

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WHO HAVE CAUSE
TO PLEAD, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA, PLEASE
BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT, FIRST
CASE ON OUR DOCKET IS WILLIAM J.
VICKERS V. ANNIE D. THOMAS.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, ANGELA FLOWERS OF
KUBICKI DRAPER ON BEHALF OF
WILLIAM VICKERS.

2016, THIS COURT REJECTED A
RESULTS-ORIENTED TEST FOR CIVIL
APPEALS AND ADOPTED A PROCESS
ORIENTED TEST WHEREBY THE COURT

IS TO EXAMINE THE EFFECT THE
ERROR HAD IN DETERMINING WHETHER
OR NOT THE ERROR WAS HARMFUL.
THIS CASE IS BEFORE THE COURT
BECAUSE THE DISTRICT COURT
IMPROPERLY APPLIED THE TEST.

>> AND IT LOOKS LIKE THE
OPPOSING COUNSEL AGREES WITH
THAT.

YOU BOTH AGREE THEY ENUNCIATED
THE WRONG STANDARD.

WOULD YOU ASK THIS COURT TO
CONDUCT ITS OWN HARMLESS
ANALYSIS OR SHOULD IT BE YOU
AGREE WITH BOTH SIDES?

SHOULD IT BE REMANDED TO THE
APPELLATE COURT FOR THEM TO LOOK
AT THE SAME AREAS AND MAKE A
DECISION AS TO WHETHER IT IS
HARMLESS?

>> WE WOULD ASK THE COURT TO
REMAND THE DISTRICT COURT IN
ORDER THAT THE BENEFICIARY OF
THE ERROR HERE THE PLAINTIFF,
MIGHT HAVE THE OPPORTUNITY TO

MEET THE GOAL OF ESTABLISHING
THERE IS NO POSSIBILITY THIS
ERROR INFLUENCED REACHING THE
DECISION.

ONE OF THE POLICIES BEHIND THE
MEDICAL CENTER'S ADOPTION OF THE
PROCESS ORIENTED HARMLESS ERROR
TEST WAS THAT IT MIGHT PLACE A
BURDEN ON THE BENEFICIARY AND
HAVE THE PUBLIC-POLICY EFFECT OF
DISCOURAGING LITIGANTS FROM
INTERJECTING ERROR INTO THE
TRIALS.

>> HOW IS THIS WORKING AS A
PRACTICAL MATTER?

YOU ARE AN EXPERIENCED APPELLATE
LAWYER.

HOW LONG DID THIS CASE RUN?

>> THE ACCIDENT --

>> HOW MANY DAYS DID THE TRIAL
RUN?

>> APPROXIMATELY 5 DAYS.

>> FOR OUR PURPOSES YOU
IDENTIFIED IMPROPER
CROSS-EXAMINATION ON A TEXT,

WHICH IS NOT AUTHORITATIVE AND
CROSS-EXAMINATION THERE AND
THERE IS IN CLOSING ARGUMENTS,
ONE CLOSING ARGUMENT.

AND READING THE WHOLE RECORD
IS HARD.

ONCE YOU IDENTIFY WHAT YOU SAY
IS AN ERROR, DON'T YOU HAVE A
BURDEN AT LEAST TO SAY HERE IS
THE ERROR AND EXPLAIN IT.

APPEAR WE POINTED OUT TWO
ERRORS.

EVEN IF WE DON'T LOOK AT THE
REST THERE IS NO BRIEFING.

THEY ARE THE BENEFICIARY OF THE
ERROR.

WHOEVER THEY ARE, HOW TO EXPLAIN
THE ERRORS AND WHY THEY ARE
ERRORS BEFORE THE BURDEN SHIFTS.

SOME CONCERN HOW THIS IS
WORKING.

>> FROM A PRACTICAL STANDPOINT,
AT THE DISTRICT COURT OF APPEAL
LEVEL, THE PROCESS BEGAN WITH
THE APPELLATE IDENTIFYING THESE

ERRORS WHICH OCCURRED AT TRIAL AND NOT ONLY DID THE DEFENDANT IDENTIFY WHAT THE ERRORS WERE BUT ESTABLISHED THE BASIS FOR FINDING THESE ERRORS WERE HARMFUL AND PREJUDICIAL. ONE OF THE ERRORS IS THE IMPROPER IMPEACHMENT OF AN EXPERT WITNESS WITH AUTHORITATIVE TEXT HE DIDN'T FIND TO BE AUTHORITATIVE. AND EXTENSIVE CASE LAW ESTABLISHES THAT IS A PREJUDICIAL HARM ERROR, ESPECIALLY IN A CASE LIKE THIS WHERE THERE IS A BATTLE OF EXPERTS WHERE DEFENDANT'S CASE TURNED ON THE THEORY THAT THE ACCIDENT WAS NOT THE CAUSE OF THE INJURIES ON APPEAL. IT COMES DOWN TO A CASE LIKE THIS WHICH WOULD BE JERRY SELECTS THE ONE THAT IS GOING TO WIN. EXTENSIVE CASE LAW, BOTH HARMFUL

AND PREJUDICIAL.

BASED ON THAT IT SHOULD HAVE
DISTRICT THE COURT OF APPEALS TO
IDENTIFY THE HARMLESS ERROR
TEST.

>> GETTING INTO THE SPECIFICS
YOU HAVE ACKNOWLEDGED WE WOULD
NOT BE THE ONES TO LOOK AT THIS
BUT YOU WOULD REMAND IT TO THE
DISTRICT COURT OF APPEAL.

THE RECORD SHOWS, TWO QUESTIONS
AFTER THE EXPERT, BEFORE THE
TRIAL COURT DID SUSTAIN THE
OBJECTION AND THE EXPERT DID NOT
DO THAT AND THE
CROSS-EXAMINATION CONTINUED ON,
NOT TO DEMEAN, IT IS NOT A
MEDICAL MALPRACTICE CASE, SO NOT
SURE THE DISPUTE WAS SHE HAD
SERIOUS INJURIES OR NOT.

THERE IS CLEAR LIABILITY.

>> SHE HAD A PREVIOUS AUTOMOBILE
ACCIDENT AND JUST BEFORE THIS
ACCIDENT OCCURRED THERE WAS TRUE
CAUSATION.

>> WHAT WAS THE AUTHORITATIVE
TEXT.

>> AN ARTICLE CALLED
NOMENCLATURE OF RADIO UP AT THE
TURNS AND DEFINITIONS.

