THE COURT WILL PREPARE TO TAKE
UP THE SECOND CASE ON TODAY'S
DOCKET.
>> THE COURT WILL TAKE UP THE
SECOND CASE ON OUR DOCKET,
SUZUKI MOTOR CORPORATION VERSUS
SCOTT WINCKLER.
>> MAY IT PLEASE THE COURT,
RAOUL CANTERO FOR SUZUKI MOTOR
CORPORATION RESERVING FOUR
MINUTES FOR A LITTLE.
IT IS A PRODUCT LIABILITY CASE
AGAINST SUZUKI PENDING IN
JACKSONVILLE, FLORIDA, THE
PLAINTIFF EXAMINED THE CHAIRMAN
AND FORMER CEO OF SUZUKI IN
JAPAN WITH NO KNOWLEDGE OF THE
CASE OF THE CIRCUMSTANCES
LEADING UP TO IT.
WE SUBMIT REGARDLESS WHETHER THE
COURT ADOPTS THE APEX DOCTRINE,
IT SHOULD QUASHED THE FIRST DCA
DECISION AND THERE WAS NO
EVIDENCE THE EXAMINATION OF THE
CHAIRMAN WOULD BE LIKELY TO LEAD
TO THE DISCOVERY OF EVIDENCE.
>> SORRY TO INTERRUPT.
COULD I ASK ABOUT THIS
DECLARATION?
IT SEEMS LIKE OBVIOUSLY IT IS A
MATTER OF COMMON SENSE.
I CAN'T IMAGINE MISTER SUZUKI
KNOWS ABOUT THIS PARTICULAR
ACCIDENT AND THE DECLARATION IS
VERY CLEAR, THE DOCUMENT WAS
SHOWN TO HIM.
THE DECLARATION DOESN'T SAY THAT
HE DOESN'T KNOW ANYTHING ABOUT
THE OVERALL RECALL DECISION.
THE ISSUE WITH THE PRODUCT HAD
TO DO WITH MORE THAN JUST ONE
ACCIDENT.
WHAT ARE WE TO MAKE OF THAT.
IT SEEMS THERE'S A DIFFERENCE
BETWEEN THESE INSURANCE CASES
FOCUSED ON ONE DISPUTE,
HIGH-LEVEL OFFICIAL SAYS I HAVE
NO NOTHING ABOUT THIS COVERAGE
DISPUTE.
IT SEEMS LIKE HERE IT WOULD BE

PLAUSIBLE TO THINK MISTER SUZUKI
WHETHER HE HAD AUTHORITY TO MAKE
THE RECALL DECISION IT DOES SEEM
PLAUSIBLE HE MIGHT HAVE
INFORMATION THAT COULD LEAD TO
ADMISSIBLE EVIDENCE AS FAR AS
OVERALL CORPORATE
DECISION-MAKING ON THIS ISSUE IN
A BROADER SENSE AND THE
DECLARATION PRECLUDES THAT.
>> WE NEED TO LOOK NOT ONLY AT
THE DECLARATION, BUT MISTER KUDO
WHO WAS WITH SUZUKI MOTORS OF
AMERICA FOLLOWED US OVER THREE
DAYS AND HE TESTIFIED HIS
DEPOSITION IS IN THE RECORD.
THE RELEVANT PARTS, 571, HE
TESTIFIED THE ONLY ENTITY THAT
COULD MAKE THE DECISION ON
RECALL WAS COUNTERMEASURES
COMMITTEE.
MISTER SUZUKI HAD NO AUTHORITY
ON THE COMMITTEE.
THE CHAIRMAN OF THE COMMITTEE
MAKES THE DECISION.
MISTER KUDO INVOLVED IN THE
INVESTIGATION, THE EXPERT
AFFIDAVIT ATTACHED DIFFERENT
EXHIBITS TO THE AFFIDAVIT,
RESPONSE ETHICS 221, DIFFERENT
PAGES OF DOCUMENTS.
HE WAS INTIMATELY INVOLVED, THE
EXPERT IDENTIFIES KUDO AS HAVING
COST-BENEFIT ANALYSIS, 358-61,
PEROTS AND CONS, AS YOU CAN SEE
FROM THOSE EXHIBITS, IN
ADDITION, THE PETITION TO THE
FIRST DCA, THE CORPORATE
REPRESENTATIVE FOR SUZUKI MOTOR
CORPORATION, IN JAPAN OVER A
PERIOD OF THREE DAYS WHO
COOPERATED WITH WHAT MISTER KUDO
SAID ABOUT THE AUTHORITY OF THE
COUNTERMEASURES COMMITTEE ABOUT
THE LACK OF AUTHORITY OF THE
CHAIRMAN TO BE INVOLVED IN THE
RECALL DECISIONS.
THE KIND OF CHAIRMAN FROM A
DECISION WHERE THE RECALL SO THE
COMMITTEE IS COMPLETELY

INDEPENDENT AND CANDY SIDE ON
ITS OWN WHETHER TO ISSUE A
RECALL WITHOUT ANY VETO
INVOLVEMENT OF THE CHAIRMAN.
THE DECLARATION, IN HIS
DECLARATION HE SAYS I WOULD HAVE
NO AUTHORITY TO OVERRIDE, REJECT
OR ORDER AND ELECTION A RECALL.
>> EVERYTHING YOU SAID GOES TO
THE AUTHORITY TO MAKE THE
DECISION AS OPPOSED TO
KNOWLEDGE, HOW TO HANDLE THIS.
THE QUESTION ABOUT THE STATE OF
THE REVIEW, THE DEPARTURE FROM
ESSENTIAL REQUIREMENTS OF LAW,
YOU SEE IN THE BRIEFS THERE IS
NO EXISTING BLACK LETTER APEX
DOCTRINE, IN THE FACE OF THE AND
CASE LAW, THERE IS NO BLACK
LETTER WILL, AS IT STOOD AT THE
TIME -- DOES THAT LEAVE YOU WITH
ABUSE OF DISCRETION ARGUMENT?
HOW DO YOU GET TO THE DEPARTURE?
>> LET ME TELL YOU ABOUT TWO
CASES FROM THIS COURT, THE FIRST
IS MARTIN JOHNSON VERSUS SAVAGE
WHICH I'M SURE YOU ARE FAMILIAR
WITH WHICH EVEN BACK THEN IN
1987 SAID THE DISCOVERY ORDERS
WERE TRADITIONALLY REVIEWED SO
EVEN 33 YEARS AGO THIS COURT
CONSIDERED IT A TRADITION THAT
DISCOVERY ORDERS WERE REVIEWED
AND SECOND, 1995 ALLSTATE VERSUS
LANGSTON QUASHED THE DISTRICT
COURT ORDER.
I WANT -- QUASHED THE DISTRICT
COURT'S OPINION TO THE EXTENT OF
THE DISCOVERY, ALTERNATIVELY
ESTABLISHED THAT SUCH
DISCOVERIES, WITH RELEVANT
INFORMATION.
SUBSEQUENTLY OTHER DISTRICT
COURTS OF APPEAL TAKING OUT THAT
LANGUAGE, AND NO CASE ON POINT
WITH RULES OF PROCEDURE WHICH
ARE ESTABLISHED LAW, NOT JUST
CASE ON POINT.
IT COULD BE A RULE ON POINT AND
DISTRICT COURTS HAVE REVERSED

