>> THE COURT WILL NOW PREPARE
FOR CONSIDERATION OF
THE SECOND CASE.
>> COURSE WILL NOW PROCEED TO
THE SECOND CASE, MARY SHEFFIELD
VERSUS R.J. REYNOLDS TOBACCO
COMPANY.
>> MAY IT PLEASE THE COURT,
DAVID SALES FOR THE PETITIONER
MARY SHEFFIELD.
THIS COURT SHOULD QUASH THE
DECISION OF THE DISTRICT COURT
FOR TWO INDEPENDENTLY SUFFICIENT
REASONS RELATING TO THE TEXT OF
THE STATUTORY AMENDMENT AND
QUESTION WHICH APPLIES ONLY TO
CAUSES OF ACTION, OCTOBER 1ST,
1999.
THE FIRST REASON IS MARY
SHEFFIELD IS FOLLOWING THE SAME
CAUSES OF ACTION PURSUED --
BECAUSE THEY ARE THE SAME CLASS
OF ACTION THEY COULD NOT HAVE
ARISEN AFTER THE EFFECTIVE DATE
OF THE EVENT WAS THE SECOND IS
THE SAME CAUSES OF ACTION AROSE
IN THE PLANE AND EARLY MEANING
OF THE TERM NO LATER THE 1994
WHEN MARY SHEFFIELD HAD THE
RIGHT TO SUE R.J. REYNOLDS FOR
SMOKING-RELATED LUNG CANCER.
AND DOUGLAS, WHEN CONSIDERING
THE CAUSES OF ACTION PURSUED BY
A PARTICULAR BE SITUATED
LITIGANTS ACTING AS HER LATE
HUSBAND'S PERSONAL
REPRESENTATIVE THIS COURT HELD
THAT SHE WAS PURSUING THE SAME
CAUSES OF ACTION AS THE SAME
DEFENDANT, A POINT THE COURT
ITALICIZED FOR EMPHASIS.
THE COURT ITS USE OF THE TERM
FITS PERFECTLY WHEN MEASURED
AGAINST THE SURVIVAL STATUTE
WHICH ALSO REFERS TO CAUSES THAT
SECTION 46.02 ONE OF THE FLORIDA
STATUTE STATES NO CAUSE OF
ACTION DIES WITH THE PERSONAL
CAUSES OF ACTION PROVIDING BY
STATUTE WHEN MISTER SHEFFIELD
DIED, CAUSES OF ACTION DO NOT
DIE WITH HIM IN THE STATUTE
COULD NOT BE ANY CLEARER ON THAT

POINT.
>> THAT IS REFERRING TO CAUSES OF ACTION RELATED TO THE DEATH.
76820, WHEN A PERSONAL INJURY RESULTS IN DEATH, NO ACTION FOR THE PERSONAL INJURY SHALL SURVIVE.
>> THAT IS THE KEY POINT.
IT DOESN'T REFER TO CAUSES OF ACTION, IN THE LAW, THE LAWSUIT AND CAUSE OF ACTION THAT IS BEING PURSUED.
IF YOU LOOK AT THE ENTIRETY OF THE TEXT, WHICH BOTH PARTIES SITE, YOU'LL SEE THE POINT, NO ACTION FOR THE PERSONAL INJURY SHALL SURVIVE NO SUCH ACTION SHALL ABATE AND THE COURT'S DECISION AND COMPONENT TELLS US IT DOES NOT MEAN EXTINGUISHED AS THE DEFENDANT SUGGESTS BUT RATHER PAUSE UNTIL THE REPRESENTATIVE TAKES ITS PLACE AND IF YOU READ THE ENTIRETY OF THE SECTION WHEN IT TALKS ABOUT WHAT HAPPENS WHEN THE DEFENDANT DIES IT CONFIRMS THE POINT BECAUSE THE STATUTE -- OF THE DEFENDANT DIES IS REPRESENTATIVE, QUOTE, SHALL BE MY DEFENDANT BEFORE OR AFTER THAT.
A DEAD PERSON IN THE LAW CANNOT PROSECUTE OR DEFEND THE LAWSUIT.
IN COURT WITH THE MOST COMMON USAGE THE MOST COMMON USAGE THE WAY LAWYERS AND JUDGES SHOULD SPEAK AND ACTION IS PURSUED AND IT GETS TRANSFORMED UPON THE DEATH OF THE INJURED PARTY.
THE CAUSES OF ACTION IF YOU READ THE STATUTES TO GATHER AS THE COURT EFFECTIVELY DID IS TO SAY THE STATUTE, THE SURVIVAL STATUTE PREVENTS THE CAUSE OF ACTION.
>> DON'T WE HAVE CASES RELATED TO WRONGFUL DEATH CAUSES OF ACTION.
>> A HIGH DEGREE OF IMPRECISION, WE HAVE CASES NOT JUST FROM THIS COURT BUT DISTRICT COURTS OF APPEAL AND ELSEWHERE THAT SPEAK OF CLAIMS AND CAUSES OF ACTION.

THE FLORIDA LEGISLATURE, IN
PLAIN TEXT, THE MOST IMPORTANT
STATUTE IS THE ONE UNDER
CONSIDERATION SPEAKING TO CAUSES
OF ACTION AND THE SURVIVAL
STATUTE WHICH SETS FORTH THE
INTERPLAY THE COURT HELD WITH
THE WRONGFUL DEATH ACT, USES THE
PHRASE CAUSES OF ACTION.
I WOULD SUBMIT THAT IS TRUE.
LAST YEAR THIS COURT DECIDED A
CASE CALLED BARNETT AND IN THAT
CASE TRAGICALLY THE COURT WILL
RECALL, THE SHOOTER SHOT KIDS.
AND THE CAUSE OF ACTION FOR THE
CLAIMS THAT AROSE IN THAT
INSTANCE.
THE COURT SAID THE CAUSE OF
ACTION BASED ON THE FAMILIAR
ELEMENTS OF DUTY, CAUSATION AND
DAMAGES.
HE DID NOT DISTINGUISH AS WE THE
DAMAGES THAT ARISE WHEN SOMEONE
LIVES OR SOMEONE DIES.
IF WE WERE TO ASK A LAW CLERK TO
SEARCH THE ENTIRETY OF FLORIDA
STATUTES AND FIND IS THE CASE
FOR THE ELEMENTS FOR A WRONGFUL
DEATH CAUSE OF ACTION, WE
WOULD BE HARD-PRESSED TO FIND
ANY SUCH CASE BECAUSE CAUSE OF
ACTION IN THE CORRECTLY USED
SENSE MEANS WHAT IS SUGGESTED BY
THE SURVIVAL STATUTE.
IF THE COURT DECIDES THIS IS
SUPPLEMENTAL OF 40 THE RECENT
DECISION, UNANIMOUS DECISION OF
THE UNITED STATES SUPREME COURT
BY JUSTICE THOMAS TO WHAT A
CAUSE OF ACTION IS IT DRIVES US
TO CONSIDER THE UNIVERSE OF
OPERATIVE FACTS, SOMETIMES WE
REFER TO THE SAME TRANSACTION
AND THAT PROVIDES CAUSE OF
ACTION.
>> ISN'T IT TRUE THAT AS LONG AS
I LIVE I HAVE A CAUSE OF ACTION
FOR MY WRONGFUL DEATH SOMEDAY IF
IT ULTIMATELY IS FOUND TRACEABLE
TO SOME INJURY I SUFFERED.
A LIMITING PRINCIPLE TO DEFINE
THE BOUNDS OF THE CAUSE OF
ACTION IS DEFINED BEFORE AND I
STRUGGLE TO DO SO.

