THE COURT WILL NOW PREPARE TO TAKE UP THE NEXT CASE IN OUR DOCTOR, CCM CONDOMINIUM ASSOCIATION VERSUS PETRI PEST CONTROL.
>> COUNSEL FOR THE PETITIONER, YOU MAY PROCEED.
>> THANK YOU YOUR HONOR, MAY IT PLEASE THE COURT, I AM SHEA MOXON OF BANNOCK & HUMPHRIES AND I REPRESENT CCM CONDO ASSOCIATION.
WE ARE ASKING THE COURT TO RESTORE THE PROPOSAL FOR JUDGMENT STATUTES TO ITS PLAIN MEANING AND TO CORRECT SOME STATEMENT THAT EARLIER OPINIONS THAT HAVE BEEN TURNED INTO A JUDICIAL REWRITING OF THE STATUTE.
THE ISSUE IN THIS CASE IS WHETHER CCM IS ENTITLED TO ATTORNEYS FEES UNDER ITS PROPOSAL FOR SETTLEMENT.
THAT TURNS ON THE STATUTORY DEFINITION OF JUDGMENT OBTAINED AND WHETHER IT INCLUDES PREJUDGMENT INTEREST OR POST OFFER COSTS.
INCLUDING EITHER OF THOSE AMOUNTS BRING CCM TO ITS FEES.
UNDER THE CLAIMING OF THE STATUTE, CCM WOULD BE ENTITLED TO ITS FEES BUT IT FELT CONSTRAINED BY EARLIER DECISIONS LIKE CHANCE VERSUS MERCURY TO EXCLUDE THOSE AMOUNTS AND I WILL ADDRESS WHY THOSE CASES DIDN'T HOLD THAT BUT FIRST I WOULD LIKE TO GO OVER WHAT THE STATUTE ACTUALLY SAYS.
THAT IS THE STARTING DEKA WHERE ANY STATUTORY INTERPRETATION IS NOT SECTION 6 OF 768.79 SETS OUT A CLEAR DEFINITION OF JUDGMENT, IT SAYS THE TERM JUDGMENT OBTAINED MEANS THE AMOUNT ENTERED PLUS, CERTAIN AMOUNTS THAT DON'T APPLY IN THIS CASE SO THERE ARE TWO KEY TAKE AWAYS.

THE STARTING DEKA FOR THE
CALCULATION IS THE NET JUDGMENT.
>> LET ME PAUSE YOU, OF WHAT?
>> NET OF SOURCES, SETTLEMENTS
WITH A DEFENDANT'S, NET OF
COMPARATIVE, A COUNTERCLAIM,
EACH SIDE RECOVERS A VERDICT,
AND I BELIEVE THE LEGISLATURE'S
POINT REALLY JUST REEMPHASIZES
THAT THIS IS THE ACTUAL JUDGMENT
AND NOT THE VERDICT.
>> LET'S SAY I AGREE WITH THE
EXAMPLES YOU HAVE GIVEN AS
CONSIDERATION FOR NETTING FROM
THE JUDGMENT.
WHERE SHALL I FIND THEM IN THE
STATUTE, IF YOUR POINT IS ITS
PROGENY ARE DEPARTURES FROM
STATUTE WE MUST RESTORE THE
STATUTE TO ITS MEANING.
MAYBE I SHOULD GET YOUR POSITION
ON WHETHER THE WORD NET
INTRODUCES AMBIGUITY.
>> IT DOES NOT.
THERE ARE STATUTES THAT PROVIDE
FOR SET OFFS AND THAT IS PART OF
THE BACKGROUND IT IN 768.79
ITSELF, WHEN I SAID CERTAIN
THINGS ARE ADDED BACK, THAT IS
SOMETHING THAT WAS SET OFF
AGAINST THE VERDICT AFTER TRIAL.
>> THE STATUTE ACCOUNTS FOR
THEM.
I THINK I HAD SOME MORE
THOUGHTS, I DON'T KNOW WHAT THE
RIGHT ANSWER IS BUT IT SEEMS
PART OF THE APPEAL OF YOUR
ARGUMENT IS WE ARE SUPPOSED TO
LOOK AT THE JUDGMENT, THE NUMBER
ON THE PAGE PLUS THESE OTHER
THINGS THE STATUTE SAYS TO ADD
BACK IN BUT ONCE YOU INTRODUCE
NET JUDGMENT, IT ARGUABLY IS
EITHER COMPLETELY USELESS WORD
OR IS DOING SOME WORK AND
DOESN'T SEEM LIKE YOUR POSITION
ACCOUNTS FOR WHAT THAT WORD
MIGHT BE DOING IT I DON'T KNOW
THERE'S A CLEAR ANSWER TO IT BUT
THAT IS THE CHALLENGE, THE

PROBLEM WE HAVE
>> THERE IS NO BASIS ANYWHERE IN THE STATUTORY DEFINITION TO CONCLUDE NET MEANS DRAWING DISTINCTION FROM PRE-OFFER AND POST OFFER AMOUNTS, LIKE COST AND PREJUDGMENT INTEREST.
THAT IS ONE POINT.
THERE IS NOTHING IN THE STATUTE THAT SUGGESTS NET IS GOING TO BE REFERRING TO A DEDUCTION IN COST OR PREJUDGMENT INTEREST.
THERE IS NO BASIS THAT ALLOWS THE STATUTE TO BE DEDUCTING THOSE THINGS FROM THE NET JUDGMENT, THERE ARE THOSE THAT PROVIDE FOR COLLATERAL SOURCES OR STATUTES, IN THIS SUBSECTION 6, THERE IS LANGUAGE BUT THAT SOMETIMES YOU ADD THOSE BACK IN.
THAT IS AN INDICATION WHAT NET MEANS AND WHAT IT DOESN'T MEAN AND I POINT OUT CHANCE VERSUS MERCURY, NONE OF THOSE CASES WHEN THEY START LOOKING AT JUDGMENT AT THE TIME OF THE OFFER, NONE WAS BASED ON CONSTRUCTION OF THE WORD NET.
THERE IS NO INDICATION IN THE STATUTES OR THE CASE LAW THAT THERE IS CONSTRUCTION OF THE WORD NET THAT COULD DECIDE WHAT NEEDS TO BE DONE IS TO DIVIDE CARS WITH PRE-OFFER AND POST OFFER AMOUNTS AND SUBTRACT THE POST OFFER AMOUNTS THOSE ELEMENTS.
THERE IS NO BASIS IN THE STATUTE TO DO THAT.
THERE ARE INDICATIONS WHAT LEGISLATURE WAS THINKING OF AND THE OPTIONS, I SUBMIT THE WORD NET IS DOING VERY LITTLE, 100% SUPERFLUOUS, WHAT IT IS MAINLY DOING IS EMPHASIZING THIS NET JUDGMENT ENTERED MEANS THE REAL JUDGMENT, ENTERED AT THE END OF THE CASE.
AND THE ORIGINAL VIRGIN OF THE STATUTE, SUBSECTION 6.

