

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR.

GIVE ATTENTION, YOU SHALL BE  
HEARD.

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

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

>> GOOD MORNING AND WELCOME TO  
THIS SESSION OF THE FLORIDA  
SUPREME COURT.

THE FIRST CASE ON THE DOCKET  
TODAY IS PINCUS V. AMERICAN  
TRAFFIC SOLUTIONS INC.  
COUNSEL?

>> GOOD MORNING, AND MAY IT  
PLEASE THE COURT.

MY NAME IS BRET LUSKIN, AND I  
REPRESENT THE APPELLANT,  
MR. STEVEN J. PINCUS, IN THIS  
MATTER OF THE CERTIFIED  
QUESTIONS.

IN 2010 THE LEGISLATURE OF  
FLORIDA ENACTED THE MARK WANDELL  
TRAFFIC SAFETY ACT WHICH ENABLED  
LOCAL GOVERNMENTS TO EMPLOY  
PHOTO-ENFORCED RED LIGHTS ON  
THEIR ROADWAYS AND SET FORTH THE  
PARAMETERS TO WHICH SUCH  
PROGRAMS MUST ADHERE.

FOLLOWING THAT, THE CITY OF  
NORTH MIAMI BEACH DECIDED TO  
AVAIL ITSELF OF SUCH A PROGRAM  
ALONG WITH MANY OTHER LOCAL  
GOVERNMENTS IN FLORIDA.

TO ACCOMPLISH THAT, THE CITY  
ENTERED INTO A WRITTEN CONTRACT  
WITH THE APPELLEE, AMERICAN  
TRAFFIC SOLUTIONS, OR ATS.

UNDER THAT CONTRACT, ATS WAS TO  
PROVIDE AND PERFORM ALL ASPECTS  
OF THE PHOTO-ENFORCED RED LIGHT  
PROGRAM INCLUDING OPERATING AND  
MAINTAINING THE CAMERAS,  
REVIEWING FOOTAGE FOR  
VIOLATIONS, ISSUING TRAFFIC  
CITATIONS AND RECEIVING CIVIL

PENALTY PAYMENTS FROM ACCUSED DRIVERS FOR THE CITY.  
IN EXCHANGE FOR PERFORMING THOSE CONTRACTUAL DUTIES, THE CONTRACT CALLED FOR THE CITY TO PAY AMERICAN TRAFFIC SOLUTIONS COMPENSATION IN THE FORM OF A MONTHLY FEE.  
THAT FEE IS NOT AT ISSUE IN THIS CASE.  
IT SHOULD BE SELF-EVIDENT THAT THE CITY AND ATS CAN AGREE AMONGST THEMSELVES IN THEIR CONTRACT HOW MUCH THE CITY SHOULD COMPENSATE ATS FOR PERFORMANCE OF ITS CONTRACTUAL DUTIES.  
IT'S ELEMENTARY THAT THEY CAN DO THAT.  
WHAT THEY CANNOT DO IS AGREE AMONGST THEMSELVES IN THEIR CONTRACT AS PARTIES TO THAT CONTRACT THAT SOMEONE ELSE, A NON-PARTY, HAS TO PAY COMPENSATION TO AMERICAN TRAVEL SOLUTIONS.  
>> LET ME ASK YOU THIS, THIS KIND OF GOES TO THE HEART OF THE CASE.  
YOU, THE FORMULATION YOU JUST MADE IS THAT SOMEONE HAS TO PAY, RIGHT?  
>> WELL--  
>> I THINK THOSE ARE THE WORDS YOU USED.  
>> SOME-- WELL, ACCORDING TO THE CONTRACT, YES.  
THE ACCUSED DRIVER HAS TO PAY THIS WHEN THEY MAKE AN ELECTRONIC PAYMENT.  
>> OKAY.  
SO WHEN THEY MAKE AN ELECTRONIC PAYMENT.  
IT SEEMS TO ME KIND OF THE CRITICAL FACTOR HERE IS THAT THE CHOICE TO MAKE AN ELECTRONIC PAYMENT IS ENTIRELY VOLUNTARY.  
NOW, AT SOME POINTS IN YOUR BRIEF YOU SEEM TO INDICATE THAT THERE'S A DUTY TO MAKE AVAILABLE AS A MATTER OF RIGHT THE ABILITY TO PAY ELECTRONICALLY.  
I DON'T KNOW WHERE THAT'S WRITTEN.

IF YOU COULD EXPOUND ON THAT,  
THAT WOULD BE HELPFUL.  
BUT IT SEEMS TO ME THAT THIS  
IDEA THAT'S AT THE CORE OF YOUR  
CASE THAT PEOPLE WERE FORCED,  
YOU SAID THEY WERE SHAKEN DOWN,  
THEY WERE ROBBED ALTHOUGH YOU  
ALSO SAY THAT THIS WAS, YOUR  
CASE DOES NOT DEPEND ON WRONGFUL  
CONDUCT.

WELL, I HAVE A LITTLE TROUBLE  
UNDERSTANDING HOW ON ONE HAND  
YOU SAY PEOPLE WERE ROBBED AND  
SHAKEN DOWN, BUT IT'S NOT  
WRONGFUL CONDUCT THAT YOU'RE  
DEPENDING ON.

EXPLAIN TO ME HOW YOU GET AROUND  
THE VOLUNTARY NATURE OF THIS  
TRANSACTION THAT PEOPLE ENTER  
INTO.

>> CERTAINLY, MR. CHIEF JUSTICE.  
I THINK YOU HIT ON THE CORE OF  
THE CASE.