>> THE BOUNDARIES OF IT AND
LIMITATIONS IMPOSED BY THE
STATUTE AND THE PRIOR DECISIONS.
INCLUDING MARTIN, LET ME GIVE AN
EXAMPLE IF I CAN.
IN WHICH MY CAR IS TOTALED AND I
SUFFERED AN INJURY.
THE CAUSE OF ACTION FOR PROPERTY
DAMAGE, WE DO NOT PROPERLY SAY
ALTHOUGH JUDGES AND LAWYERS USE
THIS LOOSELY.
WE HAVE A NEW CAUSE OF ACTION IF
MY INJURIES LEAD TO DEATH.
IT IS THE SAME CAUSE OF ACTION,
FOR NEGLIGENCE.
THINK ABOUT THE PRIOR DECISIONS,
THE COURT HELD AND IT WAS
CORRECT, THERE'S SOMETHING
DIFFERENT ABOUT PUNITIVE
DAMAGES, IT IS SIMILAR TO THE
PROPERTY DAMAGE BECAUSE IT
DEFAULTS TO THE ESTATE
UNAFFECTED BY THE DEATH OF THE
DECEASED.
THAT IS WHAT THIS COURT HAS
HELD.
THIS COURT CANNOT AFFIRM, CANNOT
UPHOLD THE DECISION OF THE
DISTRICT WITHOUT EFFECTIVELY
RECEDING FROM THAT IMPORTANT
PART OF MARTIN AND UNITED
SECURITY TO REMIND THE COURT,
MARTIN WAS CORRECTLY DECIDED AND
RELIED ON THAT IN THE CAPONE
CASE.
THESE CAUSES OF ACTION THAT WERE
IDENTIFIED BY THE FIFTH DISTRICT
EFFECTIVELY ARE NOT SEPARATE
CAUSES OF ACTION AS WELL BUT
EVEN IF IT WERE THE CASE THEN
THOSE TERMS ARE LOOSELY REFERRED
TO INFREQUENTLY LOOSELY REFERRED
TO AS SYNONYMOUS BY COURTS AND
JUDGES.
THE KEY FACTS, 46.02 ONE AND THE
STATUTE SAYS THE COURSE OF
ACTION DOESN'T 5.
768.20 SAYS THIS ACTION --
>> LET ME ASK WHAT WE ARE
TALKING ABOUT, A WRONGFUL DEATH
ACTION BY YOUR CLIENT.
COULD THE LEGISLATURE HAVE MADE
AN AMENDMENT THAT SAID NO
PUNITIVE DAMAGES WILL BE AWARDED

FOR ANY WRONGFUL DEATH ACTIONS
ARISING AFTER OCTOBER 1ST, 1999,
CODE THEY HAVE AN ACTIVE STATUTE
THAT SAID THAT?
COULD THEY HAVE SAID THAT THERE
WOULD BE NO PUNITIVE DAMAGES
AWARDED FOR ANY CAUSE OF ACTION
ARISING AFTER THAT DATE OR FOR
ANY WRONGFUL DEATH ACTION
ARISING AFTER OCTOBER 1ST, 1999?
>> WRONGFUL DEATH ACTION AND NOT
CAUSE OF ACTION.
>> THE SHORT ANSWER IS THE
LEGISLATURE COULD DO THAT
CONSTITUTIONALLY, THE DISTRICT
COURTS, I WILL CONCEDE WE FOLLOW
THE LEAD OF THE DCA.
THERE IS NO IMPEDIMENT TO DOING
THAT BUT WE ARE NOT ARGUING
THAT.
>> HYPOTHETICALLY THEY COULD
HAVE DONE THAT.
HAD THEY DONE THAT, HOW WOULD
THAT HAVE APPLIED HERE?
>> IF THE LEGISLATURE HAD SAID
WE ABOLISH YOUR ABILITY TO
PURSUE PUNITIVE DAMAGES
EFFECTIVELY.
>> FOR ANY WRONGFUL DEATH ACTION
AFTER OCTOBER 1ST, 1999, THERE
SHALL BE NO PUNITIVE DAMAGES,
HOW WOULD THAT STATUTE HAVE
APPLIED TO THE FACTS OF THIS
CASE?
>> THE RESULTS WOULD BE THE SAME
AND THAT IS THE SECOND POINT I
WANT TO DISCUSS WITH THE COURT
TODAY, THE TERM ARISING APPEARS
WITH THE STATUTE AND NOT
ACCRUING.
IF YOU TRACE THE DISTRICT COURT
DECISION THAT IT ALWAYS MEANS
THE SAME THING IT IS THE
BORROWING STATUTE SECTION 95.0
ONE WHICH HAS A BOARD IN IT THAT
THE DISTRICT CONSIDERED WHERE IT
HELD THE TERMS WERE SYNONYMOUS
BUT THIS COURT QUASHED THE THIRD
DISTRICT ON THAT PRECISE POINT
AND IN FACT THE THIRD DISTRICT
IF YOU LOOK AT JUDGE SCHWARTZ'S
DISSENT, WAS ON THE PRECISE
QUESTION, THE DEFENSE SUGGESTED
THIS IS SOME SORT OF POWERFUL

READ.
>> NOT SURE I AM FOLLOWING YOUR ANSWER TO MY QUESTION.
>> THE PLAINTIFF SHOULD STILL WIN IN THIS CASE BECAUSE THE CAUSE OF ACTION AROSE BEFORE 1999.
>> PERTAINING TO WRONGFUL DEATH ACTION SPECIFICALLY IN THE STATUTE UNDER MY HYPOTHETICAL BECAUSE OUR CAUSE OF ACTION AROSE PRIOR TO 1999.
THAT IS THE POINT ABOUT THIS COURT QUASHING THE THIRD DISTRICT DECISION WHICH THE STATUTE DOES USE THE WORD AROSE.
IF YOU APPLY THE REASONING OF THE TENTH DISTRICT TO THIS COURT'S DECISION WHERE THE COURT FOUND ALL THREE IS BEST US CLAIMANTS CASES AROSE FOR PURPOSES OF BORROWING STATUTE WHICH THE CAUSE OF ACTION BEFORE THE CAUSES OF ACTION ACTUALLY ACCRUE THE RESULTS IN THOSE CASES WERE WRONG AND THE REASONING OF THE COURT IS WRONG BECAUSE AS WE POINT OUT IN OUR BRIEF THE CAUSE OF ACTION CAN ARISE.
>> WHEN THEY AROSE, WHERE THEY AROSE AND THE CONNECTIONS WITH THE STATE WHERE THEY AROSE.
>> YES AND NO I WOULD SAY TO YOU AND HERE IS THE REASON WHY.
THOSE CASES INVOLVED TO ASBESTOS, IT IS TRUE THAT IN ANALYZING THE WHERE,
IT WAS IMPORTANT TO KNOW WHERE THAT OCCURRED.
BUT THE THIRD DISTRICT WASN'T RELYING ON IT FOR THAT PURPOSE,
AND THE FIFTH DISTRICT IN THIS CASE IS INVOLVED IN A CASE WHERE IT'S RELYING ON THE THIRD DISTRICT'S REASONING IN A STATE WHERE-- IN A CASE WHERE IT'S THE POINT IN TIME THAT MATTERS, NOT THE PLACE THAT THE CAUSE OF ACTION AROSE.
SO, YES, BOTH OF THOSE THINGS CAN BE TRUE.
BUT IF YOU TAKE, LET'S TAKE, FOR EXAMPLE--

