>> ALL RISE!
HEAR YE HEAR YE HEAR YE, SUPREME COURT IS NOW IN SESSION, INVITATION SHALL BE HEARD.
GOD SAVE THE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA, PLEASE BE SEATED.
>> GOOD MORNING, EVERYONE.
WELCOME TO THE FLORIDA SUPREME COURT.
BEFORE WE BEGIN LET ME ANNOUNCE THAT WE HAVE HERE FROM FLORIDA STATE UNIVERSITY 70 STUDENTS FROM THEIR SUMMER UNDERGRADUATE PROGRAM, PEOPLE WHO ARE TESTING THE GROUNDS WHETHER THEY WANT TO GO TO LAW SCHOOL OR NOT.
IF THOSE IN THE PROGRAM PLEASE STAND.
THANK YOU FOR FILLING UP THE COURT ROOM FOR US.
WELCOME.
I HOPE YOU ENJOY THE DAY.
OKAY.
THAT SAID, THE FIRST CASE ON THE DOCKET TODAY, ODOM VERSUS R.J. REYNOLDS.
>> MAY IT PLEASE THE COURT, I AM DAVID FAILS WITH DANIEL HOFFMAN REPRESENTING THE PETITIONER, PLAINTIFF.
>> SPEAK UP A LITTLE.
>> THANK YOU.
THIS COURT REQUIRES GREAT DEFERENCE TO THE COMPENSATORY DAMAGE VERDICT AWARDED BY A JURY AND EVEN GREATER DIFFERENCE ONCE THE TRIAL JUDGE DENIES A MOTION.
A DEFENDANT BEARS THE BURDEN OF SHOWING THE JURY'S VERDICT IS EXCESSIVE.
OTHER CASES IDENTIFY THE NATURE OF THAT BURDEN REQUIRING A SHOWING THE VERDICT IS UNSUPPORTED BY THE EVIDENCE AND REACHES USING WORDS OF THE DECISION UNREASONABLE,

OUTRAGEOUS OR EXTRAVAGANT LEVELS
OR ALTERNATIVELY SHOWING THE
VERDICT IS THE PRODUCT OF
PASSION AND PREJUDICE.
SUCH VERDICT, ONES THAT ARE
INORDINATELY LARGE.
THE COURT HAS CERTAINLY
RECOGNIZED RESULTS IN OTHER
CASES IS SOMETHING TO BE
CONSIDERED, THAT CONSIDERATION
OCCUPIES A SIGNIFICANTLY LESS
IMPORTANT PLACE IN THE HIERARCHY
OF SUCH FACTORS.
THE COURT HAS RECOGNIZED THE
RISK INHERENT IN MAKING SUCH
COMPARISONS BECAUSE EVERY CASE
IS DIFFERENT AND INDEED LIKE
THIS CASE, SOME ARE UNIQUE USING
WORDS OF THE DISTRICT COURT.
IN THE FOOD FAIR CASE THIS COURT
WAS MORE SPECIFIC NOTING IT
CONSIDERED SMALLER VERDICTS AND
SIMILAR CASES AND SUCH VERDICT
MIGHT BE PERSUASIVE IF THE COURT
WERE FIXING DAMAGES IN THE FIRST
INSTANCE.
THE COURT SAID, QUOTE, VIEWING
THEM AS APPELLATE COURT THE
DISPROPORTION BETWEEN THE
ANALOGIES AND THE CASE IS NOT
SUFFICIENT TO FORCE US TO
CONCLUDE THAT THE JURY WAS
MOTIVATED UNDULY I PASSION AND
PREJUDICE AFTER ALL, THAT IS THE
TEST.
IN THIS CASE THE DISTRICT COURT
AND REYNOLDS PLACED THEIR ENTIRE
FOCUS ON THE RESULTS IN FOUR
OTHER APPELLATE CASES IN ONE
TRIAL ORDER THAT REYNOLDS HAS
ADDED TO THE MIX IN ITS
BRIEFING.
>> LET ME ASK YOU THIS.
YOU SAID THIS CASE IS NOT THE
RESULT OF PASSION.
WHAT WAS THE BASIS FOR THE JURY
VERDICT?
>> IMPORTANTLY, THERE WERE TWO
PARTS TO IT AND ONE OF THE
POINTS WE MAKE IN OUR BRIEF IS

THE TRIAL COURT WAS HEARD AND
THE JURY HEARD EVIDENCE ABOUT
PRE-DEATH DAMAGES WHICH WERE AN
IMPORTANT PART OF THE CASE.
THE DISTRICT COURT FOCUSED
ALMOST EXCLUSIVELY ON THE ISSUE
OF THE LOSS OF CONSORTIUM, LOSS
OF GUIDANCE AND INSTRUCTION
WHILE COMPLETELY IGNORING THE
NATURE OF THE DAMAGES WE PROVED
BETWEEN THE DATE OF THE
DIAGNOSIS AND THE DATE OF DEATH
IN 1993.
A 2 AND HALF YEAR. GO WHERE
THESE WOMEN TOGETHER EXPERIENCED
IN EXTRA ORDINARY JOURNEY
INVOLVING REAL PAIN AND SURFING
-- SUFFERING, THE HOPE OF
REMISSION ONLY TO BE FOUND BY
RECURRENCE OF HER LUNG CANCER
WHICH HAD SPREAD THROUGHOUT HER
BODY LEADING, AS WE POINT OUT IN
THE BRIEF AND THE DESCRIPTION OF
THE FACTS, TO VERY DRAMATIC
CIRCUMSTANCES NEAR THE END WHERE
THE CLAIMANT SAW HER MOTHER
DEVELOPED A STROKE BEFORE HER
EYES, WHICH WAS PRECIPITATED BY
THE CANCER BECAUSE THESE ARE THE
KINDS OF DISEASES THAT
DEVASTATE.
THEY ARE DIFFERENT FROM WHAT WE
TYPICALLY SEE IN A VARIETY OF
WRONGFUL DEATH LITIGATION AND
THAT IS COMPLETELY IGNORED BY
REYNOLDS, COMPLETELY IGNORED BY
THE DISTRICT COURT BUT ONE OF
THE REASONS --
>> THERE WERE TWO ASPECTS TO IT.
>> THE OTHER IS THE LOSS OF THE
RELATIONSHIP WHICH IS THE FOCUS
OF DISTRICT COURT.
IN THE DISTRICT COURT'S OPINION
THE TYPE OF RELATIONSHIP
GOVERNANCE DAMAGE AWARD AND WE
TAKE THE POSITION THAT THE COURT
FELT SOMETHING IN EXCESS OF
MULTIMILLION WHICH AS WE POINT
OUT IN THE BRIEF CAN ONLY MEAN
WHAT IS SUGGESTED BY THOSE

