

>> WE WILL NOW PROCEED TO THE SECOND CASE ON TODAY'S DOCKET, TRUPPMAN VERSUS COZEN O'CONNOR.

>> MAY IT PLEASE THE COURT. TIM CRUTCHFIELD FOR TRUPPMAN, REPRESENTING MS. TRUPPMAN IN THIS CASE.

I WOULD LIKE TO RESERVE MY 5-MINUTE REBUTTAL.

CARL VERSUS MILTON, THE DISTRICT HAS VIOLATED THE STRICT REQUIREMENTS THAT THIS COURT HAS ESTABLISHED FOR THE SCOPE OF WHEN THE PROHIBITION CAN BE UTILIZED.

THIS IS A VERY NARROW SCOPE THAT A COURT HAS PROVIDED. IT CAN ONLY BE EXERCISED WHEN THE LOWER TRIBUNAL DOES NOT HAVE JURISDICTION, TO ACT OVER THE TYPE OF CASE THAT IS INVOLVED.

AS THIS COURT SAID IN DECISION BACK IN 1928, THE QUESTION IS NOT WHETHER THE COURT HAS JURISDICTION OF THE PARTICULAR CASE SOUGHT TO BE PROHIBITED BUT WHETHER OR NOT IT HAS JURISDICTION OF THE GENERAL CLASS OF CASES TO WHICH THE PARTICULAR CASE BELONGS.

AND THE COURT HAS MAINTAINED THAT POSITION THAT THE PROHIBITION IS -- THE COURT PROVIDED A GREAT ANALYSIS OF THE HISTORY OF THE REAL PROHIBITION AND ITS DECISION ENGLISH VERSUS MCCRARY AND ESSENTIALLY WHAT IT COMES DOWN TO IT WAS ESTABLISHED UNDER ENGLISH LAW WHEN YOU HAD THE -- THE KING'S COURTS, I CAN'T SAY IT RIGHT.

THE RELIGIOUS COURTS.

>> ECCLESIASTICAL.

>> THAT'S THE WORD.

TONGUE TIED.

IT WAS BASICALLY TO KEEP THE DIFFERENT COURTS IN RESPECTIVE LANES.

THAT'S WHAT IT COMES DOWN TO. WHEN YOU HAVE COURTS THAT HAVE DIFFERENT JURISDICTION OR TRIBUNALS SUCH AS ADMINISTRATIVE AGENCIES AND ONE HAS EXCLUSIVE

JURISDICTION OF SOMETHING, YOU HAVE TO RESPECT THAT. THAT'S THE PURPOSE OF PROHIBITION, TO KEEP EACH TRIBUNAL IN ITS RESPECTIVE LANE AND IN THIS SITUATION, THE THIRD DISTRICT DID NOT DO THAT. IT WENT AND ADDRESSED THE PROHIBITION TO ADDRESS A COLLATERAL DEFENSE WHICH IS NOT WHAT IT'S FOR BECAUSE IT'S WELL ESTABLISHED THAT THE LOWER TRIBUNAL HAS THE JURISDICTION. IF IT HAS JURISDICTION OVER THAT TYPE OF CASE, PROHIBITION WILL NOT LIE TO QUESTION THEIR RULING ON AND EXERCISING THAT PROHIBITION.

IN THIS CASE THE COURT HAD JURISDICTION TO RULE ALL OF THE DEFENSES THAT WERE RAISED IN THIS CASE SO --

>> CAN WE JUST TAKE A MINUTE TO TALK ABOUT THIS COURT'S JURISDICTION?

I THINK IT'S FAIR TO SAY THAT IN MANDICO AND MCCRARY AN AFFIRMATIVE CASE OTHER THAN ISSUED IN THIS CASE WAS LITIGATED, RIGHT?

IS THE QUESTION BEFORE THE COURT TODAY THE SAME QUESTION OF LAW THAT WAS BEFORE THE COURT IN MANDICO AND MCCRARY?

>> YES.

IN MANDICO TOO IT WAS A MORE EXTREME SITUATION WHERE THERE WAS ACTUAL, ABSOLUTE IMMUNITY THAT WAS BEING PLEAD -- WELL, BASED ON WORKERS' COMP IMMUNITY AND THIS CASE IS DEFENSE AGAINST LIABILITY.

MANDICO INVOLVED SOMETHING MUCH MORE SERIOUS.

IT INVOLVED IMMUNITY FROM SUIT AND THAT CASE THE COURT SAID EVEN WITH THAT, YOU COULD NOT DO WRIT OF PROHIBITION AND TO ADDRESS THAT THIS COURT AMENDED RULE 9.30 TO MAKE IT AN APPEALABLE ORDER.

THAT'S THE APPROPRIATE WAY TO DO WHEN SOMETHING GETS TO SUCH SIGNIFICANCE.

I DO WANT TO NOTE ONE THING,  
THIS COURT ALTHOUGH IT HAS  
RECOGNIZED THE LIMITED SCOPE IT  
HAS RECOGNIZED ONE EXCEPTION  
WHICH ADDRESSED IN MANDICO AS  
WELL, IN A FOOTNOTE IT REFERRED  
TO IT WHERE THERE IS NOT  
WITHSTANDING WHAT THE LAW IS,  
THE COURT HAS USED PROHIBITION  
TO ADDRESS -- WHEN JUDGE DENIES  
MOTION TO DISQUALIFY.  
AND BASICALLY THAT FITTING  
SQUARE PEG AND ROUND HOLE AND I  
WANT TO USE THAT AS AN EXAMPLE  
AND WHERE THERE'S NO UNINTENDED  
CONSEQUENCES FOR THIS RULING  
THAT THE COURT MAY ISSUE IN THIS  
CASE BECAUSE THAT IS SOMETHING  
THAT HAS TO BE REVIEWED  
IMMEDIATELY, BUT THE APPROPRIATE  
WAY OF DOING THAT PROBABLY WOULD  
BE TO DO THE SAME THING THE  
COURT HAS DONE IN OTHER  
SITUATIONS LIKE THAT AND AMEND  
9.30.

BECAUSE IF YOU APPLY THE RULINGS  
OF THIS COURT AND THAT'S THE  
ONLY EXCEPTION THAT I'VE SEEN  
WHERE THEY'VE SAID NOT WITH  
STANDING WHAT THE LAW IS AND WE  
WILL TREAT IT ANYWAY, YOU DON'T  
HAVE TO DO THAT, YOU CAN AMEND  
THE RULE WHICH YOU HAVE DONE  
REPEAT LID.

BUT IN MANDICO AND MCCRARY THE  
CASE FOLLOWS DIRECTLY ON POINT  
AND OUR CASE IS EVEN STRONGER  
BECAUSE WE ARE DEALING WITH A  
DEFENSE TO LIABILITY NOS AN  
IMMUNITY FROM SUIT.

>> I'M SORRY TO INTERRUPT YOU.  
DO YOU AGREE WITH THE PREMISE  
THAT THE BASIS FOR ATTORNEYS'  
FEES AND THE AUTHORITY FOR THE  
COURT TO AWARD ATTORNEYS' FEES  
OWED FROM 326.973?

>> NO, FROM THE CONFIDENTIAL ACT  
WHICH EXPRESSLY PROVIDES  
ENTITLEMENT TO FEES AS PART OF  
RELIEF FOR THE ACT.

>> FOR THE AMOUNT OF FEES THAT  
ARE SPENT LITIGATING THE  
VIOLATION OR THE -- I MEAN, TO  
THE EXTENT THAT THIS -- THE

DAMAGE IS THAT YOU WOULD HAVE WANTED I'M ASSUMING IN THIS SECOND LAWSUIT WOULD HAVE PRIMARILY -- WELL, LET'S TAKE A STEP BACK.

THIS THIRD DCA RIGHTLY OR WRONGLY CHARACTERIZED THIS SECOND SUIT AS BEING ESSENTIALLY ANOTHER ATTEMPT TO GET THE SAME FEES THAT WERE AT ISSUE IN THE -- IN THE -- THE INITIAL COVERAGE DISPUTE, RIGHT?

>> THAT WAS THEIR CONCLUSION, IT WAS WRONG, THAT WAS THEIR CONCLUSION.

>> WE ARE GOING TO THE JURISDICTION.

THAT WAS THE REASONING THAT THE THIRD DCA -- THAT WAS ONE OF THEIR PREMISES THAT LED THEM TO REACH THE CONCLUSION THAT THEY DID.

AND SO AT LEAST TO THE EXTENT THAT WE ARE TALKING ABOUT THOSE FEES AND NOT THE FEES THAT ARE INVOLVED WITH LITIGATING, YOU KNOW, THE BREACH OF THE MEDIATION CONFIDENTIALITY PROVISION, DO YOU ACCEPT THE PREMISE 626973 WAS THE BASIS FOR ENTITLEMENT TO THOSE FEES?

