

>> WE NOW MOVE FORWARD TO THE SECOND CASE ON THE DOCKET, ROLANDO RUIZ VERSUS TENET HIALEAH HEALTH SYSTEM.

TENET HIALEAH HEALTH SYSTEM.

>> MAY IT PLEASE THE COURT, PHILIP PARRISH AND TO MY LEFT, GEORGE GUTIERREZ.

THIS IS A SIMPLE CASE, WHETHER AN ANESTHESIOLOGIST WHO NEGLIGENTLY CLEARS HIS PATIENT FOR SURGERY FOR ANY ELECTIVE SURGERY THAT SHOULD NOT HAVE OCCURRED BECAUSE HE MISSED A STRIKINGLY ABNORMAL, NOT JUST IMMOBILE BUT STRIKINGLY ABNORMAL LAB RESULT IS AT LEAST A PROXIMATE CAUSE OF THE PATIENT AFTER DEATH IN THAT SURGERY. UNDER THIS COURT'S CASE LAW CONCERNING THE DIRECTED VERDICT AND CAUSATION AND ANSWER TO THAT QUESTION HAS TO BE YES, THE THIRD DISTRICT COURT OF APPEAL CONFLICTED WITH ALL THE DECISIONS NOTWITHSTANDING IT DIDN'T SITE ANY DECISIONS FROM THIS COURT BUT DID PREVENT SUFFICIENT FACTS, FROM THE FACT THAT DOCTOR LORENZO STATED THAT HE DID THE PRE-ANESTHESIA CLEARANCE.

WE HAD EXPERT TESTIMONY THAT THE PURPOSE OF THE PREANESTHESIA CLEARANCE IS NOT SIMPLY TO CLEAR A PATIENT FOR THE TYPE OF ANESTHESIA BUT TO CHECK ALL MEDICAL LAB RESULTS FOR MEDICAL INDICATIONS.

>> WHAT WAS THE CAUSE OF THAT?

>> EXSANGUINATION DURING THE SURGERY.

>> DID THE SURGEONS PERFORM SURGERY, DID THEY NOT SIGNED THE DEATH WARRANT, DEATH CERTIFICATE?

WE DO SO MANY DEATH WARRANTS. CLAIMING DATA WAS A HEART ATTACK.

>> THEY DID.

THE CORONER'S REPORT SUGGESTS IT WAS EXSANGUINATION.

THERE IS SOME EVIDENCE BY VIRTUE OF WHAT SURGEONS SAID, THE RECORD IS FAIRLY CLEAR THAT THE DEATH WAS PRIMARILY THROUGH EXSANGUINATION.

>> BLEEDING TO DEATH, HOW DID THAT HAPPEN?

>> THESE TYPES OF SURGERY REQUIRE, THEY ARE BLOODIED BECAUSE IT IS A CRANIAL SURGERY. HAS DOCTOR LORENZO NOTED THERE WAS EXTRA BLOOD ORDERED FOR THE SURGERY SO DOCTOR LORENZO UNDERSTANDS IT IS A DANGEROUS SURGERY, CRANIAL SURGERY AND HE CONCEDES, APPROACHING --

>> THE TUMOR WAS ATTACHED, WHERE WAS THAT?

>> IT WAS A LESION OF THE SCALP, IT HAD TO BE --

>> TO REMOVE THE TUMOR, INCISIONS HAD TO BE MADE AROUND IT.

AM I CORRECT?

IS THAT WHERE BLEEDING TOOK PLACE?

>> THE BLEEDING OCCURRED THROUGH THE BONES.

I AM NOT AS FAMILIAR WITH THE EXACT PROCESS IN WHICH THE BLEEDING OCCURRED.

IT IS MORE OR LESS CONCEDED FOR PURPOSES OF THE APPEAL THAT SHE DIED DURING SURGERY, IT IS ABILITY SURGERY TO BEGIN WITH WHICH IS WHY THEY ORDERED EXTRA BLOOD AND THERE WERE ALLEGATIONS AGAINST THE SURGEONS WHO WERE FOUND NEGLIGENT FOR NOT STOPPING THE SURGERY WHEN THERE WAS A SIGNIFICANT LOSS OF BLOOD BUT FOR PURPOSES OF DOCTOR LORENZO, HE KNOWS, HE CONCEDES THAT IF HE BOTHERED TO TURN THE PAGE HE LOOKED AT PAGE 1661 OF THE SUPPLEMENTAL RECORD WHICH HAS -- HE IS CHECKING OFF THE FORM. HE ALSO CHECKS OFF THERE IS NO

RENAL PROBLEMS.

HE DOESN'T LOOK AT THE NEXT PAGE, 1662 OF THE RECORD, TO SEE THAT THE PATIENT HAD 100 MG OF PROTEIN IN HER URINE.

>> BREACH OF DUTY IS NOT THE ISSUE.

IT IS CAUSATION.

CORRECT?

>> THAT IS WHAT THE THIRD DISTRICT RULES AND THE BASIS OF THE TRIAL COURT GRANTED THE VERDICT, WHEN HE SAID I AM GOING TO DO THE ENTIRE PREANESTHESIA CLEARANCE, WHAT IS THE EVIDENCE OF PROXIMATE CAUSE?

HE SAID TO HER --

>> UNDER MCCAIN, THE CAUSATION WE ARE LOOKING AT IS THE LEGAL CAUSE, APPROXIMATE CAUSE OF THE SPECIFIC INJURY THAT THE PLAINTIFF IS SEEKING RECOVERY FOR.

IS THAT RIGHT?

>> CORRECT.

>> JUST ANOTHER ANALOGY, IF SOMEONE GIVES A CAR KEY TO AN UNDERAGE PERSON WHO DOESN'T HAVE DRIVING EXPERIENCE, THEY KNOW THE PRESENT OF HAVE DRIVING EXPERIENCE OR DRIVERS LICENSE, SHOULDN'T BE DRIVING, AND ASSUME WE ALL WOULD AGREE THAT WOULD BE NEGLIGENT TO SEND THEM TO THE STORE TO GET SOMETHING FOR YOU IN THAT CAR.

ON THE WAY, THE YOUNG PERSON IS DRIVING THE SPEED LIMIT AND OBEY ALL TRAFFIC AND SURPRISINGLY MAY BE DOING A GOOD JOB AND THEN TRAGICALLY A DRUNK DRIVER SHOOTS THROUGH A RED LIGHT AND CAUSES AN ACCIDENT THE YOUNG DRIVER COULD NOT HAVE AVOIDED AND CAUSES INJURY, MAYBE EVEN DEATH OF THAT PERSON.

