

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES. GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, SUPREME COURT OF FLORIDA, PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA SUPREME COURT, WE TAKE UP CASE NUMBER 211255, SAMANTHA ELAINE TSUJI.

>> MAY IT PLEASE THE COURT, BRYAN GOWDY FOR THE PLAINTIFFS, SAMANTHA ELAINE TSUJI AND MISS WILLIAMS.

WE RESERVE TIME FOR REBUTTAL. CHAPTER 733 HAS TWO TIMELINESS BARS THAT REPRESENT ALONG TWO YEAR DEADLINE.

IN SUBSECTION 2 OF 733.702, THE PROVISION EXTINGUISHES A CAUSE OF ACTION FOUNDED ON THE DECEASED'S WRONGDOING.

733.7310, IT PROTECTS THREE BUT ONLY THREE PERSONS FROM LIABILITY FOR, QUOTE, ANY CLAIM OR CAUSE OF ACTION AGAINST THE DECEDENT AND THOSE PERSONS ARE THE ESTATE, PERSONAL REPRESENTATIVE AND BENEFICIARIES.

THE DEFENDANTS, CANNOT RELY ON THE FIRST PROVISION, THE FIRST LONG PROVISION ON 702 WHICH EXTINGUISHES THE CAUSE OF ACTION BECAUSE OF THE INSURANCE EXCEPTION.

THEY RELY SOLELY ON THE SECOND PROVISION IN 710.

710 DOES NOT APPLY BY ITS PLAIN TERMS TO THE LEWIS COMPANY OR ITS INSURERS.

THEY ARE NOT THE ESTATE, PERSONAL REPRESENTATIVE OR BENEFICIARY.

>> I UNDERSTAND AS A TEXTUAL FACT, THE ULTIMATE TRUTH OF WHAT

YOU ARE ARGUING TURN ON THE
DISTINCTION YOU MAKE BETWEEN
WHAT YOU CALL PAY MONEY
LIABILITY AND BREACH OF DUTY
LIABILITY.

AT THE END OF THE DAY, LBC HAD
PAY LIABILITY YOU WOULD CONCEDE
UNDER YOUR ARGUMENT THAT IT
WOULD APPLY?

I WANT TO UNDERSTAND THAT.

>> MIGHT MAKE A DIFFERENCE WITH
THE ESTATE, WHO BY THE WAY NEVER
FILED ANYTHING FOR THE FIRST
BLOW BUT I DON'T THINK IT WOULD
CHANGE WITH LBC.

I THINK THE ONLY PROVISION THAT
COULD PROTECT THEM IN ANY WAY IS
SUBSECTION 273.72.

>> WHAT'S THE SIGNIFICANCE OF
THE DISTINCTION YOU MAKE THAT I
CAN'T TELL IF WE OR ANY COURT
HAS EVER MADE BETWEEN PAY MONEY
LIABILITY AND BREACH OF DUTY?

>> IT TO DISTINCTION WITH
RESPECT TO THE ESTATE.

THEY DIDN'T USE THOSE TERMS BUT
THEY DID MAKE THAT DISTINCTION
IN THAT THE ESTATE WOULD BE THE
NAMED PARTY THROUGH THE PERSONAL
REPRESENTATIVE AND YOU WOULD
ESTABLISH THE DECEDENT'S
LIABILITY, NOT THE ESTATE, THE
ESTATE DIDN'T RUN OVER ON
CLIENTS, MISTER MORTON DID.

THE ONLY WAY THAT THE ESTATE AND
LEWIS BEAR ARE LIABLE HERE IS
THROUGH PAY MONEY LIABILITY
BECAUSE NEITHER -- WE ARE NOT
ALLUDING ANY NEGLIGENCE, IT IS
VICARIOUS LIABILITY WHICH IS
ALWAYS WITHOUT FAULT LIABILITY
BUT IT IS AN IMPORTANT
DISTINCTION FOR THE ESTATE
BECAUSE IT IS LISTED IN 733.

70 AND IT CAN GET CONFUSING BUT
LEWIS BEAR AND THE ESTATE ARE
NOT -- WE ARE NOT USING THE TERM
LIABILITY LIKE YOU WOULD WHEN
YOU SAY IN THE TRIAL COURT WE
WILL HAVE A LIABILITY TRIAL, WE
HAVE LIABILITY ISSUES.

WHEN SAYING THAT YOU ME WE ARE
GOING TO LITIGATE THE ISSUES
DEALING WITH WHETHER NEGLIGENCE

CAUSED THE LEGAL INJURY OR THE OTHER TORT SO THAT'S THE DISTINCTION.

>> SORRY TO INTERRUPT, ISN'T THE ONLY WAY TO ESTABLISH LIABILITY AT THIS POINT THROUGH THE ESTATE?

>> NO, THERE'S TWO WAYS. THIS HAPPENS ALL THE TIME, YOU COULD JUST SUE LEWIS BEAR, YOU ARE NOT REQUIRED TO PURSUE EMPLOYEE WHEN HE IS ALIVE. YOU CONSUME LEWIS BEAR AND ESTABLISH THE DECEASED'S LIABILITY AND BREACH OF DUTY AND SAY LEWIS BEAR IS LIABLE FOR THAT.