AND IMPLICITLY, YOU MUST  
UNDERSTAND-- AND THIS CAN'T BE  
OVERSTATED.

I KNOW WE BEAT THIS TO DEATH IN  
OUR BRIEFS, BUT THE RELATIONSHIP  
BETWEEN AMERICAN TRAFFIC  
SOLUTIONS AND MR. PINCUS AND  
ACCUSED DRIVERS IS ANYTHING BUT  
VOLUNTARY.

THE ONLY VOLUNTARY RELATIONSHIP  
IN THIS CASE, CONTRACTUAL  
RELATIONSHIP, IS BETWEEN THE  
CITY AND AMERICAN TRAFFIC  
SOLUTIONS.

AND THIS IS AN IMPORTANT POINT.  
AMERICAN TRAFFIC SOLUTIONS WORKS  
FOR THE CITY.

THEY WORK FOR THE GOVERNMENT.  
THEY WORK AGAINST THE DRIVER.  
AND THAT IS FUNDAMENTALLY  
BECAUSE A TRAFFIC CITATION IS  
NOT A CONTRACT, AND IT'S NOT AN  
INVITATION TO CONTRACT.

ON THE CONTRARY--

>> I THINK THE POINT IS, AND WE,  
YOU WOULD AGREE THAT THE \$158  
PAYMENT IS INVOLUNTARY.

>> YES.

>> BUT WHAT YOU'RE COMPLAINING  
ABOUT IS THE \$7.90 PAYMENT, AND  
THAT IS COMPLETELY VOLUNTARY

BECAUSE YOU COULD AVOID IT BY  
PAYING A DIFFERENT WAY.  
I THINK THAT'S THE NATURE OF THE  
VOLUNTARY ACT THAT THE CHIEF WAS  
TALKING ABOUT.

>> YES, YOUR HONOR.

AND I THINK THIS IS THE POINT  
THAT I'M TRYING TO GET AT, THAT  
IT'S AN ILLUSION THAT THIS IS  
VOLUNTARY.

YOU HAVE TO REALIZE THAT THE  
ACCUSED DRIVER--

>> HOW IS PAYING THE \$7.90 FEE  
NOT VOLUNTARY IF YOU CAN AVOID  
IT BY PAYING IT IN A DIFFERENT  
MANNER?

>> WELL, IT'S BECAUSE AMERICAN  
TRAFFIC SOLUTIONS HAS-- THEY  
ARE DICTATING THE PAYMENT TERMS  
HERE.

YOU HAVE TO UNDERSTAND THAT--

>> THEY DO NOT DICTATE THAT IT  
HAS TO BE ELECTRONIC.

A PERSON CAN SEND IT IN BY MAIL,  
THE TRADITIONAL OLD-FASHIONED  
WAY, AND A LOT OF TRANSACTIONS  
STILL HAPPEN THAT WAY.

>> THAT'S A GREAT POINT,  
MR. CHIEF JUSTICE.

I'D LIKE TO TOUCH ON THAT  
SPECIFICALLY.

YOU DESCRIBE AS PAYING BY MAIL,  
BY CHECK AS THE OLD-FASHIONED  
WAY.

AND WITH RESPECT, I DISPUTE  
THAT.

I THINK THAT IS WRONG.

THE IMPLICATION HERE IS THAT  
THERE IS SOME KIND OF MINIMUM  
THAT AMERICAN TRAFFIC SOLUTIONS  
HAS TO PROVIDE TO ACCUSED  
DRIVERS IN ORDER TO SATISFY ITS  
OBLIGATION TO FULFILL THIS  
GOVERNMENT ROLE.

AND THE MINIMUM, IF THERE IS A  
MINIMUM, IS NOT PAYMENT BY MAIL.

IN FACT, I WOULD SUBMIT THAT  
IT'S CASH.

>> WHERE'S THAT WRITTEN?

>> THAT WAS WRITTEN IN FEDERAL  
LAW, YOUR HONOR.

IT'S 31USC5103, I BELIEVE, WHICH  
IS LEGAL TENDER, WHICH SAYS THAT  
U.S. CURRENCY IS LEGAL TENDER

GOOD FOR ALL DEPARTMENTS, PUBLIC AND PRIVATE, TAXES AND PUBLIC CHARGES AND DUES.

I RECOGNIZE THIS ISN'T DIRECTLY ON POINT WITH THE MATTER AT ISSUE TODAY, BUT I DO THINK THAT IT'S RELEVANT AND IMPORTANT.

>> BUT YOU HAVEN'T ARGUED THAT POINT THROUGHOUT THESE PROCEEDINGS, HAVE YOU?

THAT'S NOT THE POINT.

YOU'RE NOT ARGUING THAT SOMEHOW THIS IS DEFECTIVE BECAUSE PEOPLE, THEY DON'T TAKE CASH?

>> NO.

I WAS TRYING TO ADDRESS THE POINT THAT JUSTICE LAWSON MADE.

BUT IF I CAN COME BACK MORE FUNDAMENTALLY, THE REASON THEY CAN'T DO THIS, GETTING DOWN TO IT, IS THAT IT'S PROHIBITED BY STATE STATUTE.

STATE LAW SAYS YOU CANNOT ADD ANY ADDITIONAL FEES, FINES, SURCHARGES OR COSTS TO CIVIL TRAFFIC PENALTIES ASSESSED UNDER CHAPTER 318.

AND WE CONTEND THAT IT IS ASSESSED UNDER CHAPTER 318.

>> WHY DON'T WE GO TO THAT POINT THEN.