AND SO WHAT WOULD BE THE PROXIMATE CAUSE?

THE LEGAL CAUSE OF THAT INJURY THAT YOUNG PERSON SUFFERED?

>> IN THAT CASE IT IS A DIFFERENT CASE THAN WE HAVE HERE BUT IN THAT CASE, APPROXIMATE CAUSE WOULD BE YOU GAVE THE CAR KEYS TO SOMEONE WHO IS NOT QUALIFIED.

>> WOULDN'T BE PROXIMATE CAUSE BE THE NEGLIGENCE OF THE DRUNK DRIVER?

>> THAT GETS TO ISSUES, THERE ARE CASES WHERE A COURT HAS SAID SOMETHING IS TOO REMOTE. THIS IS NOT REMOTE.

>> THE DIRECT AND PROXIMATE CAUSE OF THAT INJURY WOULD BE THE DIRECT -- DRUNK DRIVER. IT WOULD NOT BE FORESEEABLE PERSON WHO GAVE THE KEYS ALTHOUGH THEY WERE NEGLIGENT, THEY WOULDN'T BE -- THEY WOULDN'T BE THE LEGAL CAUSE.

>> IT IS --

>> IF YOU COULD ANSWER MY QUESTION, MY HYPOTHETICAL, THE PERSON WHO GAVE THE KEYS NEGLIGENTLY TO THE DRIVER, LEGALLY RESPONSIBLE BECAUSE THEY PROXIMATELY CAUSED THE INJURY OR DEATH OF THAT PERSON?

>> IT COULD BE.

BECAUSE -- IT IS NOT NECESSARILY A BIZARRE OR UNFORESEEN INSTANCE.

THAT IS A DIFFERENT CASE.

>> YOUR ARGUMENT HERE SEEMS TO BE, YOU WOULD CONCEDE THE PEOPLE RESPONSIBLE FOR CONTROLLING THE BLEEDING OR GETTING EXTRA BLOOD ARE THE ONES RESPONSIBLE --

>> WE HAVE DEFENSES FOR DOCTORS WHO ARE FURTHER REMOVED.

THE INTERNIST IN THIS CASE --

>> JUST SO I UNDERSTAND THE EVIDENCE, THERE WAS NO SUGGESTION IN THE EVIDENCE THAT THE PROTEIN IN THE URINE WOULD HAVE LED TO EXTRA BLEEDING OR HAVE ANY IMMEDIATE OR DIRECT OR INDIRECT --

>> DEPENDS HOW YOU DEFINE DIRECT

OR INDIRECT.

>> YOUR ARGUMENT IS THAT IF THIS DOCTOR HAD NOTIFIED THE SURGEONS AS HE SHOULD HAVE DONE, THERE IS EVIDENCE THAT SAID THAT, HE ADMITTED IT, THERE WAS PROTEIN IN THE URINE, THEY SHOULD HAVE STOPPED THE SURGERY BECAUSE THEY SHOULD HAVE --

>> THERE'S TESTIMONY IN THE RECORD THE ANESTHESIOLOGIST HAD THE POWER TO STOP THE SURGERY THEMSELVES, DOCTOR YATES TESTIFIED HE WOULD HAVE STOPPED THE SURGERY TO FIND OUT THE REASON FOR THAT.

DOCTOR MONROE, WHO WAS THE BOSS OF DOCTOR LORENZO AND DOCTOR VELASQUEZ, THE CHIEF MEDICAL OFFICER, TESTIFIED YOU CANNOT PERMIT A PATIENT TO GO TO SURGERY.

>> THE INJURY, THE BLEEDING OUT, WOULD NOT HAVE BEEN CAUSED BECAUSE THE SURGERY NEVER WOULD HAVE HAPPENED.

>> IF THIS HAD BEEN AN EMERGENCY SURGERY YOU HAD TO GO TO NO MATTER WHAT IT DOESN'T GET STOPPED ON THIS BASIS BUT WITH THE PATIENT WHO WAS NOT FULLY DIAGNOSED, SENT TO PATHOLOGY. THAT DOCTOR KNOWS, MEANS SHE WAS SUFFERING MYELOMA WHICH IS NOT TREATED SURGERY.

THE ABNORMALS ARE IN THE MIDDLE OF THE PAGE, THEY JUMP OFF AT YOU.

AND HE CHECKED OFF THE RENAL BOSTON ON THE ANESTHESIA FORM. HE IS SENDING SOMEBODY, MAKES A MISTAKE, STRIKINGLY ABNORMAL RESULTS WHICH WOULD HAVE LED HIM AND THE SURGEON TO CANCEL AN ELECTIVE SURGERY.

>> I AM LOOKING AT THE THIRD DISTRICT OPINION AND I SEE A STATEMENT, NONE OF THE EXPERT WITNESSES, WHO TESTIFY. NONE OF THE EXPERT WITNESSES

TESTIFIED DOCTOR LORENZO'S
EVALUATION FELL BELOW THE
STANDARD OF CARE, ANY BREACH
MORE LIKELY THAN NOT CAUSED A
SPINOZA'S DEATH.

THAT IS WHAT THEY SAY IN THE
OPINION.

I'M TRYING TO FIGURE OUT WHERE
THE CONFLICT IS.

THAT IS WHAT THEY SAY.

I UNDERSTAND YOU DON'T AGREE
WITH THAT.

THAT STATEMENT, IF THE STATEMENT
STOPPED WITH NONE OF THE EXPERT
WITNESSES TESTIFY DOCTOR
LORENZO'S EVALUATION FELL BELOW
STANDARD OF CARE. GO, BUT IT
SAYS SUCH THAT ANY BREACH MORE
LIKELY THAN NOT CAUSED
ESPINOZA'S DEATH, HAS TO BE TIED
INTO THE PENULTIMATE PARAGRAPH
OF THE OPINION WHERE THEY SAY
THE RECORD IS DEVOID OF
COMPETENT SUBSTANTIAL EVIDENCE
ON WHICH TO CONCLUDE THE BLURRY
EKG AT THE PROTEIN LEVEL
RESULTS, THE RECORD IS
ABUNDANTLY CLEAR THE PRIMARY
CAUSE OF ESPINOZA'S DEATH WAS
EXSANGUINATION.

