

>> WE WILL NOW MOVE TO THE FINAL CASE ON TODAY'S DOCKET. LEE MEMORIAL HEALTH SYSTEM VERSUS PROGRESSIVE SELECT INSURANCE COMPANY.

>> I REPRESENT WE MEMORIAL HEALTH SYSTEMS.

I WOULD LIKE TO RESERVE 3 MINUTES REBUTTAL AND THANK THE COURT FOR ACCOMMODATING MY SCHEDULES.

WE ARE HERE TODAY BECAUSE THE INSURANCE COMPANIES ARE TRYING TO ACCOMPLISH JUDICIALLY WHAT THEY HAVE BEEN UNABLE TO ACCOMPLISH LEGISLATIVELY FOR MANY YEARS AND THAT IS TO ELIMINATE THE LEE MEMORIAL.

I WOULD LIKE TO FOCUS ON .2 OF MY BRIEF RELATING TO THE LIEN LAW'S UNCONSTITUTIONALITY UNDER ARTICLE 3 SECTION 11 A 9 PROHIBITING SPECIAL LAWS THAT CREATE LEANS BASED ON PRIVATE CONTRACTS.

TO UNDERSTAND THE BASIS OF OUR ARGUMENT I MUST CLARIFY IMPORTANT FACTS IN THIS RECORD. THE ADMISSION AGREEMENT THAT CONSTITUTES THE CONTRACT IN THIS CASE IS A PUBLIC DOCUMENT. IT IS A FORM ON THE WEBSITE OF LEE MEMORIAL.

A FORM, SEEKING ADMISSION. IT CREATES, CONTAINS NO PERSONAL INFORMATION, NOTHING CONFIDENTIAL, NOT EVEN A SOCIAL SECURITY NUMBER.

>> THE EXECUTED AGREEMENT IS NOT A PUBLIC DOCUMENT.

>> IT IS A PUBLIC DOCUMENT.

>> EVEN WHEN EXECUTED.

>> EVEN WHEN EXECUTED.

>> AVAILABLE ON THE WEBSITE WHERE CAN YOU FIND IT?

>> IF YOU DID A RECORDS REQUEST TO LEE MEMORIAL, IT IS A PUBLIC RECORD AND KEPT AS A PUBLIC RECORD.

AND IF YOU LOOK AT THE RECORD IT

IS A SIGNATURE OF THE PATIENT.
IT IS NOT PROTECTED, IT IS A
PUBLIC RECORD.
THIS FACT IS VERY IMPORTANT, THE
SECOND DISTRICT SEEMED TO
BELIEVE THE CONTRACT, THE NATURE
OF IT THAT CREATES IT INTO A
PRIVATE CONTRACT, NOT A PUBLIC

IT IS ALMOST DECEPTIVE IN ITS
SIMPLICITY.
IF THIS DOCUMENT IS CREATED IN
THE PUBLIC BUSINESS OF LEE
MEMORIAL, THEN IT IS A PUBLIC
CONTRACT.
IT IS AS SIMPLE AS THAT.
THERE IS NO SUCH THING AS A
PRIVATE CONTRACT CREATED BY LEE
MEMORIAL.
ANYTHING IT IS DOING IT IS DOING
IN RUNNING ITS OPERATIONS AND
PUBLIC MISSION WHICH HAS BEEN
DECLARED BY THE FLORIDA
LEGISLATURE TO BE A PUBLIC
PURPOSE.
EVERY EMPLOYEE WHO SIGNS ONE OF
THESE DOCUMENTS, AS A WITNESS,
I'M SORRY, I MISSPOKE.
THERE ARE TWO.
THE SIGNATURE OF THE PATIENT AND
ALSO THE EMPLOYEE WHO WITNESSES
THE SIGNATURE.
>> I UNDERSTAND YOUR ARGUMENT.
IT SEEMS TO ME THAT YOU HAVE A
PIECE OF PAPER AND UNTIL SOMEONE
SIGNS IT, IT IS NOT REALLY EVEN
A CONTRACT.
IT IS JUST A PIECE OF PAPER.
IT ONLY IS PERTAINING TO, ONCE
IT IS SIGNED, IT IS ONLY
APPLICABLE TO THE PEOPLE WHO
SIGNED IT.
I AM HAVING A HARD TIME
FOLLOWING YOU THAT THIS IS A
PUBLIC DOCUMENT, SIMPLY BECAUSE
THE PUBLIC MAY HAVE ACCESS TO IT
IF YOU GO THROUGH ALL THE HOOPS
OF GETTING, YOU KNOW, REQUESTING

IT, BUT, IT IS NOT A CONTRACT UNTIL SOMEONE SIGNS IT AND ONLY THE PEOPLE WHO HAVE SIGNED IT ARE BOUND BY IT.

>> I WOULD ABSOLUTELY AGREE WITH YOU.

IT IS NOT A CONTRACT UNTIL IT IS SIGNED.

I DON'T THINK THE ISSUE IS WHETHER IT IS A PUBLIC DOCUMENT. WHAT WE HAVE TO DECIDE TODAY IS WHAT DID THE DRAFTERS OF THE CONSTITUTION MEAN WHEN THEY USE THE TERM PRIVATE CONTRACT. WHAT IS A PUBLIC CONTRACT? HERE IS OUR POSITION, YOUR HONOR.

THAT WHEN THIS DOCUMENT, WHICH, AGAIN, IS BEING CREATED IN FURTHERANCE OF THE BUSINESS OF LEE MEMORIAL, WHICH IS A PUBLIC BODY, AND THAT IS WHAT ITS MISSION IS, ITS PUBLIC PURPOSE IS TO PROVIDE HEALTHCARE TO THE INDIGENT.

WHEN THAT DOCUMENT IS CREATED, IT IS BEING DONE IN FURTHERANCE OF THAT MISSION.

I DO NOT DISAGREE WITH YOU THAT IT IS A CONTRACT BETWEEN THE HOSPITAL AND THE PATIENT. IT IS PART OF ITS PUBLIC PURPOSE.

>> AREN'T WE SUPPOSED TO READ LEGAL DOCUMENTS, CONSTITUTIONS, STATUTES, IN TERMS OF THE WORDS OF THEIR COMMON USAGE?