>> CAN I ASK AN UNRELATED QUESTION, IF YOU GO DOWN THE PATH YOU ARE ADVOCATING, WHAT YOU ARE CALLING THE PLAIN MEANING APPROACH.
HOW DO YOU PLAY OUT IN CASES THAT INVOLVE PUNITIVE DAMAGES, AT THE TIME OF THE OFFER, DAMAGES WEREN'T IN THE CASE, THEY APPEAR LATER, THE FIRST DCA CASE, COMPARE APPLES TO APPLES.
A SIMILAR THING TO THIS LINE OF CASES THAT IS DIRECTLY RELEVANT, IF WE SAY THAT THE PLAIN MEANING, MADE TO THE JUDGMENT OR WHATEVER THAT IS INCLUDING THINGS YOU WANTED TO INCLUDE HOW WE IN A LATER CASE BE ABLE TO DISTINGUISH THAT PUNITIVE DAMAGE SITUATION?
>> THAT IS NOT AN ISSUE HERE BUT IT IS SOMETHING THAT NEEDS TO BE CONSIDERED.
THE ISSUE THAT AROSE IN THE PARLIAMENTARY CASE IS A CLEAR INSTANCE THAT AROSE AND A CASE OF PARLIAMENTARY, THE PROPOSAL IN THAT CASE IS NOT ONLY SERVED WHEN THERE ARE NO PUNITIVE DAMAGES IN THE CASE BUT THE PROPOSAL DISCLAIMED ANY CLAIM FOR PUNITIVE DAMAGES.
THEY SERVE THE PROPOSAL SAYING WE ARE NOT SEEKING ANY PUNITIVE DAMAGES, NO AMOUNT OF PROPOSAL IS ALLOCATED TO PUNITIVE DAMAGES.
ALSO THE STATUTE 768.79 REQUIRES A JUDGMENT, THE OFFER OF WHETHER ANY AMOUNT ALLOCATED DUE TO DAMAGES, THAT IS KIND OF A NARROW RARE INSTANCE WHERE THE PROPOSAL WAS SERVED AT A TIME THAT REPUTED ANY PUNITIVE DAMAGES, THE WHOLE NATURE OF THE CASE CHANGED AFTER THE PROPOSAL WHEN PUNITIVE DAMAGES WERE ADDED AND THE PROPOSAL SERVED THE PARLIAMENTARY COURT AND ANOTHER BASIS FOR ITS HOLDING SAYS THIS

CREATES AMBIGUITY.
THERE ARE OTHER WAYS TO DEAL
WITH THAT ISSUE.
>> CONSISTENT ON THE
PREJUDGMENT, POSTJUDGMENT
INTERESTS, THE SITUATION OF
PUNITIVE DAMAGES OR ANY OTHER
KIND OF A LIMIT OF DAMAGES
INCLUDED IN THE ULTIMATE NET
JUDGMENT WHY SHOULDN'T THAT
NUMBER BE COMPARED TO WHAT THE
OFFER WAS AT THE TIME, THE
STATUTE ENCOURAGED SETTLEMENT.
IF SOMEBODY DOESN'T ACCEPT THE
OFFER THEY JUST RUN THE RISK OF
WHATEVER THE JUDGMENT MAY BE.
IF YOU ARE CONSISTENT WITH THE
NOTION THAT YOU GOT TO LOOK AT
THE STATUTORY LANGUAGE WHY
WOULDN'T YOU HAVE PUNITIVE
DAMAGES IN THEIR OR ANY OTHER
THING LIKE THE POST OFFER
PREJUDGMENT INTEREST?
>> NORMALLY YES, THAT IS TRUE.
THE LEGISLATURE DECIDED THE
STARTING DEKA IS TO LOOK AT THE
NET JUDGMENT ENTERED AT THE END
OF THE CASE AND THE VAST
MAJORITY OF CASES THERE IS NO
QUESTION THAT MEANS ALL DAMAGES
AND THE DAMAGES CAN CHANGE OVER
TIME.
FOR EXAMPLE IN CASES WHERE YOU
HAVE A CLAIM FOR PAST DAMAGES
AND FUTURE DAMAGES, PAST,
FUTURE, NONECONOMIC, WAGES,
EARNING CAPACITY, PAST AND
FUTURE AMOUNTS, THE STARTING
DEKA WILL BE THE DATA, THAT
PICTURE CHANGES ALL THE TIME.
JUST THE POINT THAT IT IS
UNDERSTOOD, THE WAITER STATUTE
OPERATES, LOOK AT THE DAMAGES AT
THE END OF THE CASE, IN
SITUATIONS LIKE PARLIAMENTARY,
DISTRICT COURTS HAVE WORKED OUT
DIFFERENT WAYS TO DEAL WITH THAT
AND PARLIAMENTARY WITH THE
PUNITIVE DAMAGE ISSUE, THE MAIN
POINT IS THE PUZZLE DISCLAIMED

PUNITIVE DAMAGES, TO ANY AMOUNT
ALLOCATED IN PUNITIVE DAMAGES
AND IN THE SO CONDO CASE THE ONE
INVOLVING THE SHOULDER DAMAGES
THE THIRD DISTRICT RESOLVED THAT
BY NEVER DISPUTING THE PLAINTIFF
WAS ENTITLED TO FEES, JUST HELD
THE ONLY REASONABLE FEES UNDER
THE CIRCUMSTANCES WAS 0.
>> THE FOURTH DCA APPLIED, I
UNDERSTAND WHAT THEY DID AND
THAT MADE SENSE TO ME.
WE WOULD NEED TO RECEDE FROM THE
DECISION AND LOOKING AT
STANDARDS NOW WHERE WE LOOK TO
SEE WHAT WE RECEIVED FROM
PRECEDENT OR NOT WE WOULD APPLY
A CLEARLY ERRONEOUS RULE AND
LOOK AT ALL ALLIANCES THERE.
CLEARLY ERRONEOUS INTERPRETATION
OF THE STATUTE.
>> OUR FIRST POSITION, WEIGHT
DID NOT SET OUT ANY HOLDING THAT
REQUIRES THE EXCLUSION OF POST
OFFER AMOUNTS.
>> LET'S ASSUME THAT IT DID.
>> IF IT DID, YES, THIS, IF THIS
IS ACTUAL CONSTRUCTION OF THE
STATUTE, YES, IN CLEAR CONFLICT
WITH THE PLAIN LANGUAGE OF THE
STATUTE.
THE STATUTE, DEFINES THE
JUDGMENT OBTAINED IS THE NET
JUDGMENT ENTERED, DOESN'T
PROVIDE ANY BASIS TO THE THING
WAS BETWEEN PRE-OFFER AND POST
OFFER COMPONENTS, LOOKS AT THE
JUDGMENT AT THE END OF THE CASE
AND NOT IMAGINARY JUDGMENT,
COULD HAVE BEEN ENTERED AT AN
EARLIER POINT WHEN THE OFFER WAS
SERVED.
AND -
>> WHAT ABOUT THE SECOND HALF OF
THE QUESTION WITH RELIANCE?
THERE ARE A LOT OF PEOPLE OUT
THERE WHO MADE SETTLEMENT OFFERS
THAT RELY ON THE LAST 20 YEARS
OF UNIFORM INTERPRETATION,
WHETHER IT IS INTERPRETATION OF

