>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
THE HONORABLE CHIEF JUSTICE
CANNADY PRESIDING.
>> WELCOME TO THE SESSION OF THE
FLORIDA SUPREME COURT.
THE FIRST CASE ON TODAY'S DOCKET
IS AMENDMENTS TO RULE OF CIVIL
PROCEDURE 1.150.
I WILL RECOGNIZE THE ASSISTANT
ATTORNEY GENERAL.
>> THANK YOU, MAY IT PLEASE THE
COURT.
MY NAME IS JASON HILBORN FOR THE
ATTORNEY GENERAL, WE SUPPORT THE
SUMMARY JUDGMENT STANDARD FOR
FLORIDA SUMMARY JUDGMENT
STANDARD.
WE SUBMIT MORE NEEDS TO BE DONE
FOR THE EFFECTIVE IMPLEMENTATION
OF THAT CHANGE.
THAT INVOLVES EXPANDING THE
RETIREMENTS OF THE RULE.
SUMMARY JUDGMENT TO WAIT UNTIL
TWO DAYS BEFORE THE HEARING TO
FILE BRAND-NEW EVIDENCE FOR THE
COURT.
THIS EVIDENCE INCLUDES NEWLY
DISCLOSED AFFIDAVITS INSERTING
NEW FACTS INTO THE CASE FOR THE
FIRST TIME.
TWO DAYS IS NOT ENOUGH TIME FOR
THE COUNCIL TO EVALUATE THAT
EVIDENCE AND PREPARE RECENT
ARGUMENT FOR THE JUDGE.
IT IS NOT ENOUGH TIME FOR THE
TRIAL COURT TO PREPARE FOR THE
HEARING AS WELL.
IN PREPARING FOR THE HEARING IT
IS QUICKLY IMPORTANT IN FLORIDA
COURTS BECAUSE THE TRIAL COURT
FREQUENTLY WILL PULL ON THE
MOTION FOR SUMMARY JUDGMENT.
PUTTING THE HEARING TO THE SIDE
TWO DAYS DOES NOT PROVIDE TIME
FOR THE MOVEMENT COUNSEL TO HAVE
DISCUSSIONS WITH THEIR CLIENTS
AND FOR THE CLIENT TO HAVE
INTERNAL DISCUSSIONS ABOUT
WHETHER IT MAKES SENSE TO MOVE
FORWARD WITH SUMMARY JUDGMENT IN
LIGHT OF BRAND-NEW EVIDENCE
FILED OR WHETHER SETTLEMENT

DISCUSSIONS SHOULD BE PURSUED.
THERE IS NO TIME FOR THAT IN
FLORIDA COURTS.
INSTEAD THE RULE PROMPTS A 48
HOUR FIRE DRILL FOR ANYONE TO BE
AS FAST AS POSSIBLE AND PUT
TOGETHER SOME COHERENT ARGUMENT
TO THE JUDGE AT THE HEARING.
NO NEED FOR THIS RUSH ALLOWED IN
FEDERAL COURTS.
IN FEDERAL COURT THE DEFAULT
RULE IS THE PARTY OPPOSING
SUMMARY JUDGMENT MOST FILE ITS
OPPOSING AFFIDAVITS 7 DAYS
BEFORE THE HEARING.
IN REALITY IT IS OFTEN MUCH
LONGER THAN THIS BECAUSE MOST
FEDERAL COURTS INCLUDING FEDERAL
COURT IN FLORIDA THAT THE PARTY
OPPOSING SUMMARY JUDGMENT FILE A
BRIEF IN RESPONSE TO THE MOTION
ALONG WITH IMPOSING EVIDENCE,
SELLING OUT OF TIME AFTER THE
MOTION FOR SUMMARY JUDGMENT HAS
BEEN FILED.
IN THE NORTHERN ADMITTED
DISTRICT OF FLORIDA, 21 DAYS,
THE SOUTHERN DISTRICT OF FLORIDA
IS 15 DAYS, WE PROPOSE SOMETHING
SIMILAR WHICH IS THE COURT TO
EXTEND TIME REQUIRED FOR THE
MOVEMENT TO FILE THEIR INITIAL
MOTION FROM 20 TO 30 DAYS AND
REQUIRE NONMOVING TO FILE A
BRIEF IN RESPONSE TO THAT MOTION
ALONG WITH OPPOSING EVIDENCE 20
DAYS AFTER THAT.
THIS IS A COUPLE THINGS, CREATE
A 10-DAY BUFFER FOR ALL EVIDENCE
SUBMITTED TO THE HEARING.
TO CATCH, EVALUATE AND EXTEND
GOING FORWARD.
IF IT MAKES SENSE IN LIGHT OF
CONTINUOUS, IT IS THERE FOR THE
SUMMARY JUDGMENT HEARING.
THE SECOND THING IS REQUIRES
NONMOVEMENT TO FILE ACTUAL
RESPONSE BRIEF WHICH IS
IMPORTANT BECAUSE THAT LEAVES
OUT CASE LAW AND LEGAL ARGUMENTS
THAT WILL COME UP AT THE
HEARING.
OUR GOAL OVERALL IS CREATE THE
GREATEST OPPORTUNITY FOR

EVERYONE INVOLVED INCLUDING THE
COURT TO BE PREPARED FOR THESE
HEARINGS.
WITH THAT I WELCOME ANY
QUESTIONS THE COURT WILL HAVE.
>> WE THANK YOU AND NEXT
RECOGNIZE MISTER CAR.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
THANK YOU FOR HAVING ME.
THANK YOU FOR GIVING ME 10
MINUTES.
I VIEW THIS RULE CHANGE AS A
REDUCTION ON THE RIGHT TO A JURY
TRIAL.
THE SMALLEST REDUCTION OF THE
RIGHT IS INFRINGEMENT ON THAT
CIVIL RIGHT TO A JURY TRIAL,
ESPECIALLY IN THE PRESENT TIME
WHERE CIVIL RIGHTS ARE UNDER
ATTACK, RIGHT OF FREE SPEECH
UNDER ATTACK, RIGHT OF
ASSOCIATION UNDER ATTACK, RIGHT
OF RELIGIOUS FREEDOM GATHERING
TOGETHER IS UNDER ATTACK, THE
PANDEMIC IS ALWAYS THE STATE OF
JUSTIFICATION.
>> IF I COULD I AM STRUGGLING TO
UNDERSTAND THE POINT IF THE
STANDARD WE ARE ADOPTING IS THE
SAME AS THE DIRECTED VERDICT
STANDARD, YOU COULD IMPANEL A
JOURNEY AND GO THROUGH THE
ENTIRE PROCESS BUT THE CASE
WOULDN'T BE GIVEN TO A JURY.
IF THE STANDARD IS THE SAME I AM
STRUGGLING TO SEE HOW YOU ARE
DOING ANYTHING LIKE DECLINING
SOMEONE THE RIGHT TO A JURY
TRIAL.
>> YOUR DECLINING THEM THE RIGHT
TO CERTAINLY START THE JURY
TRIAL.
>> ISN'T THAT MEANINGLESS?
DO YOU THINK CLIENTS SHOULD
SPEND MONEY STARTING A JURY
TRIAL WHEN THE CASE WOULD NEVER
BE SUBMITTED TO THE JURY?
A HARD TIME UNDERSTANDING HOW
THAT WOULD BE GOOD FOR THE
EFFECTIVE ADMINISTRATION OF
JUSTICE.
>> WITH RESPECT TO EFFECTIVE
ADMINISTRATION OF JUSTICE