IT STARTED OUT AS THERE WERE TWO
TEXTS IT SEEMS BECAUSE IT
STARTED ON PAGE 1436 WHERE THERE
WAS A QUESTION ASKED THAT HAD TO
DO WITH MEDICAL LITERATURE BUT
NO REFERENCE MADE TO WHAT THEY
ARE TALKING ABOUT.

>> DID THE JURY HEAR WHAT WAS IN
THE TEXT?

I UNDERSTOOD IT WAS SUSTAINED.

>> IT WAS SUSTAINED BUT THERE
WAS AN INITIAL QUESTION THAT
WASN'T IDENTIFIED AND A FEW
PAGES OVER THE ACTUAL REFERENCE
TO THIS PARTICULAR ARTICLE COMES
UP AND THE WITNESS DID NOT
CONSIDER IT AUTHORITATIVE AND
THERE WAS AN OBJECTION THAT WAS
OVERRULED.

THE PLAINTIFF CONTINUED

CROSS-EXAMINATION ON THE ISSUE
AND WAS BROUGHT UP AGAIN AND IT
WAS NOT AUTHORITATIVE AMONG
RADIOLOGISTS AND ANOTHER
QUESTION AND ANOTHER WAS
SUSTAINED AND THE NOTION OF
MISTRIAL WAS DENIED.

THIS COURT IS NOT IN THE
POSITION TO DIG INTO THE WEEDS
OF THE PARTICULAR ERRORS,
DETERMINING AT THIS POINT IT WAS
FORMLESS ERROR OR NOT.

THE ISSUE HASN'T BEEN BEATEN IN
DEPTH IN HERE.

AT THIS STAGE WE ARE ASKING THIS
COURT TO RECOGNIZE AND
ACKNOWLEDGE THE DISTRICT COURT
OF APPEAL DID NOT APPLY THE
HARMLESS ERROR STANDARD, THERE
IS SOME DIFFICULTY IN THE
PROCESS THAT THEY UNDERSTAND THE
STANDARD UNDER WEST SMITH IN
MEDICAL AND PROVIDE GUIDANCE.

>> WHEN YOU SAY THAT, CRIMINAL
CASES IT IS USED ALL THE TIME

AND SOMETIMES IT IS A SUMMARY
STATEMENT.

THAT CASE WAS OUT WHEN THIS WENT
UP.

WAS THAT CASE CITED BY BOTH
SIDES?

>> ABSOLUTELY.

IT WAS ACKNOWLEDGED IT WAS THE
PROPER STANDARD OF REVIEW.

DISTRICT COURTS OVER AND OVER
AGAIN WILL ASK QUESTIONS ABOUT
RESULTS-ORIENTED QUESTIONS.

ERROR IS DISCUSSED AND
IDENTIFIED IN DISTRICT COURTS
WANT TO ASK, BUT THE VERDICT
LOOKS RIGHT.

WE HAVE A PROBLEM WITH THE
VERDICT.

HOW DO YOU GET FROM PREJUDICIAL
IF THIS IS AN ACCEPTABLE RESULT
THAT COULD HAVE BEEN REACHED
FROM THE EVIDENCE, THAT IS THE
PRECISE STANDARD THIS COURT
REJECTED BUT OVER AND OVER
AGAIN, THAT IS SOMETHING THE

DISTRICT COURTS BRING UP AND
TALK ABOUT IN ORAL ARGUMENT AND
THERE SEEMS TO BE DIFFICULTY
WITH THE DISTRICT COURTS GETTING
AWAY FROM LOOKING AT THE RESULTS
AND WEIGHING THE EVIDENCE TO
DETERMINE WHETHER OR NOT THE
RESULT WAS REASONABLE IN THE
CONTEXT OF TRIAL EVIDENCE
OVERALL AND THAT IS NOT THE
STANDARD THIS COURT ANTICIPATED
ONCE THEY ADOPTED THE JULIO
STANDARD FOR CIVIL APPEALS.

THE COURT --

>> DID THEY USE THAT EXACT
LANGUAGE?

THAT YOU JUST UTILIZED?

THIS IS NOT RESULT ORIENTED?

DID THIS COURT USE THAT
LANGUAGE?

>> WHAT THIS COURT TALKED ABOUT
TO THE EXTENT THAT LANGUAGE,
THERE IS AN OVERLAP IN THE
LANGUAGE USED IN PRE-SPECIAL
CASE LAW AND WHAT IS USED TO

DESCRIBE ANALYZING WHETHER THE
OUTCOME PROCEEDINGS AND --
>> ISN'T IT BUILT IN THAT YOU
MUST LOOK TO WHAT HAPPENS
BECAUSE IT IS A QUESTION OF
WHETHER IT IMPACTED THE VERDICT.
DOESN'T THAT MEAN YOU HAVE TO
LOOK AT SOMETHING ABOUT THE
VERDICT AND THE RESULT BEFORE
YOU CAN APPLY A SPECIAL TEST AS
CIRCUIT JUDGES AROUND THE STATE
FOR DECADES PROBABLY.
>> YOU START WITH WHAT THE NEWS
RESULT WAS AND SPECIAL
INDICATIONS OF A PRINCIPAL
ANALYSIS PROVIDED YOU LOOK AT
ALL THE LEGITIMATE EVIDENCE
APPOINTED AT TRIAL, THEN YOU PAY
PARTICULAR ATTENTION TO THE
IMPROPER EVIDENCE THAT WENT INTO
TRIAL AND WAS PROPERLY EXCLUDED
AT TRIAL AND FROM THAT
PERSPECTIVE CONDUCT THE ANALYSIS
TO DETERMINE WHETHER OR NOT THE
ADDITION EXCLUSION OF PROPER

EVIDENCE COULD HAVE INFLUENCED THE JURY AND REACHING THE VERDICT AND IT IS A VERY STRICT TEST THAT FAVORS FAIRNESS OVER FINALITY AND IT DOES REQUIRE THAT THE COURT ENGAGE IN A PROCESS, BRINGING IN THE IMPROPER EVIDENCE AND ASKING IS THERE NO REASONABLE POSSIBILITY THAT THIS COULD HAVE INFLUENCED THE VERDICT THAT IT DID. THIS CASE IS A GREAT EXAMPLE OF THE SITUATION WHERE WE HAVE IMPROPER IMPEACHMENT OF A KEY WITNESS WHO WAS A FOCAL POINT IN THE DEFENDANT'S CASE WITH HOTLY CONTESTED ISSUES ABOUT CAUSATION AND THE CONCLUSION, BASED ON YEARS OF CASE LAW, THE WAY THE CIRCUIT COURT AND APPELLATE COURTS APPROACH CASES THE CONCLUSION IS WHEN YOU HAVE HIGHLY PREJUDICIAL EVIDENCE IT DIRECTLY VIOLATED A PROVISION OF THE EVIDENCE CODE.