IF A PENALTY ARISES UNDER A CHAPTER OF THE STATUTE, EVERY PLACE IT IS CROSS-REFERENCED IN THE CODE, WHAT DOES IT MEAN FOR A PENALTY TO ARISE UNDER IT?

>> THAT'S AN EXCELLENT QUESTION, JUSTICE CURIEL, AND THERE ISN'T AN EASY ANSWER FOR THAT BECAUSE ASSESSED UNDER IS NOT A LEGAL TERM OF ART.

SO WE HAVE TO DETERMINE WHAT THE LEGISLATURE MEANT, WHAT WAS THE INTENT OF THE LEGISLATURE IN DEVISING THIS PARTICULAR STATUTE.

THE FIRST ISSUE IS WAS IT ASSESSED UNDER CHAPTER 318, AND WE ASSERT THAT IT IS BY THE VERY TERMS OF 318.121 AS WELL AS CHAPTER 318 GENERALLY.

>> HELP ME OUT WITH THAT, BECAUSE ALL I SEE IS A REFERENCE TO THE FACT THAT THE FEE ARISES

OR CHARGE ARISES UNDER SECTION 316.

>> OKAY.

SO THERE'S SEVERAL ARGUMENTS HERE.

318.121 STRICTLY PROHIBITS ADDITIONAL FEES, FINES, SURCHARGES OR COSTS EXCEPT FOR FIVE EXCEPTIONS ENUMERATED IN THE STATUTE.

THE LAST OF THOSE EXCEPTIONS IN 318.121 IS SPECIFIC TO RED LIGHT CAMERA CASES UNDER 316.0083.

SO AS A STARTING POINT, THAT IS WHAT I DESCRIBE AS THE CLASSIC EXCEPTION THAT PROVES THE RULE. THERE IS AN EXCEPTION WHERE THE LEGISLATURE PERMITTED PRECISELY ONE ADDITIONAL FEE THAT CAN BE ADDED TO RED LIGHT CAMERA VIOLATIONS--

>> WOULD YOU CONCEDE THAT IF SECTION 316 DIDN'T PROVIDE FOR THIS PENALTY, THAT THE PENALTY WOULDN'T EXIST?

>> IF CHAPTER 316 DID NOT PROVIDE--

>> YEAH.

>> ARE YOU REFERRING TO THE PENALTY?

>> IMAGINE THAT 316 IS AMENDED BUT 318 ISN'T, AND IN THE AMENDMENT THE SURCHARGE THE WHOLE RED LIGHT SCHEME STRUCK OUT OF 316, BUT FOR WHATEVER REASON THE LEGISLATURE DOESN'T MAKE A CORRECTION TO 318 OR AT LEAST NOT YET.

>> LET ME TRY TO ANSWER THAT. SO IF ALL OF 316.0083 WAS VACATED, THEN THERE'S NO MECHANISM FOR LOCAL GOVERNMENTS TO HAVE PHOTO-ENFORCED RED LIGHTS TO BEGIN WITH.

>> SO DOESN'T THAT MEAN THAT THIS REALLY ARISES UNDER 316 AND NOT 318?

>> NO, YOUR HONOR, AND HERE'S WHY: BECAUSE THE PENALTY PROVISIONS WE'RE TALKING ABOUT IN 316.0083 THAT SPECIFY THAT THERE'S A \$158 CIVIL PENALTY, THOSE VERY SAME PROVISIONS APPEAR VIRTUALLY IDENTICALLY IN

318.18.

SO IT APPEARS IN BOTH STATUTES.  
ONLY THE WORDING IS VERY  
SLIGHTLY DIFFERENT, BUT ALL OF  
THE PROVISIONS ARE IDENTICAL.

>> I'M SORRY TO INTERRUPT YOU.  
DOES IT MATTER THOUGH THAT 318  
BY ITS TERMS ONLY DEALS WITH  
CITATIONS AND THIS WAS A NOTICE  
OF VIOLATION WHICH IS A  
PRECURSOR AND A WAY TO AVOID A  
CITATION?

>> I DON'T--

>> IT SEEMS LIKE, TO ME, THE  
WHOLE NOTICE OF VIOLATION  
CONSTRUCT IS COMPLETELY A  
CREATURE OF 316, AND 318 IS ON  
THE FACE OF THE TEXT TALKING  
ABOUT PEOPLE WHO WERE CITED.  
AND THEN IN 318.18 IT TALKS  
ABOUT PENALTIES WHEN THERE'S A  
CITATION.

SO IT SEEMS LIKE AT LEAST IN  
THIS CASE, AND I DON'T KNOW IF  
IT GETS TO THE CITATION STAGE, I  
DON'T KNOW HOW THE PAYMENTS WORK  
ON THAT, BUT YOU BROUGHT THIS AT  
THE NOTICE OF VIOLATION STAGE  
WHICH SEEMS TO ME IS COMPLETELY  
OUTSIDE OF 318.

>> TO ANSWER THAT, THE ANSWER IS  
NO, YOUR HONOR.

THE NOTICE OF VIOLATION, THE  
AMOUNT OF THE CIVIL PENALTY FOR  
A NOTICE OF VIOLATION IS \$158.  
AND THAT SUM, THE \$158 THAT'S  
APPLICABLE TO A NOTICE OF  
VIOLATION, THAT APPEARS IN BOTH  
316.0083 AND 318.18 SUB A 15, I  
THINK 2 AND 3.

>> BUT IN THAT CONTEXT, THOUGH,  
IN 318 IT'S CLEARLY REFERRING TO  
PENALTIES WHERE THERE'S BEEN A  
CITATION--

>> I DISAGREE.