EFFICIENCY, SPEED, CONVENIENCE, EXPEDIENCE.
SOME OF THOSE WORDS ARE USED BY THE COURT AND SOME ARE USED BY MY OPPONENTS, IN FAVOR OF THE RULE, THAT COMES AT A COST, DENIED THE RIGHT OF JURY TRIAL.
>> THE JURY TO THE SIDE.
I READ THE COURT'S OPINION AND NOTED A COUPLE OF REFERENCES OR CITATIONS TO THE COURT'S OPINION ON CASE 4 WHERE YOU TALK ABOUT ARTICLE WRITTEN BY BERMAN AND WEBSTER WHERE YOU SAY THEY CRITICIZE THE PRESENT STANDARD BY SAYING ANY COMPETENT EVIDENCE, CREDIBLE OR INCREDIBLE, SUBSTANTIAL OR TRIVIAL, WHETHER OR NOT EVIDENCE IS CREDIBLE OR INCREDIBLE IS A SUBJECTIVE INTERPRETATION OR WHETHER EVIDENCE IS TRIVIAL OR SUBSTANTIAL IS A SUBJECTIVE INTERPRETATION SO YOU ARE TAKING THAT INTERPRETATION OF EVIDENCE AND PUTTING THAT, ONE PERSON ON THE JUDGE.
THE EVIDENCE HAS AN APPLICATION, INTERPRETATION AND INFERENCES THAT ARE GATHERED FROM THAT EVIDENCE.
IF WE HAVE A JURY TRIAL --
>> ARE YOU SUGGESTING WE SHOULD DO AWAY WITH DIRECTED VERDICTS?
>> NOT AT ALL.
>> THE QUESTION IS WHETHER THE JUDGE MAKES THE DECISION AFTER WE GO THROUGH TIME, ENERGY, EXPENSE AND EFFORT OF BRINGING CITIZENS INTO A COURTHOUSE HAVING IT SIT THERE.
AND ASK THEM QUESTIONS WHETHER THEY ARE FIT TO HEAR A CASE THEY WON'T ACTUALLY HERE AND SIT IN A JURY BOX AND HERE EVIDENCE UNTIL ALL THE EVIDENCE IS PRESENTED IN THE JUDGE WILL SAY THE JURY CAN GO HOME.
THAT IS WHAT YOU ARE SUGGESTING.
IS A BETTER APPROACH.
>> THAT IS OR INFORMED REPORT, WHEN YOU HAVE A MOTION FOR SUMMARY BUT JUDGMENT YOU DON'T HAVE THE FULL CONTEXT OF THE

CASE.
IN MY EXPERIENCE MOST OF THIS,
YOU GET TO THE POINT OF SUMMARY
JUDGMENT, DEPOSITIONS AND
DOCUMENT AREAS NOT TALKING MUCH
ABOUT DOCUMENTARY EVIDENCE, YOU
ARE TALKING ABOUT TESTIMONY
TAKEN BY THE ADVERSARY.
THE CLIENT HIMSELF, LEADING
QUESTIONS AND THE ADVERSARY HE
OR SHE HAS AN AGENDA WITH THE
QUESTIONS AND USUALLY IN MOST
INSTANCES THE PLAINTIFF DOESN'T
JUMP IN AND PUT ON THEIR FULL
CASE IN DEPOSITION.
NOBODY WANTS TRIAL BY AMBUSH BUT
NOBODY WANTS TO TIP THEIR HAND
IN THE DEPOSITION.
YOU HAVE SLANTED COLLECTION OF
FACTS IN DEPOSITIONS THAT ARE
BEING PRESENTED TO THE COURT
WITHOUT THE FULL CONTEXT OF THE
CASE WHERE THE PARTICULAR PIECE
OF TESTIMONY THAT MIGHT BE
FOCUSED ON OR THE PARTICULAR
STATEMENT OR CONCESSION MADE IS
NOT BEING GIVEN IN A FULL
CONTEXT AND THE PLAINTIFF
DOESN'T HAVE THE CHANCE IN A
DEPOSITION NOR WOULD HE WANT TO
IF HE IS EXPECTING -- I ASSUME
WE ARE TALKING ABOUT MOVING FOR
SUMMARY JUDGMENT WHERE THE
NONMOVEMENT ISN'T GOING TO BE
WANTING TO PUT ON HIS ENTIRE
CASE, IN THE DEPOSITION OR
PRETRIAL BECAUSE AS FOR THE
TRIAL THE TRIAL IS LAYING OUT
THE WHOLE CASE, THE CONTEXT OF
THE CASE.
>> I UNDERSTAND TACTICAL
ADVANTAGES YOU ARE TALKING
ABOUT, CONNECTED TO THE
ARGUMENT.
OUR OPINION HOLDS THE FEDERAL
SUMMARY JUDGMENT STANDARD
SATISFIES CONSTITUTIONAL MUSTER.
CAN YOU DIRECT US TO ANY CASE
HOLDING 56 UNCONSTITUTIONALLY
VIOLATES THE SEVENTH AMENDMENT
JURY TRIAL RIGHT IN CIVIL CASES
BECAUSE YOU BEGAN BY SAYING OUR
ADOPTION OF THIS WAS
INFRINGEMENT WHICH WE TAKE

SERIOUSLY BUT YOU WOULD BE
HARD-PRESSED TO DIRECT TO A CASE
HOLDING 56 UNCONSTITUTIONAL AS A
VIOLATION OF SEVENTH AMENDMENT
JURY TRIAL.
CAN YOU SURPRISE ME?
DO YOU HAVE SOMETHING UP YOUR
SLEEVE?
>> NOTHING UP MY SLEEVE BUT I
WOULD SITE ARTICLE 1 SECTION 21
OF THE FLORIDA CONSTITUTION
WHICH GIVES THE CITIZENS ACCESS
TO THE COURT.
TALKING ABOUT --
>> HAS ANY COURT INTERPRETED
THAT PROVISION TO HOLD WILL 56
AS PROBLEMATIC IN THE STATE OF
FLORIDA.
ANY SOUTHERN, MIDDLE, NORTHERN
DISTRICT OF FLORIDA CASE LAW
HOLDING THAT PROVISION OF THE
FLORIDA CONSTITUTION SOMEHOW
DENIED BY THE FEDERAL COURT
STANDARD OF SUMMARY JUDGMENT?
>> I'M NOT AWARE OF ANY CASE AND
THAT WOULD BE A RARE SITUATION,
TO THE FLORIDA CONSTITUTION --
>> THE FLORIDA CONSTITUTION
PREEMPTED OR MADE IT PROBLEMATIC
FOR ACCESS TO COURTS, DON'T YOU
AGREE?
>> I DON'T AGREE BECAUSE YOU ARE
TALKING LIMITING THE RIGHT.
THE FLORIDA CONSTITUTION GIVES
OUR CITIZENS GREATER RIGHTS TO
THE ACCESS TO COURTS THROUGH
JURY TRIAL VAN WITH ANY FEDERAL
STATUTE OR FEDERAL JURY TRIAL
RIGHT.
WE AS A STATE HAVE THE POWER,
THE LEGISLATURE, THE GOVERNOR,
HAVE THE POWER TO GIVE CITIZENS
MORE RIGHTS TO A JURY TRIAL VAN
FEDERAL.
>> HOW DO YOU THINK IT RESTRICTS
ACCESS TO COURTS THEN?
>> IT RESTRICTS ACCESS TO THE
COURTS BECAUSE IT GIVES THE
TRIAL JUDGE A CHANCE TO MAKE
SUBJECTIVE INTERPRETATIONS ABOUT
EVIDENCE.
WHETHER OR NOT ANYTHING IS
EVIDENCE, WHETHER IT IS A CASE
THAT TALKED ABOUT WHETHER THERE

WAS METAPHYSICAL DOUBT AND THE
ANDERSON CASE TALKS ABOUT
WHETHER THE EVIDENCE IS
SIGNIFICANTLY PROBE --
PROBATIVE.
THIS TALKS ABOUT WHETHER OR NOT
THE REASONABLE JURY COULD MAKE A
DETERMINATION ON A PARTICULAR
ISSUE.
ALL THOSE THINGS ARE SUBJECTIVE
INTERPRETATIONS OF AN
INDIVIDUAL, A HUMAN BEING THAT
IS APPLYING THEIR VIEW OF THE
EVIDENCE SUBMITTED BY AN
ADVERSARY WITH AN AGENDA BEFORE
THE PLAINTIFF HAS AN OPPORTUNITY
AND THE INFRINGEMENT IS THAT IT
GIVES THE JUDGE THE SUBJECTIVE
--
>> YOUR TIME HAS EXPIRED.
15 SECONDS TO SUM UP.
>> I THINK THAT IS IT.
THE ONLY OTHER POINT I WOULD SAY
IS WHY ARE WE HERE TODAY?
WE ARE TALKING ON ZOOM.
SUMMARY JUDGMENT IS BLACK AND
WHITE, 70, 93% OF COMMUNICATION
IS NONVERBAL.
AT A TRIAL YOU GET NONVERBAL
COMMUNICATION, YOU WILL SEE HOW
PARTIES REACT TO STATEMENTS AND
YOU WILL NEVER GET THAT IN A
MOTION FOR SUMMARY JUDGMENT.
IT IS BLACK AND WHITE PAPER AND
IT IS NOT A FULL PRESENTATION OF
THE STORY OF THE CASE.
>> THANK YOU, MISTER CAR.
THIS BERMAN.
>> GOOD MORNING.
MY NAME IS CC BERMAN ON BEHALF
OF THE CIVIL PROCEDURAL'S
COMMITTEE, THE COMMITTEE GOT
TOGETHER AT THIS COURT'S
INVITATION AND THE RECENT
OPINION TO CONSIDER THREE OF THE
QUESTIONS THAT WERE RAISED BY
THE COURT AT THE END OF ITS
OPINION, WHETHER ADDITIONAL
AMENDMENTS ARE NEEDED TO RULE
1.150 BEYOND WHAT THE COURT
HAS ADOPTED, WHETHER THERE ARE
ANY TEXTUAL PROVISIONS OF RULE
56 ABOUT TO BE IMPORTED BY
1.150 OR WHETHER WILL 56 OUT