NOT SAYING THERE WAS NO EXPERT
TESTIMONY OF A BREACH IN
STANDARD OF CARE.

THAT WOULD BE A
MISINTERPRETATION OF THE RECORD.

>> THEY DID SAY IT AND THIS
CONFUSES ME.

WE HAVE TO GO, DETERMINING
WHETHER WE HAVE JURISDICTION, WE
HAVE TO GO ON WHAT THEY SAY IN
THE OPINION.

AND WE CAN'T GO ON
INTERPRETATION OF WHAT IS SAID
IN THE OPINION.

I AM STRUGGLING TO UNDERSTAND,
THEY SAY THERE IS NO EXPERT
TESTIMONY.

>> WHY THEY ARE SAYING THAT,
THEY ARE SAYING THAT -- BECAUSE
THE MISSED PROTEIN IN THE URINE

IS NOT THE MEDICAL CAUSE OF THE EXSANGUINATION, THERE CANNOT BE PROXIMATE CAUSE HERE.

>> WHAT THE EXPERT SAID.

WE KNOW THAT IS NOT THE CASE.

>> WE DON'T KNOW THAT FROM LOOKING AT THE FACE OF THE OPINION, DO WE?

>> WE KNOW THAT THEY PUT IN THE WORD, THEY DIDN'T STOP WITH NO EXPERT TESTIFYING THERE WAS A BREACH OF STANDARD CARE, THEY DON'T WANT TO SAY THEY ARE TIED TO APPROXIMATE CAUSATION, BUT WHY THEY THINK THERE IS PROXIMATE CAUSATION HERE, THAT EXPIRATION APPROXIMATE CAUSATION UNDER THE FACTS OF THIS CASE WHICH ARE SET FORTH, TO KNOW THAT WHAT THEY ARE SAYING IS WHAT I JUST SAID.

THEY ARE SAYING THE MISSING PROTEIN HAD TO BE THE MEDICAL CAUSE OF THE DEATH RATHER THAN THE MISSING PROTEIN, WHEN YOU LOOK AT DOCTOR LORENZO INDEPENDENTLY, IS THERE A REASON YOU HAVE TO LOOK TO EACH AND EVERY POSITION OF THE MEDICAL MALPRACTICE CASE?

>> YOU'RE MAKING ARGUMENTS AS TO THE MERITS BUT NOT TOUCHING ON THE QUESTION OF JURISDICTION.

>> I AM SORRY.

I HAVE ANSWERED THE QUESTION. YOU PULMONARY WON ON JURISDICTION AND ULTIMATELY ONE ON JURISDICTION BUT I AM MYSTIFIED BY THE CONFLICT.

I LOOK AT WHAT THE OPINION SAYS.

>> THE ONLY WAY I CAN INTERPRET THIS OPINION KNOWING WHAT JUDGES FERNANDEZ AND SUAREZ DO, WHICH IS THERE WAS EXPERT TESTIMONY THAT GET ALL THAT AND TESTIFIED ABOUT A BREACH OF STANDARD OF CARE IS TO LOOK AT WHAT THEY THINK IS PROXIMATE CAUSE WHICH CONFLICTS WITH THE COURT'S OPINIONS THAT THIS IS NOT A

SCENARIO WHERE YOU HAVE A
FREAKISH AND IMPROBABLE CHAIN OF
EVENTS.

WE HAVE A DIRECT CHAIN OF
EVENTS.

>> I UNDERSTAND WHAT YOU ARE
SAYING BUT TO DO THAT YOU LOOK
BEYOND WHAT IS IN THE TEXT OF
THE MAJORITY OPINION.

>> YOU HAVE TO READ THE TEXT OF
THE OPINION BY LOOKING AT THE
ENTIRE SENTENCE, NOT JUST
STOPPING WITH NO EXPERT
TESTIMONY.

IF NO ONE TESTIFIES IN THE STATE
OF CARE, ABSOLUTELY IT IS GOING
TO BE THERE.

WHICH THEN CAUSED, THEY EXPLAIN
IT LATER IN THE OPINION THAT IN
THEIR OPINION IT DIDN'T CAUSE IT
BECAUSE SHE DIED FROM
EXSANGUINATION AND THE PROTEIN,
STRIKINGLY ABNORMAL PROTEIN LAB
RESULT, THAT PROTEIN DIDN'T
CAUSE MEDICALLY, CAUSED IT
BECAUSE IT SHOULD HAVE ALERTED
THE PHYSICIANS NOT TO SEND HER
INTO THIS ELECTIVE SURGERY AND
THAT IS IN A STRICT APPROXIMATE
CAUSATION.

>> LET ME TRY THIS A DIFFERENT
WAY.

YOU AGREE THE CONSTITUTION
LIMITS OUR ABILITY TO HEAR CASES
WHICH WE CAN'T ACT OUTSIDE OUR
AUTHORITY AND IN THIS CASE YOU
HAVE ALLEGED OR EXPRESS DIRECT
CONFLICT AND AGREE THERE HAS TO
BE ON THE FACE OF THE OPINION.
YOU HAVE TO LOOK AT THE OPINION
AND SEE THE CONFLICT.

>> THE LAW WAS MISAPPLIED.

>> FROM THE FACE OF THE OPINION.
BACK TO JUSTICE KENNEDY'S
QUESTION CAN YOU POINT TO ME ON
THE FACE OF THE OPINION THE
LEGAL MISAPPLICATION YOU CAN SEE
IN THE MAJORITY OPINION?

>> THE PENULTIMATE PARAGRAPH.
IT IS SAYING THIS CAN'T BE A

PROXIMATE CAUSE BECAUSE STRIKING ABNORMAL LAB RESULTS THAT BLUR THE EKG DID NOT DIRECTLY CAUSE THE DEATH.

>> FROM THE OPINIONS SINCE ALL THE OPINION DOES IS SAY WHAT EXPERTS SAID, HOW CAN YOU TELL THAT THAT IS WRONG?

>> YOU HAVE TO TIE THE FULL SENTENCE FROM THE BEGINNING OF THE OPINION WHERE TO BE DOESN'T SAY NOBODY TESTIFIED ON THE STANDARD OF CARE, SUCH THAT THE CAUSE, WHEN THEY ARE DESCRIBING SUCH THAT IT CAUSED, THEY DESCRIBE FACTS WHICH UNDER THIS COURT'S AUTHORITY WOULD REQUIRE THEM TO REVERSE, NOT A FIRM.