WORDS, SOMETHING MORE THAN $2 MILLION CANNOT BE ACHIEVED LAWFULLY IN A CASE WHERE THE RELATIONSHIP, WHAT THERE WAS NO BASIS FOR THAT, AND THE ROOT CAUSE OF THAT, THE ROOT REASON WAS BACK TO 2000, THAT IS THE CASE WHERE THE THIRD DCA SAID $1 MILLION WAS EXCESSIVE FOR MULTIPLE ADULT CHILDREN BUT WE POINT OUT CIRCUMSTANCES OF THAT CASE WERE QUITE DIFFERENT, LED TO AN ALIENATION BETWEEN THE DECEASED PARENT AND THE CHILDREN AND YET IF YOU LOOK AT THE WAY THIS IS COME UP, FROM 1990 WHEN THIS REMEDY WAS FIRST AVAILABLE UNTIL TODAY, THERE WERE VIRTUALLY NO CASES, AND $400,000 FOR SURVIVING CHILDREN, THEY HAVE TAKEN THAT RELATIVELY SMALL NUMBER OF CASES AND DID THE SAME THING, THEY HAVE TAKEN A SMALL NUMBER OF CASES, AS A RESULT OF THEM THERE IS NO DISCRETION FROM THE TRIAL COURT, THEY SAY THAT IN TWO PLACES, AT THE TOP, THE FIRST FULL PARAGRAPH, NO MATTER WHAT THE EVIDENCE SHOWS, THIS CLASS OF CLAIMANTS, INDEPENDENT ADULT CHILD AND THAT OF THE DECEASED, THE COURT DID SAY IT WAS A USE OF DISCRETION STANDARD BUT IF YOU LOOK AT THE BOTTOM OF THE SAME PAGE WHAT THEY SAY IS THE RELATIONSHIP, INDEPENDENT, IT IS NOT HOW TO JUSTIFY MAGNITUDE OF THE PLAINTIFF'S AWARD.
ACCORDINGLY BASED ON CASES IT CITED, THE TRIAL COURT ABUSED ITS DISCRETION WHEN DENIED THE MOTION.
WE WOULD ASK THE COURT THE FOLLOWING, WHERE IN THIS DECISION ARE THE TYPES OF QUESTIONS AND ANSWERS THAT THERE IS SUPPOSED TO ASK WHEN REVIEWING NO DISCUSSION OF PASSION OR PRESIDENTS OR THE

JURY'S PERSPECTIVE, NOT EVEN A PASSING REFERENCE TO THE TRIAL COURT'S ORDER, WHICH WAS DRAFTED BY PLAINTIFF'S COUNSEL IN THE CASE, IT WAS NOT ACCURATE TO STATE THIS TRIAL JUDGE ONLY HAD 24 DAYS OR 24 HOURS, BEFORE IT ENTERED THE ORDER DENYING THE MOTION.
WHAT HAPPENED WAS THERE WAS A HEARING, THEY WANT TO REVIEW THE AUTHORITIES, AND DUELING ORDERS, CITING THE SAME AUTHORITIES YOU HAVE READ, IN THE TRIAL COURT'S ORDER, AFTER A TOTAL OF FOUR DAYS WHICH WAS SUFFICIENT TIME FOR REFLECTION ON THAT HANDFUL OF AUTHORITIES AND WHAT THE TRIAL COURT ALREADY KNEW ABOUT EVIDENCE IN THE CASE, MORE THAN SUFFICIENT FOR THE TRIAL COURT TO DECIDE IT REJECTED THE POSITION OF R.J. REYNOLDS, THE VERDICT WAS THE RESULT OF PASSION AND PREJUDICE.
>> BACK TO THE STATUTE, IT WAS 25 YEARS.
>> COULDN'T BE A CLAIMANT. THERE WAS A STATEMENT YOU MADE IN THE BRIEF THAT R.J. REYNOLDS TALKED ABOUT WHICH IS SOMETHING ABOUT THE PHILOSOPHY OF WRONGFUL DEATH STATUTE, YOU MENTIONED PRE-DEATH PAIN AND SUFFERING, AND CANNOT CLAIM FREE DEATH --
>> THE PAIN AND SUFFERING AVAILABLE.
>> THE PHILOSOPHY IS SWITCHED FROM THAT TO THE SURVIVING SPOUSE OR ONLY IN THE CASE OF NO SPOUSE TO THE ADULT CHILD.
>> THE STATUTE, THEY RECENTLY AMENDED OR APPROVED AN AMENDMENT THAT ADDED THE EXPRESSION WHICH IS THE LAW FROM THE STATUTE, PAIN AND SUFFERING ARISES FROM DATE OF INJURY AND PRESUMABLY THAT WOULD BE NO LATER THAN THE DATE OF DIAGNOSIS, AND THE PLAINTIFF WAS ENTITLED TO

RECOVER ALL THE PAIN AND
SUFFERING.
WHAT WAS INTERESTING ABOUT THIS
CASE, WE --
>> THIS FINANCIAL DEPENDENCE,
THAT IS A SEPARATE ELEMENT OF
DAMAGE, NOT A PREREQUISITE FOR
AN ADULT CHILD TO CLAIM
NONECONOMIC DAMAGES.
>> EXACTLY RIGHT AND I SEE THAT
EMBEDDED IN THE CASES GOING BACK
A WAYS.
AND ADDITIONAL GROUNDS, PERHAPS
A THROWAWAY GROUND, PERHAPS IT
WAS NOT BUT THE DISTRICT COURT
MENTIONS THAT, THE WEB CASE, THE
FIRST DCA THAT MENTIONED THAT,
ONE OF THE TWO CASES THEY RELY
ON HEAVILY, ALSO RECOMMENDS
THERE WAS NO FINANCIAL
DEPENDENCE BUT THE STATUTE WAS
CLEAR, THERE'S A DELINEATION
BETWEEN ECONOMIC AND NONECONOMIC
DAMAGES BUT RECOVERABLE BY
INDIVIDUAL, BY A SURVIVOR, IS
SUPPORT AND SERVICES AND THAT
SEGUES INTO THE CONCEPT THAT THE
DISTRICT COURT SAID IT IS ABOUT
THE RELATIONSHIP AND WHETHER YOU
LIVE WITH THE DECEIVER OR NOT
THE EVIDENCE IS THESE WOMEN WERE
NOT ONLY EXTREMELY CLOSE IN A
UNIQUE YOU RELATIONSHIP
ACCORDING TO THE COURT BUT IN
CONTACT VIRTUALLY EVERY DAY AND
IN THIS. GO, THE ACUTE PHASE,
DIAGNOSIS TO DEATH. GO THEY WERE
TOGETHER VIRTUALLY CONSTANTLY.
THIS WOMAN, OUR CLIENTS, WAS NOT
ONLY CARING FOR HER MOTHER AND
SUPPORTING HER EMOTIONALLY BUT
WORKING A FULL-TIME JOB AND
TAKING CARE OF TWO CHILDREN.
IN THE MIDST OF ALL THAT SHE
WATCHED HER MOTHER, IN HER OWN
WORDS WASTE AWAY, LOOKING LIKE A
WOMAN 20 YEARS OLDER THAN SHE
WAS NEAR THE TIME SHE HAD HER
STROKE AND DIED.
THE DISTRICT COURT DID NOT