TO SUPPLANT 1.150.
WE HAVE SHOWN IN COMMENTS FOR
THE COURT THE COMMITTEE SUGGESTS
THE ANSWERS TO THOSE QUESTIONS
ARE NUMBER ONE, ADDITIONAL RULE
AMENDMENTS WOULD BE HELPFUL TO
THE LITIGANTS IN THE STATE OF
FLORIDA.
NUMBER 2, WE DO THINK THERE ARE
PROVISIONS IN WILL 56 THAT WOULD
BE HELPFUL TO BRING 201.150 AND
THE COMMITTEE DOES NOT BELIEVE
IT IS APPROPRIATE TO ADOPT IT
OUTRIGHT AND ESSENTIALLY
DEMOLISH RULE 1.150.
THE REASON THE COMMITTEE JUMPING
RIGHT IN BELIEVES SOME
ADDITIONAL CHANGE WOULD BE
HELPFUL, IT PROVIDES MORE
CONCRETE GUIDEPOSTS TO LITIGANTS
IN FLORIDA.
THE COURT HAS GONE A LONG WAY BY
ADDING THE ADDITIONAL SENTENCE
TO SUBSECTION C OF 1.150 IN
REFERENCE TO THE TRILOGY.
IT IS ALSO TRUE US SUPREME COURT
CASES ARE DENSE AND IT MIGHT BE
HELPFUL TO LITIGANTS, TRIAL
JUDGES, LAWYERS AND MOST
IMPORTANTLY LITIGANTS WHO USE
OUR IS ALL-TIME NOT TRYING TO
TACKLE A BODY OF CASE LAW WHEN
LOOKING AT SUMMARY JUDGMENT
RULE, IF WE COULD PUT PROCEDURAL
GUIDEPOSTS IN PLACE THAT MIGHT
BE HELPFUL.
FEDERAL RULE 56 WAS AMENDED
AFTER IT CAME OUT.
THERE IS A PRACTICAL REASON FOR
THE CHANGE THAT THE COURT MIGHT
NOT HAVE AN OPPORTUNITY TO
CONSIDER AND THAT IS IN RULE
1.150, A MOTION FOR SUMMARY
JUDGMENT MUST IDENTIFY THE
EVIDENCE ON WHICH THE MOVEMENT
REALIZE AND THAT MIGHT NOT BE SO
AND THAT IS WHY WILL 5061 B WAS
AMENDED TO AFFECT AND RECOGNIZE
YOU DON'T ALWAYS NEED TO POINT
AT SPECIFIC RECORD MATERIAL WAS
THERE MIGHT BE A LITTLE
ADDITIONAL CLEANUP TO BE DONE.
THE COMMITTEE'S RECOMMENDATION
PUT FORTH IN OUR COMMENTS,

THERE'S A SPIRITED DEBATE BEYOND
THAT WITHIN THE COMMITTEE ABOUT
WHAT SHOULD BE DONE IF THE COURT
IS INCLINED TO DO ANYTHING
FURTHER.
IT IS TO BRING IN RULE 56 OR
BRING 56 OUTRIGHT, OUR MEMBERS
OFTEN JUMP BACK AND FORTH ON
THAT QUESTION.
AT THE END OF THEY BY A VOTE OF
21-16 IT IS THE COMMITTEE'S
POSITION THAT THIS COURT DO SOME
ADDITIONAL AMENDING OF THE RULE
BUT DO IT IN A MEASURED APPROACH
THAT IS MINOR VARIANCES TO
ACCOUNT FOR STATE COURT
PROCEDURE, THE COMMITTEE'S
SUGGESTION THIS COURT DISPOSE OF
CURRENT SUBSECTION C OF RULE
1.150 AND REPLACE IT WITH
SUBSECTION C OF FEDERAL RULE 56.
>> FIRST OF ALL I WANT TO SAY
THANK YOU TO YOU AND YOUR
COMMITTEE, YOU DO A TON OF WORK
AND THERE WAS A SHORT TIME
FRAME, IT IS A BIG CHANGE, YOU
DID A THOROUGH JOB OF
CONSIDERING THE ISSUES GIVING
BOTH SIDES OF EVERYTHING THAT I
KNOW EVERYONE ON THE COURT
APPRECIATES AS FAR AS THE ISSUE
ADOPTING RULE 56 ALMOST ENTIRELY
MAKING THE CHANGE THE MAJORITY
RECOMMENDS, TAGGING, TO THE
HEARING IS ADJUSTING THE EAG,
BUILDING AND MORE TIME.
THE RULE HAS BEEN AROUND A LONG
TIME, ON THE OTHER SIDE THE
EXTENT YOU WANT TO DO EVERYTHING
YOU CAN WHAT IS ON PAPER AND
ACTUAL OUTCOMES IN TERMS OF HOW
THINGS WORK.
NOT IN PARTICULAR CASES BUT
PEOPLE APPLYING THE NEW STANDARD
FAITHFULLY.
THERE IS A STRONG ARGUMENT USING
AS MUCH OF RULE 56 AS WE CAN.
CAN YOU GIVE US SPECIFIC
CONCERNS THAT WOULD PUSH YOU IN
THE DIRECTION OF KEEPING AS MUCH
OF THE CURRENT RULE TEXT AS
POSSIBLE.
I UNDERSTAND WE DON'T KNOW WHAT
WE DON'T KNOW BUT IS THERE

ANYTHING SPECIFIC THAT EMERGED
FROM YOUR DISCUSSIONS THAT YOU
WOULD WANT US TO BE AWARE OF?
>> YES AND THAT IS WHY A LOT OF
COMMITTEE MEMBERS ME INCLUDED
THOUGH I DON'T GET TO VOTE
WITHIN THE COMMITTEE FLIP BACK
AND FORTH BECAUSE IT IS
ATTRACTIVE TO CONSIDER PULLING
IN RULE 56, A FEW EXAMPLES THAT
WE SAW, FOR INSTANCE CASE LAW IN
FLORIDA INTERVENING SUBSECTIONS
D AND F OF RULE 1.150.
I APOLOGIZE, DON'T HAVE THE CASE
LAW, DIDN'T THINK WE WOULD BE
GETTING THE DETAIL.
ON THE FEDERAL SIDE OF THE COIN
WE HAVE FULL 56 WHICH TALKS
ABOUT ENTERING SUMMARY JUDGMENT
INDEPENDENT OF THE MOTION WITH
NO COROLLARY OR RULE 5060 WHICH
ADDRESSES WHAT HAPPENS WITH THAT
MOTION IF THERE WERE FACTS NOT
AVAILABLE TO THE NONMOVEMENT.
WE DON'T HAVE THAT AS STATE RULE
BUT I THINK WHAT THE COMMITTEE,
THANK YOU FOR RECOGNIZING THE
TIME CRUNCH.
WE TRIED TO START GOING DOWN
THESE TRAILS TO SEE WILL IT MAKE
A DIFFERENCE, IT IS A BIT
OVERWHELMING.
WHAT BECAME CLEAR IS THERE IS
QUITE A BIT OF CASE LAW OUT
THERE MORE THAN ANY OF US
REALIZE TAGGED TO DIFFERENT
PARTS THE DON'T HAVE ANYTHING TO
DO WITH THIS COURT'S ADOPTION OF
THE FEDERAL STANDARD, MAYBE IT
WOULD BE ALL RIGHT AND MAYBE IT
WOULDN'T, TOO MANY RABBIT TRAILS
TO FOLLOW COMPLETELY BUT WHAT
BECAME TELLING FOR THE COMMITTEE
IS AMONG THE SUPERMAJORITY OF
STATES THAT ADOPTED THE FEDERAL
STANDARD THE ANSWER IS NONE.
I DON'T WANT TO MISLEAD THAT, IT
IS CLOSE TO ONE OF THEM HOW
ADOPTED RULE 56 OUTRIGHT.
THAT WAS A SURVEY THE
SUBCOMMITTEE LOOKING AT THIS
WILL UNDERTOOK THE OUTSET.
THE OUTSET HAS SIMILAR CONCERNS
AND TO VARYING DEGREES THEY HAVE