>> YES.

I THINK THAT THAT IS A STARTING POINT.

>> YOU WANT TO ADDRESS THE FACT THAT THE SECOND DCA AND THE PARTIES APPARENTLY UP TO THAT POINT, AND EVEN HERE, HAVE ONLY FOUND, IN TERMS OF COMMON USAGE, PUBLIC CONTRACT USED TO DISCUSS A CONTRACT IN WHICH PUBLIC FUNDS ARE BEING EXPENDED. CONTRACT TO BUILD ROADS, SOMETHING LIKE THAT.

THAT SEEMS TO BE THE COMMON
USAGE OF THAT TERM.
YOU HAVE COME UP WITH A
RATIONAL, PERHAPS, SECOND WAY TO
VIEW IT, BUT I DO NOT KNOW, THAT
YOU HAVE FOUND NO AUTHORITY TO
SUPPORT THAT OTHER THAN YOUR
ARGUMENT, I DON'T KNOW HOW WE
CAN FIND THAT TO BE A COMMON
USAGE.

>> I THINK IT IS COMMON SENSE.
FIRST OFF, THE IDEA THAT A
PUBLIC DOCUMENT IS, I'M SORRY, A
PUBLIC CONTRACT IS ONLY A PUBLIC
WORKS AGREEMENT, IT CANNOT MAKE
SENSE.

THE STATE ENTERS INTO SO MANY
DIFFERENT CONTRACTS.
WE DECIDED A MYRIAD OF STATUTES
THAT PROVIDE AUTHORITY OR THE
STATE TO ENTER INTO CONTRACTS
THAT HAVE NOTHING TO DO WITH
PUBLIC WORKS.

ALL THOSE AUTHORIZED BY STATE,
WHAT THEY DO ADDRESS IS THE
OPERATIONS AND THE FINANCING OF
THE AGENCY OR THE STATE THAT IS
ASKED TO PROVIDE A CERTAIN
SERVICE.

>> I AM STILL STRUGGLING WITH
THIS BEING A PUBLIC CONTRACT
BECAUSE IF THERE IS A BREACH,
ONCE THE PARTIES HAVE SIGNED
THIS DOCUMENT AND IT BECOMES A
CONTRACT, DOES THE PUBLIC HAVE A
RIGHT TO DO SOMETHING IF THERE
WAS A BREACH OF THE CONTRACT?

>> SO THE PUBLIC DOESN'T HAVE
THE RIGHT, LEE MEMORIAL IN SELF
HAS THE RIGHT AND LEE MEMORIAL
IS A PUBLIC BODY.

LEE MEMORIAL, A PUBLIC ENTITY,
HAS MANY RIGHTS UNDER THAT
AGREEMENT THAT CAN BE ENFORCED.
THIS GETS TO, AGAIN, A VERY
ORGANIC LEVEL OF WHAT IS THE
GOVERNMENT.

THE GOVERNMENT REPRESENTS THE
PEOPLE.

WHEN WE HAVE LEE MEMORIAL

ENTERING INTO AN AGREEMENT, IT IS ENTERING AN AGREEMENT OF A PUBLIC AGENCY THAT IS AUTHORIZED EITHER PEOPLE TO DO WHAT IT IS DOING.

VERY BASIC LEVEL.

OUR POSITION IS, YES, THE PUBLIC IS REPRESENTED BY THIS DOCUMENT. IT GIVES LEE MEMORIAL, ACTING ON BEHALF OF THE PUBLIC, PURSUANT, AND IMPORTANT MISSION TO PROVIDING HEALTHCARE TO THE COURT, THE OPPORTUNITY TO MAKE SURE IT COVERS THE FINANCES IT NEEDS UNDER THAT AGREEMENT TO SUPPORT ITS WORK.

I WOULD LIKE TO GO BACK TO SOMETHING --.

>> IF LAWNWOOD, A PARTY IN A PRIOR APPEAL THIS MORNING, THERE CONTRACT, SIMILAR MISSIONS CONTRACT, WOULD BE A PRIVATE CONTRACT.

IF THERE WAS A SIMILAR STATUTE THAT REPORTED TO PROVIDE A LIEN FOR LAWNWOOD MEDICAL, YOU WOULD AGREE THAT WOULD BE UNCONSTITUTIONAL.

>> IT IS UNDER THE DECISION FOR THIS CASE.

THAT ISSUE HAS ALREADY BEEN DECIDED, I BELIEVE.

THAT IS THE DISTINGUISHING FEATURE.

EVEN THE SECOND DCA RECOGNIZE WAS NOT RESOLVED.

JUSTICE, I WOULD LIKE TO GO BACK TO ANOTHER POINT OF USING COMMON LANGUAGE.

AN IMPORTANT PART OF THIS IS NOT ONLY USING COMMON LANGUAGE TO UNDERSTAND WHAT THE DRAFTERS OF THIS CONSTITUTIONAL PROVISION MEANT, BUT TO TRY TO FIGURE OUT THEIR INTENT.

>> WOULD IT BE NECESSARILY DRAFTERS, OR THE PEOPLE THAT ADOPTED THE PROVISION?

>> ADOPTED THE PROVISION.

I THINK IT IS FAIR TO LOOK AT

THE INFORMATION WE HAVE RELATED TO WHAT THEY WERE CONSIDERING AT THAT TIME.

ALLSTATE FILED IN ITS BIGGEST BRIEF, A REFERENCE TO A LAW REVIEW ARTICLE THAT DID A VERY THOROUGH ANALYSIS OF THE CONSTITUTIONAL HISTORY SURROUNDING THESE LIEN LAWS. PACIFICALLY THIS LANGUAGE. VERY INFORMATIVE WAS A REFERENCE TO A FLORIDA BAR SPONSORED REVISION.

THIS WAS ADDRESSING THIS LANGUAGE BEFORE WE REACHED THE FINAL LANGUAGE THAT WENT INTO THIS CONSTITUTIONAL PROVISION.