>> THE FEES IN THE FEDERAL CASE, WE ARE NOT SEEKING ANYMORE AS I'VE SAID.

AS FAR AS -- WE ARE NOT SEEKING ANY DAMAGES BASED UPON THE CLAIM THAT WE COULD HAVE GOTTEN MORE FEES IN THAT CASE AND WE HAVE STIPULATED TO THAT.

THAT WAS PLED AS ONE CATEGORY AS SPECIAL DAMAGE AND WE'VE ACKNOWLEDGED THAT IT SHOULD APPLY TO THAT ONE CATEGORY. WE ARE NOT SEEKING THAT.

BECAUSE WE HAVE TO PLEA SPECIAL DAMAGES SO THAT LOST OPPORTUNITY DAMAGES WHICH IS ONLY PLEAD IN 3 OF THE COUNTS.

WE ARE NOT ASKING FOR THAT. WE ARE NOT TRYING TO GET ANY MORE FEES FOR ANYTHING --

>> ISN'T THAT -- I DON'T WANT TO GET TOO SIDE-TRACKED ON THAT, ISN'T THAT BASICALLY WHAT YOUR

DAMAGES WOULD BE, IT'S WHATEVER  
THE LOST FEES WOULD BE AS A  
RESULT OF THE ALLEGED BREACH OF  
THE MEDIATION CONFIDENTIALITY?  
WHAT ELSE WOULD THE DAMAGES BE?

>> WELL, FIRST OF ALL, THERE'S  
SOME COUNTS THAT ARE SEPARATE  
FROM THIS MEDIATION DAMAGES  
COUNTS.

THE MEDIATION DAMAGES COUNTS,  
THERE'S GENERAL DAMAGES THAT  
COMPLAINT ALLEGES AND DISCLOSURE  
OF TRADE SECRET.

WE ARE NOT IN THE CASE OF THE  
CASE WHERE WE HAVE ESTABLISHED  
DAMAGES, IT'S NOT IN THE RECORD  
AND SOMETHING THAT WE HAVE TO  
PROOF.

THERE'S OTHER COUNTS.

YOU DON'T HAVE TO PLEA WHAT YOUR  
GENERAL DAMAGES ARE.

AND THE ONLY REASON THE CATEGORY  
WAS PUT IN THERE YOU HAVE TO  
PLEA SPECIAL DAMAGES AND WHEN  
THEY WERE WRITING THE COMPLAINT,  
OKAY, THIS IS SOMETHING THAT WE  
MIGHT WANT TO CLAIM AND YOU HAVE  
TO PUT IT IN THERE AND FOR  
GENERAL DAMAGES YOU DON'T HAVE  
TO PLEA WHAT THEY ARE AND NOT  
ESTABLISHED YET BECAUSE THE CASE  
WAS -- OUR WRIT OF PROHIBITION  
WAS ENTERED.

>> I'M SORRY TO INTERRUPT YOU.  
I DON'T WANT TO GET -- THE  
REASON WE ARE HERE IS TO FIGURE  
OUT THIS PROHIBITION CONFLICT  
ISSUE.

>> RIGHT.

>> THE THIRD DCA BELIEVE THAT  
YOU WERE ESSENTIALLY TRYING TO  
GET ANOTHER BITE AT THE APPLE  
FOR THE SAME FEES, I KNOW YOU  
DISPUTE THAT BUT THAT'S THEIR  
REASONING.

IF WE ARE GOING THE QUESTION THE  
LAW INVOLVED, THE OTHER SIDE IS  
SAYING 626-9373, RIGHT OR WRONG  
BUT THEIR ARGUMENT IS THAT  
ESSENTIALLY BY INSTRUCTING THE  
COURT IN THE OTHER CASE TO ENTER  
THE JUDGMENT FOR FEES BASICALLY  
THAT THIS IS THE TYPE OF CLARITY  
THAT OUR CASE LAW AND

PROHIBITION IS LOOKING FOR WHEN WE ARE TALKING ABOUT THE ASSIGNMENT OF JURISDICTION TO ONE COURT RATHER THAN ANOTHER COURT.

I UNDERSTAND THAT IT'S NOT THE SORT OF CATEGORICAL, YOU KNOW, EVERY CASE INVOLVING FEES CAN ONLY BE DEALT WITH BY A CERTAIN COURT OR WHATEVER, BUT WHY IS THAT -- WHETHER THE THIRD DCA IS RIGHT ABOUT THIS CONCEPT, WHY IS THAT NOT A DIFFERENT QUESTION OF LAW THAN WHAT WAS INVOLVED IN THE ASSERTED CONFLICT CASES?

>> WELL, IN THIS CASE -- PROHIBITION DOESN'T LIE IF THERE'S CONCURRENT JURISDICTION OVER THE ISSUES.

IT'S NOT BASED UPON THE RULINGS AND SPECIFIC CASES OR ABOUT FACTS ABOUT A SPECIFIC CASE. BEFORE I FORGET, I WANT TO POINT OUT ON THE FEE ISSUE THAT ONE OF THE COUNTS HAS NOTHING TO DO WITH ANYTHING WITH MEDIATION ACT AND IT'S WITH BAD-FAITH CLAIM. THOSE FEES WOULD COME UNDER THE LEGISLATION DEALING WITH CLAIMS FOR INSURANCE COMPANY IF WE WENT ON BAD FAITH.

THAT ONE COUNT IS SEPARATE. THE OTHER COUNTS, THE CLAIM FOR FEES COMES UNDER THE MEDIATION CONFIDENTIALITY ACT WHICH PROVIDES THAT WE GET FEES FOR LITIGATING A DISPUTE INCLUDING AN EQUITABLE RELIEF SUCH AS THE ADJUNCTIVE RELIEF WE REQUESTED. AND PART OF THAT WE'VE ALSO WAS BECAUSE OF VIOLATION THAT EVEN OCCURRED IN THAT LAWSUIT, LEXINGTON VIOLATED AGAIN BY FILING CONFIDENTIAL DOCUMENTS AND THERE'S A SEPARATE COUNT SPECIFICALLY TO THIS COUNT. NONE OF THAT HAD ANYTHING TO DO WITH THE OTHER LAWSUIT.

BUT AS FAR AS THE ISSUES THAT ARE INVOLVED, THIS HAS TO WORK ITS WAY THROUGH LITIGATION IN THE TRIAL COURT BUT THE TYPE OF ISSUES DEALT IN PROHIBITION IS WHEN THERE'S EXCLUSIVE

JURISDICTION AND YOU'RE KEEPING ONE COURT IN ITS LANE FROM GOING INTO THE OTHER SUCH AS IN THE FLORIDA CASE WHERE THE ADMINISTRATIVE AGENCY HAD EXCLUSIVE JURISDICTION OVER A CONTRACT, CONTRACT BETWEEN HOMESTEAD AND FP&L AND THE COURT SAID, ALL RIGHT, THE COURT DOESN'T HAVE JURISDICTION OVER THAT BECAUSE THAT IS AN EXCLUSIVE JURISDICTION OF THE ADMINISTRATIVE AGENCY, ALSO IF YOU HAVE FEDERAL PREEMPTION, AN ISSUE WITH COMPLETE FEDERAL PREEMPTION OVER AN ISSUE THAN THE STATE COURT WOULD BE UNDER THE U.S. CONSTITUTION BECAUSE OF THE FEDERAL PREEMPTION.

>> RIGHT, I GUESS -- COULD YOU JUST EXPLAIN YOUR POSITION, THOUGH, ON WHY, YOU KNOW, WHY THIS ISN'T THE TYPE OF CLARITY THAT WE NEED WHERE THE LEGISLATURE HAS ASSIGNED THE RESPONSIBILITY TO A DIFFERENT COURT FROM THE ONE THAT IS, YOU KNOW, ESSENTIALLY ACTING NOW? AND, AGAIN, THIS IS A CONFLICT CASE SO WE ARE SORT OF ACCEPTING THE -- SORT OF THE TRAIN OF THOUGHT OF THE THIRD DCA.

I UNDERSTAND THAT YOU'RE DISPUTING THEIR CHARACTERIZATION OF YOUR LAWSUIT AS BASICALLY JUST BEING A REDO OF THE FEE DISPUTE, BUT GIVEN THAT THAT'S -- GIVEN THE PRECEDENT TO THE EXTENT THAT THIS THIRD DCA CASE IS PRECEDENT ON THIS PROHIBITION ISSUE, IT'S GOING TO BE ON THIS QUESTION OF WHERE -- WHERE THERE'S A STATUTE THAT TELLS ONE COURT, YOU KNOW, YOU HAVE TO GIVE FEES HERE AND YOU TRY TO GET THE SAME FEES IN A SECOND COURT.