MORE OF RULE 56 IN THEM.
WE MIGHT NOT BE THE ONLY ONES
WITH THAT CONCERN.
OVER THE LONG HAUL IF THAT IS
SOMETHING THE SPORT WOULD LIKE
TO DO OR ENTERTAIN WE COULD TALK
ABOUT THAT.
WITHIN OUR OWN COMMITTEE YOU
WILL FIND IT IS PRETTY MUCH
AGREED AMONG THE COMMITTEE AS A
WHOLE, ADDITIONAL CLEANUP TO
MAKE THE RULEBOOK BETTER,
SETTING ASIDE THE CHANGE THIS
COURT HAS EFFECTUATED ITS
OPINION FROM THE PURE CHRISTMAS
OF THE RULE STANDPOINT.
THERE WAS ENOUGH THAT MORE TIME,
SOMETHING THAT WOULD NORMALLY
TAKE MONTHS.
I CAN TELL YOU FOLKS PUT IN SO
MUCH TIME ONLY TO UNEARTH MORE
OF THESE QUESTIONS WHICH WE
ANTICIPATE LITIGANTS WILL BE
RELYING ON FEDERAL CASE LAW BUT
WE DO HAVE OUR FLORIDA CASE LAW
IN SITUATIONS NO MATTER WHAT
STANDARD WE ARE WORKING UNDER
THAT MIGHT STILL APPLY AND
WHATEVER SITUATIONS MIGHT OCCUR
AND WE WON'T BE ABLE TO ADDRESS
IT.
>> SORRY TO INTERRUPT YOU BUT I
NOTICE ONE OF THE SUGGESTIONS IN
THE ATTORNEY GENERAL'S PROPOSED
CHANGE TO THE RULE INVOLVES
REQUIRING LEGAL MEMORANDA AND I
NOTICED AT THE SUBCOMMITTEE
LEVEL THE MAJORITY ON THAT
SUBCOMMITTEE IS LIKE REQUIRING
LEGAL MEMORANDA WAS A GOOD IDEA
BUT THAT'S NOT THE MAJORITY OR
THE MINORITY IS IT?
DO YOU HAVE A VIEW ON THAT?
>> I NOTICED THE SAME THING AS I
WAS PREPARING FOR THIS AND I WAS
INVOLVED IN A LOT OF WHAT WENT
ON.
AT THE END OF THE DAY THE
MAJORITY PROPOSAL WE PUT FORTH
IS REQUIRING A RESPONSE AND I
HAVE TO COME CLEAN AND TELL YOU
I CAN'T RECALL FOR THE LIFE OF
ME, WHAT THE DIFFERENTIATION WAS
THE SUBCOMMITTEE UNTIL LEGAL

MEMORANDA VERSUS RESPONSE
CERTAINLY THE PROPOSALS PUT
FORTH BY THE COMMITTEE ARE
ANTICIPATING RESPONSES FROM
FOLKS WHO ARE NONMOVEMENT AS
WELL.
>> I THINK THE AG SAID
SOMETHING.
DO YOU THINK THERE IS ANY SIDE
IN WHAT IS MORE SPECIFIC IN
THAT?
>> SPEAKING FOR MYSELF, I DON'T
THINK SO.
I THINK KNOW.
I TRY TO BE CAREFUL, IT WAS
ROBUSTLY CREATED, ON BEHALF OF
THE COMMITTEE.
THERE'S NOTHING OFFENSIVE ABOUT
THAT PROPOSAL.
AT THE END OF THE DAY, QUITE A
BIT IN THAT DISCUSSION, WHY IT
WAS THE COMMITTEE WAS SUGGESTING
IMPORTING TO RULE 1.150, IS
THERE SOMETHING THE COURT
ENTERED MORE BROADLY, THE
COMMITTEE DOES NOT BE LEAVE, THE
COURT WILL IMPLEMENT THAT BY A
MORE MEASURED CHANGE, THAT SEEMS
TO BE ALL OVER THE COUNTRY.
FOLKS ARE NOT STUMBLING
IMPLEMENT A FEDERAL STANDARD, IF
THERE IS STILL A CONCERN NOTHING
WOULD PREVENT FURTHER AMENDMENT
TO THE RULE TO ALLOW TIME TO
CONSIDER OTHER ISSUES.
>> IT SEEMS LIKE ALL THE
COMMENTERS SEEM TO AGREE
ADOPTING RULE 56 WOULD BE THESE
RELATIONS TIED TO A HEARING AS
OPPOSED TO THE WAY IT IS IN THE
FEDERAL SYSTEM.
WHAT WE DID, IF SOMEONE DID A
SEARCH, FLORIDA WOULD BE IN THE
COLUMN OF STATES THAT HAVEN'T
ADOPTED RULE 56 AND WOULD POINT
TO FLORIDA AS NOT HAVING DONE
THAT.
I UNDERSTAND THE ISSUE OF THE
UNKNOWNS, THE CONCERNS ON WOLF
56, THE AWARDS FOR CLARITY, IF
WE WERE WRITING ON A BLANK
SLATE, IT IS MORE DIRECT.
CONCERNS ABOUT MOVING TO THAT,
MORE SPECULATIVE.

I'M NOT TRYING TO BE
ARGUMENTATIVE BUT --
>> THE COMMITTEE WOULD
ACKNOWLEDGE SOME OF THE ISSUES
MAY TURN OUT TO BE NON-ISSUES,
TRIED TO START RUNNING THEM
DOWN.
THERE ARE SOME THINGS THAT MIGHT
MATTER.
I KNOW THAT RULE 56 F, RAISED A
LOT OF DISCUSSION AMONG
COMMITTEE MEMBERS, THE ABILITY
TO ENTER SUMMARY JUDGMENT BY THE
MOTION, THAT IS A SIGNIFICANT
CHANGE, NOT PART OF THE COURT'S
DISCUSSION IN ITS OPINION.
>> MY SENSE, WITH REASONABLE
OPPORTUNITY, IT WAS NOT A MATTER
OF PEOPLE GETTING SUMMARY
JUDGMENT AGAINST THEM, THE
COMMENTS WERE THAT THAT WAS NOT
SOMETHING COURTS DO.
IT IS NOT HAPPENING EVERY MINUTE
BUT SOMETHING THAT DOES HAPPEN
SO IT IS MORE TRANSPARENT.
>> WE TALKED ABOUT THAT A LITTLE
FURTHER AND SOME FEEL THAT
ALREADY HAPPENS THOUGH THE WAY
THEY DESCRIBE IT IS DIFFERENT
THAN I PICTURED IT.
I HAVE NEVER SEEN THAT HAPPEN
THOUGH MY PRACTICE IS MOSTLY
APPELLATE.
HAVING SAID THAT, SOME FOLKS
SAID THEY SAW IT, THE JUDGE
MIGHT SAY SOMETHING ON A DUTY
QUESTION AND I SEE THE DUTY BUT
DON'T SEE HOW TO APPROVE
CAUSATION, A NEW ROUND OF
MOTIONS COMES UP ON CAUSATION.
IT IS NOT THAT THE JUDGE DOES IT
RIGHT BUT THE JUDGE INJECTS WHAT
HE OR SHE SEES AS THE PROPER
RECENTLY JUDGMENT ISSUE AND
ENCOURAGES MY WAY OF MENTIONING
THAT IT ENCOURAGES EVERYONE TO
FILE THE NEXT ROUND.
FOLKS ARE TALKING ABOUT THAT
WHEN THEY SAY IT HAPPENS.
THE COMMITTEE IS CERTAINLY
WILLING TO ACKNOWLEDGE THESE ARE
NOT CONCERNS FOR THE COURTS, NOT
CONCERNS FOR THE COURT AND THAT
IS WHY WE WANTED TO PRESENT BOTH