>> THAT GETS TO THE QUESTION OF WHETHER THE LIABILITY AGAINST THE STATE IS EXTINGUISHED BY 710 AND THERE IS NOTHING LEFT FOR L BC.

>> IF IT IS ASK THINK WISHED, RIGHT.

IF YOU TREAT 710 IS NEXT IN RICHMOND PROVISION, THEN I AGREE.

THAT IS WHAT WE HAVE CONCEDED THAT THERE IS NO INSURANCE, SUBSECTION 2 WOULD EXTEND WHICH THE CAUSE OF ACTION AND WE WOULD BE OUT OF BOARD.

ONLY BECAUSE OF THE EXISTENCE OF INSURANCE, KEEP IN MIND IT IS NOT JUST THAT WE ARE LIMITED TO THE POLICY LIMITS.

I AGREE WITH YOU BUT IT HAS DIFFERENT WORDING.

>> DOES THAT CAPTURE THE PAY AND SUBSTANTIVE LIABILITY.

>> IT IS IMPORTANT TO KEEP IN MIND THE ESTATE BENEFICIARIES LIABLE FOR ANY CLAIM OR CAUSE OF ACTION AGAINST THE DECEDENT, YOU COULD SUE THEM FOR MISAPPROPRIATION OF FUNDS OR THINGS LIKE THAT.

THE POINT BEING WE ARE TALKING ABOUT LIABILITY IN THE BREACH OF DUTY SENSE, WE ARE TALKING ABOUT THE ESTATE BECAUSE THE ESTATE --

>> IS IT BECAUSE OF THAT TO FOCUS ALL THE ELEMENTS?

IT IS KIND OF WEIRD TO SAY YOU

ARE OFF THE HOOK BECAUSE OF
CAUSE OF ACTION AND SUGGESTING
AS YOU DO TO ESTABLISH WHETHER
YOU BREACHED THE DUTY AND CAUSED
DAMAGE OR SOMETHING BUT I DON'T
TAKE IT AS THE LAST STEP.

>> THAT IS THE WAY THE STATUTES
ARE WRITTEN INCLUDING THE
NON-JOINDER STATUTE WHICH IT
STATES YOU DON'T HAVE A JUDGMENT
AGAINST THE INSURED.

YOU JUST HAVE A SETTLEMENT OR
VERDICT AND THE FIRST DISTRICT
MESS TO THAT UP IN THAT THEY
HAVE A JUDGMENT.

>> IF YOU ARE AFTER THE TWO
YEARS, YOU ARE NOT IN A POSITION
TO GET A VERDICT, AS A PRACTICAL
MATTER, YOU ESTABLISH A
FICTITIOUS PROCESS HERE.

IF YOU WERE REALLY GOING AFTER
IN A LAWSUIT IN WHICH THE
PERSONAL REPRESENTATIVE WAS
NAMED, THAT IS SUBJECT TO
DISMISSAL.

>> IF WE DIDN'T HAVE INSURANCE.
I DON'T AGREE -- BECAUSE AS THIS
COURT HAS RECOGNIZED THE INSURER
-- PUT S US IN A SITUATION WHERE
THERE IS A DISTINCTION IN THIS
CASE.

>> THIS INSURANCE PROVISION, I
AM STRUGGLING TO SEE THE EFFECT
733710 --

>> IT DOESN'T.

I'M NOT MAKING AN ARGUMENT THE
INSURANCE PROVISION AFFECTS
733.0710.

I'M NOT ARGUING WE ARE USING
THAT --

>> THAT'S WHERE TWO YEARS COMES
IN.

SUBSECTION 2, OF 733.702 BECAUSE
IT SAYS THIS PART AND SO THAT
SUBSECTION EXTINGUISHES THE
CAUSE OF ACTION AND PARTIALLY
REPEALS 46.

020 ONE WHICH IS THE SURVIVAL
STATUTE, REVERSES THAT NORMAL
THING.

IT REVERSES IT AT THE 2-YEAR
POINT.

WHAT 710 DOES IS PROTECTS THREE
PEOPLE.

THE ESTATE, PR AND BENEFICIARIES, DOES NOT PROTECT THE DECEDENT'S EMPLOYER OR INSURER.

EVEN IF WE DIDN'T HAVE JUSTICE CANNADY, EVEN IF WE ONLY HAD 710 AND 702 WASN'T THERE, I WOULD SUBMIT THAT WE COULD STILL SUE LEWIS BEAR AND WE COULD STILL SUE THE INSURANCE COMPANY. BECAUSE THE LEGISLATURE USED THREE WORDS.

INSURERS, EMPLOYERS AND THE ESTATE, NONE OF THEM RAN OVER CLIENTS OR COMMITTED THE TOUR. >> THE ESTATE TAKES THE PLACE OF THE DECEDENT.

>> THE ESTATE TAKES THE PLACE OF THE DECEDENT.

>> THIS IS ALL ABOUT -- CAN'T SUE OR BE SUED.