HERE IS WHAT THE FLORIDA BAR SPONSORED REVISION SAID. IT WANTED THE LANGUAGE TO READ, AND SET A PRIVATE CONTRACTS, EXCEPT LIENS LEVIED OR IMPOSED MUNICIPALITIES.

THERE CAN BE NO BETTER EVIDENCE OF WHAT THE DRAFTERS AND THOSE INDIVIDUALS WHO ARE PARTICIPATING IN THIS PARTICULAR CONSTITUTION PROVISION THAN THIS TYPE OF EVIDENCE.

WE FURTHER PROVIDED, AGAIN, IT CAME FROM THE LAW REVIEW ARTICLE AND IT'S SITES TO THE CONSTITUTIONAL INFORMATION, THAT THERE WAS, DOING THIS ENTIRE TIME PERIOD, NOT PERTAINING TO THIS SPECIFIC 11 A 9, BUT TWO OTHER AREAS OF ARTICLE 311.

BIG CONCERNS ABOUT MAKING SURE THAT PUBLIC LIENS WERE STILL GOING TO BE HONORED IN LIGHT OF THESE NEW CONSTITUTIONAL AMENDMENTS.

IF YOU TAKE A LOOK AT NOT JUST A COMMON LANGUAGE, NOT JUST TRYING TO FIGURE OUT WHAT DOES THIS SPECIFIC LANGUAGE MEAN IN THE CONTEXT OF ORDINARY --

>> THEY COULD HAVE SAID LIENS OF GOVERNMENTAL BODIES.

>> INTERESTINGLY, THAT IS WHAT

WAS SUGGESTED.
INSTEAD, WHAT DID THEY CHOOSE?
MUCH BROADER LANGUAGE.
THEY SUGGESTED IMPOSED BY
MUNICIPALITIES.
THAT WOULD NOT INCLUDE LEE
MEMORIAL, BY THE WAY.
THEY CHOSE VERY BROAD LANGUAGE.
PRIVATE CONTRACTS ELIMINATING
ALL PUBLIC CONTRACTS.
THAT OPENS UP THE DOOR FOR NOT
JUST MUNICIPALITIES, LIENS
CREATED BY MUNICIPALITIES, BUT
LIENS CREATED BY THIS PARTICULAR
BODY THAT IS NOT A MUNICIPALITY.
IF YOU TAKE A LOOK AT THIS
SPECIFIC LANGUAGE THAT WAS
AVAILABLE TO US TO REVIEW WHAT
THE DRAFTERS WERE THINKING, WHAT
WAS SURROUNDING THIS TIME
PERIOD, YOU WILL SEE SUPPORT FOR
OUR POSITION.
I WOULD ALSO LIKE TO TOUCH ON
PART OF THE ANALYSIS IN THE
SECOND DCA'S DECISION.
IT GOES BACK TO THE FIRST DCA'S
DECISION THAT CAME UP TO THIS
COURT.
THERE IS SOME VERY LOOSE
LANGUAGE CONTAINED IN THAT CASE.
DEALING WITH A LIEN ON PUBLIC
ASSETS, AND THIS IS NOT A LIEN
ON PUBLIC ASSETS, BUT A LIEN,
AND HERE IS WHERE I THINK THE
SECOND DCA AND PROGRESSIVE GOES
ASTRAY, IT DOES NOT SAY A LIEN
ON PRIVATE ASSET.
IF YOU TAKE A LOOK AT THE
LANGUAGE FROM THE CASE, IT IS
VERY, VERY SPECIFIC.
IT SAYS WE FIND THAT THE LIEN
DOES NOT ATTACH TO THE PUBLIC
ASSETS, BUT RATHER TO THE ASSETS
OF THE PATIENT WHOSE CONTRACT
WITH THE HOSPITAL IS A PRIVATE
ONE.
EVEN THERE THE ANALYSIS BY THE
FIRST DCA, BEFORE IT WENT UP TO
THIS COURT, DID NOT FOCUS ON THE
NATURE OF ASSETS, BUT IT BEING A

PRIVATE CONTRACT.

TO THE EXTENT THAT THE SECOND DCA LEAVES THAT THIS COURT SOMEHOW APPROVED THE FIRST DCA'S RATIONALE THAT BECAUSE A PUBLIC CONTRACT CAN HAVE A REMEDY THAT PERMITS A PARTY TO SEEK PRIVATE ASSETS TO PAY UNDER THE PUBLIC CONTRACT THAT SOMEHOW CONVERTS A PUBLIC CONTRACT INTO A PRIVATE CONTRACT, WE WOULD SAY NUMBER ONE, THAT DOES NOT MAKE SENSE AND NUMBER TWO, THAT IS NOT WHAT THE FIRST DCA MET AND NUMBER THREE, THIS COURT DID NOT ADOPT THAT.

I WOULD ALSO LIKE TO DISCUSS THE PORTION OF THE OPINION THAT IF THIS COURT FINDS THAT THIS IS CONSTITUTIONAL, THE COURT ALSO FOUND THAT THE LANGUAGE IN THE LIEN STATUTE THAT PERMITS THE HOSPITAL TO OBTAIN AMOUNTS GREATER THAN THE AMOUNT THAT WAS LEANED, CREATES SOME SORT OF UNCONSTITUTIONAL IMPINGEMENT ON THE RIGHTS OF THE INSURANCE COMPANIES, FIRST, I WOULD LIKE TO SAY THAT TO THE EXTENT THAT THE SECOND DCA BELIEVED THAT THIS WAS FACIALLY UNCONSTITUTIONAL, IT CANNOT. THERE ARE MANY SCENARIOS IN WHICH LET'S SAY YOU HAVE A POLICY FOR \$50,000 AND THE LIEN IS \$5000, CERTAINLY, THERE WOULD BE NO SCENARIO WHERE THE LIEN COULD EXCEED THE POLICY AMOUNTS. TO THE EXTENT THAT THE SECOND DCA DECLARED THIS TO BE FACIALLY AND CONSTITUTIONAL, IT'S INCORRECT.