THE STATUTE, WHAT COURSE ASSUMES
THE ROLE OF THE ROAD TO BE.
>> TWO POINTS ON THAT.
THEY ARE ENTITLED TO RELY ON
PLAIN MEANING OF THE STATUTE AND
WHAT IT SAYS.
A SIMPLE COMPARISON OF THE
JUDGMENT ENTERED AT THE END --
AND, SECOND, I THINK IT'S VERY
UNLIKELY THAT PARTIES ARE MAKING
ANY KIND OF DISPOSITIVE
DECISIONS ABOUT AMOUNTS OF
PROPOSALS OR WHETHER TO ACCEPT
OR REJECT THEM BASED ON SOME
NOTION OF THE EXACT AMOUNT OF
PREOFFERED CAUSE OR PREOFFERED
JUDGMENT INTEREST.
AS A PRACTICAL MATTER, PARTIES
MAKE THEIR PROPOSALS FOR LUMP
SUMS, AND THEY EVALUATE THEM
BASED ON THE BOTTOM LINE, WHAT'S
GOING TO BE OWED AT THE END OF
THE CASE, JUST LIKE THE, JUST
LIKE THE STATUTE CONTEMPLATES.
IN FACT, IN THIS CASE OUR
PROPOSAL IS FOR LESS THAN OUR
TOTAL AMOUNT OF DAMAGES.
SO, CERTAINLY, THEY DIDN'T
REJECT IT BECAUSE THEY THOUGHT
WE WERE ASKING FOR TOO MUCH IN
THE WAY OF COSTS IN THIS OFFER.
IT HAD TO DO WITH THEIR
ASSESSMENT OF DAMAGES OR
LIABILITY.
THE PROPOSAL WAS FOR $500,000,
AND OUR AMOUNT OF DAMAGES EVEN
BY THE TIME THIS OFFER WAS
SERVED WAS AT LEAST $549,000.
YOU CAN FIND THAT ANALYSIS AT
PAGE 3609 OF THE RECORD.
JUST AS ONE ILLUSTRATION.
SO PARTIES REALISTICALLY AREN'T
MAKING PROPOSAL FOR JUDGMENT
DECISIONS EITHER THE AMOUNT OR
WHAT THEY THINK IS THE AMOUNT OF
OFFER OF PREOFFER PREJUDGMENT
INTEREST AT THE TIME AS A
PRACTICAL MATTER.
BUT, YOU KNOW, ADDITIONALLY JUST
IN THE BIG PICTURE, THIS

REQUESTED THAT THE JUDGMENT
OBTAINED IS CUT OFF AT THE TIME
THE OFFER IS MADE HAS NO BASIS
IN THE STATUTE, AND IT'S, YOU
KNOW, IT'S THIS COURT'S DUTY TO
APPLY THE LAW CORRECTLY AND TO
CORRECT OR CLARIFY ITS EARLIER
PRECEDENTS WHEN THEY GET ASTRAY
FROM THAT.
>> BUT, COUNSEL, I'M SORRY TO
INTERRUPT YOU, BUT THE PARTIES
ARE DEFINITELY MAKING THEIR
OFFERS BASED ON WHAT THEY THINK
IS IN PLACE IN THE CASE AT THE
TIME THE OFFERS ARE MADE.
AND IT SEEMED LIKE JUSTICE
POLSTON WAS TAKING YOU DOWN THE
PATH WHERE IF WE THINK THIS IS A
PLAIN MEANING CASE, PUNITIVE
DAMAGES, WHATEVER GETS ADDED IN
LATER, I MEAN, CLEARLY THAT'S
SOMETHING THAT FACTORS IN,
RIGHT?
>> YES.
AND I'D LIKE TO POINT OUT THAT
THESE KIND OF POLICY DECISIONS,
WHAT'S THE FAIREST WAY FOR THE
STATUTE TO OPERATE?
THAT'S ULTIMATELY FOR THE
LEGISLATURE TO DECIDE.
IT MADE THAT DECISION ABOUT HOW
TO ALLOCATE, YOU KNOW, RISKS AND
AMOUNTS WHEN IT CRAFTED THIS
STATUTE AND SET OUT THIS
DEFINITION OF WHAT THE JUDGMENT
OBTAINED MEANS.
AND ALSO IT GAVE EACH SIDE A 25%
MARGIN OF ERROR.
THE OFFER CAN ALWAYS BE WRONG BY
UP TO, JUST SHY OF 25% AND AVOID
THE SANCTION OF FEES.
THAT'S HOW THE LEGISLATURE
DECIDED TO DEAL WITH, YOU KNOW,
ISSUES OF UNCERTAINTY, ANY
LITTLE QUESTIONS OF
IMPERFECTIONS THAT LAWYERS COULD
THINK OF ALONG THE WAY, YOU
KNOW?
ULTIMATELY, THE LEGISLATURE
DECIDED THAT YOU COMPARE THE

OFFER TO THE NET JUDGMENT
ENTERED SOMETIMES WITH SOME
ADDITIONAL AMOUNTS, AND
EVERYBODY CAN BE WRONG BY RIGHT
UP TO 25%.
SO THAT'S A BALANCE THAT THE
LEGISLATURE STRUCK, AND, YOU
KNOW, AS THE COURTS KNOW, IT'S
NOT ITS PREROGATIVE TO ADD FROM
OR LIMIT OR MODIFY THE PLAIN
MEANING OF THE STATUTE BECAUSE
THAT'S AN ABROGATION--
>> COUNSEL--
>> YES, YOUR HONOR.
>> YOU ARE NOW WELL INTO YOUR
REBUTTAL TIME.
YOU CAN CONTINUE, BUT YOU ARE
USING REBUTTAL TIME.
>> WELL, IF THERE ARE ANY
QUESTIONS ABOUT OUR
INTERPRETATION OF THE STATUTE,
WHY IT INCLUDES ALL CAUSE AND
ALL PREJUDGMENT ISSUES OR WHY WE
MAINTAIN WHITE AND SHANDS DID
NOT MAKE ANY DECISION ABOUT
AMOUNTS AND WHETHER THEY SHOULD
BE EXCLUDED OR INCLUDED, I'D
LIKE TO ADDRESS THOSE.
THOSE ARE TWO OF OUR KEY POINTS.
SO IF THERE ARE NO QUESTIONS AT
THIS POINT, I'LL SAVE THE REST
OF MY TIME FOR REBUTTAL.
>> THANK YOU.
COUNSEL?
>> GOOD MORNING.
MY NAME IS THOMAS HUNKER
APPEARING ON BEHALF OF THE
RESPONDENT, PETRI POSITIVE PEST
CONTROL.
OVERALL, THE LAW REGARDING
PROPOSALS FOR SETTLEMENT HAS
BEEN SOMEWHAT OBSCURE, BUT THERE
IS AT LEAST ONE ASPECT THAT HAS
REMAINED CLEAR AND STABLE
THROUGHOUT THE YEARS, AND THAT'S
THE WHITE FORMULA FOR
CALCULATING THE 25% THRESHOLD
FOR SANCTIONS UNDER SECTION
768.79.
AND IT'S A RELATIVELY SIMPLE