IF WE WERE TO RULE IN YOUR FAVOR, WE WOULD BE SAYING THAT THAT'S -- THAT'S NOT THE TYPE OF CLARITY OR THAT'S NOT TAKING JURISDICTION AWAY FROM THE SECOND COURT AND I JUST WANT TO HEAR YOUR POSITION ON WHY THAT'S

WRONG?

>> I APOLOGIZE.

IT WOULD BE DIFFERENT BECAUSE, AGAIN, THE TYPE OF JURISDICTION THAT THE TWO COURTS HAVE, THE FEDERAL COURT AND THE STATE COURT HAVE, THEY BOTH HAVE JURISDICTION OVER THE SUBJECT MATTER TO ENTER JUDGMENTS FOR FEES UNDER THE STATUTE.

WHAT YOU'RE TALKING ABOUT IS A CASE SPECIFIC FACT AND CIRCUMSTANCES OF THIS SPECIFIC CASE.

AND THE COURT HAS HELD THAT THAT IS NOT WHAT YOU CONSIDER ON PROHIBITION.

THAT YOU CONSIDER ON AN APPEAL AND THEY'LL BE AN OPPORTUNITY TO CONSIDER THAT ON APPEAL BUT IF IT'S -- THE CIRCUIT COURT DOES HAVE JURISDICTION TO ACT OVER THIS SUBJECT MATTER AND IT'S NOT A CASE -- PROHIBITION IS NOT LOOKING AT -- NOT THE FACTS AND CIRCUMSTANCES OF THE SPECIFIC CASE WHICH IS WHAT THE THIRD DCA REFERRED TO THE FACTS AND CIRCUMSTANCES OF THIS CASE, THEY SAID UNDER THE UNIQUE FACTS AND CIRCUMSTANCES OF THIS CASE.

AND THAT CLEARLY IS THE WRONG STANDARD TO APPLY BECAUSE YOU HAVE TO LOOK AT WHAT THE COURT'S OVERALL JURISDICTION IS AND WHAT THEY'RE ABLE TO DO.

SO BECAUSE BOTH THE FEDERAL COURT AND THE STATE COURT ARE ABLE TO DO THAT IN GENERAL, THEY HAVE THE SUBJECT MATTER TO DO THAT AND THAT WAS THE DEFENSE IF THAT WAS WHAT WE WERE SEEKING WHICH WE ARE NOT AND INJUNCTION IN THIS IMMEDIATE ACT SPECIFICALLY REFERS TO RELIEF WHICH INCLUDES INJUNCTION.

NONE OF THAT -- WE DIDN'T HAVE TO FILE ANY OF THAT IN FEDERAL COURT.

SO THERE'S OTHER AVENUES IN THIS CASE THAT ARE CLEARLY OUTSIDE OF THE SCOPE OF THAT.

AND WITH THAT, I DO THINK WE GO THROUGH THE WHOLE HISTORY OF IT,

WE HAVE ALSO THE CORIS DECISION WHERE THE COURT ESTABLISHED THAT JURISDICTION OF THE SUBJECT MATTER MUST BE DECIDED BY THE COURT AND THAT THE SUFFICIENCY OF SERVICE ISSUES LIKE THAT ARE NOT RELEVANT TO PROHIBITION. I THINK FROM THE CONFUSION THAT THE RESPONDENTS HAVE TRIED TO USE COMES OUT OF THE LOVETT DECISION WHERE THE COURT TALKED ABOUT JURISDICTION IN GENERAL AND IT MADE DILIGENT EFFORT TO TRY TO CLARIFY THE ISSUE BUT I THINK IT ENDED UP MUDDING THE WATERS IN THE LONG RUN BECAUSE SUBJECT MATTER JURISDICTION WHICH THE COURT HAS REPEATEDLY CONFIRMED SUCH AS THE CUNNINGHAM CASE BUT THEY WERE SAYING WITH THE JURISDICTION AND THEN THAT JURISDICTION HAS TO BE INVOKED. AND DISCUSSING HOW IT'S INVOKED, THERE'S A LANGUAGE THAT'S A LITTLE LOOSE WHERE THEY ARE TALKING ABOUT WHEN THE COURT HAS JURISDICTION OF THE SUBJECT MATTER OF ANY GIVEN CASE IF THESE WORDS ARE GIVEN FULL MEANING, THEY IMPLY GENERALLY AND BASICALLY THEY TALK ABOUT POWER TO ADJUDICATE CLASS OF CASES WHICH IS MATTER OF JURISDICTION AND THEY TALK ABOUT JURISDICTION BY LAWFULLY BRINGING BEFORE THE NECESSARY PARTIES, PERSONAL JURISDICTION. 3, BY PLEADING SOME SORT OF SUFFICIENT -- SUFFICIENT BRINGING THE CASE BEFORE THE COURT AND THE COURT CAN'T SUE AND HAS TO BE INVOKED ON FALLING ON SOMETHING AND FOURTH, JURISDICTION TO THE RACE AND THEN THE COURT SAYS THIS IN A GENERAL WAY WHEN WE SAY THE COURT HAS JURISDICTION OF THE SUBJECT MATTER AND THE PARTIES TOTAL COST AND PEOPLE TREAT IT AS IF THOSE THINGS INVOKING JURISDICTION AND THAT'S WHY THE RESPONDENTS HAVE BEEN TRYING TO ARGUE THAT INVOKING JURISDICTION IS THE SAME THING AS THE SUBJECT

MATTER JURISDICTION AND THEY REFER TO STRIKER DECISION OUT OF THE FEDERAL COURT WHERE THEY TRIED TO TREAT THAT AS AN ELEMENT THAT THE STRICT JURISDICTION IS AN ELEMENT OF SUCH MATTER JURISDICTION.

>> COUNSEL, COUNSEL, YOU CAN KEEP GOING BUT YOU'RE HITTING INTO THE REBUTTAL TIME. YOU'RE DOWN 3 AND A HALF MINUTES.

>> I DIDN'T REALIZE THAT.

>> THAT'S WHAT IT SAYS.

>> I RESERVE THE REST OF MY TIME, THANK YOU.

>> MAY IT PLEASE THE COURT, CHUCK KLEIN FOR THE RESPONDENTS, I WILL SPEAK 11 MINUTES AND YIELD TO MY COLLEAGUE.

FIRST IS WHETHER ENGLISH VERSUS MCCRARY AND MADICO ABSOLUTE PROHIBITION IN THIS CASE AND THE TRIAL COURT IN THAT CASE HAD SUBJECT MATTER JURISDICTION TO EXCLUDE THE PRESS AND THE WRIT OF PROHIBITION WOULDN'T LIE JUST TO REVIEW THE EXERCISE OF ITS DISCRETION IN THAT REGARD. ALSO IN THAT CASE, THE TIMING WAS SUCH THAT THE PETITIONER WAS TRYING TO UNDO SOMETHING THAT IT HAD ALREADY BEEN DONE WHICH YOU CANNOT DO WITH THE WRIT OF PROHIBITION.

>> YOUR FIRST POINT, COUNSEL, YOU WILL CONCEDE THAT THE CIRCUIT COURT HAS GENERALLY JURISDICTION TO CONSIDER CLAIMS ARISING FROM SECTION 44.06?

>> YEAH.

>> THAT'S INDISPUTABLE?

>> UNDISPUTABLE.

MANDICO WAS WORKERS' COMP IMMUNITY CLAIM AND I HAVE TO DISAGREE WITH THE PETITIONER THAT SAID THAT THE WORKER'S COMP IMMUNITY IS IMMUNITY FROM LIABILITY AND NOT FROM SUIT AND THEREFORE THIS COURT FOUND THAT IT HAD SUBJECT MATTER JURISDICTION OVER THE UNDERLYING PERSONAL INJURY CLAIM AND THEREFORE THERE WAS NO BASIS FOR

PROHIBITION AND THIS COURT IN THAT CASE REPEATED THE OFTEN-CITED RULE THAT COURTS -- CIRCUIT COURTS ARE SUPERIOR COURTS OF GENERAL JURISDICTION AND NOTHING IS INTENDED TO BE OUTSIDE OF THEIR JURISDICTION EXCEPT AND THAT'S A BIG WORD, EXCEPT, CLEARLY THAT WHICH CLEARLY AND SPECIALLY APPEARS TO BE SO.

WITH RESPECT, WE SUGGEST TO THE COURT THAT RE-DECIDING A PARTY'S REASONABLE ATTORNEYS' FEES THAT HAVE ALREADY BEEN DECIDED BY THE UNITED STATES DISTRICT COURT AND MERGED INTO AN UNAPPEAL FINAL JUDGMENT THAT HAS BEEN SATISFIED IS CLEARLY AND ESPECIALLY OUTSIDE OF THE CASE JURISDICTION AND I WILL TALK ABOUT THAT IN JUST A MINUTE ESPECIALLY WHERE, ESPECIALLY WHERE THE CASE JURISDICTION TOOL WOULD THOSE ATTORNEYS' FEES WAS COMMITTED BY THE LEGISLATURE TO THE FEDERAL COURT BY OPERATION OF SECTION 6269373.