>> IT'S HARD FOR ME TO
UNDERSTAND WHY A CAUSE OF ACTION
FOR WRONGFUL DEATH COULD ARISE
BEFORE THERE IS A DEATH.
HOW IS THAT POSSIBLE?
>> BECAUSE OF THE ORDINARY AND
COMMON DEFINITION OF THE WORD
"ARISE," WHICH MEANS WE ARE TO
LOOK TO THE ORIGIN OR TO THE
SOURCE OF THE CLAIM.
AND I WOULD ADJUST FOR THE
MOMENT, WE DON'T CONCEDE-- IN
FACT, WE HEAVILY DISPUTE-- THAT
BECAUSE OF THE OPERATION OF THE
SURVIVAL STATUTE THE CAUSE OF
ACTION WRIT LARGE IS THE SAME
CAUSE OF ACTION AS WAS PURSUED
ON BEHALF OF MR. SHEFFIELD BY
THE CLASS.
AND WHAT THE DISTRICT COURT DID
WAS IT SUBSTITUTED EFFECTIVELY
THE WORD "ACCRUE."
ACCRUE HAS A PARTICULAR
SIGNIFICANCE, MOST PURPOSEFULLY
REFERRING TO THE POINT IN TIME
AT WHICH A PERIOD, A STATUTE OF
LIMITATIONS BEGINS TO RUN.
WE'RE NOT HERE ON A CASE WHERE
THERE'S AN ISSUE OF LIMITATIONS,
AND IT WAS WRONG FOR THE THIRD
DISTRICT IN MEHAN TO CONCLUDE
THAT ARISE MEANS THE SAME THING
AS ACCRUE.
>> COUNSEL, IF WE LOOKED AT THE
WHOLE-- IF WE LOOK AT THE WHOLE
BODY OF THE LAW, ISN'T IT GOING
TO BE TRUE THAT MOST CASES WHERE
THERE IS A REFERENCE TO WHEN A
CAUSE OF ACTION AROSE WILL BE TO
WHEN THE CAUSE OF ACTION
ACCRUED, THEY'RE ESSENTIALLY
SYNONYMOUS?
>> SURE.
>> AGAIN, JUST LOOK AT THE WHOLE
BODY OF THE LAW AND LOOK FOR
THAT PHRASE, ISN'T THAT GOING TO
BE THE CASE?
>> SURE.
AN OBVIOUS--
>> I MEAN, I THINK EVEN YOUR
BRIEFS YOU DON'T REALLY DISPUTE
THAT.
>> SURE.
CAR WRECK, BROKEN LEG, ARISE AND

ACCRUE.
BUT AS THE COURT RECENTLY DISCUSSED IN THE NEW LIFE CASES, THERE'S A NON-TRIVIAL NUMBER OF CASES FOR WHICH THERE IS DELAYED DISCOVERY SOME OF WHICH, TWO OF WHICH, BY THE WAY, HAPPEN TO BE CAUSES OF ACTION PURSUED BY THE PLAINTIFF IN THIS CASE.
ONE IS PRODUCT DEFECT CASES AND ONE IS FRAUD CASES.
AND WHAT THE COURT SAID WAS-- WHICH THE STATUTES PROVIDE FOR-- IS THERE IS DELAYED DISCOVERY FOR ACCRUAL PURPOSES WHEN WE'RE TALKING ABOUT LIMITATIONS.
THAT IS TO SAY IT IS UNDENIABLE THAT A CAUSE OF ACTION FOR PRODUCT DEFECT-- MEHAN IS A PERFECT EXAMPLE-- CAN ARISE BEFORE IT ACCRUES.
IF THAT WERE NOT SO, THE DECISIONS WOULD NOT MAKE ANY SENSE.
OTHER EXAMPLES WERE CAUSES OF ACTION-- OR WHICH THE STATUTE OF REPOSE APPLIES.
STATUTES WILL EXTINGUISH A CLAIM WHEN IT COMES INTO EXISTENCE EVEN IF A CAUSE OF ACTION HAS NOT ACCRUED FOR, HAS NOT ACCRUED FOR PURPOSES OF THE STATUTE OF LIMITATION THINGS.
>> COUNSEL, I HAVE PUSHED YOU OVER INTO REBUTTAL TIME.
I'M GOING TO GIVE YOU AN EXTRA MINUTE OF REBUT ALSO YOU CAN CONTINUE OR RESERVE.
>> I'LL RESERVE THE REMAINDER FOR --
>> I'M SORRY, COUNSEL, CAN I ASK YOU ONE QUESTION?
>> YES.
>> SO IF WE'RE GOING TO KIND OF TRY TO PUSH ASIDE, YOU KNOW, THE LANGUAGE IN OUR CASE LAW THAT MAY OR MAY NOT HAVE BEEN SORT OF THOUGHT OUT IN RELATION TO CAUSE OF ACTION VERSUS ACTION, WHATEVER, AND WE'RE GOING TO REALLY FOCUS JUST ON THE TEXT, HOW DO I-- HOW DO YOU EVEN GET PUNITIVE DAMAGES ONCE THE ACTION

BECOMES A WRONGFUL DEATH ACTION
IF I'M JUST LOOKING AT THE
DAMAGES THAT ARE ALLOWED TO BE
RECOVERED AND IT SAYS THAT THE,
YOU KNOW, THAT THE ESTATE CAN
GET THE DAMAGES CAUSED BY THE
INJURY RESULTING IN DEATH AND
THE STATUTE SORT OF HAS THIS
WHAT APPEARS TO BE A
COMPREHENSIVE LISTING OF THE
AVAILABLE DAMAGES, WHY ARE
PUNITIVE DAMAGES NOT JUST
COMPLETELY OFF THE TABLE ANYWAY?
>> WELL, I THINK THE SHORT
ANSWER TO THAT IS BECAUSE THIS
COURT HAS HELD THAT A DEATH
FOLLOWING AN INJURY, IF THE
ORIGINAL CONDUCT YOU HAVE WOULD
HAVE SUPPORTED A CAUSE OF
ACTION-- A CLAIM, I'LL CALL
IT-- FOR PUNITIVE DAMAGE, THAT
DOES NOT DIE WITH THE PERSON.
THE COURT'S EXPRESSLY HELD THAT
IN TWO CASES.
>> BUT IN THE FIRST ONE, IT
SEEMED LIKE IT WAS POTENTIALLY
TEXTUAL, BUT ONCE THE NEW
STATUTE CAME INTO EFFECT, THE
DECISION DIDN'T SEEM TO ME TO BE
BASED ON THE TEXT AT ALL, AND IT
WAS JUST A SORT OF WE AGREE WITH
THE, QUOTE-UNQUOTE, PUBLIC
POLICY RATIONALE--
>> I DISAGREE WITH THAT.
AND IT'S IMPORTANT TO NOTE GOING
BACK TO WHAT I SAID A FEW
MOMENTS AGO THAT THE SURVIVAL
STATUTE WAS ACTUALLY AMENDED AT
SOME POINT IN THE 1960s TO
CHANGE WHAT EXISTED PREVIOUSLY
WHERE THE DEFENSE MIGHT HAVE A
BETTER ARGUMENT TO SAY THAT NO
ACTION SHALL SURVIVE.
AND NOW IT SAYS NO CAUSE OF
ACTION.
AND I DISAGREE WITH YOUR HONOR
THAT IT WAS JUST POLICY THAT
DROVE THE DECISIONS IN THOSE
CASES.
TRUE, THE COURT SAID WHAT IT
SAID ABOUT IT NOT MAKING ANY
SENSE, BUT I'VE ALREADY CONCEDED
AND WE'RE CONCEDING BEFORE THIS
COURT THAT THE LEGISLATURE COULD