SIDES OF THE COIN.
IT IS ROBUSTLY DISCUSSED WITHIN
THE COMMITTEE WITH PEOPLE BEING
VERY OPEN-MINDED AND SEEING LOTS
OF PROS AND CONS EITHER WAY.
>> I APPRECIATE THAT AND ALL OF
US APPRECIATE YOUR HARD WORK.
WE JUST WANT FLORIDA TO HAVE THE
BEST PROCESS WE CAN AND YOU GUYS
WITH YOUR HARD WORK HELPED
ELIMINATE THE ISSUES.
>> WE FEEL THE SAME AND THANK
YOU SO MUCH.
>> MISTER CHIEF JUSTICE, MEMBERS
OF THE COURT, I AM ARGUING HERE
AS A PRACTITIONER NOT
REPRESENTING ANYONE OTHER THAN
MYSELF BUT TO THE POINT, 1.150
VERSUS RULE 56, THE MOMENT I
SUGGEST THIS COURT MIGHT KEEP
INTACT SOME SUBSTANTIVE PORTIONS
OF 1.150 WILL BE THE BEGINNING
OF ARGUMENTS ALL OVER THE STATE
ABOUT WHAT THAT MEANS AND HOW TO
HAVE 1.150, RULE 56 AT THE
SAME TIME BUT YOU DON'T KNOW
WHAT YOU DON'T KNOW, 35 YEARS OF
EXPERIENCE, TO TODAY, WHAT THEY
ACT AND INTERACT AND MAKE GOOD
SENSE.
IT IS NOT AS WELL WRITTEN, WAYS
TO BE CONTRADICTORY AND WHAT
RULE 56 DOES MAKE IT MUCH
CLEARER, TO NAVIGATE
CIRCUMSTANCE.
SUBSECTION'S, RELATING TO THE
ABILITY OF COURT, IT JUST TO SIT
CORRECTLY THAT REQUIRED NOTICE
AND OPPORTUNITY TO BE HEARD.
THE PRACTICAL REALITY IN MY
EXPERIENCE, A SAFE COURT JUDGE,
INDICATE CONCERNS, WHAT HAPPENED
SO FAR, MIGHT BE A CASE FOR
SUMMARY JUDGMENT, FOR FOLKS TO
THINK ABOUT THAT, WILL COMMENT
ABOUT I NEED TO KNOW MORE ABOUT
THIS ISSUE OR THAT ISSUE, YOU
MAY NOT BE THINKING ABOUT IT BUT
I HAVE.
IT BRINGS EVERYONE CLOSER TO AN
UNDERSTANDING WHAT THE CASES
WERE ABOUT AND THE WEAKNESSES
ARE.
THAT IS AN EXAMPLE OF HOW THE

FEDERAL MOVEMENT APPLIES.
ONE OTHER THING AND I WILL STOP
HERE, THE NOTION OF A HYBRID,
INTERPRETATION TO TAKE OVER
EVERYTHING ELSE.
ONE THING THAT IS CRITICAL IS NO
MORE CAN YOU THROW 1000 PAGES OF
DOCUMENTS AND SAY LOOK AT THESE,
PARTIES HAVE TO PLAY THEIR CARDS
ON THE TABLE AND TELL THE JUDGE,
THAT IS EFFICIENT.
I HOPE TO WIN IN THE SHORTEST
ARGUMENT.
>> THANK YOU.
I SEE THERE ARE NO QUESTIONS.
MISTER LEE.
>> GOOD MORNING MISTER CHIEF
JUSTICE, MAY IT PLEASE THE
COURT.
MAKE THREE POINTS.
STAY THE COURSE AND ADOPT
FEDERAL STANDARD FOR ALL THE
REASONS THE COURT HAS GIVEN
WHICH IS ESPECIALLY IMPORTANT
NOW GIVEN THE BACKLOG DEVELOPED
IN LIGHT OF THE PANDEMIC, WE
NEED TO RESERVE TRIAL COURT
RESOURCES AND WHAT GOES TO
JURORS AND FOLKS WORKING IN THE
COURTROOMS TO MAKE EVERYTHING
RUN, THEY SHOULD BE RESERVED FOR
THOSE CASES WARRANTING FOR A
FACTUAL DISPUTE.
NEXT TIME WE FERMENT THAT
STANDARD, WE HAVE TO ADOPT WILL
56 IN ITS ENTIRETY.
A FEW REASONS FOR THAT THAT HAVE
BEEN IN QUESTION TODAY.
AND WHEN ADOPT A SENATE WILL WE
NEED TO GET THAT STABLE BODY OF
CASE LAW.
THAT IS A BENEFIT HERE.
IT BRINGS STABILITY, MUCH OF THE
UNCERTAINTY, LIKE WE DISSIPATE
BECAUSE WE ARE DRAWING ON A
STABLE AND WELL-SETTLED BODY OF
LAW WHICH RAISES A SECOND POINT
IN LISTING CASES.
I'M NOT SUGGESTING IT CAN'T
ARTFULLY BE DONE OR LISTING THE
CASES THE COURT HAS PROPOSED
LISTING IN MY OPINION THERE BEST
WIN IS INCORPORATING THE FEDERAL
STANDARD.

THEY DO THAT BUT IN LISTING A
FEW YOU RUN INTO THE RISK THAT
OTHERS ARE PERCEIVED AS NOT
LISTED OR PART OF THE RULE OF
THE COURT ADOPTED.
SCOTT HARRIS HAS BEEN MENTIONED
BY SEVERAL COMMENTERS AS A KEY
ADDITION TO FLORIDA SUMMARY
JUDGMENT STANDARD BUT NOT ON THE
LIST.
YOU EXCLUDE ANOTHER, YOU IMPLY
IT IS NOT PART.
>> ARE YOU REFERRING TO THE
CHANGE WE MADE THE TALKS ABOUT
THIS TRILOGY?
>> I AM SUGGESTING ADOPTING
FEDERAL RULE AS A WHOLE WILL
ACCOMPLISH THAT --
>> PART OF THE CHALLENGE IS
BECAUSE, THE FEDERAL STANDARDS
DIVERGED SO MUCH EVEN THOUGH THE
TEXT IS THE SAME, THE CHALLENGE
YOU COULD ARGUABLY ADOPT RULE 56
IN FLORIDA COURT COULD
INTERPRETED THE SAME WAY THEY
HAVE BEEN INTERPRETING 1.510,
THE IDEA ABOUT TALKING ABOUT
THIS WHICH EVERYBODY WOULD
ACKNOWLEDGE IS THE FOUNTAIN HEAD
FOR EXISTING FEDERAL SUMMARY
JUDGMENT LAW WOULD MAKE IT CLEAR
THAT SUBSTANTIVELY THAT IS THE
STANDARD THAT NEEDS TO GOVERN IN
FLORIDA IF WE RETAIN THE CHANGE.
>> IT IS BEST READ IS DOING
THAT.
A BETTER WAY OF ACCOMPLISHING
THE CHANGE GOAL WOULD BE TO
ADOPT RULE 56 AND ANY MOVE OF
THE DISCUSSION MAKES IT
NONEXCLUSIVE AND MAY MOVE TO THE
COMMENTS AS A DIRECTION OF WE
MADE THIS CHANGE.
ANOTHER BENEFIT OF ADOPTING THE
FEDERAL HAS BEEN DISCUSSED BY
SOME EARLIER PEOPLE WHO HAVE
COME, THE BENEFIT OF SOME OF
THESE OTHER PROVISIONS OF THE
FEDERAL.
SOME OF THEM THERE IS WIDESPREAD
AGREEMENT THAT IT WOULD BE A
GOOD THING TO REQUIRE COURTS TO
EXPLAIN REASONING FOR THEIR
SUMMARY JUDGMENT RULING SWITCH