THAT'S THE STATUTE THAT GAVE AN INSURED THE RIGHT TO RECOVER ATTORNEYS' FEES FROM HIS INSURER IF HE PREVAILS IN PROPERTY LOSS CLAIM.

THE LEGISLATURE LIKE THE GOOD LORD SAID GIVETH AND TAKETH AWAY.

YOU CAN RECOVER YOUR FEES IF YOU PREVAIL ON YOUR PROPERTY DAMAGE CLAIM BUT YOU MUST ASSERT THAT CLAIM IN FRONT OF THE COURT THAT HANDLED YOUR PROPERTY DAMAGE CASE.

>> COUNSEL, I MEAN, WE KNOW THAT THE CLAIM HERE, AND I MAKE NO COMMENT ON THE MERITS TO HAVE CLAIM.

THIS COULD BE A TOTALLY BOGUS CLAIM AND THAT DOESN'T MEAN THAT THE CIRCUIT COURT LACK JURISDICTION TO ADJUDICATE IT, ISN'T THAT CORRECT?

THE FACT THAT IT'S NOT A GOOD CLAIM, THAT MAYBE EVEN THEY FAILED TO STATE THE CLAIM DOES

NOT MEAN THAT THE CIRCUIT COURT  
LACKS JURISDICTION, DOES IT?

>> I THINK IT COULD.

LET ME EXPLAIN WHY.

>> SO YOU'RE SAYING THAT IN  
EVERY CASE WHERE THE PLAINTIFF  
FAILS TO STATE THE CLAIM, IF THE  
-- IF THE CIRCUIT COURT GETS  
THAT WRONG THEN WE ARE OFF TO  
PROHIBITION?

>> NOT AT ALL.

I'M NOT SAYING THAT.

>> WELL, I DON'T UNDERSTAND WHY  
YOU'RE NOT SAYING THAT.

>> WHAT I'M SAYING WHEN THERE IS  
A STATUTE THAT COMMITS A  
PARTICULAR DISPUTE TO ONLY A  
PARTICULAR COURT --

>> BUT THIS IS -- THIS OTHER  
STATUTE 44.406 IN THE  
CONFIDENTIAL OF CIVIL REMEDIES,  
THAT'S A SEPARATE THING.

>> THAT'S RIGHT BUT WHEN YOU  
LOOK AT HOW THE COURT, THE  
DISTRICT COURT CHARACTERIZED  
THEIR COMPLAINT, WHAT THEY'RE  
SAYING IS THAT THE PLAINTIFFS  
WHEN THEY WENT TO STATE COURT  
WERE TRYING TO CLOSE THE DELTA  
BETWEEN WHAT THEY ASKED FOR IN  
ATTORNEY'S FEES AND WHAT THEY  
GOT IN ATTORNEYS' FEES AND  
THAT'S WHAT'S CONTROLLED BY THIS  
STATUTE WHICH SAYS IF YOU WANT  
ATTORNEYS' FEES FOR PROSECUTING  
THE CASE AGAINST THE INSURANCE  
COMPANY YOU HAVE TO GET IT FROM  
THE JUDGE WHO PRESIDED OVER THE  
INSURANCE CASE, WHY?

BECAUSE HE'S THE ONE THAT KNOWS  
OR SHE KNOWS ALL OF THE BASIS --

>> COULD YOU CONCEDE THAT WHAT  
WE ARE TALKING ABOUT NOW IS A  
MIXED QUESTION OF LAW AND FACT?  
S IS NOT A PURE QUESTION OF LAW,  
RIGHT?

>> I DON'T BELIEVE SO.

I DO BELIEVE IT'S A PURE  
QUESTION OF LAW.

>> HELP ME UNDERSTAND HOW THAT  
NARRATION THAT YOU JUST GAVE  
WHICH RELIES ON WHAT FINDING  
WHAT THE COURT DID THE AMOUNT OF  
FEES, FEES FOR WHAT, HOW THAT IS

AMENABLE TO RESOLUTION AS A PURE QUESTION OF LAW.

HELP ME UNDERSTAND BECAUSE IT SEEMS PRETTY CLEAR TO ME THAT YOU'RE ASKING US TO RESOLVE OR THAT COURT TO RESOLVE A MIXED QUESTION OF LAW, IN FACT, WHICH WOULD SEEM TO BE A VERY FUNNY THING TO DO IN ORDER TO DECIDE WHETHER YOU HAVE JURISDICTION.

>> JUSTICE COURIEL, LET ME TRY TO ANSWER THE QUESTION IN THAT WAY.

FORGET FOR A MOMENT COLLATERAL ESTOPPEL, IF THE PETITION IN THIS CASE HAD GONE INTO FEDERAL COURT, TRIED THIS CASE ON THE QUESTION OF LIABILITY FOR PUBLIC DAMAGE, PREVAILED, CLOSED HIS BRIEFCASE AND WENT ACROSS TOWN TO ANOTHER COURT AND FILED AN ACTION TO RECOVER ATTORNEYS' FEES, THIS STATUTE SHOULD CAUSE THAT JUDGE TO SAY, WAIT A MINUTE, WAIT A MINUTE.

DIDN'T YOU GET YOUR JUDGMENT IN ANOTHER COURT?

YES, I DID.

WELL, GO BACK THERE AND GET -- THEY HAVE THE CASE.

>> MY FOLLOW-UP WHY ISN'T THE RIGHT ANSWER FOR THE COURT EXERCISING JURISDICTION TO DISMISS THE CASE RATHER THAN FOR ANOTHER COURT TO ASSURE PROHIBITION AND PREVENT THE COURT FROM ISSUING AN ORDER DISMISSING THE CASE?

>> BECAUSE THE DISTRICT -- RATHER THE TRIAL COURT WAS GIVEN AN OPPORTUNITY TO DISMISS THE CASE AND DECLINED TO DO SO AND SAID HE'S GOING TO GO -- TO ME THIS IS JUST LIKE -- JUST LIKE THE CASE IN PUBLIC SERVICE COMMISSION VERSUS FLORIDA. LET'S JUST LOOK AT THESE PARALLELS.

IN PUBLIC SERVICE COMMISSION VERSUS FLORIDA THE PUBLIC SERVICE -- I'M SORRY.

THE PUBLIC SERVICE COMMISSION SUED, APPEARED IN TALLAHASSEE IN THIS COURT TO PROHIBIT JUDGE

FULLARD DOWN IN DADE COUNTY FROM PROCEEDING FURTHER IN BREACH OF ACTION THAT WAS BROUGHT BY THE CITY HOMESTEAD AGAINST FP&L ON A CONTRACT THAT HAD BEEN APPROVED BY THE PUBLIC SERVICE COMMISSION AND THAT WAS EFFECTIVELY MERGED INTO THE PSC ORDER --

>> AND HAD THE COURT BELOW IN THAT CASE TAKEN ANY ACTION YET, HAD IT DISMISSED IT, HAD IT DONE ANYTHING?

>> I COULDN'T TELL FROM THE OPINION.

>> RIGHT.

I DO THINK THAT IN THE WAY THAT YOU DESCRIBED IT, I CAN'T TELL FROM THE OPINION EITHER, I THINK IN THE WAY THAT YOU DESCRIBED IT, THAT SOUNDS LIKE AN EXERCISE OF PROHIBITION, STOP ACTING. HERE THE PROBLEM FOR YOU IT SEEMS TO ME IS THAT THE COURT ACTED AND SO YOUR REMEDY WOULD SEEM TO BE AN APPEAL, RIGHT, THE REMEDY THERE?

I HAVE A HARD TIME UNDERSTANDING HOW A WRIT OF PROHIBITION WHICH IS DESIGNED AS THE NAME -- AS THE WORD SUGGESTS TO PROHIBIT A FUTURE ACT SHOULD BE, YOU KNOW, AMENABLE IN THIS CONTEXT TO BE USED UNDO SOMETHING THAT THE COURT BELOW DID.

>> WELL, IT'S NOT TO UNDO ANYTHING.

IT WAS TO PREVENT THE COURT FROM GOING FURTHER WITH DISCOVERY AND ALL THE EXPENSIVE LITIGATION.

>> IF THAT RULE OF LOGIC, IF WE WERE TO ADOPT THAT RULE OF LOGIC THAT WILL BE IN RULE OF PROHIBITION.

>> I'M NOT SURE ABOUT THAT BECAUSE HERE WE ARE NOT TALKING ABOUT AN EFFORT TO CUT OFF A SUIT THAT HAS JUST BEEN FILED. WE ARE TALKING ABOUT USING THE WRIT OF PROHIBITION TO STOP THE RELITIGATION OF SOMETHING THAT WAS ALREADY LITIGATED IN FRONT OF A JUDGE THAT HAD JURISDICTION TO LITIGATE AND BEFORE WHOM -- HE WAS THE ONLY JUDGE THAT COULD

HEAR IT.