CONSIDER ANY OF THOSE FACTORS
AND THAT IS IMPORTANT.
I URGE THE COURT TO CONSIDER ONE
OF THE ARGUMENTS MADE IN THIS
CASE WHICH IS NEVER DRAWN A
RESPONSE FROM THE DEFENDANT, THE
FIRST, WE DO THIS WORK AND WE
ARE AWARE IN LUNG CANCER CASES
PARTICULARLY IN LITIGATION THE
VERDICT HAVE TRENDED HIGHER.
FOR THE JUDGES WONDERING, GIVES
THE REASONS FOR THAT BECAUSE IT
IS SOMEWHAT UNUSUAL.
THERE ARE OTHER CONDITIONS
BESIDES LUNG CANCER AND
EMPHYSEMA WHICH CAN LEAD TO
PROLONGED COURSE RESULTING IN
DEATH.
THE NATURE OF CIGARETTE RELATED
INJURIES, DISEASES, THEY RAVAGE
THE BODY IN THIS PARTICULAR
LITIGATION THE CLAIMANT ARE
OLDER IN PART BECAUSE IT TAKES
DECADES TO GET COPD, DECADES TO
GET LUNG CANCER AND BY THE TIME
THESE PEOPLE ARE SICK THE ADULT
CHILDREN ARE THE ONES LEFT
CARRYING THE STANDARD OF A
WRONGFUL DEATH CASE AND THAT IS
WHY WE DISAGREE WITH THE
CONCEPT, YOU CANNOT COMPARE ONE
RELATIONSHIP UNDER THE WRONGFUL
DEATH STATUTE TO THE OTHER.
NO ONE IS DESIGNATING THE
SPOUSAL RELATIONSHIP THAT IS
INCREDIBLY IMPORTANT AND VERDICT
IN THESE CASES ARE LARGE.
WE TAKE THE POSITION THAT
BECAUSE OF THE UNIQUE ROLE IN
THIS LITIGATION CERTAINLY WHEN
SOMEONE IS SUFFERING FROM THE
RAVAGES OF CANCER OR EMPHYSEMA
THAT IS APPROPRIATE AND WE HAVE
NO REASON TO PROVIDE AN EXCUSE
FOR A REWARD OF THIS MAGNITUDE
IN THIS CASE AND THE JURY DID
ITS JOB.
THAT BRINGS ME TO THE LAST POINT
I WANT TO MAKE BEFORE I SAVE MY
REBUTTAL TIME.

WE HAVE ARGUED IN THE DISTRICT COURT AND THIS COURT THAT THERE IS NO EXACT STANDARD FOR THE JURY TO MEASURE THESE THINGS, THAT IS STANDARD JURY INSTRUCTION GIVEN IN THIS CASE AT 4285, 86 OF THE RECORD.
THEY HAVE AN OBLIGATION TO FIX THE PAIN AND SUFFERING IN THESE CASES TO THE DUST THAT IS THE BEST OF THEIR ABILITY.
WE ARE TO SUGGEST A FIGURE.
IN THIS CASE MY COCOUNSEL SUGGESTED FIGURE OF $5 MILLION.
AFTER HEARING THAT SUGGESTION REYNOLDS WAS CLEAR TO THE JURY THAT IT WAS PLACING ITS TRUST IN THE JURY IN THIS IS A QUOTE, WE LEAVE IT TO YOUR GOOD JUDGMENT AND COMMON SENSE, WE LEAVE THAT QUESTION TO YOU.
IT WAS REYNOLDS RIGHT TO MAKE THAT STRATEGIC CHOICE.
THE PROBLEM IS THE RECORD IN THIS AND MANY CASES SHOW IT IS NOT SINCERE.
SAYS TIME AND AGAIN REYNOLDS IS LEAVING THE MATTER OF DAMAGES.
>> WHETHER SHE SHOULD BE MADE A VERY WEALTHY PERSON?
>> THERE WAS NO CONTEXT TO THAT.
>> THAT IS ALL THEY SAID.
>> THAT IS ALL THEY SAID.
WHAT IS HAPPENING IN THESE CASES IS REYNOLDS IS LEAVING THE MATTER OF DAMAGES NOT TO THE JURY BUT LOOKING TO THE TRIAL COURT'S WHEN VERDICT ARE REVERSED TO RESCUE THEM IN POSTTRIAL MOTION PRACTICE BUT IMPORTANTLY, THIS IS AN IMPORTANT POINT, THEY ARE SEEKING APPELLATE REVIEW OF THESE AWARDS BUT ARE DOING IT IN A SELECTIVE WAY.
THIS COURT HEARD THE CASE WHERE THERE WAS NO APPELLATE REVIEW START OF 2 MILLION-DOLLAR AWARDS FOR ADULT CHILDREN ANOTHER CASE DECIDED BY THE TWO THAT COME TO

MIND.
NO APPELLATE REVIEW SAW IT, THE MOTIONS REMITTED IN THOSE CASES. BY DOING THAT BECAUSE THERE'S SO MUCH VOLUME OF THIS LITIGATION REYNOLDS IS ABLE TO TAKE THE POSITION THAT THE SUAREZ CASE FROM 2000 INVOLVING ALIENATED CHILDREN SINCE THE CEILING FOR DAMAGES AND THE WRONGFUL DEATH CASE INVOLVING ONE CLASS OF CLAIMANT.
>> YOU ARE INTO REBUTTAL TIME, YOU'RE WELCOME TO CONTINUE BUT YOU HAVE 5 MINUTES AND 8 SECONDS LEFT.
>> I WANT TO SAY IF THE DISTRICT COURT DECISION STANDS IT WILL CONFIRM THAT REYNOLDS IS MAKING THE CORRECT STRATEGIC CHOICE, THAT IN FACT THE COURTS MOST RESPECTFULLY DO NOT MEAN WHAT THEY SAY ABOUT HOW WE TEST.
>> THE JURISPRUDENCE OF THIS STATE HAS BEEN GOING ON FOR YEARS AND YEARS.
NOW WE HAVE HIT A CLASS OF CASES, THE FACTS AS IN ALL CASES IMPACT WHAT A JURY DOES.
WE SAT HERE AND HAVE METICULOUSLY GONE THROUGH IN PRIOR CASES PART OF THE RECORD IN THOSE CASES, ALL THE EVIDENCE INVOLVED IN THESE SMOKING CASES.
HOW MUCH OF THAT KIND OF FACTUAL INFORMATION, THAT TYPE OF TESTIMONY CAME FOR THIS JURY, AND WHAT WOULD BE YOUR RESPONSE TO THAT?
WE KNOW TOBACCO DEFENDANTS, WHICH THEY ARE ENTITLED TO DO, HAVE RAISED CERTAIN DEFENSES WITH REGARD TO THESE THINGS.
BUT JUST HOW MUCH?
>> THIS CASE I WOULD SAY FROM MEMORY, THAT WAS AN ISSUE IN DISTRICT COURT WHETHER WE HAD PROVEN THE CONDUCT WAS SUFFICIENT TO SUPPORT THE VERDICTS FOR INTENTIONAL TORT