DISCOVERY ORDERS WHERE THE
DISCOVERY WAS NOT LIKELY TO LEAD
TO THE DISCOVERY, WHEN THAT
HAPPENS, THE REQUIREMENTS OF
LAW.
>> UNDER THE CIRCUMSTANCES,
SEEMS SO UNLIKELY WE ARE CLEARLY
SHOWING THE DEPOSITION OR
WHATEVER THE DISCOVERY WOULD
LEAD TO ADMISSIBLE EVIDENCE THAT
IT IS AN ABUSE OF DISCRETION NOT
TO ENTER THE PROTECTIVE ORDER.
IS THAT WHAT THE COURT WOULD BE
CONCLUDING?
>> THE DEPARTURE FROM THE
REQUIREMENTS OF LAW.
AND DISCOVERY CONTEXT THE
ABUSIVE DISCUSSION WAS A
DEPARTURE.
THERE HAVE BEEN CASES IN THIS
CONTEXT.
WE CITED GENERAL STAR VERSUS
HOSPITALITY FROM THE THIRD DCA
WHICH ALSO QUASHED IN THE
CORPORATE CONTEXT, YOU REFERRED
TO IT, AND NO KNOWLEDGE OF THE
CASE, QUASHED THAT ORDER BECAUSE
IT WAS NOT LIKELY TO LEAD TO THE
DISCOVERY OF ADMISSIBLE EVIDENCE
AND DID SO WITHOUT THE DOCTRINE
THAT SAYS, IN THIS CASE, APPLIED
THE RULE.
>> IN TERMS OF WHAT IS AT ISSUE
SUBSTANTIVELY IN THIS LAWSUIT,
ISN'T ONE OF THE CLAIMS GOING TO
WHAT THE CORPORATION NEW ABOUT
ALLEGED DEFECT IN THE DECISION
TO RECALL AND THE RELATED
DECISION, ISN'T IT PLAUSIBLE
MISTER SUZUKI WOULD KNOW ABOUT
THESE CLAIMS?
HE DOESN'T DISCLAIM KNOWLEDGE IN
THE DECLARATION?
>> THE PRESIDENT OF THE COMPANY
COULD TESTIFY ABOUT THE
COMPANY'S KNOWLEDGE EVERY TIME
THERE WAS A CASE, AND THE
PRESIDENT OF THE CORPORATION
BEING DEPOSED.
>> AS A POLICY MATTER I AM

SYMPATHETIC TO WHAT YOU ARE
SAYING BUT FOR BETTER OR WORSE,
IT SEEMS THERE WERE TWO PATHS
THAT YOU HAVE.
ONE WOULD BE IN ADDITION TO THE
NORMAL RULES OF DISCOVERY IN THE
FORM OF AN APEX DOCTRINE THAT
WOULD SAY NOTWITHSTANDING THE
FACT THAT IF WE LOOK AT THE
ABSTRACT OF WHAT YOU ARE ALLOWED
TO DISCOVER YOU COULD GO TO THE
CEO AND SAY AS A MATTER OF LAW
THAT ESSENTIALLY THE TRIAL COURT
DISCRETION HAS TO REQUIRE
PARTIES TO START SOMEWHERE ELSE
FIRST BUT IF WE DON'T HAVE THAT
YET, AND STUCK WITH THE BASICS
OF DISCOVERY, IF THERE ARE
BETTER PLACES TO GET THE
INFORMATION DOESN'T SEEM THE
POOLS REQUIRE YOU TO GO TO THE
BEST SOURCE OF INFORMATION, OR
FAILURE TO REQUIRED TO DO SO IS
NECESSARILY AN ABUSE OF
DISCRETION.
IS THAT NOT A FAIR
CHARACTERIZATION OF WHERE WE
ARE?
>> I DON'T THINK SO.
IN THAT EVENT, IN FLORIDA A
MULTINATIONAL CORPORATION'S
PRESIDENT AND CEO, CHIEF
OPERATING OFFICER WOULD BE
DEPOSED IN EVERY CASE BECAUSE
HARD TO BELIEVE THEY WILL NOT
RECEIVE DOCUMENTS AND BE
INFORMED OF THINGS GOING ON IN
THE COMPANY WITHOUT GETTING
INVOLVED IN WHAT IS GOING ON
WITHOUT HAVING DECISION-MAKING
AUTHORITY, THEY JUST NEED TO BE
INFORMED ABOUT WHAT IS GOING ON
AND DOESN'T EVEN A SERRATED ANY
PROTECTION HIGH-LEVEL OFFICIALS
WOULD HAVE OVER DEPOSITIONS
WHICH WOULD MEAN YOU WOULD
ALWAYS FIND A REASON WHY A
PRESIDENT MAY HAVE TO BE
DEPOSED.
IT WOULD HAVE BEEN DEPOSED IN

THAT CASE.
WE IDENTIFIED 699-702.
THERE WERE 24 DIFFERENT MEMBERS OF QUALITY COUNTERMEASURE COMMITTEE OVER THE 10-YEAR THAT IS RELEVANT IN THE CASE, ROUGHLY 2012 THROUGH 2013.
17 MEMBERS AT ANY GIVEN TIME, THEY NEVER STOPPED TO EXAMINE ANY OF THE MEMBERS OF THAT COMMITTEE.
PEOPLE IDENTIFIED IN THE EMAIL.
>> SORRY TO INTERRUPT.
ONE QUESTION I HAVE IF WE WERE TO AGREE WITH THE IDEA IT IS AN ABUSE OF DISCRETION TO NOT HAVE THE APEX DOCTRINE IN PLACE, HOW BROADLY IS IT THAT WE SHOULD BE ADOPTING THE RULE, THE SINGULAR CEO OF THE GLOBAL ENTERPRISE OR 17 MEMBERS ON THE COMMITTEE, WOULD ANY OF THEM BE COVERED BY THE APEX DOCTRINE IN YOUR ESTIMATION?
>> THEY WOULD NOT.
THE APEX DOCTRINE TRADITIONALLY HAS BEEN APPLIED TO OFFICERS AND DIRECTORS OF THE COMPANY.
COO, CEO, CTO, THE GENERAL COUNSEL, MEMBERS OF THE BOARD OF DIRECTORS, HAVEN'T SEEN IT APPLIED TO ANYBODY OTHER THAN THAT AND BELOW THAT, LIKELY THEY WOULD HAVE KNOWLEDGE AND BEEN DIRECTLY INVOLVED SO THE LIKELIHOOD WHICH MUST GREATER.
THE WAY THE COURT CAN ADOPT IT IN THE ATLANTIC HOSPITALITY CASE, THE PROPOSED OPPONENT OR THE PARTY CONTESTING THE DEPOSITION MUST FIRST COME FORWARD WITH POSITIVE EVIDENCE THIS OFFICIAL DOESN'T HAVE KNOWLEDGE, PARTIES SEEKING THAT WOULD SHOW THIS PERSON HAS UNIQUE KNOWLEDGE NOBODY ELSE HAS THAT IS NECESSARY TO PROSECUTE THE LAWSUIT.
>> THE ARGUMENT YOU ARE MAKING AS FAR AS PRACTICALITY, I AM