DO THAT IF IT CHOSE TO.
IT COULD SAY THAT WRONGFUL DEATH CLAIMS DON'T AVAIL THEMSELVES TO PUNITIVE DAMAGES.
BUT NO ONE IN THIS CASE IS MAKING THAT SUGGESTION.
AND JUST BEFORE--
>> I'M SORRY.
I'VE TAKEN UP--
>> THAT'S ALL RIGHT.
I WOULD DISAGREE ALSO THAT ANYONE IS PUSHING ASIDE THESE REFERENCES TO WRONGFUL DEATH CAUSES OF ACTION.
THEY'RE RELYING ON THE SETTLED MEANING CANON.
AND I WOULD JUST ASK WHERE IS THE CASE WHERE THIS COURT DECIDED FOR PURPOSES OF AN ISSUE SIMILAR TO THIS CASE, WHERE IS THE DECISION THAT THERE IS A COMMON LAW OF THE MEANING OF THE WORD "ACCRUE."
ARISE, EXCUSE ME.
WHERE IS THE CASE THAT HAS CONSTRUED, WHERE THIS COURT HAS CONSTRUED THE MEANING OF THE WORD "ARISE"?
THE ONLY CASE ARE THE LUMBERMEN'S CASE AND THE MEHAN CASE.
WHEN THE QUESTION ACTUALLY AROSE, THIS COURT QUASHED THOSE DECISIONS, AND I WOULD LIKE TO RESERVE THE REMAINDER OF MY TIME, WHATEVER IT IS.
[LAUGHTER]
>> YOU'LL GET FIVE MINUTES, COUNSEL.
ALL RIGHT.
COUNSEL?
>> MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, THE 1999 AMENDMENTS APPLY TO ALL CAUSES OF ACTION ARISING AFTER OCTOBER 1, 1999.
HERE IT'S CLEAR THAT MRS. SHEFFIELD'S WRONGFUL DEATH CAUSE OF ACTION AROSE IN 2007 WHEN HER HUSBAND DIED FOR THREE BASIC REASONS.
FIRST, IN PLAIN ENGLISH, THE WRONGFUL CAUSE OF ACTION DOESN'T ARISE UNTIL THE PERSON DIES.

AS THIS COURT HELD IN BARNETT
JUST LAST YEAR, ARISE MEANS TO
BEGIN TO OCCUR OR TO EXIST OR TO
COME INTO BEING.
AND UNDER THAT DEFINITION, CAUSE
OF ACTION DOESN'T ARISE UNTIL IT
IS BROUGHT; THAT IS, UNTIL ITS
LAST ELEMENT ACCRUES.
HERE, THAT'S WHEN MR. SHEFFIELD
DIED.
SECOND, MRS. SHEFFIELD'S
PROVISION REWRITES THE STATUTE
TO APPLY ONLY WHERE CONDUCT
ARISES AFTER THE--
[INAUDIBLE]
BUT THAT'S NOT WHAT THE STATUTE
SAYS.
THE WORD ARISE MODIFIES CAUSE OF
ACTION, NOT--
[INAUDIBLE]
SO IT APPLIES WHENEVER THE CAUSE
OF ACTION ARRIVES AFTER--
[INAUDIBLE]
AND THIRD, OUR POSITION MAKES
PERFECT SENSE.
ANY EFFECTIVE DATE PROVISION
MEANS THE STATUTE APPLIES TO
SOME CASES AND NOT OTHERS.
HERE MRS. SHEFFIELD'S WILL BE
FULLY COMPENSATED FOR HER
INJURY, BUT THE LEGISLATURE
CONCLUDED THAT SUCCESSIVE
PUNISHMENTS WERE BAD POLICY.
SO IT IMPLEMENTED THAT POLICY TO
THE MAXIMUM EXTENT POSSIBLE
WITHOUT RAISING RETROACTIVITY
CONCERNS BY APPLYING IT TO ALL
CAUSES OF ACTION THAT ARISE
AFTER THE EFFECTIVE DATE.
I THINK THIS CASE IS A PERFECT
ILLUSTRATION OF THAT POLICY
CHOICE.
REYNOLDS HAS ALREADY PAID ALMOST
$500 MILLION IN PUNITIVE DAMAGES
IN JUST 65 CASES ALONE.
THE LEGISLATURE RIGHTLY
DETERMINED THAT THAT WAS MORE
THAN SUFFICIENT TO SATISFY ITS
INTERESTS IN PUNISHMENT.
BUT I WAS SURPRISED TO HEAR MY
FRIEND MR.SALES RELY ON THE
BARNETT CASE, BECAUSE BARNETT
SPECIFICALLY ADDRESSES WHEN A
CAUSE OF ACTION ARISES.

AND HERE'S WHAT IT SAYS, AND I'M QUOTING IT: ARISE IS DEFINED AS TO BEGIN TO OCCUR OR TO EXIST OR TO COME INTO BEING.
BECAUSE THE CLAIM DOES NOT COME INTO BEING OR BEGIN TO EXIST UNTIL THE LAST ELEMENT ACCRUE, THE TEXT IS MOST REASONABLY READ AS INCLUDING THE INCIDENT OR OCCURRENCE THAT CAUSED THE LAST ELEMENT IN THE CAUSE OF ACTION TO ACCRUE.
>> WHAT DO YOU MAKE OF THIS DISTINCTION BETWEEN A CAUSE OF ACTION AND AN ACTION?
>> YOUR HONOR, I THINK THERE'S NO DISTINCTION BECAUSE THIS COURT HAS REPEATEDLY MADE CLEAR THAT THE WRONGFUL DEATH ACT CREATES A SEPARATE AND DISTINCT CAUSE OF ACTION.
THE WRONGFUL DEATH ACT ITSELF SAYS THAT WHEN A PERSONAL INJURY RESULTS IN DEATH, NO ACTION FOR THE PERSONAL INJURY SHALL SURVIVE, BUT THERE ARE LEGIONS OF CASES FROM THIS COURT THAT EXPLAIN WHAT THAT STATUTE MEANS. AND I'LL POINT YOU TO TOMBS.
WHAT IT SAYS IS THAT A WRONGFUL CAUSE OF ACTION, AND HERE I'M QUOTING, AN ENTIRELY NEW CAUSE OF ACTION AND AN ENTIRELY NEW RIGHT FOR THE-- SUFFERED BY THEM, THAT IS THE SURVIVORS-- [INAUDIBLE]
SO IT IS QUITE CLEAR THAT A WRONGFUL DEATH CAUSE OF ACTION IS SEPARATE FROM THE PERSONAL INJURY CAUSE OF ACTION--
>> WELL, COUNSEL, LET ME, LET ME ASK YOU THIS.
I MEAN, I'M FOLLOWING ALL YOU'RE SAYING, BUT ISN'T THE REALITY HERE A LITTLE COMPLICATED BECAUSE WE'VE SAID THAT ABOUT THE WRONGFUL DEATH ACT AND CLAIMS UNDER THE WRONGFUL DEATH ACT.
BUT THERE IS THIS UNDERLYING REALITY THAT THE CLAIMS THAT ARE MADE THERE ARE DERIVATIVE OF CLAIMS THAT THE DECEDENT HAD.
AND ISN'T IT TRUE, FOR INSTANCE,