>> IT'S YOUR POSITION THAT IN ANY CASE WHERE THERE'S ISSUE OF ADJUDICADA OR ESTOPPEL, THERE'S NO PROHIBITION?

>> I DIDN'T SAY THAT.

>> I DON'T UNDERSTAND HOW YOU CAN AVID SAYING THAT WITH WITHOUT JUST COMING UP WITH THE DISTINCTIONS THAT DON'T -- DON'T REALLY WITHSTAND ANALYSIS. I UNDERSTAND THAT YOU THINK YOUR CASE IS DIFFERENT AND YOU'RE ENTITLED TO PROHIBITION HERE. LOOK, I DON'T FAULT YOU BUT THE THIRD DCA HAD THE PRECEDENT THEY HAD AND YOU ARE OFF DOWN THE ROAD, BUT BASED ON THAT PRECEDENT, SO I UNDERSTAND THAT. THAT'S WHY YOU PURSUED THE COURSE OF ACTION ALTHOUGH IT DOES OCCUR TO ME THAT IT HAD BEEN OVER AND RESOLVE -- PROBABLY RESOLVED IN YOUR FAVOR IF YOU HAD NOT GONE DOWN THAT ROUTE BUT PERHAPS BUT AGAIN I DON'T UNDERSTAND HOW YOU LIMIT THIS OR CABINET --

>> WELL, BECAUSE THIS PARTICULAR CASE THERE WERE TWO REASONS WHY THE TRIAL COURT, THE CIRCUIT COURT COULDN'T GO FORWARD. ONE IS OBVIOUSLY THAT COLLATERAL ESTOPPEL WERE BAR IT AND THE OTHER THE LEGISLATURE HAS COMMITTED THAT RIGHT TO THE FEDERAL COURT BECAUSE IT WAS THE ONE THAT DECIDED -- SO IT IS EXACTLY IN MY MIND LIKE YOUR DECISION IN THE PSC CASE BECAUSE HERE YOU HAVE A STATUTE THAT GIVES THE RIGHT TO ATTORNEYS' FEES BUT LIMITS TO COURTS HA HANDLE THE CLAIM AND THERE'S NO DISPUTE.

>> COUNSEL, I JUST THINK IN YOUR ARGUMENT, YOU DO NOT TAKE INTO ACCOUNT 44.406 WHICH IS A SEPARATE SORT OF CLAIM. NOW, AGAIN, MAYBE IT SHOULD HAVE BEEN RAISED, MAYBE IT SHOULDN'T HAVE BEEN RAISED IN THE OTHER PROCEEDING BUT THOSE ARE KIND OF COMPLICATED QUESTIONS AND IT'S

NOT LIKE FROM LOOKING AT THE  
THIRD DISTRICT OPINION WE DON'T  
KNOW THAT THAT STATUTE WAS  
INVOLVED.

THEY SAY THAT'S WHAT THE  
PLAINTIFFS WERE ACTING UNDER.  
>> THAT'S, OF COURSE, CORRECT,  
BUT WHAT THEY ALSO SAY THAT THE  
DOCTRINE OF COLLATERAL ESTOPPEL  
WOULD PRECLUDE THEM FROM FINDING  
ANY ATTORNEYS' FEES OTHER THAN  
THE ONES THAT WERE DECIDED AND  
THAT WAS THE ONLY CLAIM THEY  
ASSERTED BECAUSE, REMEMBER,  
BECAUSE THE DISMISSAL, WAS  
DISMISSAL BECAUSE OF LACK OF  
SUBJECT MATTER, IT DID NOT  
INCLUDE CORRESPONDENTS FOR ANY  
SET OF DAMAGES OTHER THAN WHAT  
THEY PLED.

THAT'S THE FIRST POINT.

>> YOU HAVE EXHAUSTED YOUR TIME,  
A LITTLE MORE.

I WILL GIVE YOU ANOTHER MINUTE.  
WE WILL BE FLEXIBLE HERE.

I'M NOT GOING -- HE'S GOING TO  
HAVE HIS TIME, OKAY.

WE'RE NOT ENCROACHING ON THAT.

>> IF THIS COURT DECIDES  
PROHIBITION WAS NOT THE RIGHT  
REMEDY WE DID ASK.

ALL I WANT TO COMMENT ON ONE  
CASE AND THAT'S THE BOARD OF  
REGENTS IN THE STATE OF FLORIDA,  
IT'S NOT IN OUR BRIEF, WE FILED  
AS SUPPLEMENTAL AUTHORITY AND  
STANDS THAT IRREPARABLE HARM IS  
NOT AVAILABLE TO PREVENT TRIAL  
COURT FROM PROPERLY APPLYING  
COLLATERAL ESTOPPEL.

>> IRREPARABLE HARM HAS TO DO  
WITH INTELLECTUAL PROPERTY AND  
THE RIGHTS THAT ONCE THAT'S OUT,  
IT'S OUT.

I THINK ON THE IRREPARABLE HARM  
HERE YOU HAVE A PROBLEM NOT JUST  
FOR SOCIAL BUT PROBLEM FOR  
PROHIBITION THAT THAT WAS EITHER  
REPARABLE HARM.

>> THE CASE I'M TALKING ABOUT IS  
THE BOARD REGENTS CASE --

>> IT'S ABOUT INTELLECTUAL  
PROPERTY.

>> THAT'S TRUE.

IT'S ABOUT INTELLECTUAL PROPERTY  
BUT THIS WAS JUDGMENT --  
JUDGMENT FOR DAMAGES.  
THE PLAINTIFF SUED FOR DAMAGES  
AND ASKED FOR SUMMER JUDGMENT  
AND IT WAS DENIED AND THE SECOND  
DCA AFTER QUITE A BIT OF  
DISCUSSION GRANTED THE WRIT OF  
CERTIORARI AND THE REASON  
BECAUSE IT WAS GOING TO DEFEAT  
COLLATERAL ESTOPPEL AND THE  
WHOLE IDEA FOR BRINGING THE  
RIGHT TO BRING A CLAIM AND USE  
AS COLLATERAL ESTOPPEL, THE  
FINDINGS IN THE CRIMINAL CASE TO  
JUSTIFY THEIR CLAIM, THAT RIGHT  
WOULD BE FRUSTRATED BY THE  
LEGISLATION.

>> YOU WILL NEED TO SUM UP HERE  
IN ABOUT 30 SECONDS.

>> THAT IS IT, YOUR HONOR.

THAT'S MY POINT.

THANK YOU FOR YOUR PATIENCE.

>> THANK YOU.

>> THANK YOU.

>> JUDGE, I WOULD LIKE TO  
ACCOMPLISH 3 THINGS IN THE 8 OR  
9 MINUTES.

ONE I'D LIKE TO TALK A LITTLE  
BIT ABOUT -- ANSWER SOME OF YOUR  
QUESTIONS AND SECONDLY I WOULD  
LIKE TO TALK ABOUT THE FACTS OF  
THIS CASE BECAUSE I THINK THE  
FACTS AND WHAT OCCURRED IN THIS  
CASE ARE SO EGREGIOUS THAT IT  
LEND A LOT OF BENEFIT ON WHAT  
THE COURT IS CONSIDERING.

FINALLY, I WANT TO COURT TO  
ARGUE THAT IF YOU WERE INCLINED  
TO NOT DISCHARGE THE WRIT AND  
THE REVERSE THIS COURT OR THE  
THIRD DISTRICT SHOULD GIVE MY  
CLIENTS AN OPPORTUNITY TO HAVE  
THE PETITION HEARD BECAUSE IT  
HAS NEVER BEEN HEARD.

IT WAS DENIED AS MOOT AND IT'S A  
VALID ISSUE THAT NEEDS TO BE  
RESOLVED EITHER HERE IN THE  
THIRD DISTRICT IN ALL FAIRNESS.

>> COUNSEL, SORRY TO INTERRUPT  
YOU.

COULD YOU TAKE ONE MINUTE ON THE  
JURISDICTION POINT BECAUSE I  
THINK FROM THE COLLOQUY THAT THE

CHIEF HAD WITH YOUR COLLEAGUE  
HERE, I THINK YOU HAVE ON THE  
MERITS AN UPHILL BATTLE BUT IT  
DID STRIKE ME THAT THE KINDS OF  
QUESTIONS THAT ARE AT ISSUE ON  
THE MERITS HERE WITH, YOU KNOW,  
WHAT'S THE ROLE OF THIS STATUTE  
AND EVERYTHING, THAT SEEMS VERY  
DIFFERENT FROM THE QUESTION OF  
LAW THAT WAS AT ISSUE IN THE  
MANDICO CASE, BEFORE YOU GO TO  
YOUR OTHER THREE THINGS, IF YOU  
-- IF YOU WANT TO MAKE AN  
ARGUMENT ON JURISDICTION, CAN  
YOU ADDRESS THAT?