WE KNOW FROM YEARS OF CASE LAW
THAT THIS EVIDENCE EVEN UNDER
PRE-SPECIAL STANDARDS RESULTED

--

>> WE SEE A LOT OF DEATH CASES
AND YOU ARE TALKING ABOUT
CROSS-EXAMINATION OF AN EXPERT,
ONE PART OF THE 5 DAY TRIAL.
I WOULD BE REALLY SURPRISED IF
YOU COULD FIND A DEATH CASE
WHERE THAT KIND OF QUESTION WAS
SUSTAINED, WOULD RESULT IN THE
REVERSAL OF THE CONVICTION, YET
YOU ARE URGING WHAT WOULD HAPPEN
IN THE CIVIL CASE.
THERE MAY BE OTHER CASES AND THE
APPELLATE COURTS ARE REVERSING
USING -- NOT LIKE THEY ARE
IGNORING IT FOR THE MOST PART.
MY CONCERN, I AM NOT MINIMIZING
THAT THEY SHOULD HAVE DONE IT
BUT REVIEWING A 5-DAY RECORD,
THAT YOU WOULD THINK IS A
POSSIBILITY.
IT AFFECTED THE ULTIMATE VERDICT

ESPECIALLY SINCE THE DISTRICT
TOOK AWAY THE EARNING CAPACITY.

>> IN THIS CASE THE BENEFICIARY
DIDN'T STEP UP TO ESTABLISH WAYS
IN WHICH THIS IMPROPER TESTIMONY
WAS MITIGATED OR NULLIFIED.

I WOULD SUGGEST A REVIEW OF THE
RECORD DOESN'T INDICATE THIS
IMPEACHMENT WAS HELD.

>> OTHER THAN THE QUESTION IS IT
JUST A BAD QUESTION?

WHAT WAS PRESENTED TO THE JURY
THAT YOU SAY IMPACTED THIS
VERDICT?

>> AS TO THE IMPROPER
CROSS-EXAMINATION, IT WAS THE
FACT THAT THE WITNESS WAS
CHALLENGED NOT JUST ONCE ABOUT
AUTHORITATIVE TEXTS FOR
CHALLENGED, HIS ANSWER WAS NOT
ACCEPTED AND THAT WAS NOT THE
END OF THE PROCESS BUT HE WAS
REPEATEDLY QUESTIONED AS IF
FURTHER IMPEACHMENT THAT HE
WASN'T GIVEN THE TRUTHFUL ANSWER

SO THAT HE HAD TO BE PRODDED.

>> I DON'T SEE ANYWHERE THE TEXT WAS READ TO THE JURY, IT WAS SUBMITTED THAT ANY SUBSTANTIVE EVIDENCE FROM THE TEXT WENT TO THE JURY, I DON'T SEE ANYTHING THAT COULD AFFECT THE JURY IN THAT SHORT PERIOD BETWEEN THE OVERRULED OBJECTION AND SUSTAINED OBJECTION.

>> PLAINTIFF'S COUNSEL DID NOT HAVE THE TEXT PRESENTED TO THE WITNESS.

AND HE WAS FAMILIAR WITH THE TEXT AND YOU SHOULD BE ABLE TO ASK --

>> THAT IS NOT WHAT MY COLLEAGUE ASKED.

IT IS WHAT CAME BEFORE THE JURY. THE QUESTION YOU ARE COMPLAINING ABOUT.

YOUR POINT IS AN IMPROPER QUESTION TO WHICH THERE IS NO SUBSTANTIVE ANSWER IN THIS CASE. WE WENT TO BE CLEAR WAS WE ARE

RULING ON.

>> THERE IS A SUBSTANTIVE

ANSWER.

IT IS NOT RELIED UPON.

>> IT HAPPENS OVER AND OVER WHEN

DEALING WITH A WITNESS THAT IS

AN EXPERT AND YOU ARE TRYING TO

TAKE ONE THEORY IT COMES OUT OF

ONE TEXT AND PRESENT IT, THE

NEXT QUESTION IS NOT THE

EVIDENCE OF THE TEXT, JUSTICE

LAWSON MENTIONED.

WAS THERE IS SUBSTANTIVE

MATERIAL FROM THAT TEXT, DID NOT

RECOGNIZE THAT.

>> I WANT TO BE SURE I MISSED

SOMETHING, TALKING ABOUT

ANSWERS, AND NOTHING ABOUT THE

SUBSTANCE.

>> PART OF THE INITIAL OBJECTION

WAS COUNSEL WAS NOT USING THE

TEXT, DID NOT HAPPEN WITH HIM IN

TERMS OF MAKING THE

CROSS-EXAMINATION.

SO WE DON'T HAVE THE SUBSTANTIVE

TEXT.

NOTHING DIRECTLY, THERE WAS A REFERENCE AND ALLUSION TO SOMETHING THE WITNESS DID NOT AGREE WITH THE PLAINTIFF'S COUNSEL SEEMED TO THINK WAS AUTHORITATIVE.

>> LOOKING AT WHAT THIS IS, WE DO HAVE A PORTION A THIS IS I AM NOT DEMEANING THE CASE, IT IS A PERSONAL INJURY CASE, WHETHER IT IS MRI, INJURY PRECEDED THE ACCIDENT, AND THE DIFFERENCE BETWEEN THE ASIAN -- THE AGING PROCESS AND MRIs, WITH MEDICAL MALPRACTICE CASES, NOT LIKE THEY SAY, DON'T AGREE IN THIS TEXT FROM 2014, THEY SHOW THIS TYPE OF MRI IS DUE TO AN ACCIDENT, IT SEEMS QUALITATIVELY DIFFERENT TO BE ASKED, IT WAS NEVER BEFORE THE JURY, ARE WE MISSING SOMETHING?

>> THAT IS THE EXTENT AND THE BASIS UPON WHICH THE DCA FOUND

IT.