THAT IF THE DECEDENT HAD A CLAIM
THAT COULD BE ULTIMATELY BE
BROUGHT AS A WRONGFUL DEATH
CLAIM, BUT DURING THE DECEDENT'S
LIFETIME THE DECEDENT FAILS TO
TIMELY BRING HIS OWN CLAIM, THEN
IT'S GONE.
IS THAT, IS THAT ACCURATE?
>> YES, YOUR HONOR.
AND THAT SIMPLY REFLECTS THE
FACT THAT UNDER THE WRONGFUL
DEATH ACT ONE ELEMENT OF A
WRONGFUL DEATH CAUSE OF ACTION
IS THAT THE DECEDENT COULD HAVE
SUCCESSFULLY SUED FOR PERSONAL
INJURY HAD HE LIVED.
AND THAT ONE ELEMENT WOULD FAIL
FOR THE REASONS YOUR HONOR
IDENTIFIED.
BUT NONE OF THAT CHANGES THE
FACT THAT THE WRONGFUL DEATH
CAUSE OF ACTION STILL, AS THIS
COURT PUT IT IN TOMBS AND MANY
OTHER CASES, AN ENTIRELY NEW
CAUSE OF ACTION AND AN ENTIRELY
NEW RIGHT.
AND HERE THAT CAUSE OF ACTION
DIDN'T ARISE UNTIL MR.SHEFFIELD
DIED.
I'D LIKE TO POINT OUT THAT EVEN
IF YOU LOOK AT MRS.SHEFFIELD'S
NON-FLORIDA CASES ON THE
ARISE/ACCRUE DISTINCTION, THEY
LEAD TO THE SAME RESULT.
I'M NOT AT ALL SURE THOSE CASES
ARE CONSISTENT WITH BARNETT, BUT
I'M QUITE SURE THAT THEY'RE NOT
INCONSISTENT IN A WAY THAT
MATTERS TO THIS CASE.
BECAUSE WHAT THOSE CASES SAY--
AND THEY ALL INVOLVE THE DELAYED
DISCOVERY-- WHAT THEY SAY IS
THAT A CAUSE OF ACTION ARISES
THE MOMENT IT'S SUBSTANTIVE
ELEMENTS SPRING INTO EXISTENCE
EVEN IF IT MIGHT NOT ACCRUE
UNTIL A LATER POINT MANY TIME
WHEN THE PLAINTIFF DISCOVERS
THOSE ELEMENTS THROUGH THE
EXERCISE OF REASONABLE DUE
DILIGENCE.
SO, FOR EXAMPLE, THE NEW
HAMPSHIRE SUPREME COURT THAT
THEY RELIED ON, HERE'S WHAT IT

SAYS.
QUOTE: THE CAUSE OF ACTION, THEREFORE, ARISES ONCE ALL THE NECESSARY ELEMENTS ARE PRESENT.
AND IT THEN CONTINUES: WHILE THE ACTION MAY NOT ACCRUE UNTIL THE PLAINTIFF SHOULD REASONABLY KNOW OF THE DAMAGE, IT HAS ARISEN.
WELL, IF YOU APPLY THAT STANDARD TO A WRONGFUL DEATH CAUSE OF ACTION, IT IS QUITE CLEAR THAT IT DOESN'T ARISE UNTIL THE PERSON DIES SINCE DEATH, AFTER ALL, IS AN ESSENTIAL ELEMENT OF A WRONGFUL DEATH CAUSE OF ACTION.
>> SHOULD THERE BE, SHOULD WE, SHOULD WE TRY TO SEE, THOUGH, IF THERE'S A DISTINCTION BETWEEN THE SURVIVORS' CLAIMS AND THE ESTATE'S CLAIMS?
IN TERMS OF, YOU KNOW, IT SEEMS LIKE SOME OF THE LANGUAGE IN OUR CASES TALKS ABOUT HOW, YOU KNOW, THE SURVIVORS' CLAIMS ARE THE ONES THAT REALLY ARE THE WRONGFUL DEATH CLAIM, AND THE ESTATE'S CLAIMS ARE REALLY JUST A CONTINUATION OF WHATEVER THE DECEDENT HAD BEFORE HE DIED.
I'M NOT SAYING THAT'S RIGHT, BUT I'M CURIOUS WHAT YOU THINK ABOUT THAT.
>> WELL, NO, YOUR HONOR.
FIRST OF ALL, YOU ONLY HAVE A SURVIVAL CLAIM IF INJURY DOESN'T RESULT IN DEATH.
IF THE PERSONAL INJURY DOES RESULT IN DEATH, THEN THE SURVIVAL CLAIM GONE, AND WHAT YOU HAVE LEFT IS A WRONGFUL DEATH CLAIM.
AND I THINK THAT'S WHY-- AND I'M RECALLING THAT DURING THE EARLY STAGES OF THIS LITIGATION THERE WAS ACTUALLY BOTH A SURVIVAL CLAIM AND A WRONGFUL DEATH CLAIM IN THIS CASE, BUT THAT THE PARTIES STIPULATED THAT SMOKING IS WHAT CAUSED MR.SHEFFIELD'S DEATH AND, THEREFORE, THE ONLY CAUSE OF ACTION THAT WENT TO THE JURY WAS THE WRONGFUL DEATH CAUSE OF

ACTION.
NO SURVIVAL CLAIM.
NO SURVIVAL CAUSE OF ACTION WAS SUBMITTED TO THE JURY.
SO THE ONLY CAUSE OF ACTION THAT'S AT ISSUE IN THIS CASE IS A WRONGFUL DEATH CAUSE OF ACTION.
SO THE ONLY QUESTION THEN IS WHEN DID THAT WRONGFUL DEATH CAUSE OF ACTION ARISE.
AND IT WASN'T UNTIL MR.SHEFFIELD DIED IN 2007.
LOOK, THE LEGISLATURE COULD EASILY HAVE WRITTEN THIS STATUTE IN THE WAY THAT MRS.SHEFFIELD WANTS.
THE TYPICAL STATUTE OF REPOSE ISN'T TIED TO WHEN THE CAUSE OF ACTION ARISES, IT'S TIED TO WHEN AN UNDERLYING EVENT OCCURS.
THE COURT SPECIFICALLY EXPLAINED THAT DISTINCTION WHERE IT SAID-- THIS WAS A 1992 DECISION CITING A DCA DECISION THAT A STATUTE OF LIMITATION RUNS FROM THE DATE THE CAUSE OF ACTION ARISES; THAT IS, THE DATE ON WHICH THE FINAL ELEMENT ESSENTIAL TO ITS EXISTENCE OCCURS.
IT THEN SPECIFICALLY DISTINGUISHED THAT FROM A STATUTE OF REPOSE WHICH IT SAID, QUOTE: COMMENCES FROM THE DATE OF AN EVENT SPECIFIED IN STATUTE SUCH AS THE DELIVERY OF GOODS CLOSING ON A REAL ESTATE TRANSACTION OR THE PERFORMANCE OF A SURGICAL OPTION.
THEY EASILY COULD HAVE WRITTEN THE STATUTE USING THE LANGUAGE OF A STATUTE OF REPOSE THAT SAID IT APPLIES WHENEVER THE INITIAL INJURY--
[INAUDIBLE]
BUT THAT'S NOT WHAT THEY SAID.
THEY SAID IT APPLIES WHENEVER THE CAUSE OF ACTION--
[INAUDIBLE]
AND TO PUT IT SIMPLY, A WRONGFUL DEATH CAUSE OF ACTION DOESN'T ARISE UNTIL THE PERSON DIES.
I'D LIKE TO ADDRESS, YOU KNOW,