EVEN IF YOU TAKE A LOOK AT IT, AND ASSUME THAT IN EVERY CASE, THE AMOUNT OF THE LIEN WILL EXCEED THE AMOUNT OF THE POLICY PROCEEDS, ALL WE ARE LOOKING AT RIGHT NOW IS DETERMINING OTHER THERE IS A RATIONAL BASIS FOR THE LEGISLATURE TO DO WHAT IT

DID.

TO GIVE AN INCENTIVE TO THE
INSURANCE COMPANIES.

YES, IT MAY BE A LITTLE BIT OF A
HASSLE, BUT TO PAY THE HOSPITAL
LIEN.

IF YOU CHOOSE TO NOT DO SO, IF
YOU CHOOSE TO NOT PROTECT
YOURSELF BY EITHER PAYING IT
DIRECTLY, OR PUTTING IT IN THE
COURT REGISTRY, OR WRITING A
JOINT CHECK, THEY HAVE A LOT OF
OPTIONS HERE, THERE IS A PENALTY
FOR IT.

THE PENALTY IS YOU MAY HAVE TO
PAY MORE THAN THE AMOUNT OF THE
LIEN.

THAT IS A RATIONAL, LEGISLATIVE
OBJECTIVE.

IT IS CONSISTENT WITH OTHER
STATUTES SUCH AS THE
CONSTRUCTIVE LIEN LAWS.

IT IS OUR POSITION THAT IT DOES
NOT AFFORD A BASIS TO FIND THIS
LIEN LAW OTHERWISE
UNCONSTITUTIONAL.

AND WITH THAT, ARE LIKE TO
RESERVE THE REST OF MY TIME FOR
REBUTTAL.

THANK YOU.

>> GOOD MORNING.

MAYOR PLEASE THE COURT.

MY NAME IS VALERIE A. DONDERO
WITH KUBICKI DRAPER.

THIS MORNING WE ARE HERE ASKING
THIS COURT TO CONFIRM THE SECOND
DISTRICT'S RULING, THE TRIAL
COURT'S RULING'S RULING.

GRANTING SUMMARY FINAL JUDGMENT
IN FAVOR OF PROGRESSIVE AND
DECLARING LEE MEMORIAL STATUTE
JUST THAT SECTION 18
UNCONSTITUTIONAL UNDER ARTICLE
THREE SECTION 11 A 9.

AND AS A SECOND DISTRICT
ADDRESSED, ALSO, ARTICLE ONE
SECTION 10.

>> JUST ON THE FACTS OF THIS
CASE, I UNDERSTAND THERE COULD
BE A CASE WHERE THERE IS A

MILLION DOLLARS INSURANCE AND
LEANED OUT 5000 AND THE
INSURANCE COMPANY IGNORES IT, AS
WE KNOW IS PRACTICAL MATTER, THE
INSURANCE COMPANY DOES A LOT
WITH THE SETTLING PARTY TO
ENSURE THAT MEDICAL BILLS GET
TAKEN CARE OF WITH THEIR
INSURANCE.

WHAT ARE WE DEALING WITH HERE?
PROGRESSIVE HAD A \$10,000
POLICY?

>> THAT IS CORRECT.

>> THE AMOUNT OF THE LIEN THEY
ARE ASKING YOU TO PAY IS HOW
MUCH?

>> \$84,199 FOR TWO SEPARATE
HOSPITALIZATIONS.

PROGRESSIVE POLICY OF INSURANCE
WITH ITS INSURED WAS A \$10,000
PER PERSON BODILY INJURY
COVERAGE.

IN THIS INSTANCE, AND REFERRING
TO LEE MEMORIAL'S ARGUMENT THAT
THERE ARE SOME OPPORTUNITIES, IF
YOU HAVE A MILLION-DOLLAR POLICY
IN THE LIEN IS 20,000, THAT IT
CAN BE PAID.

>> THEY ARE TALKING ABOUT
WHETHER IT IS FACIALLY
UNCONSTITUTIONAL OR AS APPLIED,
REALLY, THE ISSUE OF HOW MUCH
THE LIEN IS AND HOW MUCH THE
POLICY IS, DOES NOT AFFECT
WHETHER THEY HAVE A GREATER
RIGHT THEN ANOTHER HOSPITAL WHO,
YOU KNOW, ALWAYS ASSERTS THE
RIGHT TO GET RECOVERY AND THE
INSURED OR INJURED PARTY
NEGOTIATES.

>> THAT IS ENTIRELY CORRECT.
THEY DON'T HAVE ANY GREATER
RIGHTS THAN THE PATIENT COULD
ACTUALLY ASSIGN UNDER THAT
CONTRACT.

SO, FOR LEE MEMORIAL TO SUGGEST
THAT AN INJURED PATIENT GETS
\$10,000 BECAUSE THAT IS ALL
THERE IS IN COVERAGE, BUT IS IN
PENALIZED, PROGRESSIVE IN THIS

INSTANCE AND OTHER SIMILAR SITUATED INSURERS ARE PENALIZED BY NOT PROTECTING LEE MEMORIAL AND THEN BEING EXPOSED TO WHAT BASICALLY AMOUNTS TO EXTRACTIONAL LIABILITY, ATTORNEY FEES, COSTS, WHICH ARE ALL PART OF FLORIDA'S BAD FAITH LAWS THAT ARE NOT INCORPORATED INTO THIS LIEN.

WHEN LEE MEMORIAL TALKS ABOUT THE PENALTY THAT AN INSURANCE COMPANY SUFFERS IN FAILING TO PROTECT THAT LIEN, IT REALLY DOES CREATE BAD FAITH EXTRACTIONAL EXPOSURE TO INSURANCE COMPANIES WITHOUT LEE MEMORIAL HAVING TO JUMP THROUGH THE STATUTORY HOOPS OF 624.155 A FLORIDA CIVIL STATUTE.

>> THE PROGRESSIVE TENDER TO LEE MEMORIAL, THE \$10,000 --

>> THERE WERE TWO PAYMENTS.

\$10,000 IN BODILY INJURY LIABILITY COVERAGE TENDER DIRECTLY TO THE PATIENT ONCE THE LAWYER REFUSED TO CONTINUE ON WITH THE CASE.