CLAIMS AND IN THIS CASE FROM
MEMORY IT WAS SIMILAR TO THE
CONDUCT EVIDENCE YOUR HONOR WAS
TALKING ABOUT IF THAT IS WHAT
YOU WERE TALKING ABOUT.
OF THE QUESTION IS THAT IS WHAT
IS DRIVING THE VERDICT MY
RESPONSE TO THAT IS TWOFOLD.
FIRST THE JURY IS TOLD NOT TO BE
SWAYED BY PASSION AND PREJUDICE
AND THE COURT'S DECISIONS
INCLUDING CARTER VERSUS BROWN
AND WILLIAMSON REQUIRE US TO
PRESUME UNLESS SOMETHING SHOWS
OTHERWISE THAT THE JURY FOLLOWS
INSTRUCTIONS.
>> YOU HAVE BEEN DOING THIS A
LONG TIME.
YOU ARE AWARE THERE'S A LOT OF
TALK THAT GOES INTO THE LAW.
WE ARE TRYING TO ANALYZE WHAT IS
GOING ON WITH VERDICT AND WHAT
IS THE PROPER ROLE OF COURTS.
WITH REGARD TO VERDICTS.
THAT IS WHAT WE ARE TALKING
ABOUT THIS MORNING.
THAT IS WHAT SEEMS TO RUMINATE
THROUGHOUT THESE CASES.
WHEN YOU TELL THE JURY AND GIVEN
THE KINDS OF FACTS THAT ARE IN
SOME OF THE SMOKING CASES, I CAN
SEE THERE ARE FOLKS THAT ARE
OUTRAGED BY THAT.
AND IS THAT SOMETHING, BECOMES
AN UNSTATED FEATURE OF THE
TRIAL, THAT WE ARE DEALING WITH,
BECAUSE WHEN IT COMES IN WITH
REGARD TO HIDDEN FACTS AND
THINGS LIKE THIS OR SUGGESTIONS,
IT CAUSES A CITIZEN TO REACT.
>> I WOULD SAY COUPLE THINGS
ABOUT THAT.
PLAINTIFFS DON'T WIN ALL THE
CASES.
SECONDLY, IN MANY CASES, WHAT
THE PLAINTIFF WINS, THE DAMAGES
ARE QUITE LOW BY COMPARISON.
IN OTHER CASES THE PLAINTIFF
WINS, THEY ARE NOT ONLY FAILED
TO PREVAIL ON THE INTENTIONAL

TORT CLAIMS BUT THERE IS HIGH
COMPARATIVE FAULT ATTRIBUTED TO
THE SMOKER.
MY PERSPECTIVE ON THAT IS IT IS
CERTAINLY POSSIBLE, THAT IS THE
ROLE OF THE TRIAL JUDGE, TO MAKE
SURE THE CASE IS TRIED IN A WAY
THAT NOBODY STEPS OUT OF BOUNDS,
THE JURY HEARS THE FACTS THEY
ARE SUPPOSED TO HEAR AND DON'T
DO THE KINDS OF THINGS THAT
WOULD LEAD TO A FINDING OF
PASSION AND PREJUDICE.
IT SHOULD BE REMARKABLE TO THE
COURT.
I UNDERSTAND THE INSTITUTIONAL
CONCERNS YOU ARE TALKING ABOUT
BUT WE ARE HERE IN THIS CASE.
IN REYNOLDS, DID NOT ACTUALLY
RAISE IN ITS BRIEFING THE ISSUES
YOU ARE DISCUSSING.
>> I AM SPEAKING TO NOT CONDUCT
OF COUNSEL THAT CREATES THE
OUTRAGE BUT THE NATURE OF THE
CASE AND A LAWYER COULD COME IN,
AND NOT SAY MUCH OF ANYTHING IN
THE FACTS SHOUT OUT CERTAIN
THINGS.
>> THE LAST THING I WANT TO SAY
ABOUT IT IS IN THIS CASE THE
JURY'S VERDICT REFLECTS
DISPASSION.
FIRST OF ALL, WE WERE HIT WITH
20% COMPARATIVE FAULT WHICH IS
DIFFERENT FROM WHAT YOU
REQUESTED BECAUSE THE SHOWCASE
DID NOT -- HAD BEEN DECIDED YET.
THAT HAD A REAL IMPACT ON THE
VERDICT IN TERMS OF THE
JUDGMENT, LEAD TO REDUCTION OF
25% REDUCTION OF THE
COMPENSATORY VERDICT AND THE
JURY WAS TOLD, ONE OF THE
REASONS WE DIDN'T SEE REVIEW OF
IT, WAS TOLD THERE WOULD BE
REDUCTION SO THE JURY KNEW ABOUT
THAT.
THEY KNEW IT WOULD RESULT IN
DAMAGES THAT WENT DOWN.
IN ADDITION EVEN THOUGH IT

AWARDED A LITTLE MORE IN THE
COMPENSATORY PHASE IT REWARDED
SIGNIFICANTLY LESS, MILLIONS
LESS THEN WE REQUESTED IN THE
PUNITIVE PHASE.
>> I AM SURE THE CHIEF JUSTICE
RECOGNIZES I MANIPULATED THIS
ARGUMENT AT THE END AND
CERTAINLY GRANT YOU SUFFICIENT
TIME.
>> I WILL GIVE YOU TWO MINUTES.
TIME FOR REBUTTAL.
HANG ON FOR A SECOND.
IN MY ZEAL TO IDENTIFY THE
STUDENTS HERE TODAY I NEGLECTED
TO MENTION THE JUSTICE IS UNABLE
TO PARTICIPATE IN THE ARGUMENT.
HOWEVER HE WILL BE PARTICIPATING
IN THE DECISION TODAY.
SORRY.
GO AHEAD.
>> GOOD AFTERNOON, GOOD MORNING,
YOUR HONOR'S, THANK YOU VERY
MUCH.
JEFFREY BUCKLES FOR R.J.
REYNOLDS.
I WANT TO START WITH
JURISDICTION BECAUSE THAT IS
WHERE THE COURT SHOULD START.
I REALLY DON'T THINK THE COURT
HAS JURISDICTION HERE BECAUSE
THE FOURTH DISTRICT SAID WAS
APPLYING DISCRETIONARY REVIEW
METHOD THAT REPEATEDLY.
>> A MATTER OF COST -- FULL
DISCRETION, RIGHT?
>> THANK YOU FOR ASKING THAT.
I WANT TO ADDRESS THAT DIRECTLY.
WE DON'T THINK TWO THINGS.
WE DON'T THINK THE WHEN YOU READ
THE OPINION AS A WHOLE,
INCLUDING ALL THE STUFF THAT
COMES BEFORE THE PARAGRAPH YOU
ARE ASKING ABOUT AND THE STUFF
THAT COMES AFTER IT, WE DON'T
THINK THE OPINION CONTAINS A
HOLDING OF ANY HARD AND FAST
MIRACLE.
WE THINK THAT IS THE BEST WAY TO
READ THE OPINION AS A WHOLE.