THERE WAS A SECOND ERROR IN THE
CASE THAT HAS TO DO WITH
IMPROPER CLOSING ARGUMENTS.

>> LET ME ASK YOU THIS.

WE LOOK AT ALL THE ISSUES AND
ERRORS THAT YOU RAISED AND
DETERMINE APPLYING PROPER
HARMLESS ERROR TESTS, THE ERRORS
ARE HARVEST, YOU DEMONSTRATED
THE FIFTH DC ARTICULATED THE
TEST, NOT DEMONSTRATING ANY
ERROR OR CONCLUSION THAT ERRORS
WERE HARVESTED.

AND WHY SHOULDN'T WE REVERSE AND
SAY THE DECISION THE ERRORS WERE
HARMLESS TO THE INCORRECT.

>> PROCESS IS IMPORTANT AND THE
PROCESS THAT WAS SET FORTH
WASN'T FOLLOWED IN THIS CASE
WHETHER THE DISTRICT COURT, TO
DETERMINE WHETHER THEY ARE
HARMLESS, IT IS IMPORTANT THAT
DISTRICT COURTS UNDERSTAND THE
STANDARD, THE PROCESS BE

FOLLOWED AND THE BENEFICIARY BE
REQUIRED TO ESTABLISH IT IS
MITIGATED OR NULLIFIES IT IS NOT
A HARMFUL EFFECT ON THE JURY'S
DETERMINATION OF THE CASE.

>> YOU'VE EXHAUSTED YOUR
REBUTTAL TIME.

WE CAN CONTINUE AND I WILL GIVE
YOU AN EXTRA MINUTE.

>> THANK YOU.

>> GOOD MORNING, CHIEF JUSTICE
AND ASSOCIATE JUSTICES, MAY IT
PLEASE THE COURT, MY NAME IS WE
13 AND I'M PLEASED TO REPRESENT
THE RESPONDENT TO THIS MATTER
AND BY COCOUNSEL, I WAS TRIAL
COUNSEL, WE BELIEVE THERE ARE 5
REASONS THIS COURT DOESN'T NEED
TO ENGAGE IN A SPECIAL ANALYSIS
WITH RESPECT TO THIS APPEAL.

>> YOU AGREED IN YOUR BRIEF,
THEY DID NOT USE PROPER HARMLESS
ERROR STANDARD.

>> I DON'T BELIEVE WE ARGUED
THAT.

OUR ARGUMENT WAS IT WAS NOT
IMPROPER.

>> DON'T YOU ACKNOWLEDGE THE
SPECIAL TEST IS THE LAW OF THIS
STATE?

>> YES.

>> THEY USE ALL THIS LANGUAGE
WHAT THEY SHOULD HAVE
ENUNCIATED.

>> YES, WITH RESPECT TO THAT
ISSUE IT WOULD BE THE THIRD
REASON SPECIAL ANALYSIS DOESN'T
APPLY HERE BECAUSE WHAT THEY DID
REFERENCE SPECIFICALLY WAS
FLORIDA STATUTE 59.041 WHICH IS
WHERE THEY EVOLVE FROM THE
STATUTE ITSELF.

THEY SPECIFICALLY MAKE REFERENCE
TO THE STATUTE.

THEIR ARGUMENT THAT THEY DIDN'T
CONSIDER NEXT TO A FOOTNOTE TO
INCREASE THE SPECIAL CASES CITED
IN THE FOOTNOTE, IT IS OUR
POSITION THE FIFTH DCA DID
ENGAGE IN SPECIAL ANALYSIS

BECAUSE THEY BRIEFED A SPECIAL CASE AS PART OF THE APPELLATE PROCESS AND THE APPEALS COURT REFERENCES THE VERY STATUTE FROM WHICH 59.041, THAT WOULD BE THE THIRD REASON WE DON'T BELIEVE IT IS PRUDENT TO ENGAGE IN SPECIAL ANALYSIS.

>> YOUR OPPOSING COUNSEL FIRST SAID SHE THINKS WE SHOULD JUST SITE SPECIAL AND RE-MANNED THE FIFTH DISTRICT TO RECONSIDER IT. AS OPPOSED TO OURSELVES TRYING TO READ THE ENTIRE RECORD IF WE HAVE THE RECORD, AND LOOK AT THE TEAM IDENTIFIED AS 18 COMMENTS THAT A LOT OF THEM WERE NOT OBJECTED TO BUT THERE WERE 7 COMMENTS RESERVED FOR APPEAL. ARE YOU SUGGESTING THAT WE SHOULD DO THAT AND FIND THEY WERE RIGHT FOR THE WRONG REASON?

>> I UNDERSTAND IT IS THEIR POSITION BECAUSE THE WORD SPECIAL IS NOT USED IN THEIR

OPINION.

>> READING THIS SHORT OPINION IT IS NOT THAT THEY DON'T MENTION THAT CASE, THEY DON'T MENTION HARMLESS ERROR AS THE STANDARD TO APPLY FOR AN IMPROPER CLOSING ARGUMENT OR IMPROPER CROSS-EXAMINATION OF AN EXPERT.

>> I BELIEVE JUDGE: DID MAKE REFERENCE TO THE STATUTE FROM WHICH THEY ARRIVED.

I DON'T THINK IT IS FAIR TO SAY THEY IGNORED THAT WHICH IS BRIEFED BY THE PARTIES AND WAS ADVOCATED BY MYSELF WHICH WOULD BE THE REASONS WHY THE CONFUSION WAS SUPPORTED.

>> SINCE YOU ARE A TRIAL COUNSEL DO YOU WANT TO ADDRESS HOW YOU WOULD HAVE MADE A CLOSING ARGUMENT THAT THE DECISION TO HIRE AN EXPERT AFTER THERE WAS EMOTION LIMITING THE WITHDRAWN SHOULDER INJURY CLAIM? THEY SAY THE ATTACK WAS

DISINGENUOUS AND IMPROPER AND
YOU HAVE DONE THIS BEFORE.

>> THAT IS WHAT THE FIFTH
CONCLUDED AND I HAVE TO ACCEPT
THEIR JUDGMENTS.

I CAN DISAGREE BUT THAT DOESN'T
DO MUCH GOOD TO DISAGREE WITH
THE PROCLAMATION.

ALL I CAN DO IS LEARN FROM THAT
A NEW BOND.