THAT'S THE PRINCIPLE THAT WE ALL ACKNOWLEDGE.

>> WE ARE NOT ASKING WHETHER THE ESTATE NEGLIGENTLY OPERATED THE BOTTOM, BUT WHETHER THE DECEDENT, IF YOU WANT TO A DISTINGUISHED THE DECEDENT'S LIABILITY, USE THE LANGUAGE OF SUBSECTION 2.

>> THE ONLY WAY TO TALK ABOUT DECEDENT'S LIABILITY IS TALK ABOUT LIABILITY OF THE ESTATE. ONCE HE IS DEAD, HE IS DEAD. NOT AMENABLE TO --

>> THAT'S NOT TRUE WITH EMPLOYERS.

WE HAVE LAWSUITS ALL THE TIME WE ARE NOT EVEN LIVING EMPLOYEE IS NAMED AND WE STILL GO INTO COURT AND PROVE THE EMPLOYEE WHETHER THEY WERE DEAD OR ALIVE.

>> I'M STRUGGLING TO SEE HOW THE RULE YOU ARE SUGGESTING IS MOST CONSISTENT WITH THE LAW BECAUSE WHEN I LOOK AT THE WHOLE LEGAL CONTEXT HERE, SEEMS LIKE IT IS REASONABLE TO CONCLUDE THAT AN EMPLOYER CAN'T BE HELD LIABLE VICARIOUSLY FOR THE ACTIONS OF AN EMPLOYEE IF THE EMPLOYEE COULD NOT BE HELD LIABLE FOR THAT.

AND HERE IS THE ESTATE, THAT IS

WHAT WE ARE DEALING WITH BECAUSE
YOU CAN'T HOLD A DEAD PERSON
LIABLE AND IF YOU CAN'T HOLD THE
ESTATE LIABLE, I CAN'T SEE HOW
THE EMPLOYER CAN BE HELD
VICARIOUSLY --

>> I WOULD LIKE TO POINT YOU TO
THE 1955 CASE, A DIFFERENT CASE
FOR THE CHEMICAL COMPANY.
YOU HAD A HUSBAND DRIVING THE
EMPLOYER'S VEHICLE.
HE INJURED HIS WIFE WHO WAS A
PASSENGER IN THE VEHICLE.
THE WIFE COULD NOT SUE HER
HUSBAND BECAUSE OF SPOUSAL
IMMUNITY.

THIS COURT HELD THE WIFE COULD
STILL SUE THE OWNER OF THE
VEHICLE, PURE VICARIOUS
LIABILITY ON THE NO FAULT OF THE
OWNER FOR THE HUSBAND'S TORT.
I WOULD SUGGEST I WILL GIVE YOU
ANOTHER EXAMPLE.

IF THERE ARE -- CERTAINLY IF YOU
CAME IN AND SAID YOU HAD A
PRIVILEGE, I AGREE ABOUT THE
DEFAMATION CASE.

IF AN EMPLOYEE HAS PRIVILEGE TO
RUN OVER MY CLIENTS 2D FAME
CERTAIN PEOPLE THE EMPLOYER
CAN'T BE LIABLE BUT SUPPOSE WE
ONLY SUE LEWIS BEAR HERE, I SEE
NOTHING TO SUGGEST WE HAVEN'T
SUED THE EMPLOYEE OR THE STATE,
SUPPOSE WE DID THAT IN LESS THEN
TWO YEARS.

THE WAY THIS NON-CLAIM STATUTE
WORKS, DOESN'T MATTER WHETHER
YOU FILE AN ACTION, IF YOU DON'T
FILE SOMETHING IN THE PROBATE
COURT THEN YOU ARE BARRED FROM
SEEKING ANYTHING FROM THE ESTATE
SO UNDER THEIR THEORY, IF WE
TIMELY FILE AGAINST LEWIS BEAR
NOT JUST THE STATUTE OF
LIMITATIONS BUT LESS THAN TWO
YEARS BUT NEVER SUED THE ESTATE,
NEVER FILED ANYTHING IN PROBATE
COURT, WE WOULD BE BARRED
BECAUSE WE COULDN'T GET THE
ESTATE LIABLE.

THAT'S NOT HOW THE LAW WORKS.
YOU CAN ESTABLISH THE LIABILITY
AND BREACH OF DUTY SETS OF THE

EMPLOYEE WITHOUT HAVING TO SUE
THE EMPLOYEE AND WE SUGGEST THE
SAME THING HAPPENS HERE WITH THE
ESTATE AND THIS IS AN EASIER
CASE TO DECIDE BECAUSE THERE WAS
NO EMPLOYER.

HERE WE HAVE -- IT IS THE
EMPLOYER'S INSURERS THAT ARE ON
THE HOOK.

IT IS NOT THE ESTATE.

IF WE WERE TO FIND OUT TODAY
THAT MR.

MORTON HAD ONE BILLION DOLLARS
WE COULDN'T GET A DIME OF THAT
MONEY BECAUSE WE DIDN'T FILE
WITHIN TWO YEARS, BUT THAT WOULD
MEAN THE INSURERS ARE OFF THE
HOOK.