ALL THE OPINION HELD IS THIS
AWARD WHICH IS $6 MILLION WHICH
IS A LOT MORE THAN $2 MILLION
WHICH IS A MULTIMILLION DOLLARS,
ALL THE OPINION HOLDS IS THIS
AWARD, $6 MILLION ON THESE FACTS
IS SO CLEARLY EXCESSIVE AS TO
HAVE BEEN AN ABUSE, NO CONFLICT
AS TO THAT RULE OF LAW OR THAT
RESULT.
>> ANALYZES OTHER CASES.
[SILENCE]
>> AND THEN THAT SEEMS TO BE THE
BASIS FOR THE REVERSE.
I DON'T SEE ANY OTHER FACTUAL
DISCUSSION.
THAT CONCLUSION -- LIKE A
HOLDING.
>> YOUR HONOR, AS I SAID THERE
ARE TWO THINGS I WANT TO SAY.
I DON'T AGREE THAT IS A HOLDING
BUT MORE IMPORTANTLY, IF THIS
COURT READS THE OPINION AS
CONTAINING A HOLDING, YOU CAN
THINK OF IT AS TWO HOLDINGS, ONE
HOLDING IN THE OTHER HOLDING
NECESSARY TO THE DECISION AS
THIS AWARD, 6 MILLION ON THESE
FACTS IS GROSSLY EXCESSIVE WAS
THE OTHER HOLDING NOT NECESSARY
TO THE DECISION IS MULTIMILLION
DOLLAR AWARD WOULD BE THE.
>> SHE HAD LIVED WITH THE PARENT
FOR 13 YEARS, WAS NOT DEPENDENT
ON THE PARENT IN A WAY THAT CAN
JUSTIFY A LARGER AWARD.
I DON'T WANT TO QUIBBLE WITH
YOUR OPINION, IF YOU THINK THIS
OPINION IS TOLD THAT THERE IS A
MIRACLE WE DISAGREE WITH THAT.
WE DON'T THINK THERE IS A BASIS
FOR A HARD NUMERICAL.
WE DIDN'T ARGUE IN THE TRIAL
COURT OR THE FOURTH DISTRICT
THAT THERE SHOULD BE A HARD
NUMERICAL.
WE DON'T THINK THE FOURTH
DISTRICT CREATED ONE BUT IF THIS
COURT THINK IT DID, WE THINK IT
WOULD BE FINE FOR THIS COURT.

>> WHERE THE PREJUDICE CAME IN,
LED TO THE VERDICT THAT WERE NOT
THE KIND OF THINGS THAT SHOULD.
MAYBE I'M MISSING IT BUT I DON'T
SEE THAT ANALYSIS DISCUSSED AS
FAR AS SAYING HERE THEY ARE.
>> THE FOURTH DISTRICT LAYS OUT
THE FACTORS.
IT IS THROUGH THE COURT DOESN'T
COME BACK AND SAY AFTER
DISCUSSING THE AWARDING OF THE
CASES IN THE EVIDENCE IN THIS
CASE, TIE THAT EXPOSED TO FACTOR
D OR FACTOR E IN THE STATUTE.
THAT IS WHAT THE COURT WAS
HOLDING, THAT YOU HAVE TO LOOK
AT WHETHER THE EVIDENCE SUPPORTS
THE AWARD OR IT COULD BE A
RESULT OF REASONABLE JURORS,
ETC. THAT IS IN SUBSTANCE WHAT
THE FOURTH DISTRICT WITHHOLDING
BUT I WANT TO BE CLEAR THERE IS
NO BASIS FOR A HARD NUMERICAL
AND IF THIS COURT WANTS TO SAY
IF YOU READ THE OPINION IS
CREATING A HARD NUMERICAL THAT
IS HOLDING THAT CONFLICTS WITH
OTHER DECISIONS, THAT COURT CAN
SAY THE OPINION CONFLICTS AND
QUASH THAT HOLDING.
WE DON'T THINK --
>> YOU WOULD CONCEDE THAT IF THE
OPINION DOES HOLD, THERE IS A
HARD NUMERICAL.
THAT JURISDICTION EXISTS.
>> YES.
ON THAT ASSUMPTION.
WE DON'T AGREE THAT IS THE RIGHT
WAY TO READ THE OPINION AS A
WHOLE BUT IF THIS COURT THE
OPINION CONTAINS A HOLDING, IT
IS IMPORTANT FOR WHETHER THIS
COURT HAS JURISDICTION THAT THE
LANGUAGE ABOUT IT IS HOLDING.
THIS COURT SAID EVEN WHERE THE
DISTRICT COURT SAID THERE WAS A
CONFLICT.
>> THE BASIS IS EXPLAINED.
>> LET ME TRY TO BE CLEAR.
THE BASIS FOR THE HOLDING, TRIAL

COURT'S ORDER NEVER MENTIONS THE STANDARD FROM THIS COURT'S DECISION IN LASSITER OR, WHETHER THE AWARD EXCEEDS THE LIMIT OF A REASONABLE RANGE.
THE TRIAL COURT NEVER MENTIONS THAT.
THE TRIAL COURT NEVER ACKNOWLEDGES THAT THERE HAS NEVER BEEN AN AWARD TO AN ADULT CHILD, ANYTHING APPROACHING THE AWARD HERE.
THE TRIAL COURT NEVER ENGAGES IN THE REQUIRED ANALYSIS AND THE FOURTH DISTRICT HOLDING, IF YOU READ THE OPINION NARROWLY HOLDING BUT IT HAD TO HOLD TO DECIDE WHAT IT DECIDED, IT HELD TRIAL COURT ABUSED DISCRETION WHICH WE THINK IS THIS CORRECT BECAUSE YOU HAVE TO LOOK --
>> IN A HOLDING WE HAVE TO LOOK AT THE RATIONALE.
IT IS NOT JUST THE RESULT.
THERE IS A PATH OF REASONING HERE AND STEPS IN THAT PATH OF REASONING THAT LEAD TO A PARTICULAR RESULT AND I AM STRUGGLING WITH WHAT THE COURT SAYS ABOUT THEIR INTERPRETATION OF WEBB AND PUTNEY AND WHAT IS ESTABLISHED BY WEBB AND PUTNEY IS NOT A HOLDING.
>> I DON'T WANT TO QUIBBLE ABOUT THIS.
IF THE COURT THINKS, THE WAY I THINK IT IS, THE PARAGRAPH THAT STARTS WITH THE LANGUAGE WE ARE TALKING ABOUT IS NOT NECESSARY TO THE DECISION, THE DECISION, THIS IS NOT A $2.5 MILLION AWARD.
>> WHY WOULD WE NOT THINK IT IS THE RATIONALE?
>> IT IS PART OF THE RATIONALE FOR THE DECISION.
IF THIS COURT THINKS THAT, WE DON'T THINK THERE IS A LEGAL BASIS FOR THE FOURTH DISTRICT TO CREATE A HARD NUMERICAL.

OF THAT IS THE COURT IS READING
OF THE OPINION THE COURT HAS
JURISDICTION ON THAT READING,
THERE IS A HOLDING, ONE HOLDING,
THE BROADER WHEN WE ARE TALKING
ABOUT THAT IS NOT NECESSARY TO
THE DECISION BUT PART OF THE
RATIONALE BUT NOT STRICTLY
NECESSARY, $6 MILLION CLOSE TO
TWO, THIS COURT CAN QUASH PART
OF THAT DECISION.
WE THINK THE COURT SHOULD LEAVE
THE REST OF THE DECISION INTACT.
THIS IS NOT AN AWARD THAT IS
CLOSE TO THE LINE.
>> THERE IS WHERE WE GET BACK TO
THE LINE.
ARE YOU GETTING INTO THE MERITS?
DO YOU WANT TO SAY ANYTHING
ABOUT JURISDICTION?
>> WHEN I SAY THERE ARE TWO
HOLDINGS IT IS IMPORTANT TO
DISTINGUISH THIS.
IF THIS AWARD HAD BEEN SLIGHTLY
OVER 2 MILLION AND THE COURT
SAID WHAT IT SAID ABOUT
MULTIMILLION AWARD SUGGESTING
THAT TO BE A, YOU WOULD KNOW
THAT THAT WAS ESSENTIAL TO THE
DECISION BECAUSE IT WAS ONLY
SLIGHTLY OVER 2 MILLION.
>> LET'S GO, YOU SAY THERE HAS
BEEN A ESTABLISHED BY CASE LAW
THAT A WRONGFUL DEATH CASES
INVOLVING SMOKING-RELATED
INJURIES WHERE MR. SALES POINTS
OUT THAT UNLIKE AN ACCIDENT
WHERE THE DECEDENT IMMEDIATELY
GOT YEARS OF PREDEATH
PAIN-AND-SUFFERING, MAXIMUM, NO
MATTER HOW CLOSE THE CHILD IS TO
THE PARENT, AND THIS R.J.
REYNOLDS NEVER TAKES ISSUE WITH
THE NATURE OF THIS RELATIONSHIP,
THE MAXIMUM IS $2 MILLION.
IS THAT WHAT R.J. REYNOLDS IS
SAYING THIS COURT SHOULD HOLD
EVEN THOUGH R.J. REYNOLDS NEVER
SUGGESTED A NUMBER TO THE JURY?
>> KNOW, WE DON'T THINK THERE IS