SYMPATHETIC TO IT BUT EVEN IF
MISTER SUZUKI REMEMBERED THE
MEMO THERE WOULD BE 500 OTHER
PEOPLE AT THE COMPANY WHO WOULD
KNOW A LOT MORE AND AS A MATTER
OF POLICY WOULD WANT THE
INFORMATION SEEKER TO DEPOSE
FIRST.
WHAT YOU ARE ASKING US TO DO, IT
SEEMS THE HARDER IT IS TO DEFINE
WHAT THE APEX DOCTRINE IS THIS
WOULD BE AN EASY CASE.
HE'S THE CEO BUT IT SEEMS THE
MORE VAGUE THE RULE IS, THE
LARGER IT IS TO SAY IT IS A
FIRST-DAY ABUSE OF DISCRETION TO
FOLLOW A WOOL THAT ONE CANNOT
CLEARLY DEFINE.
>> WHAT THEY CITED, THEY DO NOT
ADOPT THE APEX DOCTRINE PER SE,
THEY STILL REVERSE ORDERS
REQUIRING THE DEPOSITION OF THE
APEX OFFICIAL UNDER THE
CIRCUMSTANCES OF THAT CASE, THAT
IS WHAT THE THIRD DCA DID, WHAT
THE FIRST DCA DID IN THE
HAMBURGER CASE WITH THE
UNIVERSITY PRESIDENT, AND AS I
SAID, DON'T HAVE THE APEX
DOCTRINE.
IN THIS CASE, THE EXAMINATION
WAS NOT LIKELY TO LEAD TO THE
DISCOVERY OF ADMISSIBLE
EVIDENCE.
I RESERVE THE REST OF MY TIME.
>> THANK YOU.
COUNSEL?
>> MAY IT PLEASE THE COURT, SHEA
MOXON FOR MATTHEW CONIGLIARO.
I CAME TO TALK ABOUT
JURISDICTION, APEX DOCTRINE,
SKIPS RIGHT OVER ALL THAT.
IT GOES STRAIGHT TO ASKING THIS
COURT TO DIRECTLY REVIEW THE
TRIAL JUDGE'S DISCRETIONARY
DECISION ON DISCOVERY RULING
WHERE HE WEIGHED THE EVIDENCE
PRESENTED TO HIM.
HE MADE A FACTUAL DETERMINATION
THIS EXAMINATION WOULD LEAD TO

RELEVANT EVIDENCE.
THEY WERE ABLE TO PROVIDE
RELEVANT INFORMATION.
>> WHAT WOULD BE THE BASIS TO
SAY HE WAS UNIQUELY -- EVERYONE
WHO IS UNIQUE INFORMATION THAT
THEY HAVE THEIR OWN PERSONAL
PERSPECTIVE BUT IT SEEMS THERE
IS ENOUGH IN THE RECORD TO
ASSUME HE ONLY WOULD HAVE THE
SAME OBSERVATIONAL INFORMATION
THAN OTHERS ON THE COMPANY WOULD
HAVE.
>> THIS WAS A DECISION
CONCERNING WHETHER TO INITIATE A
RECALL AT THE HIGHEST LEVEL OF
THE COMPANY.
WITH EMAIL AND MEMO SHOWED,
CONCLUDED THAT MISTER SUZUKI WAS
INVOLVED TO INITIATE THE RECALL.
THE DECISIONS THAT WERE DECIDED,
BRIDGESTONE FIRESTONE, TRAVELERS
BEFORE, SOME VERSION OF THE APEX
DOCTRINE, ISSUES OF KNOWLEDGE OR
MOTIVES AT THE HIGHEST LEVELS OF
THE COMPANY IS WHEN IT BECOMES
APPROPRIATE TO EXAMINE TOP
OFFICIALS WHO HAVE KNOWLEDGE
ABOUT THOSE MATTERS.
>> TRYING TO GET INFORMATION
FROM ALL THESE PEOPLE ON THIS
COMMITTEE WHO WOULD HAVE A LOT
MORE USEFUL FACTS FOR YOU AND
WHY WOULDN'T THIS BE SORT OF THE
CLASSIC CAUSE WHERE YOU COULD
INFER FROM YOUR FAILURE TO DO
THAT, THAT REALLY THE ONLY
REASON YOU'RE SO RELENTLESSLY
PURSUING THIS IS, YOU KNOW, TO
HARASS THIS POTENTIAL DEPONENT?
>> WELL, YOUR HONOR, THAT WHOLE
ISSUE OF WHETHER WE SHOULD HAVE
OR WHY WE DIDN'T TRY TO DEPOSE
MEMBERS OF THE COMMITTEE, THAT
WAS NEVER DEVELOPED OUT OF THE
RECORD.
SO I'M AT A BIT OF A
DISADVANTAGE TO DISCUSSING THAT
WITHOUT GOING OUTSIDE THE RECORD
A LITTLE BIT.