MATH PROBLEM.
IT'S, ESSENTIALLY, THE BACKBONE OF HOW THIS STATUTE HAS WORKED FOR THE PAST 18 YEARS.
IT'S BEEN RELIED ON IN NUMEROUS YEARS, IT'S A WIDELY USED, IMPORTANT TOOL.
WE'VE CITED A LITANY OF CASES, SEVERAL CASES FROM THIS COURT REAFFIRMING THE WHITE FORMULA LA, MANY CASES FROM THE DISTRICT COURT, FEDERAL COURT, COUNTY AND CIRCUIT COURTS.
THIS IS, FOR ALL INTENTS AND PURPOSES, THE LAW IN FLORIDA--
>> THE WHITE DECISION AND WHAT THEY DID THERE AS A COURT MADE SENSE TO ME IN HOW THEY CONSTRUCTED THAT, BUT ISN'T IT DIFFERENT FROM THE STATUTORY LANGUAGE?
>> WELL, THE COMMENTS THAT WERE MADE BY JUSTICE CURIEL AND JUSTICE MUNIZ WERE ACTUALLY GOING TO BE MY FIRST POINT WHICH IS, IF YOU LOOK AT HOW THE FOURTH DISTRICT ADDRESSED THAT LANGUAGE, THEY IN SEVERAL CASES SIMPLY QUOTE THE WORDS JUDGMENT OBTAINED LEAVING OUT THE WORD NET.
AND I THINK THAT'S A VERY IMPORTANT WORD IN THE STATUTE BECAUSE IT'S NET, NET MEANS AFTER DEDUCTING SOMETHING.
AND THE STATUTE, THIS IS LANGUAGE THAT WAS PUT INTO THE STATUTE IN THE 1990s A AMENDMENTS, AND THIS IS DISCUSSED THOROUGHLY IN THE BRIEFS IN THE WHITE CASE.
WHAT DOES THAT LANGUAGE MEAN?
THE STATUTE DOESN'T TELL US WHAT THE WORD NET MEANS--
>> WELL, WOULDN'T IT MEAN JUST ANY NET JUDGMENT OBTAINED FOR SOMEONE THAT WOULD BE-- IT'S A JUDGMENT THAT'S NET OF ANY LEGAL DEDUCTIONS THAT HAVE TO BE MADE IN ORDER TO COME TO A JUDGMENT

THAT SHOULD BE RENDERED FOR
SOMEONE LIKE FOR, LIKE THE SET
OFF, IF THEY SPECIFICALLY MEANT
TO ADD THAT, THERE COULD BE,
LIKE, PERHAPS COLLATERAL DAMAGES
OR OTHER THINGS THAT NEED TO BE
DEDUCTED AS A LEGAL MATTER IN
ORDER TO COME DOWN TO SOME NET
JUDGMENT ON BEHALF OF SOMEONE.
ISN'T THAT JUST A CLARIFICATION
IN THE STATUTE THAT IS NOT SOME
GROSS AMOUNT, IT'S THE NET
AMOUNT THAT'S ACTUALLY GOING TO
BE ENTERED AS A MART OF LAW FOR
SOMEONE SEEKING IT.
>> WELL, THAT'S ACTUALLY THE
QUESTION THAT THE COURT GRAPPLED
WITH IN WHITE, IS DOES NET
INCLUDE COSTS.
BECAUSE THE STATUTE DOESN'T
SPEAK TO COSTS, AND COSTS UNDER
THE CASE LAW THAT CONFLICTED
WERE NOT INCLUDED IN A JUDGMENT
AND CERTAINLY NOT FOR
JURISDICTIONAL PURPOSES.
IT WASN'T CONSIDERED DAMAGES,
AND THE STATUTE SPEAKS
SPECIFICALLY TO DAMAGES.
AND SO THE COURT IN WHITE LOOKED
AT THE WORD NET AND INTERPRETED
IT, CONSTRUED IT BASED ON HOW
THE LEGISLATURE WOULD HAVE
INTENDED IT TO WORK.
>> WELL, WHAT DOES IT THINK IN
TERMS OF WHAT YOU ADD AS, IN THE
SAME WAY AS SUBTRACTING?
IF YOU'RE GOING TO HAVE COSTS OR
ATTORNEY FEES OR PREJUDGMENT
INTEREST, YOU ADD THOSE THINGS,
YOU DON'T SUBTRACT THEM OUT.
IT SEEMS LIKE WHEN YOU LOOK AT
THE TERM NET, YOU'RE LOOKING AT
DEDUCTIONS, NOT SOMETHING YOU
WOULD ADD.
>> DEDUCTIONS, CORRECT.
NET IS SORT OF TAKING THE
JUDGMENT AND REDUCING IT TO
PRESENT VALUE AS THE DATE OF THE
OFFER SO THAT YOU CAN COMPARE
APPLES TO APPLES.

THIS IS ACTUALLY THE RATIONALE
IN THE CONFLICT CASE, PEREZ,
WHICH THE COURT IN WHITE
ADOPTED.
IT'S BASED ON HOW THIS STATUTE
CAN ACTUALLY WORK TO PROMOTE
SETTLEMENTS, TO ENCOURAGE
SETTLEMENTS SO THAT WHEN YOU'RE
AN OFFEREE, AND KEEP IN MIND,
THIS IS A SANCTIONS STATUTE.
IT'S A PENALTY STATUTE, AND IT
HAS TO BE STRICTLY CONSTRUED IN
FAVOR OF THE PARTY AGAINST WHOM
THE SANCTIONS ARE SUPPOSED TO BE
IMPOSED.
SO YOU HAVE TO CONSIDER THE
POSITION OF THE OFFEREE IN
EVALUATING THE OFFER JUST LIKE
THE WHITE COURT DID AND WHAT CAN
THEY BE REASONABLY EXPECTED TO
ANTICIPATE.
SO, FOR EXAMPLE, IF IN THIS CASE
THE FOCUS WAS ON PREJUDGMENT
INTEREST.
IS THE OFFEREE, IS IT
REASONABLE, FAIR, COMMON
SENSE-- THESE ARE THE WORDS
THAT WERE FROM THE WHITE
DECISION AND EVEN THE PEREZ
DECISION-- IS IT REASONABLE,
FAIR, COMMON SENSE TO IMPOSE
UPON A PARTY THE RISK OF BEING
SANCTIONED IF THEY ARE NOT ABLE
TO REASONABLY PREDICT HOW LONG
THE CASE IS GOING TO LAST FOR
PURPOSES OF CALCULATING
PREJUDGMENT INTEREST FROM FRONT
TO BACK OF THE CASE, OR THE
OTHER-- WITH PREJUDGMENT
INTEREST THE OTHER PROBLEM IS
THAT WE HAVE A FLUCTUATING
INTEREST STATUTE THAT GOES UP
AND DOWN WITH VARIATIONS IN THE
MARKET.
AND SO IS IT FAIR TO THE OFFEREE
TO HAVE TO BE, TO GUESS PROPERLY
AS TO HOW THE MARKET IS GOING TO
BE THROUGHOUT THE YEARS OF
LITIGATION--
>> BUT, BUT THE PROBLEM IS WE