>> WELL, YOU CAN DISAGREE WITH  
IT, AND THIS IS SUPER IN THE  
WEEDS, BUT WHEN YOU LOOK AT IT,  
YOU'LL SEE IT'S SPECIFICALLY  
TALKING ABOUT CITATIONS.

>> IF YOUR HONOR WILL GIVE ME A  
MOMENT, I RECOGNIZE THAT THIS IS  
A LITTLE BIT TEDIOUS.

BUT IN 318.18 WHICH IS ENTITLED

AMOUNTS OF PENALTIES, WE HAVE TO SKIP--

>> IT SAYS FOR A NONCRIMINAL, FOR A NONCRIMINAL DISPOSITION PURSUANT TO SECTION 318.14.

BUT THEN WHEN YOU GO TO 318.418, IT SAYS ANY PERSON CITED FOR A VIOLATION OF CHAPTER 316, BLAH, BLAH, BLAH, IS CHARGED WITH A NONCRIMINAL INFRACTION AND MUST BE CITED FOR SUCH INFRACTION. BUT THIS IS ALL AT THE CITATION AND BEYOND STAGE.

AND NOTICE OF VIOLATION IS PRE-CITATION.

>> THAT IS TRUE.

THE NOTICE OF VIOLATION STAGE IS PRE-CITATION, BUT-- AND I'M, I UNDERSTAND THE REFERENCE, YOUR HONOR.

BUT IN 318.18 SUB A 15--

>> RIGHT.

BUT YOU DON'T GET TO, YOU DON'T GET TO 15.

YOU'VE GOT TO START AT THE BEGINNING.

THE PENALTIES REQUIRED FOR A NONCRIMINAL DISPOSITION PURSUANT TO SECTION 318.14, AND THEN IT HAS COLON, AND THEN IT DOES 1, 2, 3, 4, 5.

SO--

>> YOUR HONOR, I'M NOT TRYING TO MINCE WORDS WITH YOU.

I RECOGNIZE THAT THIS IS A LITTLE BIT TEDIOUS.

BUT IF I CAN, IF I WALK THROUGH THE LEGISLATION IN 15A SUB 2 AND 3, YOU WILL SEE THAT'S NOT WHAT THEY'RE REFERRING TO HERE.

THESE STATUTES THAT I'M POINTING TO REFER DIRECTLY TO 316.0083 BY THEIR TERMS.

IT'S JUST THAT IT'S A LITTLE BIT CIRCUITOUS TO GET THERE, SO BEAR WITH ME.

SUB 15A3 SAYS 100-- AND THIS IS THE AMOUNT-- \$158 FOR A VIOLATION OF SECTION 316.74 SUB 1 OR SECTION 316.0715C1 WHICH ARE THE RED LIGHT SECTIONS THAT ARE APPLICABLE, WHEN A DRIVER HAS FAILED TO STOP AND WHEN ENFORCED BY A COUNTY'S OR

MUNICIPALITY'S TRAFFIC  
INFRACTION OFFICER-- THIS IS  
THE IMPORTANT LANGUAGE--  
TRAFFIC INFRACTION ENFORCEMENT  
OFFICER.

TO UNDERSTAND WHAT THAT MEANS,  
YOU THEN HAVE TO GO TO THE  
DEFINITION SECTION IN 318,  
EXCUSE ME FOR A MOMENT, WHICH IS  
318.13, EXCUSE ME, SUB 5.

AND WHAT THAT SAYS IN SUB 5, IT  
DESCRIBES AN OFFICER AND SAYS  
THAT AN OFFICER IS A TRAFFIC  
INFRACTION ENFORCEMENT OFFICER,  
INCLUDES A TRAFFIC INFRACTION  
OFFICER THAT IS DEFINED IN THE  
DEFINITION SECTION IN CHAPTER  
316.

IF YOU GIVE ME A MOMENT, THIS'LL  
JUST TAKE ME A-- 318, OKAY.

318.13 SUB 5.

THE SECOND SENTENCE IN HERE.  
OFFICER INCLUDES ANY INDIVIDUAL  
EMPLOYED BY A SHERIFF'S  
DEPARTMENT OR POLICE DEPARTMENT  
OF A CHARTER OR MUNICIPALITY WHO  
IS ACTING AS A TRAFFIC  
INFRACTION ENFORCEMENT OFFICER  
AS PROVIDED IN 316.640.

SO NOW AGAIN, WE HAVE TO  
REFERENCE 316.640.

AND 316.640 IN THE RELEVANT  
PORTION, EXCUSE ME, IT FINDS--  
JUST A MOMENT.

OKAY.

AND THIS IS IN SUB B3.

FOR THE PURPOSE OF ENFORCING  
316.0083-- SO NOW WE'RE BACK TO  
THE RED LIGHT CAMERA LAW UNDER  
316, THE DEPARTMENT MAY  
DESIGNATE EMPLOYEES AS TRAFFIC  
INFRACTION ENFORCEMENT OFFICERS.

AND THEN THERE'S A DESCRIPTION  
OF WHAT THESE ARE.

ESSENTIALLY DESCRIBES THEM AS  
BEING RESPONSIBLE FOR ISSUING  
NOTICES OF VIOLATION.

SO I RECOGNIZE THIS IS A LITTLE  
BIT DIFFICULT TO PARSE, BUT I  
WILL REPRESENT TO THE COURT THAT  
WHEN A UNIFORM TRAFFIC CITATION  
GETS ISSUED AFTER THE VIOLATION  
STAGE, IT FOLLOWS THE STANDARD  
PROTOCOL AND THE TOTAL SUM GOES

UP TO, I BELIEVE, \$277.