>> YEAH, OKAY.

JUDGE, ENGLISH SAYS THAT  
PROHIBITION IS -- PROHIBITION  
LIES WHERE THE JURISDICTION IS  
VESTED IN ANOTHER COURT.  
THAT'S CLEAR IN ENGLISH, WHERE  
THE JURISDICTION IS VESTED IN  
ANOTHER COURT EVEN WHERE THE  
COURT MAY HAVE GENERAL  
JURISDICTION AS YOU HAVE ALLUDED  
TO.

HERE THERE'S NO QUESTION THAT  
THE JURISDICTION LIED IN THE  
DISTRICT COURT UNDER THAT  
STATUTE 626-7393 AND HE -- AND  
THIS IS A LITTLE BIT OF THE  
FACTS AND I APOLOGIZE.  
HERE THEY MEDIATE THE CASE AND  
ENTER SETTLEMENT AND STIPULATION  
TO GO THROUGH ATTORNEYS FEES  
ISSUE PLUS OTHER RELATED  
MATTERS.

THE ISSUES WE ARE TALKING ABOUT  
AND THE DAMAGES.

THEN --

>> COUNSEL, LET ME GO BACK TO  
THE POINT THAT YOU MAKE ABOUT  
WHERE JURISDICTION IS VESTED  
OKAY, BECAUSE THAT'S SIGNIFICANT  
PART OF OUR CASE LAW.

DOESN'T THAT SUGGEST THAT THE  
JURISDICTION IS -- IS THERE AND  
EVEN THOUGH -- THAT DOESN'T SEEM  
TO -- THAT DOESN'T SEEM TO BE  
THE KIND OF LANGUAGE THAT WOULD  
BE USED IF WE WERE SAYING -- IF  
YOU WERE FOLLOWING LINE OF  
ANALYSIS BECAUSE OF COLLATERAL  
ESTOPPEL THERE'S NO

JURISDICTION.

BECAUSE OF COLLATERAL ESTOPPEL  
DOESN'T DIVEST -- I DON'T GET  
HOW THAT DIVEST THE COURT  
JURISDICTION.

IT MAY MEAN THE COURT MAY MAKE A  
MISTAKE AND MAKE A DECISION IN A  
WAY THAT'S ERRONEOUS BUT I DON'T  
UNDERSTAND HOW THAT DIVESTS THEM  
OF JURISDICTION.

>> JUDGE, WHEN YOU LOOK AT THE  
HISTORIC PURPOSE OF PROHIBITION  
IT'S TO PRESERVE JURISDICTIONS  
OF THE COURT, IS IT NOT IN AND  
HERE IS TO PRESERVE THE  
JURISDICTION OF THE COURT AND  
THAT IS THE FEDERAL COURT IN  
THIS CASE BECAUSE THEY WENT  
THROUGH THE WHOLE PROCESS, A  
STIPULATION, ATTORNEYS' FEES  
DISPUTE, NO OBJECTION AND REVIEW  
BY THE DISTRICT JUDGE AND FINAL  
JUDGMENT ENTERED ON EVERYTHING.

>> I GUESS --

>> AND THAT BARS THE 4406 CLAIM.  
HE COULD HAVE RAISED THAT IN  
THAT CASE.

HE DIDN'T -- HE CHOSE TO  
BASICALLY HIDE IT.

>> I GUESS MY QUESTION THEN  
BECOMES HOW DOES THAT JUDICIAL  
LABOR BY THE FEDERAL COURT  
DIVEST THE STATE COURT OF  
JURISDICTION OVER A CLAIM UNDER  
THE MEDIATION CONFIDENTIALITY  
ACT.

I UNDERSTAND THAT IT IS -- THAT  
IT MAY HAVE PRECLUSIVE EFFECT ON  
CERTAIN ISSUE -- CERTAIN MATTERS  
AT ISSUE IN LITIGATION  
ELSEWHERE.

BUT TO THE CHIEF'S QUESTION,  
EVEN IF THOSE ARGUMENTS ARE  
COLLATERALLY ESTOPPED, HELP ME  
UNDERSTAND HOW THE EXERCISE OF  
JUDICIAL LABOR BY THE FEDERAL  
COURT WHICH I AGREE IS -- HAS  
THAT POSSIBLE EFFECT, DIVEST  
THIS STATE COURT OF JURISDICTION  
FOR THE SUBSEQUENT CLAIM?

>> BECAUSE THE PURPOSE OF THE  
PROHIBITION IS TO PROTECT THE  
JURISDICTION OF THE COURT AND --  
>> HOW IS IT THREATENED?

HOW IS THE JURISDICTION OF THE FEDERAL COURT THREATENED? IT ISSUED ITS ORDER AND THE ORDER HAS CERTAIN PRECLUSIVE EFFECT AND NOW THERE'S A NEW CLAIM UNDER THE MEDIATION CONFIDENTIALITY ACT THAT THE PARTIES DECIDE TO BRING TO STATE COURT.

>> THERE'S NO NEW CLAIM.

THE SAME CLAIM SHOULD HAVE BEEN RESOLVED IN THE UNITED STATES COURT.

IT WAS THERE.

HE DELIBERATELY IGNORED THAT CLAIM AND HE CLAIMED THAT HE HAD BEEN VIOLATED BY THE ENTRY OF THE DOCUMENT.

WELL, THAT'S NEITHER HERE NOR THERE BUT WHEN HE DID THAT, HE HAD THE OBLIGATION TO GO IN FRONT OF THE JUDGE UNDER THAT MEDIATION STATUTE BECAUSE THAT WAS THE JUDGE'S -- FEDERAL JUDGE'S THING AND HE DIDN'T, HE DELIBERATELY AVOIDED IT.

HE DIDN'T -- HE DIDN'T RAISE IT, HE DIDN'T SEEK TO SEAL ANYTHING OR HE DIDN'T DO ANYTHING AND INSTEAD BEFORE ENTRY OF RNR HE RUNS OVER TO FEDERAL COURT AND FILES THE LAWSUIT EVEN BEFORE THE DAMAGE HAD BEEN DETERMINED BECAUSE HE HAD MADE A DECISION, HE HAD MADE A DECISION THAT HE DIDN'T WANT THE FEDERAL JUDGE TO HEAR IT AND HE WAS GOING TO GO PLAY GAMES AND BASICALLY --

>> IT SOUNDS LIKE YOU HAD ANSWERED THE CHIEF'S QUESTION DIFFERENTLY AND THE QUESTION WAS, SO ANY ARGUMENT THAT A PRIOR COURT'S JUDGMENT PRECLUDES WHETHER IT'S RAISED AJUDICADA AND FURTHER ACTION SHOULD BE TESTED BY WRIT OF PROHIBITION IF THE MOTION IS DENIED?

>> YEAH, THAT'S WHAT I BELIEVE.

>> THAT'S WHAT YOU BELIEVE.

OKAY.

>> IT'S OUR POSITION.

EVERYTHING WAS THERE IN THE FEDERAL COURT, EVERYTHING.

HE JUST DIDN'T WANT TO PLAY BALL

WIT.  
AND FOR THIS COURT TO CONDONE  
THAT KIND OF ACTION IS WRONG.  
>> BUT -- BUT DON'T -- THAT'S AN  
ACCUSATORY STATEMENT TOWARD US.  
I UNDERSTAND THAT.  
BUT THE FACT THAT -- THAT  
PROHIBITION MIGHT NOT LYE DOES  
NOT MEAN THAT ANYTHING IS  
CONDONE BECAUSE ALL SORTS OF  
ERRORS ARE CORRECTED EVERY DAY  
IN THE APPELLATE PROCESS WITHOUT  
USE OF PROHIBITION.  
OUR LAW IS THAT THIS IS --  
PROHIBITION IS AN EXTREMELY  
LIMITED AND USED IN  
CIRCUMSTANCES AND WE TALKED  
ABOUT IT BUT THE FACT THAT  
PROHIBITION DOESN'T LYE, THAT  
DOESN'T MEAN THAT A CLAIM THAT  
IS MERITLESS IS -- IS NOT GOING  
TO BE ULTIMATELY ADJUDICATED TO  
BE MERITLESS.  
>> JUDGE, I CAN'T SAY ANYTHING  
MORE THAN I HAVE ON THAT  
PARTICULAR QUESTION.  
I DON'T THINK ENGLISH OR MANDICO  
APPLIES IN THE CASE FOR THE  
REASONS THAT WE HAVE ARGUED IN  
OUR BRIEF.  
IT CERTAINLY WAS, YOU KNOW,  
PREVENTIVE, THERE WAS NO --  
THERE WERE NO DISPUTED FACTS.  
EVERYTHING THAT WAS IN THAT  
SECOND AMENDED COMPLAINT AND THE  
ATTACHMENTS TO THE FEDERAL  
PLEADINGS LAID OUT THE RECORD  
AND IT WAS SUFFICIENT.  
YOU DIDN'T HAVE TO GO -- THERE  
WERE NO CONTROVERTED FACTS.  
THAT'S WHAT THE COURT OF APPEALS  
HELD.  
THAT'S TRUE.  
THERE ARE CASES CITED WHERE  
THAT'S BEEN DONE BEFORE ON WRIT  
OF PROHIBITION.  
>> LET ME -- LET ME ASK YOU TO  
ADDRESS A SPECIFIC LANGUAGE.  
I'M GOING TO QUOTE THE LANGUAGE  
FROM MANDICO AT PAGE 854 AND ASK  
THE QUESTION.  
>> IF I DON'T REMEMBER DON'T --  
I'VE READ SO MANY CASES IN THIS  
THING.