>> THE ONLY THING, IS THE FACT
THAT THERE IS INSURANCE.

>> IF THERE WAS NO INSURANCE
SUBSECTION 2 WOULD KICK US OUT
BECAUSE THAT ESTABLISHES THE
CAUSE OF ACTION.

IT WOULD NOT BE 710, BUT
SUBSECTION 2.

THAT IS WHERE YOU GOT CONFUSED.
SUBSECTION 2, EXTINGUISHING THE
CAUSE OF ACTION, 710 PROTECT THE
ASSETS OF THE ESTATE.

>> THE 1987 DECISIONS, WORK IN
EXONERATION IN EITHER CASE.

>> ALL TYPES OF PRINCIPLES,
TALKING STATUTORY, WHAT DO THE
LEGISLATURE, WHAT IT MEANT IN
710, PROTECT THE ASSETS OF THE
ESTATE AND ALL THIS MAKES SENSE,
WITH THE INSURANCE.

MY FRIEND SAID WHAT ABOUT THIS?
WE CAN'T SUE THE EMPLOYEE FOR
INDEMNITY ANYMORE.

THAT IS WHY WE ARE LIMITED TO
INSURANCE.

WE CITED THIS IN OUR REPLY,
INSURERS AREN'T ALLOWED TO SEEK
INDEMNITY FROM INSURERS.

IF WE GO AFTER THAT, IT WOULD BE
UNFAIR.

MISTER MORTON WAS RICH, THEY
COULDN'T GET INDEMNITY FROM HIM.
ONLY THE INSURANCE COMPANY IS
GOING TO DO THAT.

IT ALL MAKES SENSE AND FITS
TOGETHER IN THAT WAY.

YOU JUST NEED TO INTERPRET THE TEXT.

>> I DON'T -- IT IS NOT -- IT DOESN'T SEEM SO MUCH LIKE A TEXT QUESTION AS A MATTER OF THE INTERACTION WITH THE BACKGROUND PRINCIPLE.

YOU ACKNOWLEDGE THERE ARE LOTS OF CASES, THAT THERE IS A DISMISSAL AGAINST THE EMPLOYEE ON STATUTE OF LIMITATIONS GROUNDS.

THERE'S LOTS OF CASES THAT SAY WHEN YOU GET A DISMISSAL ON THE STATUTE OF LIMITATIONS THERE IS NOTHING TO BE LIABLE FOR.

HOW DOES THIS FIT IN?

>> THERE ARE CASES ON BOTH SIDES OF THAT ISSUE.

IF YOU READ ONE CASE IT IS THE SOUTH DAKOTA CASE THAT LAYS OUT BOTH SIDES.

>> AND TREAT IT AS A POLICY, WHAT MAKES MORE SENSE.

>> I WON'T TELL YOU THAT EVERY CASE DOES THIS BUT A FAIR NUMBER OF THEM.

IF YOU LOOK AT THE STATUTE OF LIMITATIONS IN CHAPTER 95, 95.11 SPEAKS ABOUT YOU MUST COMMENCE ACTION.

IT IS NOT LIMITED TO ANY PARTICULAR DEFENDANT AND SO WE DON'T NEED TO GO TO THE BACKGROUND PRINCIPLES BECAUSE THE LEGISLATURE USED PARTICULAR WORDS TO LIMIT THIS NONCLAIM STATUTE.

IF THEY WANTED TO EXTINGUISH LIABILITY FOR ANYBODY RESPONSIBLE AND FOR ANY CLAIM OF CAUSATIVE ACTION AGAINST THE DECEDENT ALL THEY HAD TO DO WAS ADD ANOTHER THING TO SAY NOR ANY OTHER PERSON.

THEY PICKED THREE PEOPLE.

>> THEY COULD HAVE HELPED YOU BY PUTTING ANOTHER EXCEPTION IN 710 THE WAY THEY DID BEFORE.

>> I DON'T THINK WE NEED ANOTHER.

IT COULD ALWAYS BE CLEAR.

>> YOU ARE THE ONE WHO SAID IF THEY JUST ADDED THESE.