AS A MATTER OF FACT, THE CLAIM
THAT WE DIDN'T TRY TO DEPOSE
HIM, EVEN THAT'S NOT FULLY
DEVELOPED ON THE RECORD.
ONE INTERESTING FACT THAT I
DISCOVERED PREPARING FOR THIS IS
THAT MR. KUDO, WHOSE DEPOSITION
MR. CANTERO WAS JUST DISCUSSING,
IN HIS DEPOSITION WHICH WAS
TAKEN-- THE THIRD VOLUME WHICH
WAS TAKEN JUST A MONTH BEFORE WE
INITIATED THE PROCESS, HE WAS
ASKED WHEN DID THE QUALITY
COUNTERMEASURE COMMITTEE, WHEN
DID THEY FIRST BECOME INFORMED
OF THIS.
AND HIS ANSWER WAS OCTOBER 11,
2013.
THAT WAS THE FIRST TIME THAT
COMMITTEE KNEW ABOUT IT.
AND SO, AND THAT, AND THAT'S
JUST BY WAY TO SHOW THAT THERE'S
A LOT OF CONFUSION ABOUT WHO WE
EVEN WOULD HAVE KNOWN WHO TO
DEPOSE.
SO AT THAT POINT, THIS IS JUST
ABOUT FIVE MONTHS BEFORE TRIAL
JUDGE ENTERS HIS ORDER.
WE'RE BEING TOLD BY MR. KUDO
THAT THIS COMMITTEE DIDN'T EVEN
KNOW ABOUT THIS BRAKE PROBLEM AT
THE TIME.
SO THAT'S JUST ONE FACT IN THE
WHOLE PICTURE OF IT.
MY UNDERSTANDING IS THAT THERE
ARE DISCUSSIONS BETWEEN COUNSEL
BEHIND THE SCENES, AND WE WERE
LED TO BELIEVE THAT SUZUKI WAS
NOT GOING TO CONSENT TO ANY
DEPOSITION TAKEN THROUGH THE
NORMAL PROCESS AT THE EMBASSY
UNLESS IT WAS A CORPORATE
REPRESENTATIVE DEPOSITION.
TIE THAT ALL IN WITH THE FACT
THAT ANY DEPOSITION TAKEN IN
JAPAN TAKES MONTHS TO SET UP,
COSTS MANY THOUSANDS OF DOLLARS.
IT COULD RUN UP TO ABOUT $10,000
PER DEPOSITION.
YOU KNOW, ALL THE BURDENS ARE

DISCUSSED IN THE TWO CASES I CITED, J.C. RENFRO AND SONS AND THE SHAWL ORDER FROM NOVEMBER 17TH-- EXCUSE ME, NOVEMBER OF 2017.
ALL JUST TO SAY THAT, YOU KNOW, THERE'S A VERY COMPLEX FACTUAL AND PROCEDURAL BACKGROUND TO THIS.
SO ONE OF THE REASONS I'VE ASKED THE COURT TO DISCHARGE JURISDICTION IS BECAUSE THIS IS SUCH AN UNUSUAL CASE WHERE WE DON'T HAVE NORMAL DEPOSITION PROCEDURES WHERE ANYONE CAN JUST WITH ISSUE A NOTICE AND THEN THE CEO WITH EITHER HAS TO SIT FOR DEPOSITION OR THERE'S A PROTECTIVE ORDER.
AND THEN, YOU KNOW, THE TRIAL JUDGE CAN SAY, WELL, WHY DON'T YOU JUST DEPOSE SOME OF THESE OTHER PEOPLE FIRST, AND YOU SAY, OKAY, I'LL JUST DO THAT.
THAT'S COMPLETELY IMPRACTICAL HERE WHERE EVERY DEPOSITION HAS TO GO THROUGH AN INTERROGATORY THE, THERE'S GOING TO BE FIGHTS OVER THE TRANSLATION.
THAT'S GOING ON NOW AS SUZUKI POINTED OUT IN THE REPLY BRIEF.
THINGS HAVE TO BE THE SHE SET UP MONTHS IN ADVANCE.
AND IF WE HAD A WHOLE HEARING WHERE WE COULD HAVE DEVELOPED, YOU KNOW, AN ANSWER TO THIS QUESTION, WELL, WHY HAVEN'T YOU DONE SOME QUALITY CONTROL COUNTERMEASURE COMMITTEE IN THE RECORD ABOUT THAT.
BUT, YOU KNOW, I'M ASKING THE COURT TO STEP BACK AND LOOK, WHAT IS ITS ROLE HERE.
THIS IS WHERE I STARTED OUT WITH.
SUZUKI IS ASKING THIS COURT TO STEP IN AND DIRECTLY REVIEW THE JUDGE'S FINDING IRRELEVANCE BASED ON THE FACTUAL BACKGROUND OF THIS CASE AND THE

INFORMATION, EVIDENCE HE WAS
PRESENTED WITH.
THE JUDGE, YOU KNOW, HE REACHES
THE CONCLUSION THAT THERE'S
RELEVANT MATERIAL INFORMATION TO
BE HAD HERE, AND SUZUKI
DISAGREES WITH IT BECAUSE THEY
THINK OTHER EVIDENCE POINTS IN
THE OTHER DIRECTION.
THAT, RESPECTFULLY, IS NOT WHAT
THIS COURT IS HERE FOR.
THAT REVIEW WAS ALREADY HELD BY
THE FIRST DISTRICT WHEN THEY
CONSIDERED SUZUKI'S PETITION
FORKER IS SHORE TRUE AND
CONCLUDED THAT THERE'S NO
DEPARTURE FROM THE CENTRAL
REQUIREMENTS OF THE LAW.
>> WELL, BUT THEY'RE ALSO ASKING
US TO TRY TO LEND SOME COHERENCE
TO FLORIDA LAW OVERALL WHICH IS
OUR ROLE.
AND WHY SHOULD, YOU KNOW, THE
HEAD OF DVPR HAVE MORE
PROTECTION FROM A POTENTIALLY,
YOU KNOW, HARASSING DEPOSITION
REQUEST THAN, YOU KNOW, THE CEO
OF A COMPANY LIKE THIS?
I MEAN, IT DOESN'T-- IT DOES
SEEM, SO COULD YOU ADDRESS THAT
THAT?
SO, OBVIOUSLY, THE CASES HAVE
TALKED ABOUT GOVERNMENT AGENCY
HEADS.
BUT IN TERMS OF THE UNDERLYING
PRINCIPLES THAT LED TO THAT, TO
THE DEVELOPMENT OF THAT
DOCTRINE, IT SEEMS LIKE IT WOULD
BE HARD TO ARGUE THAT THOSE SAME
PRINCIPLES DON'T APPLY IN THIS
CONTEXT.
>> WELL, THERE ARE TWO KEY
DISTINCTIONS IN THE GOVERNMENT
CONTEXT.
FIRST IS THAT THE DECISIONS THAT
ADOPTED THIS, THE VARIANT OF THE
APEX DOCTRINE IN THE CORPORATE
CONTEXT-- EXCUSE ME, GOVERNMENT
CONTEXT, WERE DRIVEN BY CONCERNS
FOR SEPARATION OF POWERS.