>> MAY I ASK A QUESTION? ASSUME WE HAVE JURISDICTION UNDER THE THEORY THE THIRD DISTRICT DIDN'T PROPERLY EXPLAIN PRIMARY CAUSE, PROXIMATE CAUSE, THEY JUST SAY THE CONCLUSION IS, I WILL QUOTE FROM IT, THE RECORD IS ABUNDANTLY CLEAR THAT THE PRIMARY CAUSE OF ESPINOZA'S DEATH WAS SUCH AND SUCH. UNDER FLORIDA LAW YOU CAN HAVE RESPONSIBILITY, LIABILITY IF THERE IS LESS THEN PRIMARY CAUSE.

YOU CAN HAVE MULTIPLE CAUSES BUT LET'S GET THAT BEHIND US.

I WANT TO BE SURE I UNDERSTAND YOUR ARGUMENT, AND THAT IS THAT BECAUSE THERE WAS SOME LABORATORY FINDING THAT HAS NOTHING TO DO WITH WHAT HAPPENED TO THIS PATIENT, BUT IT WAS SUCH THAT THEY WOULD NOT HAVE PROCEEDED WITH SURGERY JUST TO FIND OUT ABOUT THAT CONDITION. IS THAT WHAT YOUR ARGUMENT IS?

>> I HAVE TO DISAGREE WITH YOU THAT IT HAS NOTHING TO DO WITH IT.

IT MAY NOT BE THE MEDICAL CAUSE THAT IT HAS EVERYTHING TO DO WITH THE FACT --

>> EXCUSE MY LANGUAGE.
I MISUSED THE LANGUAGE.
I'M TRYING TO GET TO THE
PRACTICAL QUESTION AND DIRECT
QUESTION THAT THE LABORATORY
RESULT WOULD HAVE JUST STOPPED
OR POSTPONED THE SURGERY,
NOTHING MORE.

NO TESTIMONY.
THE LABORATORY FINDING
CONTRIBUTED IN ANY WAY TO THE
ACTUAL OUTCOME OF WHAT HAPPENED,
THAT IS WHAT WE HAVE TO TALK
ABOUT AND FIND OUT.

I RESPECT YOUR ARGUMENTS, SO
MANY CASES ACROSS THE STATE OF
FLORIDA, AND DOES NOT HAVE A
CONTRIBUTING CAUSE TO AN
ACCIDENT.

AND YOU HAVEN'T CONVINCED ME IF
THAT IS THE LAW OF FLORIDA
RESPECTFULLY.

I AM TRYING TO GET PAST THE
SUPERFICIAL STUFF AND SOMETHING
THAT IS DANGEROUS TO THE
CONSISTENCY OF FLORIDA LAW.
I AM HAVING A PROBLEM WITH HOW
YOU GET TO CAUSATION OF ANY
KIND.

>> YOU SHOULDN'T HAVE SAID
SOMEONE TO SURGERY, HOW IS THAT
NOT THE A PROXIMATE CAUSE, NOT A
FREAKISH AND IMPROBABLE
OCCURRENCE THAT SOMETHING COULD
GO WRONG.

LET'S ASSUME SHE SURVIVES THIS
SURGERY.

SHE COULD HAVE SUED FOR HAVING
TO GO THROUGH SURGERY WHEN IT
WAS AN ELECTIVE SURGERY AND HAD
THIS BEEN COST, THE CORRECT
DIAGNOSIS.

>> ASSUME FOR A SECOND AND
AILMENT REQUIRED AMPUTATION OF
MY RIGHT LEG AND I AM WILLING TO
SURGERY THAT MORNING AND GO TO
PULMONARY TESTS.

AND A LAB REPORT IS NOT READY.
IT WOULD HAVE IMPEDED DOCTORS
FROM CONDUCTING SURGERY.

DURING SURGERY THEY AMPUTATE THE
WRONG LEG.

SEE WHAT I SAYING?

WHAT YOU ARE SAYING HIS HEAD
THEY READ THE LAB REPORT THEY
WOULD NOT HAVE CONDUCTED THE
SURGERY AND WOULD NOT HAVE CUT
OFF THE WRONG LEG.

>> CUTTING OFF THE WRONG LEG IS
FREAKISHLY IMPROBABLE.

HAVING SOMEONE DIE IN SURGERY
KNOWN TO BE BLOOD HE WHERE THEY
ORDER EXCESS BLOOD AND
COMPLETELY UNNECESSARY ELECTIVE
SURGERY, THE SURGEON, IF I HAD
BEEN ALERTED I WOULD NOT HAVE
HAD THIS SURGERY.

>> YOU HAVE CONSUMED ALL YOUR
TIME PLUS A LITTLE MORE.

>> JUST A LITTLE MORE.

THE LAST PART THREW ME OFF.
YOU ARE SAYING THEY WOULD HAVE
NEVER EVER NEEDED THIS TYPE OF
MEDICAL TREATMENT.

IF THEY HAD SOMEBODY HAD CUT
THAT.

NOT THAT IT WOULD HAVE BEEN
DELAYED.

IT IS THAT THIS WOULD HAVE NEVER
HAPPENED.

>> DOCTOR LORENZO TESTIFIED, HE
WOULD HAVE KNOWN THIS, YOU DO
NOT TREAT THIS SURGICALLY BUT
WITH RADIATION.

>> THAT ANSWERS MY --

>> EVEN THOUGH YOUR TIME IS GONE
I LOOK FORWARD TO THREE MINUTES
FOR REBUTTAL.

SINCE WE HELPS TO CONSUME IT.

>> MAY IT PLEASE THE COURT.

DINAH STEIN, WE AGREE WITH
PHILIP PARRISH.

I WOULD LIKE TO ADDRESS JUSTICE
LEWIS'S CONCERN OF THE PRACTICAL
EFFECT, A CORRECT DECISION OF
THE TRIAL COURT AND THIRD
DISTRICT MAJORITY AND IT
ABSOLUTELY WAS.

THERE IS NO REASON FOR THIS
COURT TO DO A SECOND TIER FACT

ANALYSIS IN THIS CASE THAT THE MAJORITY WAS CORRECT.