YOU ARE WELL INTO YOUR REBUTTAL.
>> IT SAYS FOR ANY CLAIM OR
CAUSE OF ACTION.
ANOTHER HYPOTHETICAL.
SUPPOSE IT WAS A DIFFERENT
OWNER.
WITH THEY GET THE BENEFIT OF
THIS?
THEY ARE STRETCHING THIS FOR
ANYBODY WHO COULD BE LIABLE FOR
THE WRONGDOING OF THE DECEDENT
WHEN THE LEGISLATURE ONLY LISTED
3 PEOPLE.
>> CHARLES WIGGINS ON BEHALF OF
THE ESTATE, MAY IT PLEASE THE
COURT WE ASK THE COURT AFFIRMED
THE DISTRICT'S DECISION AND
REJECT THE FOURTH DISTRICT
DECISION.
THIS IS A CASE THAT INVOLVES --
ON THE PART OF THE LEWIS BEAR
COMPANY AND TO MY COLLEAGUE'S
POINT, YES, CHAPTER 733.710 DOES
IN FACT PROTECT ONLY 3 ENTITIES
AND 3 PARTIES, THE PERSONAL
REPRESENTATIVE AND
BENEFICIARIES, THAT IS WHAT THE
STATUTE SAYS, BUT IN A CASE
WHERE IT IS UNDISPUTED THE
LIABILITY ON BEHALF OF THE
CORPORATE EMPLOYER IS PURELY
VICARIOUS, NOWHERE IN THE
PLEADINGS OR THE RECORD BELOW
WILL THERE BE A SCRAP OF
EVIDENCE THAT LEWIS BEAR COMPANY
WAS INDEPENDENTLY NEGLIGENT.
IT IS PURELY VICARIOUS IN
DANGEROUS INSTRUMENTALITY.
SO THIS COURT, I SUBMIT WHETHER
YOU CALL IT A 2-STEP PROCESS OR
SOMETHING ELSE YOU HAVE TO LOOK
AT CHAPTER 733, AND HOW DOES
THAT AFFECT THIS CASE?
A LIABILITY CASE UNDER THE
COMMON LAW DOCTRINE OF VICARIOUS
LIABILITY?
IN OTHER WORDS CHAPTER 733 MAY
BE THE START OF THE EMPHASIS BUT
IS NOT THE END OF THE ANALYSIS.
WHEN WE TALK ABOUT VICARIOUS
LIABILITY THE SHORTHAND VERSION
OF THAT IS THE VICARIOUSLY
LIABLE DEFENDANT.
THE EMPLOYER.

THE PRINCIPAL.
STANDS IN THE SHOES OF THE
ACTIVE TORT FEASOR.
LEWIS BEAR COMPANY BECAUSE IT IS
VICARIOUSLY LIABLE STAND IN THE
SHOES OF MR.
MORTON.

WHEN WE LOOK AT CASES LIKE
WILHELM AND SAXON AND OTHER
VICARIOUS LIABILITY CASES WE ARE
ESTABLISHING OUR BRIEF, IT TELLS
YOU WE STAND IN THE SHOES AND
YOU GET THOSE DEFENSES AND IF
THEY ARE STATUTE OF LIMITATIONS
DEFENSE, IF THERE IS AN IMMUNITY
DEFENSE, SOME OTHER DEFENSE THAT
WOULD PROTECT MR.

MORTON OR HIS ESTATE THOSE
DEFENSES WORK TO THE BENEFIT OF
LEWIS BEAR COMPANY.

>> WHAT COUNSEL SAID ABOUT THIS
ISSUE.

IN THIS CASE MAY BE A LITTLE
EASIER BECAUSE THEY DID CHOOSE
TO SEE THEM BOTH, THE ESTATE AND
THE COMPANY.

IN THE CASE WHERE THEY ONLY SUED
THE COMPANY, THEY ARE NOT TRYING
TO MAKE A CLAIM AGAINST THE
ESTATE.

ARE YOU SAYING IT IS AN
AFFIRMATIVE DEFENSE THAT YOU
WOULD LOOK BACK TO THE 2-YEAR
THING AND SAY BECAUSE THIS WOULD
HAVE BEEN DISMISSED IF YOU HAD
SUED, THE EMPLOYER GETS THE
BENEFIT OF THAT?

>> I COULD PUT IT A DIFFERENT
WAY.

LET'S ASSUME THAT THE PLAINTIFFS
IN THIS CASE HAVE NOT SUED THE
ESTATE.

THEY SUED MR.

MORTON AND AMENDED IT TO THE
ESTATE.

ASSUME THAT NEVER HAPPENED.
BECAUSE LEWIS BEAR COMPANY
STANDS UNDER THE SHOES ENDED
CLAIM IS ONLY FOR VICARIOUS YOU
WOULD BE ABLE TO ASSERT THE
STATUTE OF LIMITATIONS OR
PROPOSED OFFENSES AND FRANKLY WE
MIGHT BE IN THE SAME COURTROOM
UNDER THE SAME SITUATION DOING

THE SAME THINGS TODAY.

>> IT SEEMS IN SOME SENSE YOU HAVE A STRONG CASE WITH THE INTERACTION OF THIS STUFF WITH BACKGROUND PRINCIPLES.

THAT HYPOTHETICAL DOES SHOW THAT WE ARE GETTING PRETTY FAR, THE GOALS OF THE STATUTE AS FAR AS CERTAINTY FOR THE ESTATE ET CETERA ET CETERA.

IN THAT SCENARIO IT SEEMS THAT THE ESTATE, PERSONAL REPRESENTATIVE DOESN'T BOTHER WITH BEING NOMINALLY A PART OF THE LAWSUIT.

I'M NOT SAYING YOU DON'T HAVE THE BETTER SIDE BUT DO YOU AGREE THAT IT IS GETTING ATTENUATED FROM WHAT THE STATUTE IS TRYING TO ADDRESS AT THAT POINT?