PROGRESSIVE THEN TENDERED AN ADDITIONAL \$10,000, WHICH WAS A MAXIMUM PIP COVERAGE, PERSONAL INJURY PROTECTION COVERAGE, DIRECTLY TO LEE MEMORIAL BECAUSE THE PATIENT WAS ON A BICYCLE. HE DID NOT LIVE WITH ANYONE AND HE DID NOT OWN HIS OWN MOTOR VEHICLE.

THEY ALSO PAID THE PIP AS TECHNICALLY A PEDESTRIAN UNDER THE PIP STATUTE

THERE WERE \$210,000 PAYMENTS.

>> TODAY IN THE SETTLEMENT, IT WAS NOT REPRESENTED BY ANYONE IN THE SETTLEMENT?

>> AT THE TIME THE CLAIM WAS INITIALLY PRESENTED TO PROGRESSIVE, THE PATIENT WAS REPRESENTED BY MORGAN AND MORGAN.

THE RECORD WILL REFLECT THAT

MORGAN AND MORGAN DID STOP EVERYTHING THE PATIENT BECAUSE OF THE INABILITY TO SETTLE THE LIEN WITH LEE MEMORIAL.

>> WHEN PROGRESSIVE THEN TENDERED OR WHEN THE INSURED, THE INSURED, I AM SORRY, THE PLAINTIFF GOT THE MONEY, DID PROGRESSIVE SAY THAT HE HAD TO PROTECT THE LEE MEMORIAL LIEN?

>> YES.

THAT WAS PART OF THE SETTLEMENT. OF COURSE, THAT DID NOT HAPPEN, AS IN MANY INSTANCES, THE CORRESPONDENCE BETWEEN COUNSEL FOR THE PATIENT AT THAT TIME, HE WAS VIRTUALLY UNEMPLOYABLE AND HOMELESS AND THERE WAS A REQUEST THAT THE ENTIRE LIEN BE WAIVED BECAUSE OF FINANCIAL HARDSHIP. LEE MEMORIAL REFUSED AND HERE WE STAND.

BUT UNDER SECTION 11 A 9 OF ARTICLE THREE, THERE CAN BE NO SPECIAL LAW AS WE KNOW, BUT THERE IS FOUR SEPARATE PROHIBITIONS IN THAT PROHIBITION ITSELF.

IT IS A PROHIBITION ON THE CREATION OF A LIEN BASED ON A PRIVATE CONTRACT.

IT IS ALSO A PROHIBITION AGAINST THE ENFORCEMENT OF THE LIEN BASED ON A PRIVATE CONTRACT.

THE EXTENSION OF THE LIEN, OR THE IMPAIRMENT OF THE LIEN BASED ON A PRIVATE CONTRACT.

THERE ARE ACTUALLY FOUR PROHIBITIONS WITHIN 11 A 9. INITIALLY, YES, THE LIEN IS CREATED UPON THE HOSPITAL ADMISSION CONTRACT.

THAT, CERTAINLY IS A PRIVATE CONTRACT.

NOT BECAUSE I SAY SO, BUT WE KNOW, IN THE FIRST DISTRICT, IN THE MERCURY DECISION, WHICH THIS COURT ACKNOWLEDGE AND RATIFIED, THERE IS AN ACTUAL DESCRIPTION AND DEFINITION OF WHY THAT WAS A

PRIVATE CONTRACT.
IT WAS NOT BECAUSE SHANS WAS A
PRIVATE HOSPITAL.
NOBODY EVER MENTIONS IT WAS A
PRIVATE HOSPITAL.
IT IN FACT IS A NOT-FOR-PROFIT
CORPORATION WHO QUALIFIES AS A
CHARITY UNDER IRS CODE.
THE REASON IT WAS A PRIVATE
CONTRACT WAS BECAUSE THEY
PROVIDED MEDICAL CARE AND
TREATMENT IN THAT INSTANCE, AS
HERE, ON AN EMERGENCY BASIS FOR
WHICH IN THE PATIENT OWED A DEBT
FOR REPAYMENT.
THAT IS A PRIVATE NATURE OF THE
CONTRACT.
NOT BECAUSE IT WAS A PRIVATE
HOSPITAL OR A CHARITABLE
HOSPITAL.
THE MERCURY DECISION NEVER MAKES
THAT ANALOGY.
THIS COURT AND THE SHANS
DECISION NEVER MAKES A STATEMENT
THAT THIS IS A PRIVATE CONTRACT
BECAUSE SHANS IS A PRIVATE
HOSPITAL.
THERE ARE CERTAINLY PLENTY OF
CASE LAW, WHERE, IF YOU LOOK AT
PUBLIC ENTITIES, THEY CAN ENTER
INTO PRIVATE CONTRACTS.
WE KNOW JUST FROM LOOKING AT THE
LIEN STATUTE LANGUAGE ITSELF,
THAT LEE MEMORIAL CAN ENTER INTO
CONTRACTS OF ALL KINDS.
IT DOES NOT SAY PUBLIC CONTRACTS
OF ALL KINDS.
IT CERTAINLY COULD HAVE.
THE LIEN STATUTE SAYS LEE
MEMORIAL CAN ENTER INTO
CONTRACTS ON VARIOUS SUBJECTS
WITH PUBLIC AND PRIVATE
CORPORATIONS AND ENTITIES.
ENTERING INTO A HOSPITAL
ADMISSION CONTRACT, WITH ONE
PERSON FOR THEIR PERSONAL
MEDICAL CARE AND TREATMENT IS A
PRIVATE CONTRACT.
JUST LIKE MERCURY TOLD US AND
JUST LIKE THE SECOND DISTRICT