A HARD NUMERICAL CAP OF $2
MILLION OR ANY OTHER NUMBER.
>> BACK TO THIS ONE.
WHAT IS WRONG IN THIS CASE, $6
MILLION REDUCED BY 24%, $4
MILLION, THE DECEDENT WAS 58 AT
THE TIME OF HER DEATH, THE
SURVIVOR WAS 42, THEY HAD A
UNIQUE RELATIONSHIP, SUAREZ,
OFTEN ADULT CHILDREN OR
ALIENATED FROM THEIR PARENTS.
THIS COULDN'T HAVE BEEN A CLOSER
BOND.
THIS COULD NOT BE A MORE
TEXTBOOK EXAMPLE OF THE LOVE
THAT A MOTHER AND DAUGHTER HAD
FOR ONE ANOTHER SO MILLION
DOLLARS REDUCED BY $24 MILLION
IS TOO MUCH CONSIDERING THE PAIN
AND SUFFERING SHE WENT THROUGH
WHEN SHE WATCHED HER MOTHER DIE?
>> THAT IS OUR POSITION.
>> IS 3 MILLION THE?
>> THE STATUTE REQUIRES LOOKING
AT IF THE EVIDENCE CAN SUPPORT
THE AWARD.
THIS COURT SINCE 1935 SAID ONE
OF THE THINGS YOU HAVE TO DO IS
LOOK AT THE GENERAL PHILOSOPHY
AND TREND IN SIMILAR CASES,
ADULT CHILDREN, CASES.
>> I ALSO -- AN ADULT CHILD
CANNOT ACTUALLY, THE SAME MENTAL
ANGUISH ACTUALLY.
THE PLAINTIFF, HOW YOU FIND
THEM, VERY PERSONAL, VERY
INDEPENDENT THING, ACTUALLY, HOW
CAN -- THIS CHILD CANNOT
POSSIBLY SUFFER THE SAME --
>> 1935 THIS COURT HAS SAID YOU
HAVE TO LOOK AT SIMILAR CASES.
THERE IS A DIFFERENCE.
WE ARE NOT SAYING THERE IS A
HARD AND FAST NUMERICAL BOUND ON
ONE CATEGORY OF CASES VERSUS
ANOTHER BUT IT IS QUITE RELEVANT
THIS PLAINTIFF WAS A 42-YEAR-OLD
WHO HAD TWO CHILDREN AND HUSBAND
OF HER OWN AND THAT PERSON BY
THE NATURE OF THAT UNDISPUTED

FACT SEVERS A DIFFERENT KIND OF
LOSS AND INJURY FOR A MINOR
CHILD.
>> THE WRONGFUL DEATH STATUTE,
YOU TOOK ISSUE WITH WHAT THEY
SAID.
THIS IS ALL CHILD CAN ONLY CLAIM
THESE DAMAGES EVEN THOUGH SHE
SUFFERED AS MUCH AS SHE DID IF
THERE IS NO SURVIVING SPOUSE.
IT SEEMS TO ME THE TOBACCO
COMPANIES CAN WAIT FOR THE
SPOUSE OF THE DECEDENT TO PASS
AND MAKE THIS ARGUMENT THE
DAMAGES ARE KEPT.
THE WRONGFUL DEATH STATUTE,
TAKING AND SHIFTING WHERE THE
LOSSES ARE GOING TO BE CLAIMED
SO THE DECEDENT SURVIVORS CANNOT
CLAIM THAT.
WOULD YOU AGREE MORE THAN 3
YEARS, THIS SURVIVOR TOOK CARE
OF HER MOTHER, TOOK HER TO THE
APPOINTMENTS AND WATCHED HER
WAIST AWAY, THAT ITSELF IS A
SUBSTANTIAL AWARD THAT SHOULD BE
ACKNOWLEDGED?
>> THAT IS THE WAY THE JURY WAS
INSTRUCTED, WE DON'T DISPUTE
THAT.
>> THOSE 3 YEARS OF WATCHING A
LOVED ONE DIE OF LUNG CANCER, IS
THAT A $2 MILLION LOSS, $5
MILLION, $10 MILLION?
>> THE FOURTH DISTRICT IS AND
PUTNEY, A $5 MILLION REWARD.
>> WE ARE HERE BECAUSE THERE
SEEMS TO BE A TREND IN THE
VARIOUS APPELLATE COURTS TO PUT
BRIGHT LINE ON IT, BASED ON WHAT
IS ARGUED AND WHAT THE FACTS
ARE, WHAT IS THE SIGNIFICANCE OF
A LENGTHY. GO OF PREDEATH PAIN
AND SUFFERING?
>> THE SIGNIFICANCE IS THE
EVIDENCE HERE WITH THOSE FACTS
COULD SUPPORT A LARGER AWARD
THAN A CASE INVOLVING ANOTHER
WAS SIMILARLY SITUATED ADULT
CHILD WITHOUT THE PREDEATH

SUFFERING. GO.
>> NOW WE GO TO THE SPOUSE, AND BOARD THAT SUPPORT IF THE SPOUSE WAS STILL ALIVE, THE KIND OF PAIN AND SUFFERING AND LOSS OF COMPANIONSHIP, A $2 MILLION AWARD.
>> THE RELATIONSHIP WASN'T GREAT AND PERHAPS THE AWARD WOULDN'T BE ABLE TO BE VERY HIGH.
THE METHODOLOGY UNDER THE STATUTE GOING BACK FROM BEFORE I WAS BORN IS YOU WOULD HAVE TO LOOK AT THE GENERAL PHILOSOPHY AND TREND OF SIMILAR CASES, CASES INVOLVING MINOR CHILDREN ARE MATTER OF COMMON SENSE DIFFERENT FROM CASES INVOLVING INDEPENDENT ADULT CHILDREN, CASES INVOLVING SPOUSES ARE DIFFERENT, NOT THAT THERE IS A HARD AND FAST RANGE IN ONE CATEGORY VERSUS ANOTHER BUT THEY ARE DIFFERENT SO WHEN THE COURT ENGAGES IN METHODOLOGY IT IS REQUIRED TO ENGAGE IN AND LOOKS AT AWARDS IN SIMILAR CASES FOR ADULT CHILDREN, WHAT THE COURT FINDS IS THERE HAS NEVER BEEN AN AWARD FOR AN ADULT CHILD, MORE THAN 600 SOMETHING THOUSAND IN TODAY'S DOLLARS, WE ARE NOT SAYING THAT IS A CEILING, BY NOT APPEALING AWARDS, WE NEVER ARGUE THERE IS A CEILING, OR SUGGESTING THE COURT OR JURY COULD NOT REASONABLY SAY THE INJURIES SUFFERED HERE WOULD SUPPORT AN AWARD HIGHER ADJUSTED FOR INFLATION FROM A LONG TIME AGO.
THIS IS AN ORDER OF MAGNITUDE.
>> WHAT YOU ARE SAYING THE STATUTE SHOULD HAVE AS A MAJOR FACTOR, THE JURY IS GOING TO KNOW, THAT SHOULD BE THE MAJOR FACTOR IN DECIDING WHETHER THE AWARD IS EXCESSIVE OR NOT.
>> BEFORE THIS WAS ENACTED IS IMPORTANT, AND VARIOUS OTHER