I WOULD SAY WITH RESPECT TO
SPECIAL ANALYSIS RELATED TO
WHETHER THE COURT COMMITTED A
LEGAL ERROR, NOT WHETHER I MADE
AN ARGUMENT OUTSIDE THE BOUNDS.
SPECIAL ANALYSIS IS DEVOTED
SOLELY TO FOLLOW THE CORRECT
LAW.

>> MS. FLOWERS EXPLAINS WHY SHE
THOUGHT THIS ERROR HAS FAR AS
CROSS-EXAMINATION WAS IMPROPER.
WHY NOT ADDRESS THE TWO ERRORS
THAT ARE IDENTIFIED IN THE
OPINION?

WHY THE CROSS-EXAMINATION AND

THE ATTEMPT TO USE AN
AUTHORITATIVE TEXT WAS BETTER
AND HOW IS IT HARMLESS BEYOND
REASONABLE DOUBT AND YOUR
CLOSING ARGUMENT WHERE YOU
ATTACK THE MEDICAL EXPERT.

>> I WILL START WITH THE SECOND
FIRST.

I DON'T THINK THEY ARE SAYING I
ATTACK THE MEDICAL EXPERT, THE
FIFTH DISTRICT THAT IT WAS
PROPER TO COMMENT ON HIS LACK OF
QUALIFICATIONS WAS THE ARGUMENT
THAT HAS BEEN ADVANCED IS I
DON'T PARTICULARLY ATTACK
OPPOSING COUNSEL AND I TAKE
ISSUE WITH THAT WITH THE
ACKNOWLEDGMENT, DISAGREES WITH
THE FACT THAT I TOOK ISSUE.

I NEVER AT ONE TIME SET OPPOSING
COUNSEL DID THIS.

I NEVER NAMED OPPOSING COUNSEL.
WHAT I SAID, I ASKED A
RHETORICAL QUESTION THAT WASN'T
EVEN COMPLETED BUT ONLY HALFWAY

THROUGH WHEN THE OBJECTION WAS
MADE.

THE RHETORICAL QUESTION WAS ASK
YOUR SELF WHY WOULD THEY RETAIN
AN EXPERT AND I DIDN'T GET TO
FINISH.

THE OBJECTION WAS MADE, WE HAD A
SIDEBAR AND THE JUDGE SAYS WHEN
SHE SAYS WE WILL FINISH YOUR
SENTENCE, WHAT WERE YOU GOING TO
SAY WHICH THE JURY HAS NOT
HEARD, TELL THE JUDGE AND THE
JUDGE SAYS I WOULD SUSTAIN THE
OBJECTION.

SO I DO, I GO STRAIGHT TO THE
JURY INSTRUCTIONS THAT SAYS I AM
AWAITING CREDIBILITY AND YOU ARE
ALLOWED TO CONSIDER THE
EDUCATION SKILL TRAINING
EXPERTISE SO WITH RESPECT TO
THAT ONE FOCUSED ISSUE I ACCEPT
THE JUDGMENT OF THE DISTRICT IN
THE SENSE THAT I HAVE TO LEARN
AS A LAWYER TO BE CAREFUL WITH
WORDS, BUT DOING A SPECIAL

ANALYSIS WHICH BROUGHT US HERE,
THIS ISN'T A SHOULD I HAVE
CHOSEN WHAT IS DIFFERENT ISSUE
BUT WAS THAT ERROR FOR THE COURT
TO NOT GRANT A CURATIVE?

I SAY WITH THE RESPECT THAT
ISSUE HAS BEEN MADE.

THAT IS WHY THE SPECIAL ANALYSIS
IS UP BECAUSE THERE WAS NOT A
DENIAL OF INSTRUCTION.

I KNOW THAT IS THE POSITION THEY
HAVE ADVANCED AND THE POSITION
THEY GOT THE FIFTH DISTRICT TO
BUY INTO BUT WHEN ONE LOOKS AT
THE ACTUAL TRANSCRIPT WHICH I DO
HAVE, IT SAYS THAT THE OBJECTION
SHOULD THE TRIAL COURT ASK ME
THE SIDEBAR, WHAT WAS GOING TO
BE A RHETORICAL QUESTION HAD I
COMPLETED IT, UNDERSTAND THAT
HAD NEVER BEEN COMPLETED BEFORE
THE JURY AND THE COURT SAID WITH
RESPECT TO WHAT I SAID IN
SIDEBAR THAT SHE WAS SUSTAINED,
COUNSEL SAYS CAN WE HAVE A

CURATIVE INSTRUCTION?

THE COURT DOES NOT SAY NO.

THE COURT SIMPLY REPLIES HE

DIDN'T FINISH ASKING THE

QUESTION SO THEN COUNSEL INSTEAD

OF SAYING I NEED A RULING ON THE

CURATIVE INSTRUCTION WHICH IS

WHAT THEY ARE ARGUING IS THE

LEGAL ERROR THAT BRINGS ABOUT

SPECIAL ANALYSIS, THE COURT DOES

NOT DENY THE REQUEST FOR

CONSTRUCTION, THE COURT SAYS HE

DIDN'T FINISH ASKING THE

QUESTION TO WHICH OPPOSING

COUNSEL IMMEDIATELY JUMPED INTO

MOTION FOR MISTRIAL DENIED.

SO THIS WHOLE SPECIAL ANALYSIS

IS PREDICATED ON A RECORD THAT

DOES NOT SUPPORT THEIR ARGUMENT

THAT THE JUDGE COMMITTED LEGAL

ERROR IN REFUSING TO GIVE

CURATIVE INSTRUCTION.

THE TRIAL JUDGE DIDN'T REFUSE

ANYTHING.

>> THE TRIAL JUDGE, CURATIVE

INSTRUCTION WAS IN PLACE.

>> WAS REQUESTED.

>> TRIAL JUDGE DID NOT GIVE THE
CURATIVE INSTRUCTION.

WHAT ARE WE TO GLEAN FROM THAT?

>> THE TRIAL JUDGE WASN'T ASKED
TOOL ON THAT BECAUSE COUNSEL
IMMEDIATELY JUMPED INTO MOTION
FOR MISTRIAL.

>> YOU ARE SAYING AFTER YOUR
REQUEST THE TRIAL JUDGE, YOU ARE
TO ASK FOR IT AGAIN.

>> I DO THINK IT IS INCUMBENT ON
A TRIAL LAWYER TO ASK FOR A
RULING FROM THE COURT INSTEAD OF
ASSUMING THE COURT IS REFUSING
THE REQUEST.