[LAUGHTER]

>> A PERSON HAS THE RIGHT TO FILE IN THIS CASE MANDICO PERSONAL INJURY ACCIDENT CIRCUIT COURT AND THE COURT HAS JURISDICTION TO ENTERTAIN THE SUIT.

THE ASSERTION THAT THE PLAINTIFF'S EXCLUSIVE REMEDY IS UNDER THE WORKERS' COMPENSATION, WHAT WAS AT ISSUE IN THAT CASE, IS AN AFFIRMATIVE DEFENSE AND VALIDITY CAN BE DETERMINED IN THE COURSE OF LITIGATION.

MY QUESTION IS IF YOU JUST TAKE OUT PERSONAL INJURY AND PUT IN A CHAPTER 44 CLAIM AND TAKE OUT THE AFFIRMATIVE DEFENSE AT ISSUE THERE AND PUT IN THE COLLATERAL ESTOPPEL, RAISED ADJUDICADA AND AFFIRMATIVE DEFENSE, WHY DOESN'T THAT APPLY PERFECTLY TO THIS CASE AND SAY THAT THAT HAS TO BE DETERMINED IN THE COURSE OF LITIGATION, YOUR DEFENSE OF RAISED ADJUDICADA IN RAISED LITIGATION?

>> JUDGE, BECAUSE THE REASON I ANSWERED FOR JUDGE COURIEL. EVERYTHING IS ESTABLISHED IN SECOND AMENDED COMPLAINT AND WHAT OCCURRED HERE AND CREATES THE BASIS FOR THE PROHIBITION. THAT'S WHY MANDICO HAS NO APPLICATION HERE. THAT WAS A DISPUTED FACT ABOUT WORKERS' COMP IMMUNITY WAS GOING ON.

THIS IS NOT THE SITUATION IN THIS CASE.

YOU KNOW, I DON'T WANT TO BELABOR THE MANDICO THING BUT THE UNDERLYING -- I WILL TELL YOU WHAT, I'M NOT GOING TO DISCUSS IT BECAUSE WE HAVE HASHED IT OUT.

I WANT TO MAKE OTHER POINTS AND LAST POINT.

PROHIBITION IS THE PURPOSE TO PREVENT AND RESTOP LITIGATION, I BELIEVE, AND THAT'S WHAT THE CASES HOLD.

THIS CASE IS NOT EVEN CLOSELY SIMILAR TO MANDICO OR TO

FACTUALLY TO THOSE CASES.  
IF YOU BUY INTO MINCE'S  
VIEWPOINT AND YOU CAN LET A MAN  
RUN OVER THE FEDERAL COURT,  
AVOID THE JURISDICTION, IT  
REALLY TAKES A DRACONIAN  
VIEWPOINT ON PROHIBITION AND I  
KNOW -- AND I KNOW IT'S A  
LIMITED THING BUT THIS ONE IS  
WAY OVER THE TOP.

ALL THE RELIEF HE SOUGHT IN THIS  
CASE HE HAD IN FRONT OF THEM IN  
FEDERAL COURT, ALL THE DAMAGES,  
EVERYTHING AND WE POINTED TO  
SIMILAR CASE WHERE IS  
PROHIBITION HAS BEEN ISSUED BY  
DISTRICT COURTS BESIDES THE  
THIRD DISTRICT.

BADEN VERSUS BADEN AND TINK  
VERSUS BURCH AND THOMPSON VERSUS  
STATE AND, OF COURSE, THE  
FULLARD CASE.

IN ALL THOSE CASES THEY STOPPED  
PROHIBITION, ACTS WHERE ANOTHER  
COURT OR BODY HAD JURISDICTION.  
THAT'S EXACTLY WHAT HAPPENS  
HERE.

IN SUM ON THIS ISSUE, A PRIOR  
JUDGMENT WAS ENTERED.  
THAT CREATED THE BASIS FOR THE  
ENTIRE SITUATION AND THAT MAKES  
THIS WHOLE DIFFERENT THAN  
BEFORE.

NOW, I'D LIKE TO JUST TOUCH ON  
ONE OTHER THING.

IF -- IF THE COURT DISAGREES AND  
DOES NOT DISCHARGE THE WRIT, WE  
ARE ASKING AS AN ALTERNATIVE IF  
THE COURT DECIDES PROHIBITION  
DOES LIE HERE THAT THIS COURT  
RESOLVE THE ISSUE OF THE  
PETITION OF SORORITY BECAUSE IT  
HASN'T BEEN RULED ON OR SEND IT  
BACK TO THIRD DISTRICT TO BE  
RESOLVED.

THIS COURT IN PRIOR DECISIONS --  
>> COUNSEL, I'M HAVING TROUBLE  
SEEING THE IRREPARABLE HARM.  
IF YOU HAVE IRREPARABLE HARM  
HERE THEN YOU HAVE IRREPARABLE  
HARM IN ANY CASE WHERE THERE'S A  
FAILURE TO DISMISS, FAILURE  
STATE OF CLAIM IT SEEMS TO ME.  
>> JUDGE, I CAN ONLY ASK YOU TO

ANSWER THAT BY SAYING THAT  
COLLATERAL ESTOPPEL IN THIS CASE  
AND LACK OF STANDING CANNOT BE  
MEANINGFULLY ENFORCED ON A  
PRELIMINARY APPEAL.

THIS WHOLE DOCUMENT WAS ISSUED  
TO PROTECT A PARTY FROM HAVING  
TO DEFEND ITSELF IN A LAWSUIT.

AND THAT'S WHY THERE IS THE  
IRREPARABLE HARM HERE.

HERE THE -- THE ACTIONS OF THE  
JUDGE HAD THE SOLE JURISDICTION  
AND HERE ARE THE REQUIREMENTS OF  
HARM IS DEMONSTRATED BY  
REQUIRING THE PARTY TO RESUBMIT  
TO THE LITIGATION IT WAS  
INVOLVED WITH.

IT'S FUNDAMENTAL ERROR, IT'S THE  
LACK OF SUBJECT MATTER  
JURISDICTION.

YOU CAN'T RECREATE -- IF IT'S  
NOT THERE, IT'S NOT THERE AND  
IT'S NOT FAIR TO A PARTY TO GO  
THROUGH THAT ENTIRE SITUATION  
AND JUST BE REACHING A LEGAL  
ISSUE AT THE VERY END.

>> COUNSEL, I HELPED YOU GO  
OVER.

>> NO, NO, IT WAS FINE.

[LAUGHTER]

>> SORT OF.

[LAUGHTER]

>> FUN BUT NOT REAL FUN.

>> THANK YOU.

>> COUNSEL, I'M GOING GIVE YOU A  
LITTLE EXTRA TIME SO LET'S TAKE  
5 MINUTES.

>> OKAY, THANK YOU, YOUR HONOR.  
I WILL TRY TO --

>> OKAY.

>> I UNDERSTAND, THANK YOU, YOUR  
HONOR.

FIRST OF ALL, I WOULD LIKE TO  
ADDRESS COUNSEL'S ARGUMENT ON A  
COUPLE OF THINGS.

WITH ENGLISH, HE TALKED ABOUT  
HOW YOU CAN'T REVOKE A  
PREVIOUSLY ENTERED ORDER.

IN THIS CASE WHAT THE COURT DID  
BY ORDER DENYING MOTION TO  
DISMISS HAS TO BE TURNED INTO AN  
ORDER TO GRANT THE MOTION OF  
DISMISS.

CAN'T GET MORE CLEAR CUT ON

INVOKING A PRIOR ORDER BUT ALSO ON MANDICO IS DIRECT ON POINT ON THIS FOR A VARIETY OF REASONS AND THE COURT HAS RECOGNIZED, I BELIEVE, BUT I ALSO WANT TO POINT OUT THAT THIS COURT ACCEPTS JURISDICTION OF THIS CASE, IT HAS DISCRETION TO TREAT AS IF IT'S REVIEWING EVERYTHING FRESH, AS IF IT WAS AN INITIAL PRESENTATION.