TOLD US IN THIS CASE HERE.
IF YOU LOOK AT THAT HOSPITAL
ADMISSION CONTRACT, IT IS NOT A
FORM CONTRACT.
IT DOES NOT HAVE ANY PERSONAL
ISSUES ATTACHED TO IT.
IT DOES.
THE PATIENT HAS AN UNCONDITIONAL
GUARANTEE.
THAT IS THE LANGUAGE OF THE
HOSPITAL ADMISSION CONTRACT.
HE HAS TWO ASSIGNED HIS RIGHTS
TO PAYMENT OF HIS BILLS.
FROM MEDICARE, MEDICAID,
THIRD-PARTY LIABILITY INSURANCE,
HEALTH INSURANCE, WHATEVER THAT
PATIENT HAD IN THE WAY OF AN
ASSET, HE ASSIGNED TO LEE
MEMORIAL.
THOSE ARE HIS PRIVATE INSURANCE
CONTRACTS.
HIS PRIVATE HEALTH INSURANCE.
HIS PRIVATE MEDICARE AND
MEDICAID INSURANCE.
THOSE ASSETS BELONG TO THE
PATIENT.
THEY DO NOT BELONG TO THE
PUBLIC.
THEY DON'T BELONG TO LEE
MEMORIAL.
THEY BELONG TO, IN THIS
INSTANCE, THE PATIENT.
SHANDS AND MERCURY DISPOSED OF
THIS ISSUE WHEN THIS COURT RULED
IN 2012 THAT THIS TYPE OF LIEN
LAW, WHICH, IF YOU COMPARE THE
LANGUAGE, FROM THE ALACHUA
COUNTY ORDINANCE THAT WAS AT
ISSUE TO THE LIEN LAW THAT IS AT
ISSUE HERE FOR LEE MEMORIAL,
THEY ARE ALMOST IDENTICAL,
VERBATIM LANGUAGE.
IT IS A SPECIAL LAW THAT CREATED
A LIEN BASED ON A PRIVATE
HOSPITAL ADMISSION CONTRACT.
THEN IT GOES ONE OR TWO STEPS
FARTHER.
IT CREATED A LIEN BASED ON THE
HOSPITAL CONTRACT, BUT THEN IT
ENFORCES THAT LIEN, NOT BASED

UPON THE HOSPITAL ADMISSION CONTRACT, BUT IT ENFORCES THE LIEN AGAINST THE PROGRESSIVE POLICY OF INSURANCE.

THAT IS ANOTHER PRIVATE CONTRACT.

IT PROVIDES A SOURCE OF RECOVERY FOR IMPAIRMENT OF THE LIEN BASED ON THE PRIVATE INSURANCE POLICY THAT PROGRESSIVE HAD FOR ITS INSURED.

THAT IS ANOTHER PRIVATE CONTRACT.

IT IS NOT SUFFICIENT FOR THE MEMORIAL TO SUGGEST TO THIS COURT THAT BECAUSE IT'S HOSPITAL ADMISSION CONTRACT IS A PUBLIC CONTRACT THAT THEY HAVE ESCAPED JUDICIAL SCRUTINY UNDER ARTICLE ONE SECTION 11 A 9 BECAUSE THEY HAVE NOT.

THEY HAVE ENFORCED, EXTENDED AND IMPAIRED LIENS.

THEY HAVE CREATED A SPECIAL LAW FOR THAT ENFORCEMENT AND FOR THAT IMPAIRMENT BASED ON THE PRIVATE CONTRACT THAT PROGRESSIVE HAD WITH ITS INSURED.

HOW DO WE KNOW THAT?

BECAUSE LEE MEMORIAL WANTS \$84,000, EIGHT TIMES THE AMOUNT OF INSURANCE COVERAGE THAT WAS PURCHASED BY PROGRESSIVES INSURED.

PLUS ATTORNEYS FEES.

PLUS COSTS.

A NONPARTY TO THAT INSURANCE POLICY HAS GREATER RIGHTS THAN WAS EVER CONTRACTED FOR BETWEEN PROGRESSIVE AND ITS OWN INSURED.

>> SEPARATE AND APART FROM THE LIEN, DID THIS ACTION OR THIS CASE OR THIS DISPUTE EVER BECOME INVOLVED WITH A QUESTION OF PAYMENT OVER AND IN THE FACE OF THE ASSIGNMENT OF BENEFITS THAT EXISTED BEFORE THE PAYMENT WAS MADE?

>> I'M NOT SURE THAT I FOLLOWED

YOUR QUESTION, JUSTICE LEWIS.

>> A FULL ASSIGNMENT OF BENEFITS.

YOU UNDERSTAND WHAT AN ASSIGNMENT IS, I KNOW.

YOU KNOW WHAT BENEFITS ARE.

YOU KNOW WHAT IT MEANS WHEN AN INDIVIDUAL ASSIGNS BENEFITS OF SOME KIND TO SOMEBODY RIGHT?

>> YES.

>> THAT'S WHAT I'M ASKING.

SEPARATE AND APART FROM THE LIEN, WAS IT EVER LITIGATED IN A DISPUTE IN THIS MATTER AS TO WHETHER THE PAYMENT TO THE INSURED OVER, NOTWITHSTANDING THE BENEFITS HAD ALREADY BEEN ASSIGNED TO THE HOSPITAL IN THIS CASE.

SEPARATE AND APART.

>> NO.

I DO NOT BELIEVE THAT IT WAS. LEE MEMORIAL GETS NO GREATER RATES THAN THE PATIENT ACTUALLY HAS.

IF THE CAUSE OF ACTION IS PERSONAL INJURY AGAINST, IN THIS INSTANCE, PROGRESSIVE INSURED, PROGRESSIVE HAS A POLICY OF INSURANCE AND A DUTY OF GOOD FAITH AND FAIR DEALING TOWARDS THAT INSURED TO PAY THAT CLAIM.

>> THERE ARE OTHER PROBLEMS.

>> CERTAINLY.

>> YOU DO HAVE THE MEDICAL BENEFITS, THOSE TYPES OF THINGS, THAT I BELIEVE CAN BE ASSIGNED TO SOMEONE.

>> AND PROGRESSIVE PAID THE PIP UNDER THAT.

>> I DO UNDERSTAND THAT.

I DON'T KNOW OF ANY THEORY THAT WOULD ELEVATED TO THE FULL AMOUNT OF THEIR BILLS THAT WERE THERE.

WHAT I DO WONDER, AS TO WHETHER AN INSURANCE COMPANY PAYS OVER AN ASSIGNMENT OF BENEFITS, MEDICAL BENEFITS THAT CAN BE

ASSIGNED, WHETHER THAT INSURANCE COMPANY MAY BE RESPONSIBLE FOR HAVING TO PAY IT AGAIN.