IT'S A BIT TEDIOUS TO WORK THROUGH THESE STATUTES. BUT THE POINT I'M MAKING IS THAT UNDER 318.121 BOTH BY ITS TERMS, ITS OWN TERMS AND 318 GENERALLY AND THE RELATIONSHIP BETWEEN THESE STATUTES WAS CLEARLY INTENDED BY THE LEGISLATURE TO APPLY TO PHOTO-ENFORCED RED LIGHTS.

AND THAT MAKES SENSE CONSIDERING THAT THE ENTIRE FLORIDA MOTOR VEHICLE CODE IS DESIGNED TO BE A UNIFORM SET OF LAWS APPLICABLE THROUGHOUT THE STATE WITH EACH CHAPTER DEALING WITH A DIFFERENT ASPECT OF THE TRAFFIC LAW.

>> COUNSEL, YOU ARE NOW CONSUMING REBUTTAL TIME. YOU MAY KEEP GOING, BUT YOU NEED TO BE AWARE YOU'RE IN YOUR REBUTTAL TIME.

>> THANK YOU, YOUR HONOR. I WILL CONCLUDE HERE AND RESUME MY REBUTTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, JOSEPH LANG FROM CARLTON FIELDS FOR AMERICAN TRAFFIC SOLUTIONS INC.

WITH ME AT COUNSEL TABLE FROM THE STATE SOLICITOR GENERAL'S OFFICE IS DAVID COSTELLO.

I'M CEDING FIVE MINUTES OF MY TIME FOR MR. COSTELLO TO ADDRESS THE MONEY TRANSMITTER STANDARD IF THE COURT WANTS TO TALK ABOUT IT.

WE DIDN'T GET THAT FAR AT THE BEGINNING.

I'M HAPPY TO ANSWER ANY QUESTIONS ON ANY PARTS OF THIS, BUT I'LL TRY TO FOCUS ON WHAT WE JUST TALKED ABOUT.

BUT AT THE OUTSET, I WANT TO EMPHASIZE ESPECIALLY GIVEN THE IDEAS OF EXTORTION AND EMBEZZLEMENT THAT WERE IN THE REPLY BRIEF, I WANT TO MAKE CLEAR SO EVERYBODY UNDERSTANDS THIS NOTICE OF VIOLATION WAS FOR \$158.

\$158 WAS COLLECTED, \$158 WAS

RECEIVED BY THE CITY, AND IT WAS APPORTIONED EXACTLY AS IT WAS SUPPOSED TO BY THE STATUTE. NOTHING WAS SIPHONED OFF. THAT'S NOT EVEN WHAT THIS CASE IS ABOUT.

THIS CASE IS ABOUT WHAT HAPPENS AFTER THAT NOTICE OF VIOLATION ARRIVES AT THE VIOLATER'S HOUSE, AND THE VIOLATER HAS TO CHOOSE HOW TO PAY IT.

AND THE VIOLATER HAS MANY OPTIONS THAT DON'T HAVE ANY FEES; MONEY ORDER, CHECK. NO FEE INVOLVED, YOU JUST PAY THE VIOLATION.

BUT WHAT YOU DON'T GET WHEN YOU SEND A MONEY ORDER OR SEND A CHECK IS ANY SORT OF IMMEDIATE VERIFICATION THAT THE FEE IS PAID.

YOU CAN'T KNOW FOR SURE THAT THE POSTMARK MADE IT, AND THAT'S IMPORTANT WHEN YOU WAIT UNTIL THE LAST DAY AS MR. PINCUS DID IN THIS CASE.

THE RECORD REFLECTS THAT THIS WAS PAID ON THE LAST DAY.

SO AN ADDITIONAL OPTION THAT ATS OFFERS WITH THE AUTHORIZATION OF THE CITY THROUGH THEIR CONTRACT IS THAT YOU CAN PAY ONLINE WITH A CREDIT CARD OR OVER THE PHONE WITH A CREDIT CARD.

AND WHEN YOU DO THAT, AS IS VERY COMMON IN THE WORLD TODAY, THERE'S A CONVENIENCE FEE ASSOCIATED WITH THAT.

>> DOES A CONVENIENCE FEE ALSO APPLY TO DEBIT CARD TRANSACTIONS, OUT OF CURIOSITY?

>> AS FAR AS I KNOW, IF YOU'RE ALLOWED TO USE A DEBIT CARD AT ALL, IT WOULD APPLY, BUT I THINK MAYBE THIS IS A CREDIT CARD-ONLY SITUATION.

I THINK ANY ELECTRONIC PAYMENT WOULD HAVE THE CONVENIENCE FEE.

>> SO THE CONVENIENCE THAT THE FEE INCLUDES IS THE CONVENIENCE TO ESSENTIALLY WAIT UNTIL THE LAST MINUTE.

YOU'RE BUYING TIME.

IS THAT A FAIR STATEMENT?