HELPS APPELLATE COURTS WHEN THEY
HAVE TO FIGURE OUT WHERE IT WAS
GRANTED AND IT WOULD BE A BETTER
DECISION BECAUSE PEOPLE TENDS TO
MAKE BETTER DECISIONS WHEN THEY
HAVE TO EXPLAIN THEMSELVES AND
BE ACCOUNTABLE ON THE RECORD.
IT FOCUSES IN ON THE REASONING
PROCESS.
THERE IS CONFUSION ABOUT WHETHER
DECLARATIONS COUNT AND THE
FEDERAL COURT WOULD REMOVE THAT
AND THE FEDERAL PROVISIONS THAT
WERE SUGGESTED IS UNKNOWN
EARLIER ARE IMPORTANT PARTS OF
THE EFFICIENCY PROMOTING SUMMARY
JUDGMENT PROCESS.
WHEN A JUDGE IS SAYS THIS MAY BE
A SUMMARY JUDGMENT ISSUE IF HE
DOESN'T ADDRESS IT THERE IT WILL
LANGUISH AT TRIAL AND RENDER THE
TRIAL POTENTIALLY WORTHLESS
SOMETHING THAT NEEDN'T NEED TO
TAX RESOURCES, SO BETTER TO
ALLOW THE JUDGE TO SPOT THAT
EARLIER AND THE RULE REQUIRES
PARTIES BE GIVEN A CHANCE TO
RESPOND.
I REALIZE MY TIME IS SHORT.
EXTENDING THE RULE TO THE
MAXIMUM EXTENT CONSISTENT WITH
THE EFFICIENCY WOULD PROMOTE
WHAT THE CIVIL RULES ARE
DESIGNED TO DO AND BE KEY AS I
MENTIONED DURING THIS PANDEMIC
AND IN MY VIEW SUGGEST THE COURT
SHOULD MAKE IT CLEAR IT APPLIES
TO OPINION CASES EVEN IF IT
REQUIRES RECONSIDERATION AS THE
COURT ORDER AND ALSO WE PREFER
TO MAKE CLEAR WHEN THE CASE
COMES BACK FOR A NEW TRIAL BY
VIRTUE OF APPEAL FOR NEW APPLIES
TOO.
QUERY ON THE FRONT END SO WE
DON'T HAVE ANCILLARY LITIGATION
HOW THE TAKES EFFECT.
>> THANK YOU.
>> MAY IT PLEASE THE COURT, ON
BEHALF OF THE DOCTORS COMPANY IN
FLORIDA MEDICAL ASSOCIATION, WE
HAVE PROPOSED ADDITIONAL
LANGUAGE TO BE INCORPORATED INTO
THE RULE AS YOUR HONORS HAVE

PROPOSED WHICH EXPRESSLY SETS
FORTH WHAT IS REQUIRED TO BOTH
SIDES OF SUMMARY JUDGMENT MOTION
AT EACH STAGE OF THE PROCEEDING
AND THE REASON WE PROPOSED MORE
EXPRESS LANGUAGE IN THIS REGARD
IS A PLURALITY, THERE IS NO
CO-HE SERVED STATEMENT ON WHAT
IS REQUIRED OF THE MOVING PARTY
THAT IS CLAIMING THE OTHER SIDE
CAN'T PROVE ITS CASE TO THE
EXTENT THAT JUSTICE BRENNAN SAID
WE ARE NOT EXPLAINING WHAT IS
REQUIRED OF THE INITIAL MOVING
PARTY WHEN IT IS TRYING TO SHOW
THAT AND IN RESEARCHING HOW
THESE CIRCUITS HAVE APPLIED AND
HOW THE STATE COURTS
JURISDICTIONS ADOPTED IT THERE
DOES APPEAR TO BE A DIVERGENCE
IN WHAT IS REQUIRED AS FAR AS
THE EVIDENTIARY AREA STANDARD,
AND SHOW THE OTHER SIDE WITH
EVIDENCE, REVIEWING CASE LAW WE
BELIEVE THE ELEVENTH CIRCUIT,
THE FITZPATRICK DECISION, MOST
CLOSELY REPRESENTS WHAT THIS
COURT ACCOMPLISHED IN THE
TRILOGY AND MAKING IT A DIRECTED
VERDICT MOTION, THE FITZPATRICK
CASES THE MOVING PARTY THIS IS
THE LANGUAGE WE INCORPORATED TO
THE PROPOSED ADDITION TO THE
RULE, THE MOVING PARTY TRYING TO
SHOW THE OTHER SIDE CAN'T MEET
ITS BURDEN AT TRIAL, THEY NEED
TO IDENTIFY TO THE COURT THE
ISSUE AND PLACE THE BURDEN ON
THE OTHER SIDE TO COME UP WITH
EVIDENCE THAT ISN'T A DIRECTED
VERDICT TYPE PROCEEDING THAT
THEY CAN PROVE THEIR CASE SHOULD
IT GO TO TRIAL.
>> I THOUGHT YOUR COMMENT WAS
REALLY THOUGHTFUL AND I
APPRECIATED IT.
IT SEEMS THE ACADEMIC DEBATE
OVER THIS IN THE CASE LAW HAS 2
DO WITH FINDING THAT LINE
BETWEEN A CONCLUSORY ALLEGATION
THE NONMOVING PARTY DOESN'T HAVE
EVIDENCE VERSUS SHOWING THAT
THEY DON'T AND IT SEEMS RULE 56
WHERE IT TRIES TO GIVE PEOPLE

MORE DIRECTION AND LOOKED AT THE
LANGUAGE YOU GUYS PROPOSED AND
ALLOWABLE RATES ON THAT A LITTLE
MORE BUT I AM NOT REALLY SURE
THAT I AM NOT CRITICIZING
SUBSTANTIVELY BUT IT DOES
DISTILL THE CASE LAW BUT WHAT IS
THE VALUE OF DOING SOMETHING
LIKE THIS OVER AND ABOVE THE
EQUIVALENT OF 56 C WHICH POSED,
TRIED TO GIVE PARTIES A LITTLE
MORE DIRECTION WITH A CONCRETE
FRAMEWORK, TO SHOW WHAT NEEDS TO
BE SHOWN.
>> THE VERSION OF 56 THAT IS IN
EFFECT AT THE TIME WAS LIKE THE
FLORIDA LAND IT SEEMS THE RULES
PROCEEDED ON PARALLEL PATH
REFLECTING ON SUBSTANTIVE LAW.
IF THE COURT WERE TO COMPARE A
SECOND CIRCUIT COURT, AND WILL
56 WITH THE FITZPATRICK CASE.
THEY COME TO DIFFERENT
CONCLUSIONS ABOUT WHAT IS
REQUIRED SO THE CONCERN IS RULE
56 HAS CHANGED SINCE THEN BUT
HASN'T CHANGED THE SUBSTANCE AND
I DON'T KNOW THAT IT HAS GIVEN
ENOUGH GUIDANCE TO SHOW WHAT IS
INTENDED TO BE REQUIRED FOR THE
MOVING PARTY.
THE OTHER THING WE NOTICED IS IN
OTHER STATES ADOPTING, NOT ALL
OF THEM ARE ADOPTED NECESSARILY
MAJORITY, SOME OF THEM ADOPTED,
ADOPTED JUSTICE BRENNAN'S TO
SEND.
DESCEND.
I DON'T KNOW IF INCORPORATING
RULE 56 INTO FLORIDA IS GOING TO
FIX THE PROBLEM OF WHAT IS THE
BURDEN ON THE MOVING PARTY
MOVING FOR SUMMARY JUDGMENT
UNDER -- THAT IS THE CONCERN.
>> ADOPTING THE EQUIVALENT OF 56
C, DOES THAT GET YOU A LOT OF
AWAY TOWARD ACCOMPLISHING YOUR
OBJECTIVE?
>> I THINK IT HELPS.
I DON'T THINK IT GETS US THERE.
THERE HAS BEEN SO MUCH
INTERPRETATION OF RULE 56, THE
MOVING PARTY SHOWING THE OTHER
SIDE CAN'T PROVE ITS CASE