IF THIS HAS NOT BEEN DISCUSSED, I AM JUST TALKING.

>> THAT IS AN EXCELLENT POINT. UNDER ASSIGNMENT LAW, OBVIOUSLY, IT WOULD NOT BE AN ASSIGNMENT OF ANY GREATER RIGHTS THAN ANY PATIENT WOULD HAVE HAD OR FIRST PARTY INSURER.

>> I AGREE.

PROTECTING THE BENEFITS AND THE ONE WHO ACTUALLY PROVIDES THE SERVICES.

AND I DO SEE THAT THERE IS A SIGNIFICANT DIFFERENCE BETWEEN SHANDS A PRIVATE HOSPITAL AND A PUBLIC HOSPITAL.

SPONSORED BY THE GOVERNMENT AND FUNDED BY THE GOVERNMENT.

ANYWAY, YOU ANSWERED MY QUESTION.

>> THANK YOU.

A DIFFERENCE BETWEEN WHO SHANDS IS AND TO LEE MEMORIAL IS, THEY DO NOT PROVIDE DIFFERENT MEDICAL CARE AND TREATMENT WHICH IS WHAT THIS CONTRACT CREATED A LIEN ON. THEY STILL BOTH PROVIDE THE SAME TYPES.

HOPEFULLY, OF CARE AND TREATMENT.

REMEMBER WHEN THEY WERE BEFORE THIS COURT, THERE WAS -- PRESENTED WHERE THE FLORIDA HOSPITAL ALLIANCE WAS ATTEMPTING TO CREATE A PUBLIC PACT, ARGUMENT, THAT WAS EXACTLY THEIR WORD SAYING, HEY, LISTEN, THIS IS NOT A PRIVATE CONTRACT THAT WE HAVE FOR MEDICAL CARE AND TREATMENT, WE HAVE TO TREAT EVERYBODY UNDER EMERGENCY LAWS. EVERYBODY THAT COMES INTO OUR EMERGENCY ROOM HAS TO BE TREATED.

THAT IS WHAT WE DID UNDER OUR PUBLIC PACT.

OUR PUBLIC PURPOSE.

OUR PUBLIC OBLIGATIONS.
WHAT DID THE COURT RULE ON THAT?
WE FIND THAT THE ASSET THAT THE
LIEN ATTACHES TO ARE NOT PUBLIC
ASSETS.
THEY ARE THE ASSETS OF THE
INSURED.
IN THIS INSTANCE, THE ASSETS OF
THE PATIENT WHO HAS A PRIVATE
CONTRACT FOR MEDICAL CARE AND
TREATMENT WITH SHANDS.
IT IS THE SAME HERE, JUSTICE
LEWIS.
IT IS THE SAME BECAUSE THERE IS
NO DIFFERENCE IN A PUBLIC VERSUS
PRIVATE HOSPITAL IN THE
RENDITION OF MEDICAL CARE AND
TREATMENT.
THEY COULD STILL ENTER INTO A
PRIVATE CONTRACT.
THE FACT THAT THEY ARE A PUBLIC
HOSPITAL DOES NOT CHANGE THAT
FACT.
THE FACT THAT LEE MEMORIAL CAN
SUGGEST THAT THIS HOSPITAL
ADMISSION CONTRACT IS PUBLIC
RECORD, THE BOTTOM OF THAT
HOSPITAL ADMISSION CONTRACT SAYS
IT IS A MEDICAL RECORD.
IT IS PART OF THE MEDICAL RECORD
FOR THAT PARTICULAR PATIENT.
SO THE PUBLIC RECORDS ARGUMENT,
UNAVAILING.
THE ISSUE ON THE LIMITATION OF
RECOVERY, IF THIS COURT FINDS
THAT THAT STATUTE IS
UNCONSTITUTIONAL, WHICH WE
SUGGEST THAT IT CANNOT UNDER THE
HOLDING AND BRIEF PRESENTED HERE
TODAY, LEE MEMORIAL IS NOW IN A
POSITION TO HAVE GREATER RIGHTS
UNDER A POLICY THAT ANYBODY ELSE
WOULD IN THE STATE OF FLORIDA.
CERTAINLY WITHOUT FOLLOWING ANY
OF FLORIDA'S ADD FAITH OR
EXTRACONTRACTUAL STATUTORY
GENERAL LAW PROVISIONS.
THAT SIMPLY CANNOT STAND.
HERE, LEE MEMORIAL GETS TO
CONTROL THE CLAIM.

LEE MEMORIAL GETS TO CONTROL THE LITIGATION, IF THERE IS ANY. THERE STATUTE ALLOWS THEM TO INTERPLEAD RIGHT INTO ANY LITIGATION.

IT HAS AN OPPORTUNITY IN THE FIRST PART OF THEIR STATUTE, SECTION 18 OF THE STATUTE CREATES THE LIEN ON THE CAUSE OF ACTION, OR THE SETTLEMENT AND THEN THE SECOND PART OF SECTION 18 TELLS US HOW THEY WANT TO GO ABOUT AND ENFORCE IT.

THAT ENFORCEMENT THEN BECOMES PUNITIVE IN EXTRACTIONAL IN NATURE BECAUSE IT SEEKS RECOVERY OF EXTRACTIONAL DAMAGES, IN THIS INSTANCE, EIGHT TIMES WHAT THERE WAS AN INSURANCE COVERAGE. THAT THE INSURED NEVER PAID FOR. THAT PROGRESSIVE NEVER ACCEPTED A PREMIUM FOR.

ALLOWS LEE MEMORIAL TO PURSUE A RECOVERY THAT IS OUTSIDE THE SCOPE OF THE LIEN THAT IT CREATES UNDER THE FIRST SECTION OF THE STATUTE.

IF THE STATUTE SAYS THE LIEN IS BASED ON THE SETTLEMENT, THAT SETTLEMENT WAS \$10,000.

YOU CAN'T HAVE A SECOND PART OF THAT STATUTE SAY THE LIEN WILL ONLY BE ON THE SETTLEMENT, BUT WE WILL COLLECT THE FULL REASONABLE COST OF OUR LIEN AND PUNISHMENT FOR NOT PROTECTING US.