>> ISN'T IT MORE RELEVANT TO COURTS TALK ABOUT THAT IN THE CONTEXT OF THE TYPES OF QUESTIONS THAT CAN BE ASKED IN THE SORT OF DISCRETIONARY GOVERNMENT DECISIONS.
BUT IT SEEMS LIKE THE CORE OF THE DOCTRINE ORIGINATED WITH THE IDEA THAT, YOU KNOW, IF YOU JUST LITERALLY LOOK AT OUR DISCOVERY RULES, YOU COULD THEORETICALLY COME UP WITH SOME REASON WHY YOU COULD DEPOSE AN AGENCY HEAD FOR PRETTY MUCH ANYTHING THAT'S GOING ON IN THE AGENCY.
IT SEEMS LIKE AS YOUR COLLEAGUE ON THE OTHER SIDE WAS SAYING THE SAME ARGUMENT KIND OF LIKE WHAT YOU'RE FAKING IN THIS CASE IN THE CORPORATE CONTEXT.
>> WELL, RESPECTFULLY, JUSTICE MUNIZ, I HAVE TO DISAGREE.
THERE IS ACTUALLY-- I REVIEWED ALL THE GOVERNMENT APEX CASES RECENTLY, AND THERE'S NOT ONE MENTIONED ABOUT ANY RULES OF DISCOVERY IN THERE THAT I COULD SEE.
JUST MAYBE A CASUAL MENTION THAT SOMEBODY MOVED FOR A PROTECTIVE ORDER.
NOW, THE DOCTRINE ORIGINATED OUT OF CONCERN FOR SEPARATION OF POWERS.
GOING BACK TO THE HRS V. BROOK CASE, 573363.
THAT CASE WAS ADDRESSING MORE TRIAL TESTIMONY, AND IN THE LATER DECISIONS THE FIRST DISTRICT APPLIED THE SAME PRINCIPLES TO DEPOSITIONS.
AND, AGAIN, IT WAS SAME CONCERN LARGELY DRIVEN BY A CONCERN FOR SEPARATION OF POWERS WHERE AGENCY HEADS WERE BEING BROUGHT IN TO ASK TO EXPLAIN THEIR REASONING BEHIND THE DISCRETIONARY DECISIONS OR HOW THEY WOULD HAVE RULED IN HYPOTHETICAL SITUATIONS.

SO THERE'S A SEPARATION OF POWER CONCERN AND THERE'S ALSO A PUBLIC POLICY MATTER WHICH IS THAT THOSE CASES ARE ALL DRIVEN BY, ALSO BY A CONCERN THAT IF AGENCY HEADS ARE SUBJECTED TO TOO MANY DEPOSITIONS, THAT IT WOULD DETER QUALIFIED PEOPLE FROM WANTING TO SEEK THOSE POSITIONS IN GOVERNMENT.
WELL, THERE'S NO PUBLIC POLICY THAT DRIVES COURTS TO TRY TO ENCOURAGE EMPLOYMENT AS HEADS OF PRIVATE CORPORATIONS.
THE PUBLIC POLICY CONCERN JUST ISN'T HERE.
AND THAT'S ONE OF THE REASONS WHY THE CITIGROUP CASE AND FLORIDA OFFICE OF INSURANCE REGULATION SAID THAT THE PRIVATE CONTEXT IS DISTINGUISHABLE, THAT WE DON'T HAVE THAT PUBLIC POLICY CONCERN.
>> WELL, THAT'S-- I MEAN, LOOK, THE MORE YOU TALK POLICY, THE BACKER YOUR POSITION IS.
I THINK STICKING TO SORT OF THE BLACK LETTER EXISTING LAWS, I MEAN, BECAUSE IT'S REALLY-- IT SEEMS INDEFENSIBLE THAT YOU COULD HAVE SORT OF ONE POLICY FOR AN AGENCY HERE AND A POLICY THAT ACTS LIKE WE SHOULD BE INDIFFERENT TO, YOU KNOW, POTENTIAL HARASSMENT OF PEOPLE WHO ARE SIMILARLY POTENTIALLY INVOLVED IN EVERYTHING THAT THAT GOES ON LITERALLY IN THIS CASE ALL OVER THE WORLD.
>> WELL, I CAN ONLY OFFER WHY THOSE COURTS ADOPTED THAT GOVERNMENT APEX RULE WHICH HAS NEVER BEEN BEFORE THIS COURT BEFORE.
THIS COURT HAS NEVER REALLY WEIGHED IN ON THAT, WHETHER THAT WAS CORRECT LAW IN THE FIRST PLACE.
BUT THOSE GOVERNMENT CONTEXT CASES, THEY'RE NOT BASED ON ANY

RULES OF PROCEDURE, THE ORIGIN
OR THE SEPARATION OF POWERS
CONCERNS, AND THERE'S PUBLIC
POLICY OF ENCOURAGING
EMPLOYMENT, NEITHER OF WHICH
APPLIES HERE.
WHAT WE DO HAVE IN THE CORPORATE
CONTEXT, THE PRIVATE CONTEXT, WE
HAVE A SET OF RULES THAT THERE'S
ABSOLUTELY NO WAY TO DISCERN IN
THE TEXT OF ANY OF THESE RULES
ANY BASIS THAT GIVES SPECIAL
TREATMENT TO TOP OFFICERS OF
CORPORATIONS WHEN SOMEBODY WANTS
TO TAKE THEIR DEPOSITION.
THERE'S NOTHING IN THERE THAT
PUTS ANY BURDEN ON THE PERSON
SEEKING THEIR DEPOSITION TO HAVE
TO MAKE THIS UNIQUE SHOWING THAT
THE OPPONENT WILL HAVE UNIQUE
KNOWLEDGE THAT NOBODY ELSE HAS
AND THAT THEY'VE EXHAUSTED EVERY
OTHER SOURCE OF DISCOVERY.
YOU KNOW, THE VERSION OF THE
DOCTRINE THAT'S RAISED IN THIS
QUESTION, IT WOULD REQUIRE OR
EXHAUSTION OF ALL OTHER
DISCOVERY EVEN IF THE APEX
OFFICIAL HAS UNIQUE KNOWLEDGE
WHICH, YOU KNOW, DOESN'T MAKE
SENSE.
IF IT'S UNIQUE KNOWLEDGE, WHY IS
NOT EVERYTHING ELSE?
SO, YOU KNOW, THERE'S NO BASIS
IN THE RULES, AND REALLY THIS
DOCTRINE IS UNNECESSARY.
ONE POINT WHERE I THINK WE AGREE
WITH SUZUKI IS THAT EXISTING
RULES ARE SUFFICIENT TO ADDRESS
THIS SUPPOSED PROBLEM, IF IT
REALLY IS A PROBLEM, OF
POTENTIALLY HARASSING
DEPOSITIONS OF CEOS CHAIRMANS OF
THE BOARD.
WE JUST DISAGREE ON HOW THAT
APPLIES TO THE FACTS HERE.
SO MY POINT BEING IS THAT THE
RULES, THE CURRENT RULES PROVIDE
TRIAL COURTS ALL THE TOOLS THEY
NEED TO PREVENT HARASSING