FIRST THING I WANT TO ADDRESS IN CASE IT IS AN ISSUE IS THE QUESTION ABOUT WHAT THE DEATH CERTIFICATE SAID.

THIS WAS A CLEAR CASE OF EXSANGUINATION AND NOTHING ELSE. THE DEATH CERTIFICATE SAID HEART FAILURE WHICH EVERYONE AGREED AT TRIAL, THE EXPERTS AGREED WAS SECONDARY TO BLOOD LOSS AND WHAT HAPPENED WAS AS SOON AS SURGEONS STARTED INCISING, STARTED LOSING MASSIVE QUANTITIES OF BLOOD THROUGH WHAT WAS THOUGHT TO BE BONE AND TRAGICALLY THEY KEPT OPERATING.

NOBODY STOPPED THEM.

'S BLOOD CAME OUT OF HER AND THAT IS WHAT CAUSED --

>> HERE'S MY QUESTION.

IT GOES BACK TO THE CAUSATION ISSUE.

THE ANESTHESIOLOGIST IS THE KEY PERSON WHO HAS TO CLEAR SOMEBODY FOR SURGERY SO IF SOMEBODY IS GOING FOR A MINOR SURGERY THAT IS ELECTIVE AND THERE ARE CONTRAINDICATIONS, THE EKG, THE BLOODWORK, WHICH ALL HAS TO BE REVIEWED BY THE ANESTHESIOLOGIST BEFORE THAT, TO SAY IT WAS OKAY, SHE WENT TO SURGERY, IF IT IS AN UNNECESSARY SURGERY, HE CONTRIBUTED TO HER GOING TO SURGERY BY NOT STOPPING, THAT IS THE ARGUMENT.

>> THAT IS PART OF IT AND LET ME ADDRESS THAT AND I WILL SPLIT IT UP INTO THE TWO ALLEGED ACTS A BIG NEGLIGENCE BECAUSE WHEN WAS THE EKG AND WHEN WAS THE URINE. THE EKG EVERYBODY AGREED IF HE HAD ORDERED A REPEATING EKG IT WOULD HAVE BEEN DONE IN 20 MINUTES AND COME BACK NORMAL. PLAINTIFFS, TWO EXPERTS AGREED THAT IT HAD NOTHING TO DO WITH THE CASE.

WE ARE TALKING ZONE OF RISK.
THERE WAS NO ZONE OF RISK FROM
THE EKG.

IT HAD 0 TO DO WITH HER GOING
INTO SURGERY AND WHAT HAPPENED
IN SURGERY.

SHE DID NOT DIE OF CARDIAC
PREEXISTING CONDITION.

THAT SHOULD BE OFF THE TABLE.

>> WHAT WAS THE TESTIMONY ABOUT
HOW SHE DIED?

WAS THE TUMOR TOO BIG AND SHE
BLED TO DEATH BECAUSE OF THE
TUMOR?

>> THE TESTIMONY, IT WAS THE
PLAINTIFF'S EXPERTS TESTIFIED
THE SURGEONS, THERE WAS A LOT TO
BE SAID ABOUT THE TECHNIQUES
THEY USE, THEY USED THE WRONG
TECHNIQUE.

THEY USED A TECHNIQUE THAT WAS
ARCHAIC AND ALLOW TOO MUCH TIME
TO BLEED AND THERE WASN'T ENOUGH
TIME TO STOP THE BLOOD AND TURN
HER OVER AND PUT A WAX ON THE
BLEED SO THAT WAS THE TESTIMONY.

IT WAS SHE KEPT BLEEDING,
NOTHING TO DO WITH SIZE OF TUMOR
AT LEAST IN THE TESTIMONY, JUST
THESE PEOPLE LET HER BLEED TO
DEATH DURING THE SURGERY.

BUT OF COURSE IF THE EKG HAD
BEEN REDONE THE SURGERY WOULD
HAVE HAPPENED 20 MINUTES LATER.

>> YOU WERE GOING TO TALK ABOUT
THE PROTEIN.

>> LET ME BACK UP TO THE PROTEIN
ISSUE.

IT IS UNDISPUTED IN THIS RECORD
INCLUDED PLAINTIFFS WITNESSES,
THAT DOCTOR LORENZO DIDN'T
CLEAR, HE DIDN'T CLEAR HER FOR
SURGERY.

THEY AGREED HE NEVER GOT TO THE
SECOND PAGE WITH THE PROTEIN
LEVEL BECAUSE DOCTOR VELASQUEZ,
THE ASIDE ANESTHESIOLOGIST WHO
WAS IN THE OPERATING ROOM SET
I'M TAKING OVER FROM HERE AND
STARTED FROM START TO FINISH.

SO THE PLAINTIFF'S THE ANESTHESIOLOGIST EXPERT AGREED HE NEVER LOOKED AT THE SECOND PAGE.

SO HE TRIED TO TAKE IT A STEP FURTHER, HE SHOULD HAVE LOOKED AT THE SECOND PAGE BECAUSE HE PUT HIS INITIALS ON THE PAGE AND THEREFORE IN HIS MIND HE BELIEVED, THE ANESTHESIOLOGIST IN CHARGE.

THE TESTIMONY --

>> DOCTOR VELASQUEZ CLEARED FOR SURGERY DESPITE THE EKG AND PROTEIN IN THE URINE.

>> THE MEDICAL RECORDS SHOWED IT.

>> DOCTOR VELASQUEZ WAS THE DEFENDANT.

THE THEORY AGAINST DOCTOR VELASQUEZ AS IT WENT TO TRIAL WAS HE WAS NEGLIGENT DURING THE SURGERY.

DOCTOR LORENZO WAS SUED FOR NEGLIGENTLY CLEARING HIM.

AND NOT DIRECTLY BEING SUED BY THE PLAINTIFF.

>> I DON'T TAKE ISSUE WITH THAT FOR THE PURPOSES OF THIS ANALYSIS BUT I WOULD LIKE TO GET BACK TO WHAT THE EVIDENCE WAS BECAUSE THE EVIDENCE WAS DOCTOR VELASQUEZ, DOCTOR LORENZO DIDN'T CLEAR HER FOR SURGERY.

HE NEVER SAW THE SECOND PAGE. THERE IS THAT.

>> A PRETTY BIG DEAL.

IT IS A PRETTY BIG DEAL.

HOW OLD WAS THIS PATIENT?

>> 45.