THE COURT DID NOT SAY I REFUSE
THE REQUEST, I AM DENYING THE
REQUEST.

THEY RESPONDED TO COUNSEL AND
SAID HE DIDN'T EVEN FINISH THE
QUESTION.

>> YOU ARE REFERRING, AT
SIDEBAR, IF THE OBJECTION HAD

BEEN SUSTAINED FROM THE JURY, WE
WOULDN'T BE HERE ON SPECIAL
ANALYSIS, CORRECT?

>> CORRECT.

>> WHY DO YOU HIRE A DOCTORATE A
SPY SURGERY CASE?

THAT IS WHAT YOU SAY.

I SUGGEST THE COURT SUSTAIN THE
OBJECTION AND WE HAVE A CURATIVE
INSTRUCTION.

SHE SAYS SHE'S FINISH ASKING THE
QUESTION WHICH I ASSUME IS
REFERRING, YOU ARE SAYING THAT
IS NOT RULING, AND THE REQUEST
FOR A CURATIVE INSTRUCTION, THEN
HE SAYS MOTION FOR MISTRIAL
DENIED SO YOU SAY THERE WAS NO
RULING ON THE REQUEST FOR A
CURATIVE INSTRUCTION.

>> THAT WAS THE TRIAL COURT
RESPONDING TO COUNSEL.

>> THE JURY DIDN'T HEAR THAT THE
QUESTION, MAY BE GETTING INTO
THE WEEDS HERE BUT THEY DIDN'T
HEAR THE QUESTION THAT WAS

STARTED THAT SEEMS TO BE
ERRONEOUS.

THE IMPROPER RULING WAS NOT
GIVEN A CURATIVE INSTRUCTION AND
SUSTAIN THE OBJECTION, THE JURY
HEARD NOTHING TO LET THEM
UNDERSTAND THE QUESTION WAS
IMPROPER.

ISN'T THAT THE ERROR THAT WAS
BRIEFED ON APPEAL, AND NOT
WAIVED?

>> THERE ARE THAT WAS BRIEFED ON
APPEAL RESPECTFULLY WAS VASTLY
DIFFERENT.

THE ERROR BRIEFED ON APPEAL WAS
BECAUSE I GAVE AN IMPROPER
CLOSING ARGUMENT, THE COURT
SHOULD HAVE GRANTED A MOTION FOR
A NEW TRIAL OR GRANTED THE
POSTTRIAL MOTION A NEW TRIAL.

THE DIFFICULTY AND THE REASON
THIS HASN'T BEEN ADVOCATED TO
YOU ALL NOW, THE DEFENSE DID NOT
PRESENT TO THE APPELLATE COURT
THE POSTTRIAL HEARING TRANSCRIPT

WHICH WAS TWO HOURS LONG TO
ALLOW THE APPEALS COURT TO KNOW
WHETHER THE TRIAL COURT ABUSED
HER DISCRETION IN DENYING THE
EMOTIONAL REQUEST FOR A NEW
TRIAL.

IT IS THAT ABSENCE THE HEARING
TRANSCRIPT THAT HAS CAUSED THIS
CASE TO BE POSTURED DIFFERENTLY.
THAT IS WHY THEY PACKAGED THIS
AS A SPECIAL ANALYSIS.

BECAUSE THERE IS AN
ACKNOWLEDGMENT THE FIFTH DCA
CANNOT RULE THE TRIAL COURT
ABUSES DISCRETION POSTTRIAL AND
A RULING ON A MOTION FOR NEW
TRIAL WHICH IS THE STANDARD WHEN
THE APPEALS COURT WASN'T EVEN
GIVEN THE OPPORTUNITY TO REVIEW
THE TRANSCRIPT THAT WOULD ALLOW
THE COURT TO KNOW HOW THE TRIAL
JUDGE UTILIZED DISCRETION.

I HOPE I ADEQUATELY ANSWERED.

>> I AM NOT SURE.

I THINK THE POSTURE OF THIS CASE

IS VERY FRUSTRATING FOR ME.
BECAUSE IF WE WERE GOING TO
DECIDE ON A SPECIAL ANALYSIS
WITHOUT BRIEFING ON WHAT THE
FIFTH DISTRICT SAYS WAS IMPROPER
CLOSING ARGUMENTS AND OTHER
IMPROPER EVIDENTIARY RULINGS
WITHOUT BRIEFING WHAT THOSE WERE
WERE PERILOUS TO DO.

IN MY VIEW, TO FIGURE THIS OUT,
THE FIFTH DISTRICT BRIEF IN
WHICH NO ONE IS SUGGESTING WE
DO.

>> LET ME SEE IF I CAN BE
SUCCINCT IN SETTING FORTH THE
REASONS A SPECIAL ANALYSIS
SHOULD NOT BE BEFORE THIS COURT.
NUMBER ONE THERE IS NO SPECIAL
ANALYSIS IF THIS COURT WERE TO
DETERMINE COMMENTS BY MYSELF OR
NOT IMPROPER.

I CONTEND THEY WERE BASED ON THE
FACTS OF THE EVIDENCE IN THIS
CASE.

I UNDERSTAND AND RESPECT THE 50

DISAGREES WITH THAT.

NUMBER 2, THIS COURT DOES NOT

ENGAGE IN SPECIAL ANALYSIS.

IF THERE IS NOT LEGAL ERROR

WHICH IS DIFFERENT FROM

ARGUMENT, A DIFFERENT STANDARD.

>> LET'S GET PAST THAT WE ARE

NOT GOING TO REVISIT, DON'T KNOW

ABOUT MY COLLEAGUES, WHETHER

THESE WERE ERRORS OR NOT.

LET'S ASSUME THERE WERE ERRORS.

>> THE 30 SHE WAS THERE IS NO

SPECIAL ANALYSIS HERE IF ONE

CONCLUDES THE FIFTH DISTRICT'S

OPINION THAT SPECIFICALLY

REFERENCING 59.041 WHICH IS THE

STATUTE UPON WHICH IT IS BASED,

EXPRESSLY IDENTIFYING THAT

STATUTE, ONE CAN LOGICALLY

CONCLUDE WHEN BOTH PARTIES

BRIEFED THE SPECIAL AND STATED

EXPRESSLY THE STATUTE, SPECIAL

ANALYSIS WAS CONDUCTED

FORCEFULLY, IT IS THE

RESPONDENT'S POSITION OF A

COMPLETE WAIVER OF THIS ISSUE
BEFORE THIS COURT.