DEPOSITIONS AND TO MAKE SURE
THAT, YOU KNOW, THE WHEELS OF
COMMERCE AREN'T GOING TO BE
GROUND TO A HALT BY CALLING
EVERY CEO AND CHAIRMAN IN FOR
DEPOSITION OVER AND OVER AND TO
MAKE SURE THAT DEPOSITIONS ARE
ARE GOING TO BE REASONABLY
CALCULATED TO LEAD TO ADMISSIBLE
EVIDENCE.
>> ISN'T-- AREN'T THE FACTS
HERE SORT OF THE POSTER CHILD
FOR WHY MAYBE THERE SHOULD BE
MORE GUIDANCE TO THE TRIAL
COURTS?
REALLY IT SEEMS LIKE THE ONLY
THING YOU'RE HANGING YOUR HAT ON
FOR WHY THERE SHOULD BE A
DEPOSITION HERE THIS, YOU KNOW,
THE FACT THAT THIS PIECE OF
PAPER WAS SHOWN TO THIS GUY WHO
PROBABLY SEES A GAZILLION OF
THESE MEMOS.
AND SO THERE'S NOTHING-- SO TO
THE EXTENT THAT THERE'S NOTHING
IN OUR RULES THAT PREVENT THAT,
THEN IT SEEMS LIKE MAYBE THERE
DOES NEED TO BE MORE, MORE MEAT
ON THE BONES OF WHAT THE RULES
ARE.
>> WELL, IT WASN'T JUST THAT IT
WAS SHOWN TO HIM, IT WAS
DISCUSSED WITH HIM.
IT WAS DISCUSSED WITH HIM, AND
READING THE E-MAIL AFTERWARDS,
THE E-MAIL INDICATES THAT THE
MANAGERS INVOLVED WITH THAT
DOCUMENT ARE APPARENTLY NEEDING
HIS SIGNATURE FOR WHATEVER
PURPOSE, YOU KNOW?
THE E-MAIL SAYS TODAY WHEN I
HANDED THE BACKGROUND MATERIAL
FOR THE SENIOR MANAGING OFFICER,
THE SENIOR MANAGING OFFICER
EXPLAINED IT TO THE CHAIRMAN AND
BACK WITH THE CHAIRMAN'S
SIGNATURE, I'M SENDING THE
MATERIAL WITH HIS SIGNATURE.
SO THEY WERE WAITING FOR HIS
SIGNATURE.

YOU KNOW, DESPITE WHAT HE SAYS ABOUT NOT HAVING AUTHORITY TO APPROVE IT, IT REALLY DOESN'T STAND TO REASON THAT WHATEVER HE MIGHT HAVE THOUGHT OR SAID WHEN HE REVIEWED THIS, THAT THAT WOULD BE IGNORED BY THE COMPANY. AND IT WOULD CERTAINLY HAVE WEIGHT AT TRIAL.
BUT AGAIN, YOU KNOW, I WANT THE COURT TO STEP BACK.
THIS EVIDENCE, IT WAS WEIGHED BY THE TRIAL JUDGE.
HE MADE THIS RULING.
IT'S A DISCRETIONARY RULING, AND IT'S ALREADY BEEN REBUKED ONCE BY THE FIRST DISTRICT COURT OF APPEAL THAT FOUND NO DEPARTURE FROM THESE REQUIREMENTS OF THE LAW.
SO HOW DOES THIS CASE GET UP TO THIS COURT.
WELL, THEY CERTIFIED THIS QUESTION OF GREAT PUBLIC IMPORTANCE, BUT THE QUESTION THAT SUZUKI WOULD LIKE THAT TO BE, WHEN THIS COURT SHOULD ADOPT THE APEX DOCTRINE, THAT'S NOT A QUESTION THAT THE FIRST DISTRICT EVER PASSED UPON.
SO, YOU KNOW, IT'S A FUNDAMENTAL PRINCIPLE OF THE COURT'S JURISDICTION UNDER ARTICLE V 3B4, IT DOESN'T HAVE JURISDICTION TO ANSWER QUESTIONS THAT WERE NEVER ASKED UPON BY THE DISTRICT COURT.
SO HERE THE FIRST DISTRICT, THEY NEVER WEIGHED THE PROS AND CONS OF EXTENDING THE APEX DOCTRINE TO THE CORPORATE SIDE, NEVER CANVASSED THE CASES AROUND THE COUNTRY FROM DIFFERENT STATES, SOME ADOPTING, SOME REJECTING, EXAMINED WHETHER IT'S CONSISTENT WITH THE RULES.
SO THAT QUESTION THAT SUZUKI WAS, YOU KNOW, HAS BEEN ASKING THIS COURT TO ANSWER UNTIL THEY SEEMED TO CHANGE COURSE TODAY,

YOU KNOW, THAT WHETHER THIS
DOCTRINE SHOULD BE ADOPTED BY
THIS COURT, THAT'S NOT A
QUESTION THAT WAS EVER PASSED
UPON BY THE FIRST DISTRICT.
AND SO--
>> JUDGE THOMAS SPENT SOME TIME
TALKING ABOUT IT, DIDN'T HE?
>> WELL, HE CERTAINLY DID.
BUT A DISSENT IS NOT-- YES, HE
DID.
BUT THE-- RIGHT.
BUT THE COURT HAS TO LOOK TO THE
MAJORITY OPINION BECAUSE THE
COURT REVIEWS THE DECISION THAT
PASSES UPON A QUESTION CERTIFIED
TO BE OF GREAT PUBLIC
IMPORTANCE.
SO IT HAD TO BE PASSED UPON BY
THE--
>> IN THIS CASE THERE'S NO
QUESTION THE COURT PASSED UPON
THE QUESTION THAT IT CERTIFIED
WHICH IS, IS IT A DEPARTURE FROM
THE ESSENTIAL REQUIREMENTS OF
LAW ARE, DOT, DOT, DOT.
SO THAT MEANS THAT'S THE GATE TO
JURISDICTION.
AND YOUR COLLEAGUE ON THE OTHER
SIDE HAS ASKED US TO REVIEW THE
DECISION.
AND WE'RE BEING ASKED TO DECIDE
IS IT A DEPARTURE FROM THE
ESSENTIAL REQUIREMENTS OF LAW,
AND IT SOUNDS LIKE HE'S BASING
HIS ARGUMENT ON SOME, YOU KNOW,
BROADER PRINCIPLES HERE THAT AT
LEAST THERE IS SOME HOOK IN
EXISTING FLORIDA LAW.
SO I DON'T THINK THAT IT'S, I
DON'T THINK THAT-- REGARDLESS
OF HOW WE SHOULD ANSWER THE
QUESTION, IT DOESN'T SEEM LIKE
IT'S NOT PROPERLY BEFORE THE
COURT.
>> WELL, I SUBMIT THAT THE
QUESTION OF WHETHER THIS
DOCTRINE SHOULD BE ADOPTED IS
NOT PROPERLY BEFORE THE COURT.
WHAT THE FIRST DISTRICT--