HAVE TO APPLY THE STATUTE, NOT
OURSELVES DETERMINE WHAT'S FAIR.
DO WE NOT?
>> WELL, IT'S NOT-- THE PURPOSE
OF THE STATUTE IS TO UPHOLD THE
LAW.
AND WORDS ARE SYMBOLS OF
MEANING.
AND THEY'RE-- SO THE COURT
ALWAYS LOOKS FIRST TO THE WORDS
IN THE STATUTE, BUT IF THE WORDS
DON'T DEFINE THEMSELVES AS HERE,
WE DON'T KNOW WHAT NET MEANS,
IT'S NOT DEFINED IN THE STATUTE,
WE HAVE TO TRY TO DETERMINE WHAT
THE LEGISLATURE MEANT.
AND IT FACTORS THAT THE--
>> BUT, COUNSEL, I JUST, I HAVE
A HARD TIME UNDERSTANDING HOW
YOU GET FROM THAT WORD NET TO
YOUR POSITION.
I MEAN, IT-- AND I UNDERSTAND
YOUR POLICY ARGUMENTS, BUT IT
SEEMS LIKE IN TERMS OF AN
ANALYSIS OF THAT LANGUAGE, THE
ONLY PATH THAT LEADS FROM THE
TERM NET TO WHAT YOU'RE
SUGGESTING IS A HIGHLY MOTIVATED
PATH OF REASONING.
AND I JUST, I MEAN, I'M JUST
STRUGGLE TO FIND THAT IN THE
WORD NET.
COULD YOU HELP ME WITH THAT?
>> WELL, IF THE WORD NET IS
AMBIGUOUS.
IT IS NOT DEFINED IN THE
STATUTE.
THE CCM HASN'T TOLD US WHAT THAT
WORD MEANS.
I MEAN, AT ORAL ARGUMENT THEY'VE
GIVEN SOME SUGGESTIONS OF WHAT
IT MIGHT INCLUDE, BUT WE DON'T
KNOW FOR SURE--
>> WELL, THERE'S OBVIOUS THINGS
THAT IT WOULD MEAN LIKE
SETTLEMENTS, RIGHT?
>> WELL, ACTUALLY, IF YOU LOOK
AT THE LANGUAGE OF THE STATUTE,
IT ADDS THE WORD PLUS IN BETWEEN
NET JUDGMENT ENTERED PLUS, AND

THEN IT TALKS ABOUT THE-- SO
IT'S ALMOST LIKE THE LANGUAGE OF
THE STATUTE IS SAYING THESE ARE
TWO DIFFERENT THINGS.
YOU HAVE THE NET JUDGMENT PLUS
THE SETOFFS.
SO I DON'T THINK THAT'S WHAT THE
LEGISLATURE COULD HAVE MADE AT
LEAST BY THE GRAMMATICAL
ARRANGEMENT OF THE WORDS IN THE
STATUTE.
SO IT WOULDN'T BE THE SETOFFS.
IT COULD BE THAT, YOU KNOW,
OTHER THINGS DEALING WITH OTHER
CLAIMS IN THE CASE, BUT--
>> BUT THAT'S NOT A
COMPREHENSIVE LIST OF SETOFFS,
AS THE CHIEF SUGGESTED.
I MEAN, ANY NET JUDGMENT WOULD
BE SUPPRESSING ANY SETOFFS
THERE.
THERE ARE CERTAINLY OTHER TYPE
OF LEGALLY DETERMINED SETOFFS OR
THINGS THAT YOU WOULD SUBTRACT
IN DETERMINING TO A NET
JUDGMENT.
THAT'S NOT COMPREHENSIVE.
BUT THE STATUTE IDENTIFIES
CERTAIN ONES THAT YOU SHOULD ADD
BACK.
>> RIGHT.
ADD TO THE NET JUDGMENT ENTERED.
>> WELL, YEAH.
JUDGMENT OBTAINED.
THE OBTAINED PART TELLS YOU THE
MATH HAS ALREADY BEEN DONE,
RIGHT?
>> RIGHT.
>> JUDGMENT OBTAINED MEANS THE
MATH HAS ALREADY BEEN DONE, SO
THE QUESTION IS WHAT, IF
ANYTHING, DOES THE WORD NET ADD
TO THAT.
AND IT SEEMS LIKE, YOU KNOW,
SOME-- I MEAN, I GUESS SOME,
YOU KNOW, THERE'S AN ARGUMENT
THAT IT DOESN'T REALLY ADD
ANYTHING.
I MEAN, ISN'T YOUR BURDEN
BASICALLY TO SHOW THAT THERE'S

ENOUGH AMBIGUITY IN THE STATUTE
FOR THE COURT TO SAY THAT IT'S
NOT CLEARLY ERRONEOUS WHAT
COURTS THROUGHOUT FLORIDA HAVE
PRETTY MUCH BEEN UNIFORMLY
SAYING FOR THE LAST 20 YEARS?
>> ACTUALLY, WE AREN'T THE ONES
ASKED FOR THE COURT TO RECEDE
FROM ITS PRECEDENT--
>> OBVIOUSLY, YOU'RE TALKING TO
A BUNCH OF PEOPLE WHO STRUGGLE
WITH THE IDEA OF-- IF ALL OF US
THOUGHT THAT THE TEXT COULD NOT
BEAR THE MEANING THAT YOU'RE
ASKING US TO GIVE IT, THEN IT
PROBABLY WOULDN'T BE VERY MUCH
HELP THAT YOU HAVE ALL THIS
PRECEDENT.
BUT IF THE TEXT, IF THERE'S
ENOUGH DAYLIGHT IN THE TEXT TO
WHERE YOU COULD, YOU KNOW, IN
GOOD CONSCIENCE THINK THAT IT
COULD MEAN WHAT YOU'RE SAYING,
THEN, YOU KNOW, IT KIND OF
SHIFTS THE BURDEN, RIGHT?
>> I DON'T THINK IT SHIFTS THE
BURDEN, BUT TO JUSTIFY THE
PRECEDENT, THE WAY THE STATUTE
WORKS IS IT GIVES THE OFFEREE
THE ABILITY TO MAKE A REASONABLY
ACCURATE DETERMINATION OF WHAT
THEIR RISK IS.
IF YOU HAVE TO PREDICT EVERY
POSSIBLE CHANGE THAT COULD
POSSIBLY HAPPEN, AMENDMENT OF
THE PLEADINGS TO ALLEGE OTHER
CLAIMS OR PUNITIVE DAMAGES OR IF
YOU HAVE TO PREDICT HOW LONG THE
CASE-- THESE THINGS IN THE
FUTURE, YOU'RE TRYING TO HIT A
MOVING TARGET.
AND ALSO AS, IN THE AMADOR CASE,
THE FIFTH DISTRICT POINTED OUT
IT GIVES AN INCENTIVE TO THE
PLAINTIFF TO MANIPULATE THE
FACTORS BY HOLDING OFF INCURRING
CERTAIN COSTS UNTIL AFTER THE
OFFER EXPIRES OR PURPOSELY
DRAGGING OUT THE CASE SO THAT
INTEREST CONTINUES TO ACCRUE.