>> AS SOMEONE WHO DEFENDED LOTS OF LAWSUITS, SOMETIMES AN EMPLOYEE NEVER GETS SUED BUT YOU LOOK AT WHAT YOU'RE DEFENSES ARE OR THE DEFENDANT DOES IS THERE AN IMMUNITY?

IN SAXON?

THE CORPORATE, THE GOVERNMENT ENTITY THAT WAS ONLY VICARIOUSLY LIABLE DIDN'T RELY ON STATUTE OF LIMITATIONS IT RELIED ON AN IMMUNITY DEFENSE, THEY STOOD IN THE SAME SHOES ON THAT IMMUNITY AS THEIR EMPLOYER DID AND TO THE COURT'S POINT THAT YOU HAVE TO GO DOWN A RABBIT TRAIL TO GET TO THIS POINT, IS IT A MULTISTEP OR MULTIFACTOR ROLE PROCESS?

>> SURE.

I WOULD AGREE WITH THAT.

MULTI STEP PROCESSES IN DETERMINING WHETHER SOMEBODY IS LIABLE OR CAN BE MAINTAINED IN THE LAWSUIT YOU'VE GOT TO DO THAT EVERY DAY.

>> WOULD IT MAKE SENSE TO BE DONE IN THIS TIMEFRAME?

THE EMPLOYER BY OPERATION IS BEING SUED BUT ALSO THEY HAVE DEFENSES AGAINST THE EMPLOYEE, MAYBE THEY WERE NOT OPERATING, THERE WERE OTHER DEFENSES THEY NEEDED SO THE EMPLOYEES ACTIONS THAT WOULD SUBJECT THE EMPLOYEE,

NOW THE ESTATE TO CERTAIN
LIABILITY THOUGH IT PUT IT BACK
INTO THE 2-YEAR LIMITATION OF
THE STATUTE.

>> I AGREE.

TO THAT POINT I WOULD LIKE TO
CLARIFY WHAT MY COLLEAGUE SAID
IN HIS REMARKS.

HE SAID INSURANCE CARRIER CAN'T
SEE WHAT IS INSURED FOR
INDEMNITY.

HE IS RIGHT.

THEY CAN'T.

HE DIDN'T VOTE WHAT THOSE CASES
SAY IS A LITTLE DIFFERENT.

THE CARRIERS CAN'T SUE.

IT DOESN'T MEAN THE LEWIS BEAR
COMPANY CAN'T SUE ITS OWN
EMPLOYEE.

FOR INDEMNITY IN VICARIOUS
LIABILITY SITUATION.

I DON'T KNOW IF THAT IS FACTS WE
HAVE HERE BUT AS CONCEPT OF LAW
LEWIS BEAR COMPANY COULD AND YOU
MIGHT SAY SOME OF THIS IS
COVERED BY INSURANCE BUT SOME OF
IT ISN'T.

LEWIS BEAR COMPANY MIGHT HAVE
EXTRA CONTRACTUAL DAMAGES OF
OVER -- OVER AND ABOVE ITS
INSURANCE POLICY, THINGS THAT IF
THINGS GO THE WRONG WAY FOR
LEWIS BEAR COMPANY IT MIGHT HAVE
A RIGHT TO RECOVER THOSE FROM
ITS EMPLOYEE.

TO THE COURT'S POINT IT IS TOO
LATE FOR THAT.

>> WHAT DO YOU MAKE OF YOUR
COLLEAGUES ARGUMENT ABOUT MAY
VERSUS ILLINOIS CASE WE DECIDED
IN 2,000 AND THE ABSENCE OF
SUBSEQUENT LEGISLATIVE
CLARIFICATION FROM YOUR
PERSPECTIVE ABOUT HOW THESE
SECTIONS AND TIMELINES INTERACT
WITH EACH OTHER?

>> THAT IS A CRYSTAL BALL AND
SPECULATION ON MY PART.

THE LACK OF LEGISLATIVE ACTION
IN THE WAKE OF MAY, DON'T KNOW
WHAT THAT TELLS US.

DOES THAT MEAN THE LEGISLATURE
ENDORSED MAY FOR THE LIMITED
PURPOSES ARE LIMITED SCOPE OF

THE DECISION IN MAY?

THE LEGISLATURE, PAY ATTENTION
TO IT AT ALL?

I CAN'T PRECISELY ANSWER THAT.
>> WE PRESUME THE LEGISLATURE
KNOWS WHAT THEY STOOD FOR OR
STAND FOR AND I GUESS THE
ARGUMENT I'M ASKING YOU TO
CONSIDER IS TELL ME WHY THAT IS
WRONG.

SHOULD WE AS A COURT BE SAYING
THE LAST WORD IS MAY?
AND THAT IS THE PROPER FRAMING
OF HOW THESE INTERSECT WITH EACH
OTHER?

I AM USING THAT AS A SHORTHAND
FOR WHAT YOUR OPPONENT HAS
DESCRIBED AS THE INTERSECTION,
THE READING OF THESE TWO
STATUTES.