DOESN'T HAVE TO AFFIRMATIVELY
PROVE THAT WITH EVIDENCE BUT
TAKE DISCOVERY AND YOU DON'T --
WILL 56, YOU DON'T LEAVE IT TO
ARGUMENT AND INTERPRETATION AND
POTENTIAL VARIANCE IN DECISIONS.
THIS LANGUAGE WHICH IS A HYBRID
OF JUSTICE BRENNAN AND THE
REHNQUIST PLURALITY FROM
FITZPATRICK AND THIS TELLS THE
PARTY EXACTLY WHAT IS EXPECTED
OF THEM.
NO INTERPRETATION.
IT LAYS OUT A VERY EASY
FRAMEWORK.
>> YOU ARE A MINUTE OVER.
>> BIG THE COURT FOR HEARING US
ON THIS AND GIVING US TIME ON
THIS IMPORTANT ISSUE, THANK YOU.
>> ESTHER GET US -- MISTER GET
US -- COMMUTED.
>> MY APOLOGIES, YOUR HONOR.
MAY IT PLEASE THE COURT, EDWARD
GETTY S ON PUBLIX SUPER MARKETS.
THE COURT HAS HEARD SOME
EXCELLENT SUGGESTIONS, OTHER
LAWYERS HAVE APPEARED THIS
MORNING, AND A NUMBER OF REASONS
TO CONSIDER THE ADOPTION
WHOLESALE RULE 56.
I WOULD LIKE TO FOCUS MY
COMMENTS ON THE POINT THAT IF
THE COURT WERE TO DECIDE NOT TO
ADOPT WILL 56 WHOLESALE OR ADOPT
ONLY 56 C, THE COURT CONSIDERS
THE POSSIBILITY OF IMPLEMENTING
A PORTION OF 56 A WHICH REQUIRES
THE TRIAL COURT TO ARTICULATE ON
THE RECORD WITH THE COURT
REPORTER PRESENT EACH REASONING
FOR GRANTING OR DENYING A MOTION
FOR SUMMARY JUDGMENT.
MY PRIMARY CONCERN AS WE
EXPRESSED IN COMMENTS IS IN HER
SHOW IS AN EXTREMELY POWERFUL
FORCE.
THERE MAY BE RETICENCE, THERE
MAY BE CONFIDENCE IN OUR TRIAL
COURTS TO IMPLEMENT THE NEW
FEDERAL STANDARD, MAY BE A
QUESTION OF HABIT FOR JUDGES WHO
HAVE BEEN ON THE BENCH FOR A
LONG TIME AND LABORED, REQUIRING
THIS ARTICULATION HAS AN EFFECT

FOR ALL THE PARTICIPANTS IN THE
PROCESS INCLUDING THE TRIAL
JUDGE WHICH IS TO CONSCIOUSLY
ENGAGE THE ADOPTION OF THE
FEDERAL STANDARD AFFECTS THE
OUTCOME IN THIS CASE.
WHEN THIS COURT ADOPTED
RECENTLY, RULE 1.30, FOR THE
REVIEW OF COMMUNITY DECISIONS.
THE COURT NOTED THE PREVIOUSLY
EXISTING FULL ALLOWED TOO MUCH
DIFFERENCE TO THE TRIAL COURT
AND HOW THEY ARTICULATED THE
POSITION.
THE PURPOSE OF IMMUNITY.
NOT REQUIRING ARTICULATION OF
REASONING HAS POTENTIAL EFFECT
OF FRUSTRATING OF THE ADOPTION
OF THE FEDERAL STANDARD BECAUSE
DENIALS OF FEDERAL JUDGMENT ARE
NOT REFUSED.
THE EXERCISE AS IMPORTANT AS THE
OUTCOME, WE THINK THAT COMPONENT
EVEN IF THE COURT DECIDES NOT TO
ADOPT THE ENTIRE, THE REASONING
OF THE TRIAL COURT SHOULDN'T
MAKE IT INTO RECORD.
THE OTHER OBSERVATION DIRECTED
TO MY FRIEND'S PROBLEMS THE
DANGERS RESOLVING THE CASES OF
SUMMARY JUDGMENT.
THERE IS A BUILT IN BIAS.
I WILL SPEAK GENERALLY ABOUT
PLAINTIFFS PART THAT BECAUSE OF
EXISTING CASE LAW IN FLORIDA AND
THE STANDARD THAT IS APPLIED,
PLAINTIFFS MAKE DECISIONS WHEN
IT CAME TO SUMMARY JUDGMENT NOT
TO LAY OUT THE CASE OR TO
PRESENT ALL OF THEIR ARGUMENTS.
THAT WAS WHAT THE PRIOR SYSTEM
ENGENDERED.
THE SIXTH CIRCUIT AND THE
SEVENTH CIRCUIT COLORFULLY
DESCRIBED SUMMARY JUDGMENT AS
PUT UP OR SHUT UP MOMENT IN
LITIGATION WHICH IS BOTH SIDES
NEED TO COME FORWARD TO
ARTICULATE WHAT THE EVIDENCE IS.
IF EITHER SIDE FAILS IN THAT
ENDEAVOR THERE ARE CONSEQUENCES
AND THE BAR NEEDS TO BE ALERTED
TO THAT FACT SO WHATEVER THE
COURT CAN DO TO HELP OVERCOME

WHATEVER BUILT IN BIAS THERE
MIGHT HAVE BEEN ARISING FROM THE
PRIOR SUMMARY JUDGMENT STANDARD
IT SHOULD DO BECAUSE THAT WILL
INCENTIVIZE ALL THE PARTICIPANTS
TO STEP UP AND ENGAGE THE TASK
MEANINGFULLY IN A WAY THAT LETS
THE COURT REACH THE RIGHT
CONCLUSION.
I THANK THE COURT FOR ITS TIME
AND ALLOWING US THE OPPORTUNITY
TO SPEAK.
UNLESS THE COURT HAS ANY
QUESTIONS.
>> THANK YOU.
NEXT WE HAVE MISTER VAN THEY
BOGART.
>> THAT WAS PERFECT.
MAY IT PLEASE THE COURT, THE
BUSINESS LAW SECTION OF THE
FLORIDA BAR.
THE BUSINESS LAW PRACTICING
BUSINESS LITIGATION,
INTELLECTUAL PROPERTY,
BANKRUPTCY AND CORPORATE
TRANSACTION OF LAWYERS.
THROUGHOUT THE STATE, THEY'VE
LOST MOTIONS FOR SUMMARY
JUDGMENT BASED ON UNPROVEN OR
UNSURE ALLEGATIONS WITH THE
SLIGHTEST DOUBT WINNING THE DAY
THUS THE BUSINESS LAW SECTION
THAT SUPPORTS THE FLORIDA
SUPREME COURT'S ADOPTION OF THE
FEDERAL SUMMARY JUDGMENT
STANDARD BUT PROVIDING OUR
COMMENT, THE TRILOGY OF CASES
ADOPTING THE NEW STANDARD IS NOT
ENOUGH MAY LEAD TO AMBIGUITY
UNCERTAINTY AND INCONSISTENCIES
IN APPLICATION BY FLORIDA TRIAL
COURTS.
DRAFTING THE COMMENT IN PROPOSED
CHANGES, THE PREVIOUS OPINION
REASONING FOR ADOPTING THE WOOL
BY MAKING SURE IT IS CRYSTAL
CLEAR, HOW IT SHOULD BE APPLIED.
TWO ASPECTS OF THE FEDERAL
STANDARD SUGGESTED IN OUR
APPENDIX THE DIRECTED VERDICT OF
STANDARD APPLIES AND THE BURDEN
OF PROOF APPLIES TO THE CORRECT
PARTY PROVIDING EVIDENCE ON
SUMMARY JUDGMENT MOTION IS THE