IT WAS NEVER PRESENTED
POSTTRIAL, AT THE FIFTH DCA
LEVEL, LEGAL ERROR.

WHETHER OR NOT, WHETHER IT WAS
IMPROPER AND COMPLETELY
DIFFERENT STANDARD, THAT IS NOT
A SPECIAL STANDARD.

SPECIAL STANDARD IS DEVOTED TO
THE LEGAL ERRORS BY THE TRIAL
COURT.

>> FROM WHERE DO YOU OBTAIN
THAT?

AUTHORITIES CAN SAY ANYTHING
THEY WANT AND THERE IS NO
APPLICATION IN CONNECTION WITH
THE ANALYSIS.

>> I LOOK TO THE CASE OF R.J.
REYNOLDS VERSUS ROBINSON WHICH
WAS BRIEFED BY THE RESPONDENT
THAT SAYS WE REJECT REYNOLDS
ARGUMENT THAT IS ENTITLED TO A
NEW TRIAL BECAUSE ROBINSON
CANNOT MOVE THE IMPROPER

ARGUMENTS WERE HARMLESS ERROR
AND THE CONTEXT OF A HARMLESS
ERROR ANALYSIS IS AN IMPROPER
RULING BY THE TRIAL COURT, NOT
AN IMPROPER COMMENT BY COUNSEL
OR A WITNESS.

>> WHAT THE TRIAL COURT DOES IN
RESPONSE TO WHAT COUNSEL HAS
DONE.

>> WHICH IS WHY I WAS TRYING TO
EMPHASIZE, THAT IS WHAT THEY DID
AT THE POSTTRIAL LEVEL, THEY PUT
THE FOCUS -- IN ORDER TO GET
THIS ISSUE BEFORE THIS COURT,
THEY HAVE TO SHIFT IT INTO A
LEGAL ERROR COMMITTED BY THE
TRIAL COURT.

>> THEY ARE ARGUING THE TRIAL
COURT DID NOT TAKE APPROPRIATE
ACTION TO YOUR ARGUMENTS TO THE
JURY.

THEY WAIVED THOSE BECAUSE THEY
DIDN'T OBJECT TO THOSE.

NOT A FUNDAMENTAL ERROR BUT WE
SEEM TO BE TALKING PAST ONE

ANOTHER ON THE STANDARDS HERE
TODAY.

>> I GUESS I'M TRYING TO
ARTICULATE THIS COURT DOESN'T
HAVE TO ADDRESS A SPECIAL
ANALYSIS WHEN THAT WAS NOT
PLACED BEFORE THE TRIAL COURT OR
THE FIFTH DISTRICT COURT.

THE COMMISSION OF A LEGAL ERROR
BY THE TRIAL COURT.

THEIR FOCUS WAS DIFFERENT THAN
THAT WITH RESPECT TO WHAT THEY
PERCEIVED TO BE MY IMPROPER
CLOSING ARGUMENTS WHICH WAS NOT
THE SPECIAL ANALYSIS.

IN ORDER TO GET THIS CASE BEFORE
THIS COURT THEY HAD TO REPACKAGE
SOMETHING.

I CONTEND THAT IS A WAIVER WITH
RESPECT TO THIS SETTING, THIS
COURT ISN'T HERE TO WEIGH ISSUES
THAT WERE NOT PRESENTED
POSTTRIAL NOR AT THE DISTRICT
LEVEL.

IF I MAY, WRAPPING UP THE LAST

THOUGHT, I MENTION THE
COMMENTARY AND CLOSING
ARGUMENTS, THE COURT DID NOT
REFUSE THE CURATIVE I ALLUDED TO
IN THE RECORD BEARS THAT OUT,
AND WITH RESPECT, YOU WERE
ASKING, WITH ALL DUE RESPECT
THERE WAS NO IMPEACHMENT.

THERE WAS AN ATTEMPT TO LAY A
PREDICATE TO UTILIZE A TREATISE.
THERE WAS NO SUBSTANCE, THE
SUBJECT OF A TREATISE, HERE IS
THE SUBSTANCE THAT I'M GOING TO
TELL YOU.

ONCE THE OBJECTION WAS SUSTAINED
IT BECAME APPARENT IT WOULD BE
PROBLEMATIC, I MOVED ON TO THE
NEXT QUESTION.

>> YOU MENTIONED SEVERAL TIMES
59.041.

YOU SAID SPECIAL IS BASED ON THE
STATUTE, FOR A SIMPLE OR
CRIMINAL, ANY ERROR, A JUDGMENT
REVERSED FOR NEUTRAL OR GRANTED,
THE ERROR COMPLAINED OF HAS

RESULTED IN A MISCARRIAGE OF
JUSTICE.

WHERE IN SPECIAL IS THAT --

>> FURTHER SAYS AFTER THE
EXAMINATION OF THE ENTIRE RECORD
IT SHALL APPEAR THEIR COMPLAINT
RESULT IN A MISCARRIAGE OF
JUSTICE.

THE DISTRICT COURT DID DO THAT.

>> THAT IS CONSISTENT WITH WHAT
THIS COURT SAID IN SPECIAL?

>> YES, THAT IS MY
UNDERSTANDING, YOUR HONOR.

>> THE COURSE ANALYSIS, THE
MAJORITY'S ANALYSIS IN SPECIAL
ACTUALLY BEGIN WITH A CITATION
OF SECTION 59041 AND A STATEMENT
THAT WE ARE MINDFUL OF THE
HARMLESS ERROR WILL CONTAINED
THERE WHICH PROVIDES AS FOLLOWS
AND UNDER THIS RULE APPELLATE
COURTS EVALUATE ON A
CASE-BY-CASE ANALYSIS AND THE
WHOLE ANALYSIS GOES FROM THAT?

>> YES, SIR.