>> BE HELPFUL IF I UNMUTE.
WHERE IN THE QUESTION, COUNSEL,
IS THE WORD "SHOULD"?
>> IT'S NOT IN THERE AND THAT'S
MY POINT.
>> WELL, BUT THEY'RE ASKING US,
THEY JUST, THEY MADE A DECISION
THAT THERE WAS NOT A VIOLATION
OF THE ESSENTIAL REQUIREMENTS OF
LAW, AND THEY'RE ASKING US TO
ADDRESS THAT SAME QUESTION,
WHETHER THEY WERE RIGHT OR WRONG
ON THAT QUESTION THAT THEY
ADDRESSED.
I MEAN, WHETHER THIS CASE OUGHT
TO BE DISCHARGED FOR SOME OTHER
REASON, THAT'S A DIFFERENT
QUESTION.
BUT ON THAT, JUST HOW THEY
DIDN'T PASS ON WHAT THEY'VE
ACTUALLY ASKED HERE, I'M
MYSTIFIED BUT IT.
>> YES.
THAT ACTUAL WASN'T WHAT I WAS
ARGUING.
WHAT THEY ACTUALLY WROTE, WHAT
THE CERTIFIED QUESTION ACTUALLY
ASKS AND WHAT THEY PASSED UPON
WHETHER THE APEX DOCTRINE IS
CURRENTLY LAW.
EVERYONE IN THE CORPORATE
CONTEXT.
EVERYONE AGREES THAT IT ISN'T.
SUZUKI AGREED THAT IT ISN'T IN
PAGE 3 OF THE REPLY BRIEF.
AND SO LOOKING AT IT THAT WAY,
IT'S A VERY SIMPLE MATTER.
YOU CAN EITHER DISCHARGE
JURISDICTION BECAUSE IT'S
ALREADY SETTLED AND YOU DON'T
NEED TO ANSWER IT, OR YOU CAN
JUST SAW, NO, IT'S NOT CURRENTLY
LAW IN THE CORPORATE CONTEXT,
AND SO THERE'S NO DEPARTURE FROM
THE REQUIREMENTS OF LAW IN
FAILING TO APPLY IT.
YOU DID THE RIGHT THING IN
DENYING CERTIORARI BECAUSE THERE
WAS NO CLEARLY ESTABLISHED LAW
EXTENDING THIS VERY RIGID APEX

RULE TO THE CORPORATE CONTEXT.
IT'S BEEN EITHER REJECTED OR
DECLINED TO BE APPLIED IN EVERY
DISTRICT COURT DECISION THAT'S
EVER LOOKED AT THE QUESTION.
AND I KNOW I'M RUNNING LOW ON
TIME, BUT JUST TO SUM UP, WE
MAINTAIN THERE'S NO JURISDICTION
TO ANSWER THE SHOULD QUESTION
BECAUSE THAT WAS NEVER PASSED
UPON.
BEYOND THAT, THIS IS THE WRONG
CASE BECAUSE THE UNUSUAL
PROCEDURES AND THE SPECIFIC
FACTUAL CONTEXT TO REALLY DECIDE
WHETHER THE APEX DOCTRINE SHOULD
BE ADOPTED, THE DOCTRINE
UNNECESSARY BECAUSE CURRENT
RULES ALREADY GIVE TRIAL JUDGES
ENOUGH DISCRETION TO DEAL WITH
ANY PROBLEM POTENTIALLY
HARASSING DEPOSITIONS WHEN THEY
ARISE.
AND IF THE COURT WERE TO
CONSIDER WHETHER TO ADOPT THIS
VERY RIGID RULE THAT GREATLY
LIMITS DISCOVERY IN EVERY CASE
INVOLVING CORPORATE POLICIES,
THAT WOULD BEST BE DONE IN A
RURAL PROCEEDING.
SO IN CONCLUSION, WE'RE ASKING
THE COURT TO DISCHARGE
JURISDICTION.
FAILING THAT, IT SHOULD ANSWER
THE CERTIFIED QUESTION IN THE
NEGATIVE AND APPROVE THE FIRST
DISTRICT'S OPINION.
DECISION DENYING CERTIORARI.
>> THANK YOU, COUNSEL.
NOW FOR REBUTTAL ARGUMENT.
>> PERHAPS WORKING MY WAY
BACKWARD, UNLESS THE COURT HAS
ANY QUESTIONS, AS TO THE
CERTIFIED QUESTION, THE FIRST
CERTIFIED QUESTION ASKS DOES A
TRIAL COURT DEPART FROM THE
ESSENTIAL REQUIREMENTS OF LAW BY
NOT REQUIRING A PARTY SEEKING TO
DEPOSE THE TOP OFFICER OF A
CORPORATION TO SHOW THAT, ONE,

OTHER MEANS OF DISCOVERY HAVE
BEEN EXHAUSTED AND, TWO, THE
CORPORATE OFFICER'S UNIQUELY
ABLE TO PROVIDE RELEVANT
INFORMATION THAT CAN NOT BE
OBTAINED IF OTHER SOURCES.
THERE CAN BE NO QUESTION THAT
BOTH THE MAJORITY AND THE
DISSENT ADDRESSED THAT ISSUE.
THAT WAS THE WHOLE POINT OF THE
MAJORITY AND DISSENTING
OPINIONS.
SO I DON'T THINK THERE'S ANY
QUESTION THAT THE COURT DOES
HAVE DISCRETIONARY JURISDICTION,
AND I ALSO SUBMIT THAT THE COURT
SHOULD RETAIN JURISDICTION AND
ANSWER THE QUESTION OR ANY
REPHRASED QUESTION BECAUSE OF
THE POLICY ISSUES INVOLVED AND
TO ELIMINATE ANY INCONGRUITY
BETWEEN THE PROTECTIONS THAT
IN-- THAT AN APEX PUBLIC
OFFICIAL RECEIVES AND AN APEX
PRIVATE OFFICIAL RECEIVES.
LET US REMEMBER AS FAR AS PUBLIC
OFFICIALS, THEIR ROLE IS
IMPORTANT.
BUT IT'S RESTRICTED TO THE STATE
OF FLORIDA.
FOR APEX OFFICIALS IN THE
PRIVATE CORPORATIONS AS IS THE
CASE HERE, THEIR INFLUENCE IS
WORLDWIDE.
SUZUKI OPERATES IN MANY PARTS OF
THE WORLD, AND SO I SUBMIT THAT
THE STATE SHOULD PROTECT THOSE
OFFICIALS AT LEAST AS MUCH AS IT
PROTECTS PUBLIC OFFICIALS.
SO THAT'S A REASON TO RETAIN THE
CASE.
ON THE MERITS I'D LIKE TO
ADDRESS JUDGE MUNIZ, YOU
REFERRED TO THE BLACK LETTER
LAW.
WE HAVE RULE 1.280B1, I BELIEVE
IT IS, WHICH REQUIRES THAT THE
DISCOVERY BE RELEVANT OR
REASONABLY LIKELY TO LEAD TO THE
DISCOVERY OF RELEVANT