AT SOME POINT IN TIME IF YOU'RE GOING TO SANCTION A PARTY, THEY HAVE TO HAVE AT LEAST SOME REASONABLE BASIS TO EVALUATE WHAT THE POTENTIAL OUTCOMES CAN BE.
AND I THINK THAT'S WHY IT HAS WORKED FOR SO MANY YEARS, IS THAT IT WORKS.
YOU ARE ABLE TO DO THIS SIMPLE MATH PROBLEM COMPARING APPLES TO APPLES ON THE DATE THE OFFER WAS MADE, AND SO IT'S NOT LIKE ASKING, AS I SAID, THE OFFEREE TO DO SOMETHING THAT IS HIGHLY SPECULATIVE.
[INAUDIBLE CONVERSATIONS]
>> GO AHEAD.
>> I'M SORRY, GO AHEAD.
>> WHAT'S YOUR BEST ARGUMENT FOR, YOU KNOW, BEYOND JUST INACTION BY THE LEGISLATURE, WHAT'S YOUR BEST ARGUMENT FOR THERE BEING ANY INDICATION OF AN AFFIRMATIVE SORT OF BUY-IN FROM THE LEGISLATURE TO WHAT THE COURTS HAVE BEEN SAYING?
HOW THE COURTS INTERPRETED THIS PROVISION?
>> WELL, WHEN THE CASE CAME UP ON WHITE, THE ISSUE WAS ABOUT COSTS.
AND THE RESPONDENT WAS ARGUING THAT NO COSTS SHOULD BE CONSIDERED IN THE ANALYSIS AT ALL.
AND THAT HAD BEEN THE HOLDING OF SEVERAL DISTRICT COURT DECISIONS THAT WERE IN CONFLICT WITH WHITE WHEN IT FIRST CAME UP.
AND THE PETITIONER--
>> WELL, AND ISN'T IT THE CASE WITH WHITE THAT THERE WERE NO POST-OFFER COSTS?
>> THAT'S A FACTUAL HOLDING, CORRECT.
>> SO THAT'S THE FACTS THEY WERE DEALING WITH.
THEY WERE NOT DEALING WITH THE ISSUE OF POST-OFFER COSTS

BECAUSE THAT SIMPLY WASN'T AN
ISSUE IN THAT CASE.
>> SURE.
BUT SUBSEQUENT CASE LAW FROM
THIS--
>> UNDERSTAND.
I'M TALKING ABOUT WHITE.
>> YEAH, WHITE, SURE.
BUT IT WAS ALMOST UNDISPUTED
THAT IT WOULD ONLY BE-- AND
THAT'S WHY IF YOU READ THE
UNDERLYING DECISION FROM PEREZ
AND, THEY TALK ABOUT, THEY TALK
ABOUT THIS BEING A LINE OF
DEMARCATION TO WHERE THERE'S A
LOT OF TALK IN THESE DECISIONS
ABOUT HOW DO WE APPLY THIS TO
EFFECTUATE THE PURPOSE WHICH IS
TO PROMOTE SETTLEMENT.
IF YOU HAVE, ARE AN OFFEREE AND
YOU THINK-- YOU GET AN OFFER
AND IT JUST SAYS ONE THING BUT
YOU HAVE TO SOMEHOW PREDICT
EVERY POSSIBLE VARIABLE OF HOW
THE CASE COULD CHANGE IN THE
FUTURE, THEN IT BECOMES-- IT
BREAKS DOWN.
AND ALSO IT CREATES, AS I SAID
AND AS THE AMADOR CASE POINTED
OUT, THESE OPPORTUNITIES, THESE
INCENTIVES FOR THE PLAINTIFF OF
TO UNILATERALLY AFFECT THE
FACTORS THAT GO INTO THE
FORMULA.
IF YOU STICK WITH WHITE, YOU
DON'T HAVE ANY OF THOSE
PROBLEMS.
WHITE, THAT'S WHY WHITE HAS
LASTED THIS LONG.
THE LEGISLATURE HASN'T ACTED TO
ABROGATE IT.
THIS COURT HAS REAFFIRMED IT IN
MULTIPLE DECISIONS, THE FEDERAL
COURTS, THE LOWER COURTS HAVE
ALL APPLIED IT.
THIS IS ACTUALLY THE FIRST CASE.
AND EVEN LEWIS FROM, I BELIEVE
IT WAS THE FIFTH DCA OR THE
FIRST DCA, CITED THE FOURTH
DISTRICT'S HOLDING IN THIS CASE

SUBSEQUENT TO IT AND DIDN'T
QUARREL WITH THE HOLDING AS
PREJUDGMENT INTERESTS BEING UP
TO THE DATE THE OFFER WAS MADE.
SO REALLY THIS IS THE ONLY CASE
IN 18 YEARS THAT HAS EVER RAISED
THIS ISSUE.
SO, I MEAN--
>> COUNSEL, ARE YOU AWARE OF ANY
OTHER PLACE IN THE FLORIDA
STATUTES WHERE THE PHRASE NET
JUDGMENT EXISTS?
>> YES.
ACTUALLY, IN THE DANTUNIAS CASE
THE PETITIONER'S RELYING ON--
THEY USED THAT WORD NET JUDGMENT
ENTERED, BUT THEY DON'T
INTERPRET THAT VERSION OF THE
STATUTE.
THERE WAS AN AMENDMENT SIMILAR
TO ONE IN 1990 TO THE PROPOSAL
FOR SETTLEMENT STATUTE THAT
SIMILARLY DEFINED JUDGMENT
OBTAINED AS NET JUDGMENT
ENTERED.
AND THE WAY THAT THE COURT GOT
TO ITS CONCLUSION OF INCLUDING
ALL COSTS IN THE JUDGMENT
BECAUSE THEY DIDN'T DEAL WITH
THAT STATUTE, THEY DEALT WITH
THE PREDECESSOR STATUTE THAT
DIDN'T DEFINE, DIDN'T INCLUDE
THAT NET JUDGMENT ENTERED
LANGUAGE IN IT.
SO IT'S POSSIBLE, BUT WE DON'T
KNOW THAT THERE WOULD HAVE BEEN
A DIFFERENT RATE.
THERE'S ALSO THE FACT THAT IT
WAS DICTA BECAUSE THEY DIDN'T
PRESERVE WHEN THE COSTS WERE
INCURRED.
UNLIKE THIS CASE, IT'S
UNDISPUTED THAT IF THE WHITE
FORMULA APPLIES, THEN THE FOURTH
DISTRICT GOT IT RIGHT BECAUSE
INTEREST COSTS THAT WOULD HAVE
BEEN AWARDED ON THE DATE THE
OFFER WAS MADE WOULD NOT HAVE
REACHED THE 25% THRESHOLD.
SO IT'S A SIMPLE MATH PROBLEM.