>> TO BE GOING IN THINKING YOU'RE HAVING A SIMPLE SURGERY TO CHECK OUT WHAT IS WRONG WITH A TUMOR BUT IN FACT WHAT YOU HAVE IS MULTIPLE MYELOMA WHICH IS IF SOMEONE LOOKED AT THE SECOND PAGE WOULD HAVE STOPPED THE SURGERY, MAYBE THAT IS NOT PROXIMATE CAUSE LEGALLY, BUT TO ME IT IS MORE DIRECT THAN THE

TRIAL JUDGE TALKED ABOUT THE CABDRIVER TAKING HER OVER, THAT SHE COULDN'T GET IT RIGHT OVER THERE WOULDN'T HAVE BEEN THE SURGERY.

>> I WILL TAKE IT A SECOND STEP. I WANT THE COURT TO UNDERSTAND THE EVIDENCE BECAUSE AGAIN DOCTOR LORENZO WASN'T THE ONE WHO CLEARED HER FOR SURGERY. THAT IS WHY HE DIDN'T SEE THE SECOND PAGE OF THE LABS.

HE WASN'T ASSIGNED TO THE CASE.

>> THAT WOULD MEAN THERE WAS NO DUTY OF CARE BUT THAT IS NOT WHAT WE ARE HEARING.

WE ARE HEARING PROXIMATE CAUSE, THE ASSUMPTION WAS THERE WAS A BREACH OF THE STANDARD OF CARE BUT THERE WASN'T CAUSATION.

>> NO EXPERT TESTIFIED AT TRIAL, PLAINTIFFS TRIED TO MAKE THE INFERENCE BUT NOBODY TESTIFIED THAT HAD DOCTOR LORENZO SEEN THE PROTEIN, CALLED THE PRIMARY CARE PHYSICIAN, CALLED DOCTOR YATES, THAT THE SURGERY WOULD BE PERMANENTLY CANCELED.

HE SAID IT WOULDN'T HAVE GONE FORWARD THAT DAY.

>> DOCTOR YATES SAID IF HE KNEW ABOUT THE PROTEIN HE WOULD HAVE CANCELED THE SURGERY.

>> THE PROBLEM WITH THAT, IT IS UNDISPUTED.

I BELIEVE HE DID.

HE KNEW ABOUT THE PROTEIN.

>> YOU DISAGREE SHE ACTUALLY HAD MULTIPLE MYELOMA, THAT IS WHAT -- THAT IS NOT -- THEY DIDN'T EVEN CONCEDE THAT.

>> THAT IS NOT DISPUTED.

>> HE DID HAVE IT.

>> A PERSON WITH MULTIPLE MYELOMA GOING IN TO HAVE HER SKULL CUT OPEN, THE SURGERY WOULD NEVER HAVE OCCURRED IF PEOPLE PAID ATTENTION TO SOMETHING SIMPLE ON THE SECOND PAGE, THE PRIMARY CARE DOCTOR

WAS SUED ALSO.

SO WOULD HE HAVE BEEN ABLE,
WOULD THAT HAVE BEEN IF HE HAD
BEEN SUED AND IN THE CASE, WOULD
THAT HAVE BEEN APPROPRIATE?
EVERYTHING THAT HAPPENED DURING
SURGERY IS THE ONLY PROXIMATE
CAUSE OF WHY SHE DIED.

>> KNOW.

THE PLAINTIFF SUED FOR TAKING
HER TO SURGERY.

>> THERE ARE TWO PARTS.

>> ANYBODY THAT CONTRIBUTED TO
HER GOING FOR SURGERY AS PART OF
THE PROXIMATE CAUSE OF HER
DEATH.

>> AND CORRECTIVE THE PERSON
DIDN'T CONTRIBUTE TO HER GOING
TO SURGERY.

YOU HAVE TO LOOK AT EACH PERSON
INDIVIDUALLY AND NOBODY SAID
DOCTOR LORENZO HAD A DUTY EITHER
TO DIAGNOSE MULTIPLE MYELOMA AND
THEIR ANESTHESIOLOGIST AGREED HE
WOULDN'T PUT THAT ON THE
STANDARD OF CARE OR TO STOP
DOCTOR VELASQUEZ WHEN HE SHOWED
UP AND SAID I AM SORRY, I
STARTED THIS EVALUATION.

I NEED TO FINISH BEFORE YOU TAKE
OVER AND THAT IS THE PROBLEM
WITH IT.

HE WAS A PERSON WHO NEVER
CLEARED HER FOR SURGERY AND
NOBODY TESTIFIED AT TRIAL AND
THE PLAINTIFF'S EXPERT AGREED HE
DIDN'T SEE --

>> IN HIS DISSENT ABOUT
TESTIMONY, ABSOLUTELY INCORRECT?

>> A LOT OF AND I BELIEVE, THERE
WERE SUGGESTIONS SHE DIED IN THE
DISSENT OF CARDIAC ARREST.
THAT IS NOT IN THE RECORD AT
ALL.

THERE ARE -- THE DISSENT DOESN'T
-- IS NOT A BASIS FOR
JURISDICTION.

>> YOU WENT BEYOND THAT, TALKING
ABOUT WHETHER DOCTOR LORENZO WAS
NEGLIGENT.

>> WHEN JUSTICE KENNEDY TALKS ABOUT THE THIRD DISTRICT THAT THE BUT HE TESTIFIED BELOW THE STANDARD OF CARE SUCH THAT IT CAUSED HER DEATH, THAT WAS PART OF IT, THIS PERSON UNDISPUTEDLY WAS ASSIGNED TO THE CASE, DIDN'T FINISH THE EVALUATION BECAUSE THE ASSIGNED PERSON SHOWED UP, HE WAS HELPING OUT AND WITHOUT DISPUTE HE JUST DIDN'T GET FAR ENOUGH TO SEE A YOUR ANALYSIS RESULTS.

IT IS BEYOND PROXIMATE CAUSE, WE SHOULDN'T BE LOOKING AT HIM AS A CAUSE OF GOING INTO SURGERY WITH THE EKG.

BECAUSE HE SAW IT.