SINCE I HAVE ONE MINUTE AND 30 SECONDS I WOULD ALSO INVITE THIS COURT TO VISIT WHAT WE PRESENTED IN THE BRIEF WHICH IS THE FIFTH ADOPTING A NEW STANDARD FOR DIMINISHING CAPACITY DAMAGES. IN THIS CASE THERE WAS AN ACKNOWLEDGMENT BY THE DEFENSE THAT THE EVIDENCE WAS SUFFICIENT FOR AN AWARD OF SOME DAMAGES AND I AM QUOTING SPECIFICALLY TO BOTH THE EMOTION, MOTION FOR REMIT FILED SEPTEMBER 2015 AND ANOTHER MOTION THE DEFENSE FILED DECEMBER 14TH WHERE THEY STAYED, QUOTE, THIS COURT SHOULD ORDER THE AWARD TO FUTURE LOST WAGES TO \$52,897, THIS SUM REPRESENTS AN AWARD SUPPORTED BY THE TESTIMONY OF PLAINTIFF'S TREATING NEUROSURGEON AND IS REASONABLY RELATED TO DAMAGES APPROVED AT TRIAL, THAT IS THEIR POSITION. THE FIFTH TOOK AWAY THE ENTIRETY

OF THE JURY'S DETERMINATION BUT
THE SULLIVAN CASE IN DIFFERENT
CASES EMANATING FROM THIS COURT
HAVE CONCLUDED THAT YOU DO NOT
NEED EXPERT WITNESS TESTIMONY
FROM VOCATIONAL REHAB EXPERT TO
QUANTIFY FUTURE WAGE LOSS
DAMAGES BUT THAT DOES APPEAR TO
BE WHAT THE FIFTH IS MANDATING.
>> ARE YOU CROSSING THAT ISSUE?
YOU ARE CONTESTING WHAT THEY
WILL ON.

>> THAT IS PART OF THE BRIEF, BY
BRINGING THIS BEFORE THE COURT,
I CITED A SPECIAL CASE WHICH
SAYS BY BRINGING THE ISSUES
BEFORE THE COURT IT OPENS ALL OF
THOSE EVIDENTIARY ISSUES SO THE
FIFTH DCA DETERMINED WHAT IT
FELT TO BE THE SUFFICIENCY OF
EVIDENCE WHEN THE CASE LAW IS
EMANATING FROM THIS COURT TO
FOCUS ON THE DETERMINATION OF
SUFFICIENCY OF THE EVIDENCE AS
DID THAT AND DOES NOT REQUIRE

EXPERT TESTIMONY, THIS COURT EXPRESSLY HELD AND IS A FACTUAL DETERMINATION TO BE MADE WHICH IS THE JURY.

>> I AM CONFUSED.

ARE YOU NOT TRYING TO GET US TO AFFIRM THE FIFTH DCA?

>> EXCEPT WITH RESPECT TO THEIR TAKING AWAY MY CLIENTS AWARD.

>> YOU HAVE CROSS APPEAL?

>> IT IS NOT A CROSS APPEAL.

IT WAS BRIEFED AND A SPECIAL CASE, HAVING BROUGHT THIS ISSUE BEFORE THE COURT AS TO FUTURE WAGE LOSS DAMAGES AND SUFFICIENCY OF THE EVIDENCE, I ENTITLED TO CROSS ARGUE THAT THIS COURT HAS THE OPPORTUNITY TO REVISIT THAT ISSUE IN ITS ENTIRETY.

THAT IS MY UNDERSTANDING OF WHAT THIS COURT EXPRESSLY HELD IN THE SPECIAL DECISION AND I HAVE EXCEEDED MY TIME.

THANK YOU VERY MUCH.

>> YOUR HONOR'S.

THE IMPROPER ATTORNEY ARGUMENT
AND DENIAL OF THE CURATIVE
INSTRUCTION IS AN IMPORTANT
ERROR THAT OCCURRED IN THE CASE
AND ONCE AGAIN IT WAS AN ERROR
WHICH THE DISTRICT COURT
IDENTIFIED AND DEEMED THOSE
COMMENTS TO HAVE BEEN
DISINGENUOUS AND IMPROPER BUT
THE COURT PROCEEDED TO APPLY THE
ERROR STANDARD.

>> ISN'T IT TRUE THAT IN OUR
DECISION, THE MAJORITY DECISION,
THAT AFTER DESCRIBING THE JULIO,
PROVING HARMLESS ERA BEYOND A
REASONABLE DOUBT, THE COURT SAID
WE OBSERVE THE JULIO TEST IS
CONSISTENT OF THE HARMLESS ERROR
WILL CODIFIED IN SECTION 5.941
AND THE LEGISLATURE'S INTENT
GRANTED IN THE EVENT OF
MISCARRIAGE OF JUSTICE.

>> THE COURT -- THAT IS WHAT THE
MAJORITY SAID.

>> THE COURT THROUGH SPECIAL INDICATES THE PROCESS BY WHICH COURTS WILL DETERMINE IF THERE HAS BEEN A MISCARRIAGE OF JUSTICE.

>> THE NOTION THAT THE CITATION OF THAT STATUTE IN THE DISTRICT COURT'S OPINION INDICATES THE COURT GOT THE HARMLESS ERROR ANALYSIS WRONG WOULD BE A FLAW IN ANALYSIS.

>> I WOULD THINK SO.
THE CITATION DOESN'T RECOGNIZE THE FACT THAT IT ARTICULATES THE PROCESS BY WHICH THAT DETERMINATION IS MADE UNDER THE STATUTE.

WE WOULD ASK THAT THIS COURT FOCUS NOT ONLY ON THE IMPROPER CROSS-EXAMINATION BUT THE IMPROPER CLOSING ARGUMENT COMMENTS, REQUEST FOR CURATIVE INSTRUCTION BY MOTION FOR MISTRIAL WHICH WAS DENIED.
THE JURY DID NOT HEAR ANY RULING

ON THE IMPROPER CLOSING ARGUMENT
THAT OCCURRED AT SIDEBAR.
FOLLOWING THAT OBJECTION,
PROCEEDED TO CITE THE
CREDIBILITY JURY INSTRUCTION IN
THIS PARTICULAR EXPERT, THE
SHOULDER EXPERTS AND ATTACK HIS
CREDIBILITY, UNDERSTANDING IT IS
APPROPRIATE TO ADDRESS
QUALIFICATIONS AND DIFFERENCE IN
QUALIFICATIONS FOR THE EXPERTS
BUT HE WENT AGAIN TO SAY WHO WAS
HIRED BY THE DEFENSE, AND IT WAS
JUST AT A POINT THE OBJECTION
HAD ALREADY NOT COME TO THE
COURT TO GIVE CURATIVE
INSTRUCTION.
AND THE SECOND REFERENCE OF THE
DEFENSE OCCURS BUT IS NOT
OBJECTED TO.
>> YOU ARE OUT OF TIME.