IT'S FAIR, IT'S COMMON SENSE,
IT'S REASONABLE AND IT'S ALSO
CONSTRUING AN AMBIGUITY IN THE
STATUTE STRICTLY IN FAVOR OF THE
PARTY AGAINST WHOM THE SANCTIONS
ARE GOING TO BE ENTERED.
SO IT'S GOT TO BE REASONABLE.
AND IF YOU'RE LEFT WITH THE
QUESTION OF WHAT DOES THIS WORD
NET MEAN, THEN THERE'S NO,
THERE'S NO SHOWING OF CLEARLY
ERRONEOUS-- THAT WHITE WAS
CLEARLY ERRONEOUS SUCH THAT THIS
COURT SHOULD DEPART FROM ITS
PRECEDENT.
IF ANYTHING, ALL OF THE EVIDENCE
OF RELIANCE SHOWS THAT IT IS
CORRECT AND THAT THE
LEGISLATURE'S INACTION IS JUST
ONE ELEMENT OF THAT.
BUT IF YOU LOOK AT THE LOWER
COURT'S DECISION, THE FEDERAL
COURT'S DECISIONS, THE FACT THAT
THIS COURT REAFFIRMED IT
MULTIPLE TIMES, IF YOU RECEDE
FROM WHITE, IT'LL TEAR THE BACK
DOWN OUT OF THIS STATUTE AND A
LOT OF CASES AS THE FOURTH
DISTRICT POINTED OUT IT'S A
WIDELY USED STATUTE.
IT'S A VERY, VERY IMPORTANT
ISSUE.
IT WILL CAUSE A LOT OF CHAOS.
THIS IS THE ONE AREA, AS I SAID
BEFORE, OF PROPOSAL FOR
SETTLEMENT LAW THAT IS PRETTY
SETTLED.
AND FOR 18 YEARS, THIS CASE
CAME ABOUT A, THERE WAS NO REAL
QUARREL WITH THE WHITE DECISION
EITHER FROM THE LEGISLATURE OR
FROM THE LOWER COURTS OR FROM
MULTIPLE PANELS OF THIS COURT
OVER SEVERAL DECISIONS BETWEEN
THE TIME IT WAS ENTERED IN 2002
AND THE LAST STATEMENT ON IT
WHICH WAS SHANDS IN 2012.
>> AND, AGAIN, IN SHANDS THE
WHOLE ISSUE OF THE POST-OFFER
INTEREST, IT WAS ABOUT INTEREST

THERE, THAT WASN'T AT ISSUE.
AND FOR ONE REASON IT WOULDN'T HAVE MADE ANY DIFFERENCE IN WHETHER THE FEES WERE GOING TO BE AWARDED OR NOT BECAUSE THE THRESHOLD HAD ALREADY BEEN EXCEEDED, ISN'T THAT CORRECT?
>> YES.
AND THE FACTUAL HOLDINGS, CERTAINLY THE FACTUAL HOLDINGS ARE ONE THING, BUT IN TERMS OF THE FORMULA ITSELF SETTING FORTH CONSTRUCTION OF THE STATUTE, THAT HAS ALWAYS SPOKEN OF PREJUDGMENT INTEREST ACCRUED UP TO THE DATE OF THE OFFER AND COSTS INCURRED UP TO THE DATE OF THE OFFER.
AND WHATEVER DAMAGES WOULD HAVE BEEN INCLUDED ON THE DATE THE JUDGMENT WAS MADE.
THAT LEGAL FORMULA FROM WHITE HAS BEEN CONSISTENTLY IMPLIED BY EVERY COURT.
IN FACT HERE, THE TWO CASES CITED AS CONFLICT PREDATED WHITE.
AND THERE'S A REASON FOR THAT, BECAUSE WHITE CLEARED UP THE LAW IN THIS AREA.
AND THE UNDERLYING RATIONALE IS THERE'S A FAIRNESS COMPONENT TO IT.
I MEAN, IT'S NOT THE ONLY FACTOR, BUT WHEN YOU'RE TALKING ABOUT WHETHER A STATUTE SHOULD BE CONSTRUED NOT TO CREATE AN UNREASONABLE RESULT OR ABSURD RESULT AND SHOULD BE CONSTRUED REASONABLY, THIS IS THE RATIONALE OF PEREZ, APPLES TO APPLES.
THAT'S WHY YOU COMPARE THE AMOUNT THAT WAS OFFERED TO WHAT THE JUDGMENT WOULD HAVE BEEN HAD THE CASE CONCLUDED ON THE SAME DAY THE OFFER WAS MADE.
THAT'S APPLES TO APPLES.
IF YOU ALLOW WHATEVER HAPPENS OVER THE COURSE OF TIME TO BE

PUT ON THE OTHER SIDE OF THE SCALE, THAT CREATES AN APPLES TO ORANGES COMPARISON WHICH IS LIKE THE PUNITIVE DAMAGE CASE POINTED OUT.
AND IT WASN'T JUST ABOUT, YEAH, THERE WAS THIS SITUATION WHERE THE OFFER CONFLICTED WHERE IT SAID THEY INCLUDED PUNITIVE DAMAGES, BUT THERE'S MULTIPLE DECISIONS IN THE SEGUNDO LINE OF CASES THAT TALK ABOUT-- IF IT'S SOMETHING THAT WASN'T PART OF THE CASE AT THE TIME THE OFFER WAS MADE, YOU'RE CREATING APPLES TO ORANGES, AND THERE'S NO, IT'S NOT A FAIR COMPARISON.
SO THAT'S WHY THE RATIONALE IN PEREZ IS A REASONABLE INTERPRETATION.
IT WAS USED BY THIS COURT IN WHITE AND SUBSEQUENTLY USED EVERY TIME THE WHITE FORMULA ARE WAS APPLIED BY THIS COURT AND SUBSEQUENT COURTS.
>> ALL RIGHT, COUNSEL.
>> I BELIEVE THAT'S ALL--
>> THERE'S NO PENALTY FOR WAIVING YOUR TIME.
>> I WOULD JUST ASK THE COURT TO EITHER APPROVE THE FOURTH DISTRICT'S DECISION OR DISCHARGE THE CASE FOR LACK OF JURISDICTION.
>> THANK YOU.
>> THANK YOU.
>> REBUTTAL.
>> THANK YOU, YOUR HONOR.
FIRST, I'D LIKE TO ADDRESS THE ARGUMENT THAT THE SO-CALLED WHITE FORMULA WAS THE CONDUCTION OF THE NET AND NET JUDGMENT ENTERED.
THAT'S ABSOLUTELY INCORRECT.
NOT BASED ON THE WORD NET AT ALL.
THERE'S ABSOLUTELY NO INDICATION IN THE WHITE OPINION THAT IT WAS CONSTRUING THE WORD NET.
IN FACT, THE PART OF THE WHITE