AND NOBODY HAD A DUTY TO DIAGNOSE MULTIPLE -- AND ONE EXPERT SAID, SIGN THIS ONE CAGE. I HAVE TO PUT MY SIGNATURE THERE, ONE EXPERT SAID BECAUSE HE PUT HIS INITIALS ON THE PAGE, THAT MEANT CLEARED FOR SURGERY. THAT WAS BEFORE THE THIRD DISTRICT, THAT IS NOT ENOUGH TO PUT ON THIS PERSON WHO BREACHED A DUTY OF CARE AS TO THE PROTEIN.

THERE IS NO DUTY OR CAUSE AS TO THE PROTEIN.

WE JUST NEVER GET TO HIM CLEARING HER ON THAT ISSUE OF THE EKG, NO CAUSATION AND THE MULTIPLE URINE PROTEIN BUT AGAIN TO QUOTE THE EXPERTS, DOCTOR MAZZAI NEVER SAID THE SURGERY WOULD BE PROBABLY CANCELED HAD HE ALERTED ANYONE TO THE URINE PROTEIN.

THE RECORD IS UNDISPUTED THAT DOCTOR YATES HAD IT COME BACK TO HIM WITH THE APPROVAL OF THE PRIMARY CARE PHYSICIAN. THEY ARE THE ONES WHO SAW IT, NOT DOCTOR LORENZO.

>> I AM CONFUSED.

DID DOCTOR VELASQUEZ SHOW THE SURGEON THE PROTEIN RESULTS?

>> HE DID NOT.
>> HOW DID HE SEE IT?
>> WHEN DOCTOR YATES ASKED FOR PRESURGICAL CLEARANCE, THE LABS WENT TO DOCTOR THE NARROW PRIOR TO THE SURGERY.
HE SIGNED OFF ON THE LABS WHICH HAD THE ABNORMAL PROTEIN, THE SAME LABS.
>> THE SURGEONS WHO DID THE SURGERY SIGNED OFF ON THE SAME LABS?
>> THERE WAS TESTIMONY THAT WAS NOT IN DISPUTE.
>> I CLEARLY RECALL YATES'S TESTIMONY THAT IF HE HAD KNOWN HE WOULD HAVE CANCELED THE SURGERY.
>> THERE WAS INCONSISTENT TESTIMONY BY YATES BUT YATES GOT THE LAB REPORT CLEARING HIM. WHETHER HE LOOKED AT IT OR NOT IS A DIFFERENT STORY BUT SHE WAS APPROVED FOR SURGERY WITH THOSE LABS BY THE PCP AS ORDERED BY DOCTOR YATES.
WE HAVE AN UNDISPUTED FACT THAT SHE HAD ALREADY BEEN APPROVED FOR SURGERY BASED ON WITH THE URINE RESULT.
THE OTHER THING I WANT TO DECK OUT IS THE TESTIMONY WAS UNDISPUTED THAT URINE PROTEIN IS NOT A SURGICAL RISK.
EVERYBODY AGREED IT DOESN'T MAKE YOU ANY MORE RISKY FOR SURGERY. THEY ARE TRYING TO PUT A DUTY ON ANESTHESIOLOGISTS TO DIAGNOSE ANY DISEASE.
I DON'T THINK WE HAVE TO GET THAT FAR.
THERE DUTY AS STATED IN THE TESTIMONY IS TO LOOK FOR SURGICAL RISKS.
>> THAT IS WHAT HAPPENED IN THIS CASE, THE WAY IN WHICH IT APPEARS, THE THIRD DISTRICT WROTE THIS OPINION BECAUSE THE CONCLUDING LINE SAYS THAT THE PRIMARY CAUSE WAS THE ACTUAL,

WHAT CAUSED THE DEATH.
THAT IS WHAT SET OFF THIS CHAIN
OF EVENTS.

YOU WOULD HAVE TO AGREE AS AN
OFFICER OF THE COURT THAT IN ANY
NEGLIGENCE CASE IT DOESN'T HAVE
TO BE JUST THE PRIMARY CAUSE.
YOU CAN HAVE CONTRIBUTING
CAUSES.

>> I CAN'T DISAGREE WITH THAT.
I DON'T DISAGREE WITH THAT.
I AGREE.

>> THAT IS WHAT I SAYING.
THAT SET THIS CHAIN OFF.
WHAT YOU HAVE DESCRIBED THIS
MORNING IS A CASE WHERE THERE IS
NO EVIDENCE, NOT THAT IT IS THE
PRIMARY CAUSE BUT THERE IS NO
EVIDENCE, THAT IS WHERE I AM
THROWN BACK A LITTLE BIT.
THE OPINION ON ITS FACE IS VERY
VERY SLIM IN ITS FACTUAL
DISCUSSION.

THE CONCLUDING LANGUAGE CREATES
HARM TO ALL FLORIDA LAW.
IT IS THE REASON THEY ARE
DECIDING IT, BECAUSE WHAT THE
PRIMARY CAUSE WAS.

>> THE LANGUAGE WASN'T PERFECT.
I WOULD SUBMIT THE FACTS OF THIS
CASE DON'T ARISE TO AN
INJUSTICE.

>> JUST THE LANGUAGE, IT DOES DO
HARM IN MY VIEW TO OTHER CASES,
YOU DON'T HAVE PRIMARY CAUSE YOU
CAN TAKE THE CASE.

EVEN AS A DEFENDANT SUING FOR
CONTRIBUTION OR WHAT HAVE YOU SO
IT SEEMS TO ME THE MORE I THINK
ABOUT IT, WE DO HAVE
JURISDICTION BUT THE RESULT MAY
NOT BE ANY DIFFERENT.

>> THE RESULT IS NOT DIFFERENT.
WE OBTAINED A NO JURISDICTION
BECAUSE ANY LITIGANT CAN READ
THE LANGUAGE, THERE IS NO BREACH
OF DUTY SUCH THAT IT CAUSED, AND
KNOW THAT IS WHAT IT MEANT
WITHOUT GETTING TO THE SECOND
PART WHICH IS A LITTLE LOOSE BUT

DOESN'T CHANGE IT.

>> IT IS NOT THE PRIMARY CAUSE
SO THERE'S NO ACTION.

>> THE DISTRICT WASN'T INTENDING
TO MAKE BROAD SWEEPING LAW.

>> WE HAVE TO BE CAREFUL WHEN WE
WRITE OPINIONS AND THAT IS WHAT
LEADS TO.