THIRD CHANGE A SUGGESTED RULE 56
E1 TRIAL COURT APPLIES THE
STANDARD.
THIS IS NECESSARY AND HELPFUL
FOR A COURT APPLYING THE FEDERAL
STANDARD.
WE SIMPLY SUGGEST MAKING IT MORE
EXPLICIT THE WAY IT READS.
>> CAN I INTERRUPT YOU?
CAN WE ELABORATE ON WHY YOU ARE
NOT REPRIMANDING ADOPTING
FEDERAL RULE 56 ACCOUNTING FOR
PROCEDURAL WRINKLES.
>> WE DO NOT SUGGEST FULL
ADOPTION OF RULE 56 IN ITS
ENTIRETY.
THAT IS BECAUSE THE PROCEDURAL
REQUIREMENTS, THE HISTORY OF THE
STATE, THIS IS GOING TO BE A
DIFFICULT TRANSACTION WITH THE
HISTORY THAT WE HAVE ARGUED AND
BELIEVE SHOULD HAPPEN.
IF WE ADOPT ENTIRE RULE 56 AND
ALL THE OTHER INTRICACIES AND
CHANGES, IT WILL MAKE THAT MUCH
MUCH HARDER AND THAT ISN'T
NECESSARY TO THE COURT'S
ADOPTION SUBSTANTIVELY OF THE
FEDERAL STANDARD.
IT IS PROCEDURAL REQUIREMENTS,
THE SUMMARY JUDGMENT STANDARD
APPLY THE WAY IT SHOULD APPLY.
IT IS A MATTER OF CLARITY,
EXPLICITY, MAKING IT EASY FOR
JURISTS WHO KNOW HOW TO ARGUE IN
BRIEF SUMMARY JUDGMENT AND MAKE
SUMMARY JUDGMENT, EASIER TO
APPLY IN THE STATE OF FLORIDA
AND THUS GOING 56 BE A LITTLE
MORE WE BELIEVE 56 HE WILL GIVE
JURISTS THE POWERS REQUIRED TO
APPLY THIS NEW IN ALL FOUR
SUBPARTS, IT SPEAKS TO JURISTS
IN ALLOWING THEM TO ASK FOR MORE
EVIDENCE, THINGS THAT ARE NOT
SHOWN, IGNORE THEM, GIVES THAT
CLARITY TO A JUDGE HOW TO APPLY
THE NEW AND GIVES THEM THE POWER
TO APPLY THE RULES SO THERE ARE
NOT ADDITIONAL QUESTIONS I
BELIEVE THE REST OF MY TIME AND
THANK YOU VERY MUCH FOR ALLOWING
US THIS OPPORTUNITY.
>> THANK YOU.

>> MAY IT PLEASE THE COURT.
THIS HAS BEEN A LONG DISCUSSION
SO I WON'T BELABOR POINTS THAT
HAVE BEEN MADE.
I'M HERE ON BEHALF OF MISTER
COHAN, MISTER DURBIN AND MYSELF.
THE FIRST, WE APPRECIATE THE
COURT TO MAKE THE IMPORTANT
CHANGE, THE CRITICAL DISTINCTION
AND CRITICAL ALIGNMENT, LESS
STATE AND FEDERAL AND MORE
SUMMARY JUDGMENT, THE IMPORT OF
THE QUESTION WITH JUSTICE LAWSON
TO MISTER CARR SO WE SUPPORT THE
CHANGE AND I WON'T BELABOR THE
POINT.
I WANT TO ADDRESS THE ISSUE OF
THE TIMING.
SOME OF THE COMMONERS DID.
THE OPINION IS CLEAR THAT IT
SHOULD APPLY TO IN PENDING
MOTIONS AND NEW MOTIONS
INCLUDING MOTIONS FOR
RECONSIDERATION IN PENDING
CASES.
THE IN THE ABSENCE OF EXPRESSED
A BY THE COURT SAYING THAT WE
WILL BE LITIGATING THAT A LOWER
COURT SO IT WILL BE HELPFUL FOR
THE COURT TO DO THAT SO THE
FINAL POINT IS SIMILAR TO THE
TIMING ISSUE.
EVERYONE KNOWS BECAUSE OF THE
PANDEMIC THERE IS A HUGE BACKLOG
OF TRIALS IN LOWER COURTS AND WE
THINK NOW IT IS INCREDIBLY
IMPORTANT AT THIS POINT THAT THE
COURT IMPLEMENT THIS CHANGE AS
EXPEDITIOUSLY AS POSSIBLE SO
THAT WE ARE NOT HARKENING BACK
TO WHAT JUSTICE LAWSON SAID NOT
USING RARE AND PRECIOUS JURY
TRIAL TIME NOT TO MENTION
JURORS, THE JURY SLOTS ON CASES
THAT AREN'T GOING TO GET TO THE
JURY SO TO THAT EXTENT OUR
OVERALL PROPOSAL IS LESS IS MORE
TO THE EXTENT YOU GET THIS
IMPLEMENTED BY MAY 1ST.
YOU SHOOK THE BUSHES AND THERE
ARE A LOT OF STRONG OPINIONS ON
SUMMARY JUDGMENT PRACTICE.
THIS HAS BEEN A USEFUL EXERCISE,
IT WASN'T A LOT OF FUN BUT

USEFUL FOR THE COMMITTEE.
I PERSONALLY TO SPEAK OF MYSELF
AND VERY SUPPORTIVE OF THE AG'S
PROPOSAL OF GOING TO 30 DAYS AND
20 DAYS.
THE IDEA OF PUTTING IN RULE 56 C
SO THAT YOU ARE CLEAR ON WHAT
ACTUALLY HAS TO BE DONE TO
SUPPORT OR OPPOSE A PARTICULAR
FACT IS IMPORTANT TO THE EXTENT
AND I AGREE THAT CLEANING UP THE
ISSUE OF MAKING SURE
DECLARATIONS ARE INCLUDED AS THE
STATUTE MAKES CLEAR ARE GOOD
CHANGES SO WE WOULD SUPPORT
THOSE TO THE EXTENT THE COURT
CAN DO THEM AND DO THINGS
BETWEEN NOW AND 22 DAYS TO
MAY 1ST.
IF YOU ARE STRUGGLING WITH SOME
OF THESE TECHNICAL ISSUES TO
IMPLEMENT THEM OUR PROPOSAL
WOULD BE TO IMPLEMENT WHAT YOU
PROPOSE DOING AND THE WAY YOU
MAKE IS CLEAR AS POSSIBLE THAT
THE RULE IS AS YOU SAY IT SHOULD
BE AND FOR SOME OF THE OTHER
CHANGES YOU MAY THINK ARE MORE
TECHNICAL OR COMPLICATED OR YOU
HAVE QUESTIONS ABOUT THE LAW AND
THE CONSEQUENCES WITH MY
APOLOGIZE YOU TASK THE COMMITTEE
AND THE RULES COMMITTEE TO GO
BACK THROUGH THESE COMMENTS
BECAUSE I THINK THERE'S A LOT OF
INTERESTING IDEAS THERE AND I
DON'T ENVY YOU YOUR TASKING
GOING THROUGH THAT TO DECIDE
WHICH TO TAKE IN THE NEXT 22
DAYS SO WE SUGGEST IF YOU HAVE
ANY CONCERNS ABOUT THAT
IMPLEMENT THE RULE YOU PROPOSED,
MAKE CLEAR OTHER CHANGES OR
IMPROVEMENTS YOU THINK YOU CAN
MAKE AND BEYOND THAT LITMUS
BERMAN AND THE COMMITTEE DO
THEIR JOB BECAUSE I THINK THERE
ARE OTHER GOOD CHANGES SUGGESTED
BUT THE TIMING OF THIS IS
CRITICAL AND WE WOULDN'T WANT TO
DELAY IMPLEMENT IN THE NEW
SUMMARY JUDGMENT STANDARD.
OF THE COURT HAS NO FURTHER
QUESTIONS I TAKE THANK THE COURT

FOR TAKING THIS ISSUE UP AT THE
TIME.
>> THANK YOU.
I WANT TO AGAIN SAY THANKS TO
EVERYONE WHO HAS PARTICIPATED IN
THE ORAL ARGUMENT TODAY FOR YOUR
COMMENTS AND EVERYBODY ELSE WHO
HAS PARTICIPATED IN THIS PROCESS
AND PROVIDED INPUT TO THE COURT,
WE ARE GRATEFUL AS HAS ALREADY
BEEN ACKNOWLEDGED A LOT OF
PEOPLE HAVE DONE A LOT OF WORK
ON THIS AND THE COURT IS DEEPLY
GRATEFUL FOR IT.
WITH THAT THE COURT WILL NOW
STAND IN RECESS FOR ABOUT 10
MINUTES BEFORE WE TAKE UP
THE NEXT CASE.