I'M HAPPY TO ANSWER ANY
QUESTIONS YOUR HONORS HAVE, BUT
I WOULD LIKE TO ADDRESS
MR.SALES' ARGUMENT ABOUT THE
LUMBERMEN'S AND MEHAN CASES.
AND I THINK, CHIEF JUSTICE
CANADY, YOU ARE ABSOLUTELY
RIGHT.
ALL THOSE CASES SAY IS THAT IN
INTERPRETING FLORIDA'S BORROWING
STATUTE, THE BORROWING STATUTE
INCORPORATES BASIC COMMON LAW
CHOICE OF LAW RULES.
BUT THOSE CHOICE OF LAW RULES
ARE UTTERLY IRRELEVANT TO THE
DETERMINE NEIGH OF WHEN CAUSE OF
ACTION ARISES.
THAT, RATHER, IS GOVERNED BY THE
PLAIN LANGUAGE OF THE STATUTE AS
THIS COURT EXPLAINED IN BARNETT,
AND IT DOESN'T ARISE UNTIL THE
CAUSE OF ACTION CAN BE BROUGHT.
I CAN ILLUSTRATE THE POINT BY
USING THE LUMBERMEN'S FACT
PATTERN AS AN EXAMPLE.
YOU MAY RECALL THAT IN THE
LUMBER MEN YOU HAD AN INSURANCE
CONTRACT THAT WAS ENTERED INTO
IN MASSACHUSETTS IN, I THINK,
ROUGHLY AROUND 1970.
AND THEN YOU HAD A CAR ACCIDENT
THAT OCCURRED IN FLORIDA IN
ROUGHLY 1980.
AND THERE WAS AN INSURANCE
COVERAGE DISPUTE BETWEEN THE
PARTIES.
WHAT THIS COURT HELD IN
LUMBERMEN WAS THAT THE LAW
GOVERNING THE CONTRACT WAS THE
MASSACHUSETTS LAW BECAUSE THAT
WAS THE PLACE WHERE THE CONTRACT
WAS ENTERED INTO.
BUT I WOULD SUBMIT THAT NOBODY
WOULD SAY THAT THE INCURRED
INSURANCE COVERAGE DISPUTE AROSE
IN 1970, TEN YEARS BEFORE THE
ACCIDENT TO OCCURRED.
THAT'S JUST NOT HOW PEOPLE TALK.
JUST LIKE NOBODY WOULD SAY THAT
A WRONGFUL DEATH CAUSE OF ACTION
AROSE TEN YEARS BEFORE THE
PERSON DIED.
THAT'S JUST NOT HOW PEOPLE TALK.
>> COULD YOU ADDRESS THE

RELATION BACK THEORY ON AN AMENDED COMPLAINT SO THAT IT WOULD RELATE BACK TO AN EARLIER DATE?
>> SURE, YOUR HONOR, I'D BE HAPPY TO ADDRESS THAT.
AND I THINK THAT THE RELATION BACK DOCTRINE IS SIMPLY IRRELEVANT TO THIS CASE FOR MULTIPLE REASONS.
FIRST OF ALL, THE RELATION BACK DOCTRINE APPLIES WHEN YOU AMEND A COMPLAINT TO ADD A NEW CAUSE OF ACTION.
HERE MRS.SHEFFIELD'S FIRST INDIVIDUAL COMPLAINT ALREADY INCLUDED THE WRONGFUL DEATH CAUSE OF ACTION BECAUSE IT WAS FILED AFTER HER HUSBAND DIED.
PUT THAT ENTIRELY TO THE SIDE.
EVEN IF YOU THINK THAT THE RELATION BACK DOCTRINE ISN'T GONE FOR THAT REASON ALONE, ALL THE RELATION BACK DOCTRINE SAYS IS THAT A NEW CAUSE OF ACTION IS TIMELY IF IT RELATES BACK TO AN OLD CAUSE OF ACTION.
BUT IT DOESN'T CHANGE WHEN THE NEW CAUSE OF ACTION ARISES.
AND HERE THE NEW CAUSE OF ACTION DIDN'T A ARISE UNTIL MR.SHEFFIELD DIED IN 2007.
AND FINALLY, YOUR HONOR, THE RELATION BACK DOCTRINE THE IS A PROCEDURAL RULE.
SO IT DOESN'T CHANGE THE SUBSTANTIVE LAW THAT APPLIES, IT SIMPLY MAKES A NEW CAUSE OF ACTION TIMELY IN CERTAIN CIRCUMSTANCES.
WELL, HERE THE SUBSTANTIVE LAW THAT WAS IN EFFECT AT THE TIME THAT MR.SHEFFIELD DIED WAS THE 1999 AMENDMENT SINCE, AFTER ALL, THEY WENT INTO EFFECT SOME EIGHT YEARS AFTER MR.SHEFFIELD DIED.
SO I THINK FOR ALL THOSE REASONS, THE RELATION BACK DOCTRINE IS IRRELEVANT, AND THAT MAY BE WHY MY FRIEND, MR.SALES, DIDN'T INVOKE THEM, THAT DOCTRINE, IN HIS AFFIRMATIVE ARGUMENT.
I'D ALSO LIKE TO ADDRESS THE

MARTINS AND CAPONE CASES THAT MY FRIEND RELIED UPON.
ALL THOSE CASES DO IS EXPLAIN THAT THE WRONGFUL DEATH ACT ELIMINATED THE CAUSE OF ACTION THAT USED TO BE ABLE TO BE BROUGHT UNDER THE OLD SURVIVAL STATUTE AND INCORPORATED IT INTO A NEW WRONGFUL DEATH CAUSE OF DEATH ACTION.
SO NOW WHAT YOU HAVE IS A WRONGFUL DEATH CAUSE OF ACTION INSTEAD OF TWO OVERLAPPING CAUSES OF ACTION.
BUT WHAT EMERGED FROM THAT LEGISLATIVE PROCESS WAS A SEPARATE AND INDEPENDENT WRONGFUL DEATH CAUSE OF ACTION.
AS THIS COURT PUT IT IN TOMBS, AN ENTIRELY NEW CAUSE OF ACTION.
SO AGAIN, THE QUESTION IS WHEN DID THAT ENTIRELY NEW CAUSE OF ACTION ARISE, AND IT WASN'T UNTIL MR.SHEFFIELD DIED IN 2007.
MR.SALES DIDN'T RAISE THE RETROACTIVITY ISSUE, BUT I WOULD LIKE TO ADDRESS THE RETROACTIVITY ISSUE.
OUR POSITION DOES NOT RESULT IN A RETROACTIVE APPLICATION OF THE LAW.
AND EVEN IF IT DID, IT WOULDN'T MATTER.
IT DOESN'T INVOLVE A RETROACTIVE APPLICATION OF THE LAW BECAUSE IT APPLIES ONLY TO CAUSES OF ACTION THAT ARISE OR ACCRUE AFTER OF THE EFFECTIVE DATE.
NOBODY HAS A VESTED RIGHT IN A CAUSE OF ACTION, THAT IS A CAUSE OF ACTION THAT HAS NOT YET ACCRUED.
SO APPLYING A STATUTE TO CAUSES OF ACTION THAT ACCRUE AFTER THE EFFECTIVE DATE IS PRECISELY HOW YOU AVOID MAKING YOUR STATUTE RETROACTIVE.
BUT SECONDLY, EVEN IF SOMEHOW YOU THOUGHT THAT OUR POSITION WAS RETROACTIVE WHEN IT'S CLEARLY NOT, IT WASN'T MATTER.
BECAUSE IN GORDON AGAINST STATE, THIS COURT MADE QUITE CLEAR THAT