CASES REITERATED PART OF THE
ANALYSIS COMPARING TO SIMILAR
CASES AND NOW THAT WE HAVE A
STATUTE THAT EXPLICITLY SAYS WE
HAVE TO EVALUATE, WHETHER IT IS
BY REASONABLE JURORS, LOGICALLY
INDUCED IN LIGHT OF INJURIES
SUFFERED, WITH SIMILAR INJURIES
7 AND WHAT AWARDS WERE AFFIRMED
TO GET A SENSE WHAT REASONABLE
RANGE, WITH REASONABLE RANGE.
IF THERE IS A FROM ANY PRIOR
CASE, ANY PRIOR CASE SETS A
MATHEMATICAL LIMIT, THIS COURT
SAID THE GENERAL PHILOSOPHY AND
TREND IS WHETHER THE WARD BEERS
A RELATIONSHIP TO THE GENERAL
PHILOSOPHY AND TRENDS, YOU CAN
SAY THE PRIOR CASE IS DISTANT
VISIBLE AND THE AWARD CAN BE
SOMEWHAT HIGHER.
THIS IS NOT SOMEWHAT HIGHER BUT
AN ORDER OF MAGNITUDE HIGHER.
AN ORDER OF MAGNITUDE HIGHER.
>> IT LOOKS, I AM SORRY, GO
AHEAD.
>> IN THIS PARTICULAR CASE.
$5 MILLION -- THESE FACTS.
THAT WAS THE JURY'S DECISION,
DEFENSE COUNSEL SAID IF YOU
THINK SO, THAT IS FINE.
A CONCERN ABOUT THEM COMING,
THAT IS THE JURY, ASKING US TO
JUDGE A JURY VERDICT, COUNSEL,
TO EXPLAIN TO THE JURY WHY ON
THESE FACTS.
>> IT WOULD BE A RELEVANT
FACTOR, IN THE RANGE SUGGESTED
BY THE PLAINTIFF, THIS IS $1
MILLION HIGHER, AND SUGGEST $5
MILLION ABOVE OR BELOW THAT.
>> THE LAW IN FLORIDA IS A JURY
-- A PLAINTIFF MAY REQUEST
CLOSING ARGUMENTS.
>> WE ARE NOT SUGGESTING ERROR
PER SE, WE ARE NOT SUGGESTING
THAT BUT IN RESPONSE TO JUSTICE
LAWSON'S QUESTION, AND
EMPHASIZED THE AWARD WAS IN THE
RANGE OFFERED BY A PLAINTIFF BUT

THERE IS NO LEGAL BASIS TO SUGGEST THE DEFENDANT HAS AN OBLIGATION TO SUGGEST A NUMBER. THE DEFENDANT IS NOT REQUIRED BY ANY PRINCIPLE OF LAW I CAN IMAGINE, THE PAIN IS FORFEITING THE REVIEW THAT THE STATUTE REQUIRES.
AND IN THE ANALYSIS, WHAT WAS REQUESTED, FUNDAMENTALLY THIS IS NOT A CLOSED CASE OR AN AWARD THAT IS A LITTLE HIGHER THAN AWARDS IN SIMILAR CASES OR A SITUATION OF A BASIS TO EXTEND WHAT THE AWARDS HAD BEEN IN SIMILAR CASES.
>> I LOOKED BACK AT THESE CASES, AND YOU HAD A SITUATION WHERE CHILDREN WERE ALIENATED.
THE FACTS OF THIS CASE IF YOU TOOK A POSTER CHILD, POSTER CASE, AN ADULT CHILD WOULD HAVE A RELATIONSHIP WITH THEIR PARENTS.
AND POINTS FOR A SUBSTANTIAL VERDICT FOR PAIN AND SUFFERING, LOSS OF COMPANIONSHIP.
I READ ALL THESE OTHER CASES, AND --
>> THERE WAS AN EXTRAORDINARILY CLOSE RELATIONSHIP BETWEEN THE PARENT AND WEB.
THERE IS LESS SPECIFICITY, DEVASTATED, THE SAME WORD USED HERE, TOOK THE PARENT TO APPOINTMENTS, KILLED HER, I DON'T THINK IT IS ACCURATE TO SAY THIS CASE IS SO DIFFERENT FROM THE OTHER ONES.
TO THE EXTENT THIS CASE IS DIFFERENT IT MEANS THE AWARD COULD BE JUSTIFIABLY IN TERMS OF THE MAJOR STATUTES SOMEWHAT HIGHER THAN AWARDS IN SIMILAR CASES BUT NOT THAT THEY ARE A ORDER OF MAGNITUDE HIGHER THAN ANY OTHER AWARD AFFIRMED BY ANY COURT OF THE STATE FOR ANY ADULT CHILD UNDER ANY SET OF FACTS.
THAT IS GROSSLY EXCESSIVE UNDER

THE COURT'S PRECEDENT.
>> AT LEAST ARGUE AND ASSERT THE NUMBER PRESENTED OR ARGUMENTS PRESENTED BY THIS INDIVIDUAL'S COUNSEL WERE INAPPROPRIATELY HIGH.
>> IN THE TRIAL COURT?
>> TO THE JURY.
>> THAT IS WHAT I MEANT.
>> THE CLOSING ARGUMENT, IT IS TRUE OUR COUNSEL DID SAY SOMETHING TO THE EFFECT, I DON'T HAVE THE PRECISE WORDS IN FRONT OF ME, THE DAMAGE TO YOUR GOOD JUDGMENT IF YOU GET THAT FAR, BEFORE THAT, YOU NEED TO DECIDE WHETHER THE EVIDENCE YOU HEARD JUSTIFIES THE AMOUNT OF MONEY YOU HEARD THE PLAINTIFF ASK FOR.
>> THAT IS NOT CHALLENGING THAT AMOUNT IS TOO HIGH IN SO MANY WORDS.
THIS IS SOMETHING THAT TO ME IS ABERRANT TO THE LAW.
IN ANY CASE PEOPLE GO TO THEIR DEATH BECAUSE THEY HAVEN'T RAISED SOMETHING AND HERE WE COME, WE DON'T HAVE TO TELL A JURY WHAT THE OUTSIDE PARAMETERS ARE IN JURY INSTRUCTIONS DON'T DO THAT YET I CAN COME BACK LATER AND GO TO A SINGLE JUDGE AND HAVE THE JUDGE CHANGE IT WHEN I NEVER EVEN OFFERED ANY GUIDANCE TO A JURY.
>> THE STATUTE REQUIRES COURTS TO ENGAGE IN WHAT LEGISLATOR DECIDED WAS IN THE BEST INTEREST OF THE PEOPLE.
>> THE PRACTICAL EFFECT OF THAT, I KNOW WHAT STATUTES SAY.
>> THERE IS NO LEGAL BASIS THAT A DEFENDANT CONTESTING LIABILITY FORFEITS THE RIGHT THE STATUTE PROVIDES TO HAVE THE COURT REVIEW --
>> I'M NOT SAYING FORFEITS THE RIGHT BUT HAVE TO FACTOR THAT IN WITH REGARD TO LOOKING AT THE AMOUNT AWARDED.