>> THE CONCERN IS IT WAS NEVER
CLEAR TO US WHAT THE
JURISDICTION WAS, NO LESS THAN
EIGHT DECISIONS AND THE
JURISDICTIONAL BRIEF OF EVERY
CONCEPT AND WHAT WE ARE TRYING
TO BRING THIS BACK TO IS A
SIMPLE CASE, IT IS A SIMPLE CASE
OF CAUSATION, A SIMPLE CASE OF
NO DUTY, NO EVIDENCE OF BREACH
OF DUTY, THIS IS IN THE CASE TO
REVERSE OR STOP INJUSTICE
BECAUSE THIS DEFENDANT SHOULD
NOT --

>> WE OUGHT NOT HAVE LAW OUT
THERE FLOATING AROUND AND SAY IT
MUST BE ONLY THE PRIMARY CAUSE,
YOU CAN'T HAVE ACTION FOR
CONCURRING CAUSE.

>> THE COURT'S JURISPRUDENCE IS
LONG AND LONG-STANDING AND WE
HAD MCCAIN AND THE THIRD
DISTRICT.

THE THIRD DISTRICT WASN'T
INTENDING TO DO ANYTHING TO
DISRUPT AND I SUBMIT THE OPINION
DOESN'T DO THAT.

>> THAT IS WHERE WE DISAGREE.
I CAN'T SEE ALL KINDS OF
PROBLEMS TRYING TO MAKE AN
ANESTHESIOLOGIST RESPONSIBLE FOR
DIAGNOSING BASED ON THE LAB
REPORT.

EVERY CONDITION A PATIENT MAY
HAVE.

I APPRECIATE THAT BUT THAT
DOESN'T GO -- THIS CASE IS
BOUNCING BACK AND FORTH.

IS THERE A DUTY TO DO THAT, A
CAUSE AND THE CAUSATION IS WHAT
CREATES A PROBLEM.

>> AGAIN WE WOULD SUBMIT THERE

IS NO JURISDICTION BUT AT THE LEAST IF THE COURT NEEDED TO CLARIFY PRIMARY CAUSE ISN'T ILLEGAL, ISN'T PART OF THE JURISPRUDENCE, APPRECIATE THAT BUT IT WOULDN'T CHANGE THE RESULT HERE.

>> IF YOU'RE ON HIS DON'T HAVE ADDITIONAL QUESTIONS ABOUT THE EVIDENCE THEN I WILL SIT. APPRECIATE YOUR TIME. THANK YOU.

>> I HAVE TO CLARIFY TWO MISTAKEN REPRESENTATIONS OF THE RECORD.

THERE IS ABSOLUTELY EVIDENCE IN THIS CASE THAT DOCTOR LORENZO CLEARED HER FOR SURGERY, ANSWER INTERROGATORY, ALL EVIDENCE AND ALL INFERENCES THE WE PRESENTED ARE DEEMED ADMITTED BY A DEFENDANT TO THE INTERROGATORY RESPONSE, HE PUT THE SIGNATURE ON 1654.

HIS SIGNATURE IS IN THE BLOCK FOR THIS POSITION SIGNATURE. DOCTOR VELASQUEZ HAS DESIGN OUTSIDE THE BOX.

HE GOT ALL THE WAY THROUGH THE RENAL SECTION IN THE RENAL SECTION IS THE REAL ISSUE HERE BECAUSE HE DIDN'T LOOK. NOT BECAUSE HE DIDN'T HAVE TIME, HE LOOKED AT THE FIRST PAGE. ALL HE HAS TO DO IS TURN THE PAGE.

THAT IS NOT WHY THE --

>> DID DOCTOR VELASQUEZ DISPUTE THE TESTIMONY THAT HE WALKED IN WHEN DOCTOR LORENZO WAS IN THE PROCESS AND TOOK OVER?

>> HE WASN'T ASKED A LOT ABOUT THE HAND OFF.

HE HAD LITTLE RECOLLECTION OF THAT DAY.

11 THROUGH 1113, HE WAS ASKED A SERIES OF QUESTIONS AND DOESN'T HAVE A LOT OF MEMORY.

HE SAYS MY USUAL PRICE WOULD BE FROM BEGINNING TO END.

KEEP IN MIND HE IS NEGLIGENT
BECAUSE HE LOOKS AT IT AND
DOESN'T THINK IT IS AN ISSUE BUT
UNDER SAUNDERS YOU LOOK AT EACH
POSITION.

>> FACTUALLY IT IS UNDISPUTED IN
THE RECORD FACTUALLY THAT DOCTOR
LORENZO STARTED BECAUSE DOCTOR
VELASQUEZ WAS LATE BUT DOCTOR
VELASQUEZ FINISHED AND WAS THE
ONE THAT TOLD THE SURGEONS THEY
COULD GO AHEAD AND WAS IN IT.

>> OUR EXPERT TESTIFIED AMONG
OTHER THINGS AND ANOTHER
MISCHARACTERIZATION OF THE
RECORD THAT OCCURRED, HE DID
TESTIFY, THERE WAS NO DOUBT, HE
TESTIFIED WITHOUT ANY CHALLENGE,
HAS CREDENTIALS.

SO HE IS SAYING IF THEY DON'T
HAVE KIDNEY DISEASE, WHY IS THIS
YEAR AN ABNORMAL.

WILL IT AFFECT THE ANESTHETIC?
IS THIS A SIGN OF WHAT IS GOING
ON WITH THE PATIENT?

IN THIS CASE THE DIAGNOSIS IS
NOT KNOWN, THEY ARE TRYING TO
TAKE SAMPLES DURING SURGERY.
FOR ANY ELECTIVE CASE WHICH THIS
WAS, PARTICULARLY WHERE WE DON'T
KNOW WHAT THE TUMOR IS SO WE
DON'T HAVE A DEFINED DIAGNOSIS,
IS THIS THE PART OF THE PUZZLE
THAT IS MISSING.

IF THE DIAGNOSIS IS MULTIPLE
MYELOMA YOU DON'T DO THE
SURGERY.

>> YOU NEED TO SO UP.
DIRECTED LORENZO DID CLEAR THE
SURGERY, FOR UNNECESSARY SURGERY
DURING WHICH SHE DIED WHICH IS
NOT A BIZARRE OR FREAKISH OR
IMPROBABLE EVENT DURING SURGERY,
SO WE ASK THE COURT TO REVERSE
AND REMAND.

>> THANK YOU FOR YOUR ARGUMENT,
THE COURT WILL STAND IN RECESS
FOR TEN MINUTES.