INFORMATION.
THIS COURT AND OTHER COURTS HAVE ROUTINELY, HISTORICALLY, TRADITIONALLY REVIEWED DISCOVERY ORDERS ON THAT BASIS.
IT QUASHES DISCOVERY ORDERS REGARDLESS OF WHETHER THERE WAS ALREADY A CASE ON POINT.
IN THE DISCOVERY CONTEXT IF YOU NEED THERE TO BE A PRIOR CASE, YOU PROBABLY WOULD NOT DECIDE 90% OF PETITIONS FOR CERTIORARI BECAUSE THERE ARE ALWAYS KNEW WEEK, NEW FACTUAL CIRCUMSTANCES.
THE COURTS DO NOT SAY IS THERE ESTABLISHED LAW ON POINT IN WHICH CASE RARELY WILL A TRIAL JUDGE VIOLATE IT.
>> I UNDERSTAND WHAT YOU'RE SAYING, BUT IT SEEMS LIKE WE EITHER, YOU KNOW, IN ORDER TO SORT OF JUSTIFY OUR KIND OF INTERVENING HERE, YOU COULD IMAGINE, QUOTE-UNQUOTE, ADOPTING AN APEX RULE WHICH IS SORT OF, YOU KNOW, KIND OF-- IT WOULD BE, ESSENTIALLY, A NEW RULE.
OR IF WE'RE REALLY JUST, IF WE REALLY WERE JUST GOING TO SAY THAT, YOU KNOW, GIVEN THIS DECLARATION AND WHAT THE CORPORATE REP IN THIS CASE SAID, YOU KNOW, THAT THIS PARTICULAR PERSON'S DEPOSITION, YOU KNOW, THERE WASN'T ENOUGH THERE TO CONCLUDE THAT IT WOULD REASONABLY LEAD TO DISCOVERY, I MEAN, THAT WOULD BE-- I MEAN, WOULD YOU AGREE THAT THAT WOULD BE KIND OF AN ODD THING FOR THIS COURT TO BE GETTING, TO BE SOCIALLY ISSUING A MICRO RULING ON SOMETHING LIKE THAT?
>> IT IS UNUSUAL BUT NOT UNPRECEDENTED, AND I SUBMIT THAT THAT'S EXACTLY WHAT THIS COURT DID IN ALLSTATE V. LANGSTON.
IT'S KIND OF WHAT IT DID IN ELKIN V. PSYCHEN WHERE IT ADOPTED THE THIRD DCA'S

EIGHT-POINT PLAN, SO TO SPEAK,
FOR GETTING FINANCIAL AND ORE
DISCOVERY FROM EXPERTS IN THE
CASE.
THAT WAS A CASE OF FIRST
IMPRESSION HERE.
BUT I THINK MORE BROADLY THE
COURT SHOULD CLARIFY, IS THERE
AN APEX DOCTRINE IN FLORIDA
BECAUSE COURTS ARE APPLYING IT
TO PUBLIC OFFICIALS.
AND IF THERE'S AN APEX DOCTRINE,
SHOULD IT APPLY TO BOTH PUBLIC
AND PRIVATE OFFICIALS?
I DON'T THINK THE COURT
SHOULD--
>> BUT YOU, YOU CONCEDE,
COUNSEL, THAT IF WE MADE THAT
DECLARATION, IT WILL BE THE
EXISTENCE OF AN APEX DOCTRINE
THAT APPLIES IN THE CORPORATE
CONTEXT.
THAT WILL BE NEWLY DISCOVERED.
IT'D BE SOMETHING THAT WE HAVE
JUST DISCOVERED IN THIS CASE.
>> WELL, I DON'T THINK IT'S IN A
SENSE NEWLY DISCOVERED.
I UNDERSTAND WHAT YOUR POINT IS,
BUT IT'S THE APPLICATION OF THE
RULES OF PROCEDURE, THE RULE
1.280B1 AND RULE 1.280C WHICH
ALLOWS COURTS TO ISSUE ORDERS TO
PREVENT ANNOYANCE AND OPPRESSION
OF UNDUE BURDEN OR EXPENSE, TWO
PARTICULAR FACTS THAT MAY ARISE
AND STANDARDIZE THE PROCESS LIKE
THIS COURT DID IN PSYCHEN V.
ELKIN.
SO I DON'T THINK IT'S NEW, BUT
TO THE EXTENT IT IS, IT'S
CERTAINLY NOT UNPRECEDENTED THAT
THIS COURT PRESENTS NEW
STANDARDS.
AS WE SAID IN OUR BRIEF WITH
TUCKER V--
[INAUDIBLE]
>> WELL, IT JUST SEEMS TO ME,
AND I'LL SAY THIS, IT'S KIND OF
AN ODD THING TO HAVE A NEWLY
DISCOVERED, CLEARLY ESTABLISHED

PRINCIPLE OF LAW.
>> WELL, THE CLEARLY ESTABLISHED PRINCIPLE, YOUR HONOR, THE RULE ITSELF THAT PROHIBITS DISCOVERY THAT IS NOT REASONABLY LIKELY TO LEAD TO DISCOVERY OF ADMISSIBLE EVIDENCE.
>> I APOLOGIZE FOR TALKING TO YOU HERE ONCE YOUR REBUTTAL TIME IS OVER.
IF YOU COULD SUM UP IN ABOUT 30 SECONDS.
>> CERTAINLY, YOUR HONOR.
THANK YOU FOR THE INDULGENCE.
WE SUBMIT THAT THE COURT, WHETHER OR NOT IT ADOPTS THE APEX DOCTRINE, SHOULD QUASH THE DECISION OF THE DISTRICT COURT OF APPEAL AND HOLD THAT EITHER UNDER CIRCUMSTANCES OF THIS PARTICULAR CASE OR IN OTHER CIRCUMSTANCES THAT THE DEPOSITION OR EXAMINATION OF AN APEX OFFICIAL SHOULD NOT BE TAKEN UNTIL THE PARTY CAN SHOW THAT ONLY THAT OFFICIAL HAS UNIQUE KNOWLEDGE THAT IS UNAVAILABLE FROM OTHER OFFICIALS.
THANK YOU VERY MUCH FOR YOUR TIME.
>> ALL RIGHT.
WE THANK YOU BOTH FOR YOUR ARGUMENTS IN THIS CASE TODAY.
AND BEFORE THE COURT MOVES ON TO THE REST OF OUR DOCKET, WE WILL NOW TAKE A RECESS OF ABOUT TEN MINUTES.