>> WE DON'T THINK THERE'S A
BASIS TO FACTOR IT IN BUT IF
THERE'S A LEGAL BASIS TO FACTOR
IN AND AT THE MARGINS IT STILL
DOESN'T JUSTIFY THIS AWARD HERE.
>> I KNOW YOU'RE OUT OF YOUR
TIME BUT YOU SAID WEB WAS LIKE
THIS CASE.
THE DECEDENT IN WEB IT WAS
ESTABLISHED IN THE TRIAL COURT
ORDER WENT TO THE AGE OF 78,
THIS DECEDENT WAS 58.
20 YEARS, THE SURVIVING DAUGHTER
WAS ALREADY 54 WHEN THE DECEDENT
DIED.
THERE WERE OTHER THINGS.
YOU THINK 20 YEARS, IS IT
INSIGNIFICANT, 20-YEAR
DIFFERENCE IN LIFE EXPECTANCY?
>> I DIDN'T MEAN TO SAY WEB WAS
EXACTLY LIKE THIS CASE.
YOU ASKED ABOUT THE NATURE OF
THE RELATIONSHIP.
IN WEB THE RELATIONSHIP WAS VERY
CLOSE, PERHAPS CLOSER UNDER THE
UNUSUAL FACTS OF THIS CASE.
YOUR RESPONSE, WE ARE NOT
SUGGESTING THAT IS IRRELEVANT.
WE ARE NOT SUGGESTING THAT THE
AWARD IN WEB ON REMAND AFTER
THEY REMIT IT SETTING A
NUMERICAL CAP FOR WHAT THE AWARD
CAN BE, IT IS NOT THAT KIND OF A
1-TO-1 MATHEMATICAL ANALYSIS BUT
IT NONETHELESS IS RELEVANT THAT
WEB IS A HIGHLY SIMILAR CASE NOT
IDENTICAL FOR THE REASON YOUR
HONOR POINTS OUT.
I APPRECIATE IT.
>> THANK YOU FOR YOUR ARGUMENT.
BLESS YOU FOR TWO MINUTES.
>> A COUPLE THINGS.
IT WASN'T JUSTICE LEWIS THAT
THEY WERE SAYING COME IN
AFTER-THE-FACT AND CHANGE IT.
IT IS CLEAR BECAUSE OF THE
COURT'S DECISION IN WASTE
MANAGEMENT THAT THE REMITTED
PRACTICE IN THIS LITIGATION IS A
LITTLE BIT THE SHELL GAME

BECAUSE THEY KNOW WHAT WE WON'T ACCEPT, THEY KNOW THEY WILL REQUEST REMIT OR WON'T ACCEPT AND AS HAPPENED IN SUBSEQUENT IN THE SUBSEQUENT CASE IN WEB 2, I DON'T HAVE THE CITATION IN MY HEAD, THE TRIAL COURT REMITTED THE DAMAGES TO THE AMOUNT THE PLAINTIFF REQUESTED AND SAID THAT IS THAT.
AND THEN THEY WENT UP AND GOT THE FIRST DISTRICT TO AGREE THEY GET A NEW TRIAL BECAUSE THEY DON'T LIKE IT BUT THIS IDEA THAT THE PRACTICE IS USED FOR THE PURPOSE FOR WHICH IT IS INTENDED TO ALLOW THE TRIAL COURT TO BE THE GATEKEEPER IN REMEMBERING, IT IS OBLIGED TO SET THE DAMAGE AWARD UNDER THIS COURT'S AUTHORITY SUPPORTED BY THE EVIDENCE, THAT THEY ARE NOT ASKING FOR A IS NOT CORRECT BUT THE REPLY BRIEF, IN 2016, THEY ARGUE THAT PUTNEY WAS A OF $5 MILLION, BINDING PRECEDENT, THE $5 MILLION WRONGFUL DEATH AWARD IS EXCESSIVE.
CONTRARY TO WHAT COUNSEL SUGGESTS HE REFERENCED ONE OF THE SURVIVORS IN THIS RESPONSE, THIS IS FROM PUTNEY, THE SAME CASE.
ONE OF HIS SONS TESTIFIED HOW HE VISITED HIS MOTHER IS OFTEN AS HE COULD.
IT IS DIFFICULT TO DO BECAUSE HE HAD HIS OWN FAMILY.
WERE OTHER SIBLINGS IN POSITION?
THE POINT IS THEY HAVE BEEN ANGLING FOR THERE TO BE A FROM THE BEGINNING.
IN THE DISTRICT COURT, JUSTICE LAWSON IS NOT ONLY AT THE COURT IN THE LANGUAGE EVERYBODY KEEPS QUOTING IN THIS CASE.
THE COURT SAYS THE RELATIONSHIP BETWEEN AN ADULT CHILD LIVING INDEPENDENT OF THEIR PARENT IS NOT THE TYPE OF RELATIONSHIP

WHICH CAN JUSTIFY THE MAGNITUDE
OF THE PLAINTIFF COMPENSATORY
DAMAGE AWARD.
ACCORDINGLY THE TRIAL COURT
DENIED THE MOTION SO YES, THAT
IS THE HOLDING OF THE CASE IN
ADDITION TO THE ONE YOU QUOTED
THAT ACCORDING TO THE FOURTH DCA
IF WE CAN ARGUE WHAT
MULTIMILLION REALLY MEANS, I
AGREE WITH THAT BUT WHATEVER IT
MEANS, COMMON USAGE SUGGESTS 2
MILLION.
THAT IS ALL RIGHT.
>> THE FACT --
>> I DON'T AGREE.
I DON'T AGREE.
WE DON'T CLAIM IT IS DISPOSITIVE
AND WE URGE THE COURT TO LOOK AT
THE COMMENTS IN THE PARK CASE
WHICH HAVE BEEN FOLLOWED IN THE
SECOND DCA THE NUMBER OF FEDERAL
CASES CITED IN THE BRIEF.
IT IS A FACTOR TO BE CONSIDERED
AND THE WAY IT IS EXPLAINED IN
THOSE CASES WHEN THE DEFENDANT
COMES THE COURT AFTER-THE-FACT,
HAVING GAMBLED AND LOST, IT
SHOULD BE MORE DIFFICULT FOR
THEM TO PERSUADE AN APPELLATE
COURT LIKE THIS COURT THAT THE
DAMAGE AWARD BY THE JURY IS
UNREASONABLE OR EXTRAVAGANT OR
SHOCK THE CONSCIENCE OR WHATEVER
LEGAL MAXIM IS APPLIED TO THE
PARTICULAR CIRCUMSTANCES OF THIS
CASE AND MY TIME IS UP AS WELL.