PUNITIVE DAMAGES ARE SUBJECT TO
THE LEGISLATURE'S--
[INAUDIBLE]
THEY CAN COMPLETELY ELIMINATE
THEM IF THEY WANT TO AS LONG AS
THEY'RE NOT DISRUPTING A FINAL
JUDGMENT ISSUE BY A COURT.
SO YOU ACTUALLY HAVE APPLY THEM
RETROACTIVELY SUBJECT TO THAT
FINAL JUDGMENT LIMITATION.
SO OUR POSITION ISN'T
RETROACTIVE.
BUT EVEN IF IT WAS, IT WOULDN'T
MATTER.
YOUR HONORS, I'M HAPPY TO ANSWER
ANY ADDITIONAL QUESTIONS THAT
YOU HAVE.
>> WELL, LET ME ASK YOU ON THAT
POINT, HOW DOES MANCUSEY FIT
INTO YOUR ANALYSIS?
>> IT'S IRRELEVANT FOR A COUPLE
OF REASONS, YOUR HONOR.
MAINLY, IT APPLIED THE
PRESUMPTION OF RETROACTIVITY TO
THE RETRO APPLICATION OF AN
AMBIGUOUS STATUTE.
HERE OUR POSITION ISN'T
RETROACTIVE, AND THE STATUTE
ISN'T AMBIGUOUS.
AND IN ANY EVENT, IT NEVER
ADDRESSES THE CONSTITUTIONAL
QUESTION.
IT'S PURELY A QUESTION OF
STATUTORY CONSTRUCTION.
THE STATUTE THAT WAS BEING
APPLIED RETROACTIVELY, IT
APPLIED AN AMBIGUITY-RESOLVING
CANON TO RESOLVE THAT CASE AND
THEREBY AVOID THE CONSTITUTIONAL
QUESTION.
IT DIDN'T AT ALL PURPORT TO
OVERRULE OR BE INCONSISTENT WITH
THE CLEAR STATEMENT IN GORDON
AGAINST STATE THAT PUNITIVE
DAMAGES ARE SUBJECT TO THE
LEGISLATURE'S PLENARY AUTHORITY.
I THINK THE MAIN OBJECTION THAT
MY FRIENDS ON THE OTHER SIDE
HAVE RAISED AT LEAST IN THEIR
BRIEFING IS NOT SO MUCH AN
OBJECTION TO OUR TEXTUAL READING
OF THE STATUTE, BUT A POLICY
OBJECTION.
AND THEY POINT TO THE APPARENT

UNFAIRNESS OF NOT ALLOWING
PUNITIVE DAMAGES IN A CASE LIKE
THIS.
BUT WHAT I WOULD SAY IS THAT
ANYTIME THE LEGISLATURE DRAWS A
LINE THROUGH AN EFFECTIVE DATE
OR OTHERWISE, THERE ARE GOING TO
BE SOME CASES THAT FALL ON ONE
SIDE OF THE LINE, SOME CASES
THAT FALL ON THE OTHER SIDE OF
THE LINE, AND IT MIGHT STRIKE
SOME PEOPLE AS UNFAIR.
BUT HERE THE LEGISLATURE MADE A
FUNDAMENTAL POLICY CHOICE.
WHAT IT SAID WAS NOT LIKE
EXCESSIVE PUNITIVE DAMAGES.
WE DON'T LIKE THEM IN THE
FUTURE, WE DON'T LIKE THEM IN
THE PAST.
AND THE WAY THAT THE LEGISLATURE
IMPLEMENTED THAT POLICY WAS THE
WAY THAT YOU TRADITIONALLY
IMPLEMENT THE POLICY IN ORDER TO
GIVE IT MAXIMAL EFFECT WITHOUT
RAISING RETROACTIVITY CONCERNS.
AND THE WAY YOU DO THAT IS BY
APPLYING IT TO ALL CAUSES OF
ACTION THAT ARISE OR ACCRUE
AFTER THE EFFECTIVE DATE,
PRECISELY WHAT THE LEGISLATURE
DID HERE.
BUT WHERE I WOULD CONCLUDE IS
WHERE I WOULD BEGIN, THE TEXT OF
THE STATUTE WHICH, AFTER ALL, IS
THE MOST AND ARGUABLY THE ONLY
RELEVANT EVIDENCE OF WHAT
LEGISLATIVE INTENT WAS AND IS.
AND HERE THE LEGISLATURE
EXPLICITLY SAID THAT THIS
STATUTE APPLIES TO ALL CAUSES OF
ACTION THAT ARISE AFTER THE
EFFECTIVE DATE.
AS THIS COURT SQUARELY HELD IN
BARNETT JUST ONE TERM AGO, THE
CAUSE OF ACTION DOESN'T A ARISE
UNTIL IT EXISTS.
AND A WRONGFUL DEATH CAUSE OF
ACTION DOESN'T EXIST UNTIL THE
PERSON DIES.
FOR THAT REASON, WE THINK THAT
THE FIFTH DCA GOT IT EXACTLY
RIGHT.
HAPPY TO ANSWER ANY OTHER
QUESTIONS YOUR HONORS HAVE.

>> ALL RIGHT.
WE THANK YOU.
REBUTTAL.
>> YES, THANK YOU, YOUR HONOR.
OUR ARGUMENT BEFORE THIS COURT IS PRIMARILY TEXTUAL.
IT IS THE DEFENDANT WHO'S COME INTO COURT AND TALKED ABOUT HOW MUCH THEY'VE HAD TO PAY AND WHY THIS COURT SHOULD AGREE WITH THEIR CONSTRUCTION OF A STATUTE, THE MEANING OF WHICH IS IN DISPUTE.
WE'RE NOT MAKING IT A POLICY ARGUMENT TODAY.
WE'RE TELLING THE COURT THAT A CAUSE OF ACTION MEANS SOMETHING, AND IT'S DIFFERENT FROM AN ACTION.
AND IF ONE LAYS THE SURVIVAL STATUTE AGAINST THE WRONGFUL DEATH STATUTE WHERE IT REFERS TO ACTION AND LAYS THAT AGAINST THE STATUTORY AMENDMENT IN QUESTION, THE COURT SHOULD CONCLUDE THAT THERE IS A DIFFERENCE AND THAT THEY HAVE A DIFFERENT MEANING.
THEIR ARGUMENT IS THE POLICY ARGUMENT, NOT OURS.
I WANT TO TALK VERY BRIEFLY ABOUT MARTIN, BECAUSE IN THEIR BRIEFS AND HERE TODAY THEY REALLY GIVE THOSE CASES SHORT SHRIFT.
IF THE COURT IS GOING TO RECEDE FROM THEM AND SAY THAT THE SURVIVAL STATUTE MEANS SOMETHING ELSE, IT COULD DO SO.
BUT IT CONSIDERED THE MEANING OF THE SURVIVAL STATUTE IN THOSE CASES, AND IT CONSIDERED THE MERGER OF THE CLAIMS FOR PERSONAL INJURY BROUGHT ABOUT BY THE WRONGFUL DEATH ACT.
AND IT SAID IN THE OPINION, JUST AS AN EXAMPLE IN MARTIN, CITING CASES FROM MISSISSIPPI AND COLORADO THAT THE DEATH OF THE INJURED PARTY DOES NOT TERMINATE THE RIGHT TO RECOVER PUNITIVE DAMAGES.
OF COURSE, THE RIGHT THAT EXISTED AT THAT TIME, FROM THE ASSAILANT ABSENT A STATUTORY