INSURANCE COMPANIES HAVE SIGNIFICANT DUTIES AND OBLIGATIONS.

ONE COUNTY OVER THEIR DUTY STATEWIDE TO EVERY ONE OF THEIR INSURED THAT THEY HAD ISSUED A POLICY FOR.

DUTIES OF GOOD FAITH AND FAIR DEALING TO SETTLE CASES WHEN IT IS REASONABLY SETTLED.

THAT IS WHAT THEY DID AND THAT IS WHAT THEY CONTINUE TO DO. THAT IS THEIR REGULATED, HIGHLY

REGULATED OBLIGATIONS IN THE
STATE OF FLORIDA.

WE WOULD ASK THE COURT TO AFFIRM
THE SECOND DISTRICT AND FIND THE
STATUTE UNCONSTITUTIONAL.

THANK YOU FOR YOUR TIME THIS
MORNING.

>> WHAT YOU HEARD ARE COMPLAINTS
ABOUT WHAT THE LEGISLATURE DID.
IT IS NOT UP TO THIS COURT TO
REWRITE THE LIEN LAW TO MAKE IT
EASIER FOR INSURANCE COMPANIES.
WHAT THEY ARE COMPLAINING ABOUT
IS THEY HAVE TO FOLLOW THE LAW.
I WOULD ADD THAT IT WOULD BE
IMPOSSIBLE FOR THEM TO BE
VIOLATING THEIR GOOD FAITH
TOWARDS THEIR INSURED WHEN THEY
ARE FOLLOWING THE LAW WHICH IS
INCORPORATED INTO THE POLICY.

>> PRACTICALITIES OF WHAT YOU
ARE SAYING.

FOR THIS CASE.

DO YOU AGREE THEY PAY THEIR
\$10,000 IN PIP TO THE HOSPITAL?

>> THEY PAY THE \$10,000 OF PIP
TO THE HOSPITAL.

>> BECAUSE THEY PAY THE
ADDITIONAL 10,000 TO THE
INSURED?

TO THE INJURED PARTY RATHER THAN
YOU?

IF THEY HAD PAID THE 10,000 TO
THE HOSPITAL, WITH THAT HAVE
BEEN THE END OF WHAT LEE
MEMORIAL WOULD HAVE SOUGHT FROM
PROGRESSIVE?

>> THAT WOULD BE THE END OF IT.
THERE WAS ANOTHER INSURANCE
COMPANY INVOLVED IN THIS.

MGA WHO WE ALSO SUED AND PAID
THE 10,000.

THIS WAS THE END OF IT.
PRACTICALLY.

ONCE THEY PAY THE 10,000, WE
CANNOT GET ANY MORE THAN THAT.
IT ENDS AT THAT POINT.

ANOTHER POINT I WOULD LIKE TO
MAKE.

>> AGAIN, OBVIOUSLY A LAW FIRM

COULDN'T BECAUSE YOU WANTED THE WHOLE AMOUNT, A VERY INJURED PERSON, EITHER GIVE IT ALL TO THE HOSPITAL OR WALK AWAY, BUT YOU ARE SAYING, AGAIN, THE LIEN, IF YOU DID NOT HAVE THIS SPECIAL LAW, YOU WOULD AGREE THAT YOU'VE GOT TO PAY OR YOU'LL BE ON THE HOOK FOR ALL OF IT WOULD NOT HAVE PERTAIN TO OTHER HOSPITALS THAT ARE NOT PUBLIC HOSPITALS.

>> NO.

ACTUALLY, THERE ARE ORDINANCES. IT HAS A SEPARATE ORDINANCE THAT DOES THIS.

IT IS ALLOWED TO OBTAIN A LIEN ON THE PROCEEDS.

I CANNOT TELL YOU RIGHT NOW WHAT AMOUNT THAT PARTICULAR ORDINANCE ALLOWS THEM TO GET, BUT, MOST OF THE PUBLIC AND PRIVATE HOSPITALS HAVE ORDINANCES THROUGHOUT THE STATE.

THE KEY FACT HERE IS LEE MEMORIAL DOESN'T.

IT JUST HASN'T SPECIAL LAW.

WE ARE NOT DOING SOMETHING THAT IS UNLIKE WHAT OTHER PRIVATE AND PUBLIC HOSPITALS ARE DOING.

ANOTHER IMPORTANT POINT HERE IS THIS IDEA THAT THE CONTRACT IN ANY WAY CONTAINS PRIVATE TERMS, EVERY PERSON THAT ENTERS INTO THIS CONTRACT KNOWS THAT THE PERSON SITTING NEXT TO THEM IS AGREEING TO ALL THE SAME THINGS.

JUSTICE LAWSON, GETTING DOWN TO A GRANULAR LEVEL ABOUT WHAT IS PRIVATE AND PUBLIC, PRIVATE IS SECRET.

PRIVATE IS SOMETHING I KEEP TO MYSELF.

WHEN SOMETHING IS PUBLIC, EVERYONE ELSE KNOWS WHAT IS HAPPENING, HOW COULD THAT INFORMATION IN THAT CONTRACT BE PRIVATE?

>> YOU MAKE A LOT OF GOOD POINTS, BUT SAYING THAT IS WHAT PRIVATE MEANS, PRIVATE

BUSINESSES, PRIVATE PRACTICES,
NONE OF THAT CAN NO SECRET
SOCIETIES.

IF IT IS GRANULAR, IT IS
GRANULAR ON THE WRONG SIDE.

>> SO, YOUR HONOR, HERE IS WHAT
I WOULD SAY, THIS PROBABLY
BRINGS US FULL CIRCLE.

THIS IS AN ISSUE THAT HAS NEVER
BEEN DECIDED BY COURT.

WHAT IS PUBLIC AND WHAT IS
PRIVATE.

WHAT DID THE DRAFTERS MEAN WHEN
THEY USE THE WORD PRIVATE IN THE
CONSTITUTION.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.

THAT IS THE FINAL CASE ON
TODAY'S DOCKET.

THE COURT WILL NOW BE IN RECESS.