OPINION THAT CREATED THIS
ALLEGED FORMULA, IT WASN'T
CONSTRUING THE STATUTE AT ALL.
IT'S NOT EVEN BASED ON
CONSTRUCTION ON THE STAGE.
WHITE, THIS ACTUALLY GOES IN TWO
PHASES.
FIRST, THERE'S A PART ON PAGE
550 THAT ACTUALLY LOOKS AT THE
LANGUAGE OF THE STATUTE AND
CONSTRUES WHAT IT MEANS.
IT LOOKS AT THE DEFINITION,
JUDGMENT OBTAINED, NET JUDGMENT
ENTERED, AND IT CONCLUDES THAT
THAT INCLUDES COSTS BECAUSE
COSTS ARE PART OF THE JUDGMENT.
IF CAUSE WEREN'T GOING TO BE
INCLUDED, THEN THE LEGISLATURE
WOULD HAVE SAID VERDICT INSTEAD
OF JUDGMENT, BUT AS HE SAID
JUDGMENT, IT HAS TO MEAN
SOMETHING MORE THAN DAMAGES, AND
SO THAT'S ANOTHER REASON WHY
COSTS ARE INCLUDED.
IT REJECTED THE ARGUMENT THAT
COSTS ARE NOT MATERIAL FOR
JURISDICTIONAL PURPOSES.
THOSE ARE ALL REASONS TO INCLUDE
ALL COSTS.
AND THE ONLY COST AT ISSUE IN
THAT CAUSE WERE PREOFFER COSTS
BECAUSE THAT WAS ALWAYS
INCLUDED.
SO THESE ARE ALL REASONS TO
INCLUDE THIS JUDGMENT FOR COST.
BUT WHERE IT GOT AWAY FROM THE
STATUTE IS WHEN IT STARTED
TALKING ABOUT THESE CASES WHICH
WERE DECIDED IN THE 6.7428
CONTEXT.
A COMPLETELY DIFFERENT STATUTE.
>> COUNSEL, I'M SORRY TO
INTERRUPT YOU BECAUSE YOU ONLY
HAVE A MINUTE LEFT, BUT DO
YOU-- I UNDERSTAND, YOU KNOW,
THAT IF YOU READ THE WHITE AND
SHANDS, YOU KNOW, THE PRECISE
ISSUE THAT WE'RE TALKING ABOUT
NOW WAS NOT IN FRONT OF THE
COURT, AND SO, YOU KNOW, YOU CAN

ARGUE AS TO WHETHER WE A
APPLIED, YOU KNOW, THE
FORMULA-- HOW MUCH WEIGHT WE
SHOULD GIVE THAT.
BUT IS IT FAIR TO SAY THAT SORT
OF THE UNIFORM APPROACH IN THE
DISTRICT COURTS AND IN OUR STATE
HAS BEEN TO TRY TO DO THIS
APPLES TO APPLES COMPARISON?
WHETHER YOU SAW IT'S REQUIRED BY
OUR PRECEDENTS OR WHATEVER, IS
IT FAIR TO SAY WE WOULD BE KIND
OF UPENDING THAT IF WE, YOU
KNOW, ADOPT THE READING OF THE
STATUTE THAT YOU'RE ADVOCATING?
>> NO, YOUR HONOR.
IT'S-- I DON'T BELIEVE THAT
THIS HAS BECOME THE BACKBONE OF
THE PROPOSAL FOR SETTLEMENT LAW
LIKE WAS SUGGESTED.
MANY OF THE CASES HE'S RELIED ON
IT'S KIND OF A SIMILAR SITUATION
WHERE INCLUDING PREOFFER AMOUNTS
IS ENOUGH TO GET TO CONCLUSION
YOU NEED.
AND, YOU KNOW, THERE ARE ONLY A
FEW RELATIVELY FEW CASES WHERE
IT WORKED THE OTHER WAY, THAT
EXCLUDING POST-OFFER AMOUNTS
MADE A DIFFERENCE.
BUT THAT EXCLUSION OF POST-OFFER
AMOUNTS, THAT WAS NEVER
CONSIDERED OR INTENDED BY THE
WHITE OR SHANDS COURTS.
AND AS ARGUING EARLIER, PARTIES
DON'T MAKE PROPOSAL FOR
SETTLEMENT DECISIONS BASED ON
SOME NOTION OF THE EXACT AMOUNT
OF COSTS OR PREJUDGMENT
INTERESTS ON THE DAY OF THE
OFFER.
THEY CONSIDER A MIX OF FACTORS
OR ASSESSMENTS OF LIABILITY, HOW
MUCH A CLIENT WOULD ACCEPT, HOW
MUCH A DEFENDANT'S WILLING TO
PAY, OR WHAT THEY THINK THE
BOTTOM LINE IS GOING TO BE AT
THE END OF THE CASE.
>> COUNSEL, CAN YOU SUM UP NOW?
BECAUSE YOU'RE OVER TIME.

>> YES.
WE'RE ASKING THE COURT TO APPLY THE PROPOSAL FOR SETTLEMENT JUDGMENT STATUTE ACCORDING TO ITS PLAIN MEANING.
THAT INCLUDES ALL CAUSE AND ALL PREJUDGMENT INTERESTS.
PREJUDGMENT INTEREST BECAUSE IT'S SIMPLY AN ELEMENT OF PECUNIARY DAMAGES.
THERE'S NO BASIS IN THE STATUTE TO DISTINGUISH BETWEEN PRE AND POST-OFFER AMOUNTS.
IT WAS NEVER INTENDED BY WHITE OR SHANDS, SO THE COURT SHOULD CLARIFY THAT ANY SUGGESTION IN THOSE CASES THAT YOU ONLY LOOK AT PREOFFER AMOUNTS WAS DICTA OR, ALTERNATIVELY, RECEDE FROM THAT SUGGESTION BECAUSE IT'S CONTRARY TO THE CLEAR AND PLAIN MEANING OF THE STATUTE.
>> ALL RIGHT.
THANK YOU.
WE THANK YOU BOTH FOR YOUR ARGUMENTS IN THIS CASE.
AND THE COURT WILL NOW STAND IN RECESS FOR ABOUT TEN MINUTES BEFORE WE TAKE UP THE NEXT CASE ON OUR DOCKET.
THANK YOU.