PROVISION OTHERWISE.
IT ALSO SAID PRINCIPLES
GOVERNING PUNITIVE DAMAGES ARE
FUNDAMENTALLY-- ANSWERING YOUR
QUESTION, JUSTICE COURIEL-- THE
SAME AS IF THE DEFENDANT WERE
LIVING.
THEY DON'T EVEN MENTION ATLAS
PROPERTIES IN THEIR BRIEF WHICH
IS THE CASE FROM WHICH THESE
PRINCIPLES ARISE.
BUT IF YOU LOOKED AT MARTIN
WHERE THE COURT THEN DESCRIBED
THE FACTS OF THE CASE, IT WENT
ON TO SAY IF THESE ALLEGATIONS
WERE ESTABLISHED, THEY WOULD
HAVE PROVIDED THE BASIS FOR A
PUNITIVE DAMAGE CLAIM IF MRS.
ASHLEY HAD LIVED.
AND THE COURT HELD THAT THAT
RIGHT TO PURSUE PUNITIVE DAMAGES
REMAINED.
THEY DON'T EVEN MENTION AT A LAS
PROPERTIES WHICH IS TO THE SAME
EFFECT.
ON BARNETT I'M QUOTING FROM THE
CASE--
>> COUNSEL, I'M SORRY TO
INTERRUPT YOU, BUT IN ATLAS IT
SAYS HERE THAT THE CLEAR
LANGUAGE OF WHAT WAS THEN 4511
SAYS NO ACTION SHALL DIE WITH
THE PERSON.
>> I THINK AT ONE POINT IN THE
OPINION, THE GOVERNING STATUTE
THAT APPLIED AT THE TIME WAS
AMENDED IN 1967 OR '65 AND SAYS
NO CAUSE OF ACTION SHALL
SURVIVE.
THAT IS NOT THE STATUTE THAT WAS
IN PLAY, ACTUALLY, IN THE CASE.
AND THAT IS NOT THE STATUTE THAT
EXISTS TODAY.
I'M LOOKING AT BARNETT NOW.
AND REMEMBER, FOUR DEAD, ONE
LIVING.
THE ELEMENTS OF A CAUSE OF
ACTION IN TORT ARE LEGAL DUTY,
BREACH, INJURY AND DAMAGES
PLURAL.
THEY SAY THIS CASE HELPS THEM.
I WOULD JUST URGE THE COURT TO
READ WHAT THE COURT WROTE AT
PAGE 515 WHEN IT EMBRACED THE

DEFINITION OF THE WORD "ARISE"
ON TO THE SECOND TEXTUAL POINT
HERE THAT WE ARE URGING ON THE
COURT.
AND THIS IS WHAT IT SAID:
THE CLAIM OR JUDGMENT ARISING
OUT OF THE SAME INCIDENT OR
OCCURRENCE AND THE TEXT USE OF
THE WORD ARISING OUT OF ARE ALSO
BEST UNDERSTOOD TO INCLUDE THE
IMMEDIATE INJURY-CAUSING EVENT,
NOT THE NEGLIGENT OMISSIONS THAT
WERE RELIED UPON BY THE
PLAINTIFFS IN THAT CASE.
>> WELL, WASN'T THE ISSUE THERE
REALLY ABOUT HAVING TO DO WITH
AN INCIDENT, AND THE CONNECTION
WAS ARISING FROM AN INCIDENT.
>> RIGHT.
>> AND SO TEXTUALLY, IT'S A
LITTLE DISTINCT--
>> IT IS DISTINCT, BUT IF YOU
APPLY THE FIFTH DISTRICT'S
REASONING AND COUNSEL'S ARGUMENT
TO THE FACTS OF BARNETT, IF THE
INJURED CHILD HAD LATER DIED,
WOULD THIS COURT HAVE REALLY
HELD THAT A SEPARATE CAUSE OF
ACTION HAD COME INTO BEING I'LL
SAY INSTEAD OF ARISING OUT OF
THE SAME INCIDENT?
IT WOULD NOT HAVE.
BECAUSE THE EFFECT WOULD HAVE
BEEN THAT THERE WOULD HAVE BEEN
AT LEAST ONE ADDITIONAL
STATUTORY CAP CHANGING THE
STATE'S EXPOSURE.
WE HAVEN'T HEARD A WORD TODAY
FROM A TEXTUAL POINT OF VIEW,
WHICH I SUBMIT TO THE COURT
STRIKING, WE HAVEN'T HEARD A
WORD TODAY ABOUT THE FIFTH
DISTRICT'S SUBSTITUTION OF THE
WORD "ACCRUE" FOR THE WORD
THAT'S ACTUALLY IN THE TEXT,
WHICH IS "ARISE."
THEY HAVE THEIR REASONS WHY THEY
SAY THAT ARISE DOESN'T APPLY,
THAT IT RELATES TO SOME CONCEPT
THAT ARISE MEANS WHERE SOMETHING
HAPPENED AS OPPOSED TO WHEN IT
HAPPENED.
IF THAT'S TRUE, WHY IS THE THIRD
DISTRICT IN MEHAN AND WHY IS THE

FIFTH DISTRICT IN THIS CASE
RELYING ON THAT DEFINITION OF
THE WORD ARISE TO REFER TO
TEMPORAL ELEMENTS?
THE REASON IS BECAUSE ARISE CAN
ABSOLUTELY HAVE A TEMPORAL
ELEMENT TO IT.
AND THAT IS CLEAR IF ONE LOOKS
AT THE ENTIRETY OF THE CHAPTER
99.225.
THE BEST EXAMPLE--
>> WELL, WE KNOW, WE KNOW ARISE
CAN REFER TO SOMETHING TEMPORAL.
I MEAN, THAT'S THE WHOLE STATUTE
HERE.
[LAUGHTER]
>> RIGHT.
>> AND, OBVIOUSLY, THAT OCCURS.
>> RIGHT, RIGHT.
>> I DON'T THINK ANYBODY'S
DISPUTING THAT.
I MEAN, I HAVEN'T HEARD THAT.
>> I THINK THAT THEY ARE,
BECAUSE THEY'RE SUGGESTING THAT
THE CASES THAT WE REFERRED TO
WHICH USE THE WORD "ARISE" ONLY
REFER TO THE ORIGIN IN THE SENSE
OF A CONTRACT OR A STATE IN THE
CASE OF THE--
>> COUNSEL.
I ACTUALLY GAVE YOU MORE TIME
THAN I TOLD THEM TO.
YOU GOT SIX MINUTES, AND YOU'RE
ABOUT TO GO INTO THAT.
SO IF YOU CAN SUM UP IN THE NEXT
30 SECONDS.
>> I WOULD JUST URGE THE COURT
FROM A TEXTUAL POINT OF VIEW TO
TAKE A LOOK AT CHAPTER 99.225
AND THE STATUTE OF REPOSE.
AND I WILL CONCLUDE WITH THIS:
IT PROVIDES UNDER NO
CIRCUMSTANCE MAY A CLAIMANT
COMMENCE AN ACTION FOR PRODUCT
LIABILITY INCLUDING A WRONGFUL
DEATH ACTION-- NOT CAUSE OF
ACTION-- OR ANY OTHER CLAIM
ARISING FROM PERSONAL INJURY.
AND THAT'S THE WAY THAT THIS
STATUTE, THIS ACT USES THOSE
TERMS.
THESE CAUSES OF ACTION AROSE,
MOST RESPECTFULLY, FROM A LUNG
CANCER NO LATER THAN 1994 AND

CERTAINLY PERHAPS AS EARLY AS
THE 1980s WHEN THE CONDUCT IN
QUESTIONED HAD TERMINATED AT
LEAST VIS-A-VIS MY CLIENT.
FOR THOSE--
>> ALL RIGHT.
>> THANK YOU, YOUR HONOR.
WE URGE THE COURT AND ASK THE
COURT TO QUASH THE DECISION.
THANK YOU.
>> THANK YOU, COUNSEL.
WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE TODAY.
THE COURT WILL NOW STAND IN
RECESS FOR ABOUT TEN MINUTES.