>> I THINK IT'S MORE THAN THAT.  
TIME, BUT IN DIFFERENT WAYS.  
FIRST, YOU DON'T HAVE TO HAVE  
OUT-OF-POCKET MONEY.  
IF YOU PAY--  
>> THAT WAS WHY I WAS ASKING THE  
QUESTION ABOUT THE DEBIT CARD.  
YEAH.  
>> YOU ALSO GET THE IMMEDIATE  
NOTIFICATION THAT IT'S BEEN  
PAID, A VERIFICATION THAT IT'S  
BEEN PAID WHICH GIVES YOU PEACE  
OF MIND ESPECIALLY IF YOU'RE ON  
THE LAST DAY.  
PEACE OF MIND THAT, WHENEVER,  
IT'S OFF MY PLATE, I DON'T HAVE  
TO PUT IT IN THE MAIL, I DON'T  
NEED TO GET MY STAMP, I DON'T  
NEED TO GET MY MONEY TO ORDER IF  
THAT'S WHAT IT'S GOING TO TAKE.  
IT'S DONE.  
SO THERE IS REAL BENEFIT HERE.  
AND IF WE GET TO IT, I'D LIKE TO  
TALK ABOUT WHY THAT BENEFIT BY  
ITSELF IS A BENEFIT OF THE  
BARGAIN THAT PRECLUDES THE  
UNJUST ENRICHMENT CAUSE OF  
ACTION THAT IS GOING ON HERE.  
UNJUST ENRICHMENT IS ABOUT  
MISTAKEN TRANSFERS.  
THERE'S NOTHING MISTAKEN ABOUT  
THE PAYMENT OF THIS CONVENIENCE  
FEE.  
THIS WAS A KNOWING CHOICE BY  
MR. PINCUS.  
NOBODY SAYS THAT HE PAID MORE  
THAN HE WAS TOLD HE WAS GOING TO  
PAY.  
HE CHOSE TO MAKE THE CONVENIENCE  
FEE PAYMENT WHEN HE USED HIS  
CREDIT CARD.  
SO THIS DOESN'T REALLY FIT ON  
JUST ENRICHMENT AT ALL.  
BECAUSE OF WHAT WE TALKED ABOUT  
IN THE INITIAL PART OF THIS  
ARGUMENT AS 318, I'LL JUMP TO  
THAT.  
HAPPY TO ANSWER ANY QUESTIONS,  
AND I WOULD LIKE TO TOUCH JUST A  
BIT ON JUST ENRICHMENT--  
>> COUNSEL, BEFORE YOU DO THAT,  
LET ME ASK YOU WHAT DO YOU THINK  
IF THE COURT DECIDED TO RULE IN  
THE CITY'S FAVOR OR, I'M SORRY,

ATS' FAVOR, WHAT WOULD BE THE NARROWEST WAY FOR THE CASE TO BE DECIDED?

>> THE NARROWEST WAY WOULD BE WHERE I WAS GOING TO START HAD WE GOTTEN THERE, AND THAT IS THE BENEFIT OF THE BARGAIN DOCTRINE. THAT WOULD RESOLVE THIS ENTIRE CASE BECAUSE ALL THREE CAUSES OF ACTION ARE BASED ON UNJUST ENRICHMENT, AND THE RESTATEMENT TO START WITH BLACK LETTER LAW, FLORIDA COURTS-- THIS COURT HAS ADOPTED THE RESTATEMENT OF RESTITUTION AND UNJUST ENRICHMENT, BUT WE HAVE FLORIDA COURTS THAT HAVE CITED IT, AND IT'S VERY WELL RESPECTED.

BLACK LETTER LAW SAYS THAT IN AN UNJUST ENRICHMENT SITUATION IF THERE'S BEEN COUNTER-PERFORMANCE, THEN-- MEANING BENEFIT OF THE BARGAIN HAS BEEN GIVEN-- THERE IS NO UNJUST ENRICHMENT.

WE CITED A LONG LINE OF CASES FROM THE 11TH CIRCUIT AND THE FEDERAL DISTRICT COURTS INCLUDING ONE STATE COURT CASE, THE 5TH DISTRICT COURT OF APPEAL CASE THAT I BELIEVE, JUSTICE LAWSON, YOU WERE ON THE PANEL FOR.

AND THIS DOCTRINE HAS BEEN UNIFORMLY ADOPTED.

MR. PINCUS DID NOT GRAPPLE WITH THOSE CASES.

HE TRIED TO MAKE ONE DISTINCTION OF THE BATISTA CASE IN HIS INITIAL BRIEF, AND WE SHOWED WHY THAT DISTINCTION DIDN'T WORK.

AND IN THE REPLY BRIEF

MR. PINCUS JUST IGNORES THE ENTIRE LINE OF CASES AND TRIES TO SET THIS CASE APART AS BEING DIFFERENT BECAUSE HE WAS

COMPELLED TO DEAL WITH ATS.

AND WHILE HE WAS COMPELLED TO PAY THE VIOLATION, HE WAS CERTAINLY NOT COMPELLED IN ANY WAY TO CHOOSE TO PAY WITH A CREDIT CARD.

HE COULD HAVE PAID WITH A MONEY ORDER OR A CHECK AND NOT

INCURRED THE FEE.

>> I'M SORRY TO INTERRUPT YOU  
THOUGH, BUT-- AND I KNOW WE'RE  
NOT BOUND BY IT, BUT ISN'T THERE  
SOME TENSION BETWEEN THE BENEFIT  
OF THE BARGAIN ARGUMENT AND THE  
SILVER STAR 11TH CIRCUIT CASE?  
IN THAT CASE IT DIDN'T SAY, AT  
LEAST IN THE FACE OF THE  
OPINION, THERE WASN'T ANY ISSUE  
ABOUT WHETHER THE SERVICES HAD  
BEEN RENDERED THAT THE INSURANCE  
COMPANY WAS BEING CHARGED FOR  
BUT, ESSENTIALLY, THE COURT SAID  
YOU COULD HAVE UNJUST ENRICHMENT  
BASED ON THE FACT THAT THE, YOU  
KNOW, THAT THE STATUTE MADE THE  
FEES NOT CHARGEABLE GIVEN, YOU  
KNOW, THE OWNERSHIP STRUCTURE OF  
THE COMPANY.