SO THE COURT IS NOT REQUIRED TO ACCEPT ANY FACTUAL ERRORS THE THIRD DCA MADE IN ITS OPINION AND CLEARLY THAT ONE CATEGORY OF SPECIAL DAMAGES PLED WHICH IS WHAT COUNSEL FOR LEXINGTON IS REFERRING TO -- WE ARE NOT SEEKING THAT.

THAT'S SUCH AN UNIMPORTANT PART OF THE CASE AND MISREPRESENTS WHAT THIS IS ABOUT.

THE FACT THAT WE NEED INJUNCTIVE RELIEF IS ESTABLISHED BY THE FACT THAT AFTER WE FILED THE COMPLAINT LEXINGTON VIOLATED ON AND PROMISED NOT TO DO IT AGAIN BUT WE HAD TO ADD A NEW COUNT BECAUSE OF VIOLATIONS IN THIS LAWSUIT.

SO THERE'S A REASON WE HAD TO CONTINUE TO DO IT.

ALSO THE JUDGE IN THE FEDERAL CASE ISSUED AN ORDER THAT THE ISSUES LITIGATED BECAUSE THEY FILED A MOTION WITH THAT COURT TOO AND IT'S IN THE RECORD, I APOLOGIZE I DON'T HAVE THE RECORD CITE BUT THE JUDGE WHO LITIGATED THE ISSUE THE ISSUES IN THAT CASE WEREN'T LITIGATED IN THIS CASE AND JUDGE KING, DISTRICT JUDGE, HE ENTERED AN ORDER DENYING IT, HE DIDN'T GET INTO THAT ISSUE BUT THE MAGISTRATE JUDGE WHO LITIGATED SAID THE ISSUES BEING LITIGATED IN THE STATE COURT WERE NOT LITIGATED IN THIS CASE.

SO THIS IS, YOU KNOW, THE ISSUES ARE VERY SEPARATE.

I THINK THE CASE HAS BEEN MISUNDERSTOOD IN A LOT OF WAYS BECAUSE OF ONE CATEGORY OF

SPECIAL DAMAGES.

LIKE YOU SAID IF YOU COME WITH SPECIAL DAMAGES, YOU HAVE TO SPECIFY WHAT IT IS IN THE COMPLAINT.

YOU MIGHT DECIDE DOWN THE ROAD IT'S NOT THE BEST WAY TO GO. OUR GENERAL DAMAGES CAN REFER TO -- WE COULD -- THIS COULD BE DISMISSED AND FILE A NEW LAWSUIT.

WE HAVE ALREADY DONE THAT. OUR LAWSUIT HAS ALLEGATION OF GENERAL DAMAGES.

EITHER WE WILL PROVIDE EVIDENCE OF DAMAGES OR WE WON'T BUT THAT'S TO BE LITIGATED.

DISMISS THING LAWSUIT FIRST TO HAVE THE SAME LOUT WITHOUT THE LOST OPPORTUNITY DAMAGES DOESN'T CHANGE ANYTHING BECAUSE WE ALREADY HAVE GENERAL DAMAGES PLED.

BUT LIKE I SAID, THIS IS NOT ALL ABOUT THAT.

WE HAVE THE INJUNCTIVE RELIEF, BAD-FAITH COUNT WHICH ALSO HAS NOTHING TO DO WITH THE AMOUNT OF FEES THAT WERE AWARDED.

SO NONE OF THOSE DEAL WITH ANY OF THAT.

AS FAR AS THE CERT, I'M REALLY NOT TRYING TO BE ON AN ADVOCATE AND MORE OF AN ADVISORY POSITION AND MY READING THAT BECAUSE THE COURT DOES NOT HAVE JURISDICTION TO ENTER A RULE ON A PETITION FOR CERT IT CAN REVIEW A DISTRICT COURT'S RULING ON A POSITION FOR CERT BUT THIS COURT CAN'T ENTER CERT.

UNDER THAT ANALYSIS THAT THE COURT HAS BEEN VERY CLEAR THAT IT DOES HAVE JURISDICTION TO ENTER CERT.

I DID HAVE A WAY OF VIEWING IT THIS WEEKEND, THE ORDER OF DENYING CERT WAS ERROR AND YOU COULD VIEW IT THAT WAY AND GET INTO WHETHER A CERT, I'M NOT REALLY ADVOCATING ONE WAY OR THE OTHER BUT IF THE COURT DOES GET INTO DECIDING WHETHER CERT SHOULD BE GRANTED ALL THE

REASONS IN MANDICO, ALL THOSE REASONS APPLY.

IN ADDITION WITH THIS CASE, WE HAVE IN OUR INITIAL BRIEF WE HAD A FOOTNOTE EVEN THOUGH WE SAID WE DON'T WANT TO BURDEN THE COURT WITH ARGUMENTS WE DON'T THINK IT CAN ADDRESS, WE RAISED TWO VERY CLEAR SPECIFIC GROUNDS THE CERT CANNOT BE GROUNDED IN THIS CASE.

BUT FIRST OF ALL, IT'S NOT TIMELY ON THE LITIGATION PRIVILEGE ARGUMENT THAT THEY RAISED BECAUSE THERE WAS A RULING 405 DAYS BEFORE THEY FILED PETITION FOR CERT AND WHEN THE COMPLAINT WAS FILED THEY REARGUED THE SAME ISSUE AND YOU CAN'T GET A PETITION FOR CERT -- IT WAS DENIED BOTH TIMES ON BOTH GROUNDS.

SO YOU CAN'T -- THERE'S CASE LAW SAYING YOU CAN'T REIGNITE THE ABILITY TO FILE CERT.

IT HAD TO BE FILED WITHIN 30 DAYS.

THE OTHER ISSUE CERT CAN ONLY BE ESTABLISHED AND GRANTED WHEN IT'S CLEARLY ESTABLISHED AS WELL.

JUSTICE RECOGNIZED THIS IS NOT CLEARLY ESTABLISHED LAW.

WE HAVE VERY UNIQUE CASE ISSUES OF FIRST IMPRESSION REGARDING THE MEDIATION CONFIDENTIALITY ACT AND HOW IT APPLIES IN ALL OF THESE DIFFERENT KIND OF CATEGORIES.

PRETTY INTERESTING WHEN YOU GET INTO IT.

IT'S ULTIMATELY WHAT THE CASE IS ABOUT.

IT'S ABOUT ENFORCING CONFIDENTIALITY ACT.

>> COUNSEL, I'VE LET YOU GO OVER THE 5 MINUTES ABOUT HALF MINUTE SO YOU NEED TO SUM UP.

>> WELL, THAT IS MY SUMMARY.

THIS CASE WILL ULTIMATELY BE ABLE WHEN IT GOES TO GO THROUGH THE COURT.

AS CASE OF FIRST IMPRESSION HOW TO PROTECT THE IMPORTANCE OF THE

CONFIDENTIALITY PROVIDED BY  
MEDIATION CONFIDENTIAL ACT AND  
THAT IS IN THE CONTEXT, THAT ACT  
IS IN THE CONTEXT OF THE STATUTE  
OF PROVIDING, DEALING WITH  
LITIGATION, JUDICIARY CHAPTER,  
DEALING WITH ALTERNATIVES TO  
LITIGATION.

SO THAT ACT --

>> MAYBE YOU COULD -- MAYBE YOU  
COULD HAVE PROTECTED IT BY  
FILING SOMETHING FOR ANOTHER  
COURT THAT WAS ADJUDICATING THE  
FEE ISSUE.

>> YOU CAN FILE IN JURISDICTION.  
WE COULD FILE IN THAT COURT OR  
FILE IN THIS COURT.

WE ARE NOT TRYING TO LITIGATE  
THE ISSUES IN THAT COURT.

THAT'S A MISUNDERSTANDING AND  
ALSO AS COUNSEL NOTED IT WAS  
FILED LIKE WITHIN TWO MONTHS OF  
AFTER THIS ISSUE COMING UP, LONG  
BEFORE THE FEDERAL COURT ENTERED  
FOR RECOMMENDATION OR FINAL  
ORDER ON THE AMOUNT OF FEES.  
SO THEY WERE AWARE THAT IT WAS  
FILED TOO.

SO IT WAS ALREADY IN THE STATE  
COURT WHILE THAT WAS PENDING, SO  
THEY DIDN'T RAISE THAT IN THE  
FEDERAL COURT AT THE TIME  
EITHER.

THANK YOU, YOUR HONOR.

>> ALL RIGHT.

WE THANK ALL THREE OF YOU FOR  
YOUR ARGUMENTS IN THIS VERY  
INTERESTING CASE AND THE COURT  
WILL NOW STAND IN RECESS FOR  
ABOUT TEN MINUTES BEFORE WE TAKE  
UP THE NEXT CASE ON OUR DOCKET.