>> THIS WAS ARGUED IN THE FIRST
DISTRICT COURT OF APPEAL.
WHEN WE LOOK AT WHAT MAY STANDS
FOR, MY ARGUMENT THEN AND MY
ARGUMENT NOW IS THAT MAY WAS
LIMITED BY ITS OWN TERMS TO
PROCEEDINGS IN PROBATE COURT.
THIS IS NOT A PROCEEDING IN
PROBATE COURT.

IS IN THE CIVIL COURT.
THAT MAY BE THE BEST ANSWER.

>> IT WAS IN THE SAME YEAR,
RIGHT?

>> THEY WERE DECIDED IN 60 TO 90
DAYS OF ONE ANOTHER.

IT SEEMS AT LEAST IN THAT SENSE,
THERE IS NOTHING TOO IMPORTANT
TO LEGISLATIVE ACTION.

I AM NOT SMART ENOUGH TO INFER
WHAT THE LEGISLATURE DOES IN THE
WAKE OF CASE LAW.

UNLESS THE COURT HAS ANY OTHER
QUESTIONS.

>> ONE QUESTION, THE ARGUMENT
ABOUT STATUTES.

THE PROBATE LAWYER, THE NUMBER
OF PROBATE LAWYERS, ONE OF THE
PROBLEMS THEY RAISE, COURT FEES,
NO ONE KNOWS ABOUT, THE
PLAINTIFF KNOWS ABOUT IT,
SOMETHING LIKE WHAT HAPPENED
HERE.

SEEMS THE STATUTE PROVIDES
INSURANCE AT LEAST.

HOW DOES THAT WORK AND THE COMPLAINT THAT PROBATE LAWYER SAYS SHOULD BE AFFIRMED IN THE SECOND DEAL IN PROBATE PRACTICE AS IT IS KNOWN.

IT WILL CAUSE AN UPHEAVAL IN PROBATE PRACTICE.

HOW IS IT ONE FINDS OUT SOMEBODY DIED, AND WE MAKE WELLNESS CALLS, HOW DOES ONE FIND OUT?

>> I HAVE A PRECISE ANSWER BUT IF I COULD GIVE A SHORT PREFACE WHICH IS THE ARGUMENT MADE BY THOSE AMICUS PARTIES WAS IT MAKES OUR JOB TOUGHER.

HOW DO WE KNOW?

I CONTEND THAT THAT ARGUMENT GETS PRETTY FAR FROM HOW THE COURT SHOULD INTERPRET THE STATUTE BUT TO YOUR POINT, THE ESSENCE OF THAT AMICUS ARGUMENT WAS THAT THIS IS A HEAVY BURDEN.

HOW DO WE KNOW?

AS ATTORNEYS WHO ARE IN THE TRENCHES EVERY DAY WE'VE ALL GOT BURDENS, LOTS OF BURDENS, SOME HARDER THAN THIS.

IF WE'VE GOT A CLIENT WHO WANTS TO SUE SOMEBODY WE'VE GOT TO FIND OUT IF THE DEFENDANT IS SUBJECT TO PERSONAL JURISDICTION, IF THE CLIENT HAS A PERMANENT INJURY.

GOT TO FIGURE OUT WHERE DO I SUE IN THE APPROPRIATE VENUE?

THE SOVEREIGN IMMUNITY PLOT OR SOME OTHER PRIVILEGE APPLY, DOES THE STATUTE OF LIMITATIONS, HAS IT ALREADY RUN?

PROBABLY MORE THAN YOU WANT TO KNOW ABOUT ME BUT I GET CALLS ALL THE TIME FROM PEOPLE WHO HAVE VALID CLAIMS BUT IT WOULD BAR THE MAN YOU'VE GOT TO SEND THE PACKET.

ANOTHER BURDEN, IF ALIVE CAN THE DEFENDANT AND BE SUBJECT TO SERVICE?

THE REASONABLE AND PRUDENT ATTORNEY HAS THOSE BURDENS OR OBLIGATIONS TO ENGAGE IN THAT DUE DILIGENCE WE ARE NOT FAR AFIELD IF WE SAY ATTORNEYS OF THE STATE OF FLORIDA HAVE A DUTY

TO INQUIRE AS TO WHETHER THE DEFENDANT IS ALIVE DEBT IN THE FIRST 2-YEAR PERIOD AND AS A PRACTICAL MATTER I SUGGEST THAT BURDEN IS NOT TOO TOUGH IN THAT IN LIGHT OF CHAPTER 733, THE POTENTIAL PLAINTIFF'S ATTORNEY OR ATTORNEY FOR THE POTENTIAL PLAINTIFF JUST NEEDS TO KNOW WHETHER AT THE 2-YEAR MARK FROM THE DATE OF THE ACCIDENT IS THE DEFENDANT ALIVE.

IF SO YOU'VE GOT ANOTHER 2 YEARS, DEALING WITH A 4-YEAR STATUTE OF LIMITATIONS FOR THE PURCHASE CLAIM.

ON THE ONE HAND, I APPRECIATE AMICUS SAYING THIS IS A BURDEN TO FIGURE THIS OUT.