SO, I MEAN, I-- THE BENEFIT OF  
THE BARGAIN THING, THAT SEEMS  
LIKE AN ATTRACTIVE AVENUE, BUT  
IS THERE-- AM I MISSING  
SOMETHING ABOUT HOW THAT RELATES  
TO THE CASE TO THAT 11TH CIRCUIT  
CASE?

>> AS FAR AS-- NO, YOUR HONOR.  
IT'S A GREAT QUESTION BECAUSE I  
QUESTION HOW SILVER STAR CAME  
OUT THE WAY IT DID BECAUSE IT  
WOULD SEEM THE BENEFIT OF THE  
BARGAIN DOCTRINE SHOULD HAVE  
BARRED IN THAT CASE TOO.  
BUT THE 11TH CIRCUIT DID NOT  
GRAPPLE WITH THAT.

IT DIDN'T MENTION BATISTA,  
DIDN'T MENTION PEREIRA.  
IT JUST DIDN'T DEAL WITH THAT  
LINE OF CASES.

AND SO WHILE THERE MAY BE SOME  
TENSION, IT'S LARGELY BECAUSE  
THEY DIDN'T ADDRESS IT.

THEY HAVE THESE OTHER CASES ON  
BENEFIT OF THE BARGAIN, AND IT  
EITHER WASN'T RAISED OR THEY  
OVERLOOKED IT, BUT IT JUST DID  
NOT COME UP IN SILVER STAR.

BUT BATISTA, PEREIRA AND THE  
FEDERAL DISTRICT COURT CASES YOU  
HAVE A SETTLED LINE.

WE, OF COURSE, THINK THAT SILVER  
STAR WAS DECIDED WRONGLY UNDER A  
DIFFERENT ARGUMENT OF UNJUST

ENRICHMENT, THE MORE GENERAL ARGUMENT WHETHER UNJUST ENRICHMENT ARGUMENT CAN EXIST AT ALL.

WE WOULD SAY THAT IT'S JUST THE WRONG VEHICLE, THE WRONG CAUSE OF ACTION TO ADDRESS A CASE SUCH AS THIS.

>> LET ME ASK YOU THIS, WHAT IF IT WAS NOT VOLUNTARY LIKE IN THE SITUATION THAT THE ABILITY TO SEND CHECKS OR A MONEY ORDER WITHOUT PAYING THIS ADDITIONAL CONVENIENCE FEE WAS NOT THERE OR THEY CHARGE THE SAME THING FOR WHATEVER METHOD OF PAYMENT. IS THAT A VIOLATION OF THE STATUTE?

>> A MANDATORY--

>> YES.

>>-- FEE?

YES.

I THINK A MANDATORY ADD-ON WOULD BE A VIOLATION OF, DEPENDING ON WHAT IT LOOKED LIKE, I WOULD SAY EITHER VIOLATE THE COMMISSION OR IF IT'S THE VENDOR THAT'S GETTING THE MANDATORY ADD-ON-->> SO IF THAT'S A VIOLATION OF THE STATUTE, THAT SEEMS RIGHT TO ME, IT SEEMS TO BE A GOOD ARGUMENT FOR UNJUST ENRICHMENT IN THAT CASE.

IT WOULD BE IN VIOLATION OF THE STATUTE COLLECTING THE FEE NOT AUTHORIZED.

>> I THINK THE WAY THE COURT OUGHT TO LOOK IS WHETHER THAT STATUTE CREATES A PRIVATE RIGHT OF ACTION.

>> WELL, WE HAVE COMMON LAW CAUSES OF ACTION FOR UNJUST ENRICHMENT, DON'T WE?

>> THERE CERTAINLY IS A COMMON LAW, BUT THE PROBLEM HERE IS THE THIRD PRONG.

THE FIRST PRONG IS THAT THE PLAINTIFF GETS A BENEFIT.

THE SECOND PRONG IS THAT DEFENDANT HAS ACCEPTED THAT.

THE THIRD IS THAT IT'S INEQUITABLE FOR THE DEFENDANT TO KEEP THAT.

THE WHOLE ARGUMENT FOR INEQUITY

HERE IS THAT A STATUTE WAS VIOLATED.

>> EXACTLY.

SO IN ANSWER TO CHIEF JUSTICE CANADY'S QUESTION ABOUT THE MOST NARROW GROUNDS, IT SEEMS TO ME THE PROPER WAY TO LOOK AT THIS TO SEE, FIRST OF ALL, WHETHER THERE WAS A VIOLATION OF THE STATUTE.

NO, BECAUSE IT'S VOLUNTARY, AND THEN YOU NEVER GET TO THE UNJUST ENRICHMENT CLAIM.

WOULDN'T THAT BE THE PROPER WAY TO ANALYZE THIS?

>> THE COURT CERTAINLY CAN GET THERE THAT WAY, ANSWER IT IN THE ORDER THAT THE 11TH CIRCUIT CERTIFIED THE QUESTIONS.

TO DO THAT, YOU HAVE TO RULE ON THREE DIFFERENT STATUTES.

I GUESS THAT'S THE REASON I WOULD ARGUE THAT THE BENEFIT OF THE BARGAIN DOCTRINE, BECAUSE IT COVERS THE ENTIRE CASE, TO GET THERE ON THE STATUTORY GROUND BECAUSE HE HAS THREE DIFFERENT COUNTS.

HE HAS A CHAPTER 316 COUNT, A CHAPTER 318 COUNT AND A CHAPTER 560 COUNT.