WE'VE GOT A LOT OF OTHER BURDENS EQUALLY AS IMPORTANT THAT WE ARE OBLIGATED TO CARRY AS ATTORNEYS REPRESENTING THE PEOPLE OF THE STATE OF FLORIDA.

UNLESS THE COURT HAS ANY QUESTIONS, MORE TIME.

THANK YOU.

>> COUNSEL, YOU CAN HAVE 4 MINUTES FOR REBUTTAL.

>> JUSTICE PAULSON, YOUR CONCERNS ABOUT THE EMPLOYER, THEY ARE COMPLETELY SAFE NOT BECAUSE OF 710 BUT BECAUSE OF SUBSECTION 2.

WE CAN ONLY GET THINGS FROM THE INSURANCE COMPANY.

THIS PARADE OF HORRIBLES ABOUT HOW WE MIGHT WANT TO SUE THE EMPLOYEE OR THINGS LIKE THAT, IT DOESN'T EXIST NOT BECAUSE OF 710 BUT SUBSECTION 2.

IF THIS IS A \$50,000 POLICY, IT TURNS OUT THERE IS MORE COVERAGE HERE SO WE ARE IN THE FLORIDA SUPREME COURT.

THIS GOES TO MY SECOND POINT WHICH I HEARD NOBODY DISCUSS FROM THE BENCH OR OPPOSING COUNSEL IN HIS BRIEFS OR TODAY. WHAT WORK DOES SUBSECTION 2 DO THAT IS DIFFERENT FROM THE WORK 710 IS DOING UNDER MY OPPONENTS IN THE FIRST DISTRICT'S CONSTRUCTION?

IT DOES NO WORK, BECAUSE IT IS NOT JUST THE SHORT STATUTE BUT EXPRESSLY INCORPORATES THE LONG DEADLINE AND EXTEND WHICH IS THE CAUSE OF ACTION AFTER TWO YEARS SO WHAT WORK DOES SUBSECTION 2 DO?

YOU CAN'T WRITE AN OPINION EXPLAINING IF THAT.

SUBSECTION 2 PROTECT EVERYBODY BUT THE INSURANCE COMPANY. SUBSECTION 710 PROTECTS ONLY THOSE 3 PERSONS.

WHAT WE HAVE HERE IS AN INSURANCE COMPANY TRYING TO USE 710, THE EMPLOYER OR OWNER OF THE VEHICLE OR OTHER PEOPLE WHO COULD BE LIABLE FOR PURPOSES OF AVOIDING THE LIMITATION IN 702, AND HAVE 3 EXCEPTIONS FOR MORTGAGE, INSURANCE.

WITH THE MORTGAGE IF YOU OPENED THIS CAN OF WORMS MANY PEOPLE DON'T TRANSFER THE NAMES OF THEIR HOUSE AFTER SOMEONE DIES. IF WE'VE GOT TWO YEARS ARE THEY GOING TO STAND UP AND SAY A MORTGAGE COMPANY DIDN'T COME IN? YOU EFFECTIVELY WRITE OUT FOR A. AS FAR AS THE CONSEQUENCES HERE, THE HYPOTHETICAL YOU LAID OUT BASICALLY SAID EVEN IF THE EMPLOYEE IS NOT NAMED WE ARE GOING TO CLAIM THE DEFENSE. WHAT THAT IS GOING TO MEAN IS EVERY TIME THE EMPLOYEE DIES, WILL HAVE TO BE A PROBATE ESTATE OPEN.

NOWADAYS THAT DOESN'T HAPPEN BECAUSE PLAINTIFFS ATTORNEYS DEALING WITH THE INSURANCE COMPANY, A LOT FEWER STATES OPEN.

THEY ARE GOING TO MAKE MORE MONEY IF THE COURT TAKES THE FIRST DISTRICTS ROLLING HERE. YOU WILL HAVE MORE PROBATE ACTIONS AND YOU REALLY DIDN'T GET AN ANSWER TO YOUR QUESTION. ON THE PLAINTIFF SIDE, THE ONLY WAY IS TO CONSTANTLY BE SEARCHING EVERY MONTH FOR OBITUARIES AND THINGS LIKE THAT. THEY DIDN'T NOTICE WHAT

HAPPENED.

YOU THEY ARE THE ONES WHO WILL
PAY THE CLAIM.

YOU NOW HAVE IT WHERE YOU ARE
GOING -- I ALREADY KNOW PEOPLE
SAYING WE WILL FILE EVERYTHING
INTO YEARS AND OPEN A PROBATE
EVEN IF WE ARE NOT GOING TO NAME
THE EMPLOYEE, AND THE
LEGISLATURE SET UP A LOGICAL
SYSTEM.

IF THERE IS INSURANCE WE WILL
HAVE IT OVER HERE.

IF THERE'S NOT INSURANCE THEN
AFTER TWO YEARS EVERYONE IS
PROTECTED AND IF I COULD SAY ONE
MORE THING.

THIS WAS MORE ABOUT RULE 40 ONE
IN RESPONSE TO YOUR QUESTION
THAT HAS NOTHING TO DO WITH THIS
CASE.

>> WE ARE ADJOURNED.