NOW I, OF COURSE, BELIEVE THE FACT THAT THIS IS A VOLUNTARY, OPTIONAL PAYMENT SETTLES ALL THREE OF THOSE STATUTORY ARGUMENTS.

BUT THE COURT WOULD HAVE TO ADDRESS ALL THREE STATUTES TO GET THERE FROM THE TOP DOWN.

>> DOES THE CITY NEED TO HAVE AN AFFIRMATIVE GRANT OF AUTHORITY TO DO, TO SET UP THIS MECHANISM IN THE FIRST PLACE?

AND IF SO, IS IT 215.322?

AND DOES THIS COMPLY WITH THAT?

>> NO, I-- WE'RE AWARE OF 215

AND LOCAL GOVERNMENTS CAN UTILIZE SECTION 215.

THIS FEE IS NOT LIMITED LIKE THE FEE, THE CONVENIENCE FEE IN 215.

IT DOES HAVE A PROFIT ELEMENT TO IT.

AND OUT OF CANDOR TO THE COURT, YOU NEED TO UNDERSTAND THAT WILL

NOT SATISFY THE SECTION 215.

I THINK SECTION 215 IS INTERESTING BECAUSE IT INDICATES THAT CONVENIENCE FEES THAT ARE UNDERSTOOD BY THE LEGISLATURE, AND THEY'RE ALL OVER THE PLACE OUT THERE AS FAR AS WHERE IS THE AUTHORITY TO DO THIS.

OBVIOUSLY THE LEGISLATURE HAS AUTHORIZED THESE TYPE OF PROGRAMS.

I MEAN, THAT IS CHAPTER 316.0083, AND UNDERSTANDS THAT VENDORS ARE GOING TO BE OPERATING THESE PROGRAMS. YOU CAN SEE THAT IN THE SPECIFIC PROHIBITION OF VENDORS GETTING A PER-VIOLATION PAYMENT.

THEY DON'T WANT TO INCENT VENDORS TO GET A PAYMENT THAT'S BASED ON A PER-VIOLATION--

>> HOW CAN I, SO-- I

UNDERSTAND, I'M VERY SYMPATHETIC TO WHAT YOU'RE SAYING ABOUT THE PRIVATE RIGHT OF ACTION, BUT HOW WOULD, IF IT WERE AN ILLEGAL CHARGE BUT SOMETHING VOLUNTARY, LIKE LET'S SAY THAT THE 318.121 ARGUMENT WERE MERITORIOUS, HOW-- WHAT WOULD BE THE PROPER WAY TO HAVE CITIES STOP CHARGING THAT FEE?

>> RIGHT.

IF THERE IS NO PRIVATE RIGHT OF ACTION, WHICH IS ASSUMED-- I NEED TO MAKE THAT CLEAR. IT'S ASSUMED IN THIS CASE THAT NONE OF THESE THREE STATUTES HAS A PRIVATE RIGHT OF ACTION.

>> AND I DON'T THINK THE OTHERS--

>> AND I DON'T THINK THEY'VE EVEN ARGUED OTHERWISE. THEN IT BECOMES AGENCY ENFORCEMENT--

>> RIGHT.

WHAT AGENCY THOUGH?

>> DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES HAS THE RESPONSIBILITY TO ENFORCE CHAPTERS 316 AND 318.

AND UNDER 316 THEY HAVE A MORE SPECIFIC RESPONSIBILITY TO MONITOR THESE PROGRAMS TO ISSUE

AN ANNUAL REPORT AND TO MAKE RECOMMENDATIONS FOR LEGISLATION MAY BE NEEDED IF THEY SEE PROBLEMS WITH THE WAY THIS PROGRAM IS RUNNING.

SO DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES FOR CHAPTER 316 AND 318, AND AS MY COLLEAGUE WILL EXPLAIN, IT'S THE OFFICE OF FINANCIAL REGULATION FOR CHAPTER 560.

>> OKAY.

>> COUNSEL, LET ME GO BACK TO THE UNJUST ENRICHMENT.

HAS ANY FLORIDA STATE COURT EVER RECOGNIZED AN UNJUST ENRICHMENT CLAIM BASED ON A WRONG ARISING FROM A STATUTORY VIOLATION?

>> NO.

>> WHAT WOULD-- WHY WOULD SOMEONE BE WRONG IN THINKING ABOUT CLAIMS ASSOCIATED WITH STATUTORY VIOLATIONS IN LIGHT OF WHETHER THERE IS AN EXPRESS CAUSE OF ACTION?

AND FREQUENTLY THERE ARE EXPRESS CAUSES OF ACTION OR AN IMPLIED RIGHT OF ACTION.

AND NOT TRYING TO SHOVE THIS INTO THE, SUCH MATTERS INTO THE FRAMEWORK WHICH DOES NOT SEEM TO BE A COMFORTABLE FIT WITH UNJUST ENRICHMENT.

I HOPE THE HISTORY OF THAT, ALL THE CIRCUMSTANCES RELATED TO THAT, THE WAY THAT IS SET UP, WHAT WOULD BE WRONG AT LOOKING AT IT THAT WAY?

>> WE AGREE THAT UNJUST ENRICHMENT IS A VERY ILL-FITTING CAUSE OF ACTION FOR THIS.

WE THINK THAT THE COURT'S JURISPRUDENCE ABOUT PRIVATE RIGHTS OF ACTION WOULD CAPTURE THESE TYPES OF SITUATIONS.

AND IF THE LEGISLATURE EITHER EXPRESSLY OR IMPLIEDLY WANTED THERE TO BE A PRIVATE RIGHT OF ACTION, THERE ARE WAYS TO DEAL WITH THAT UNDER THE LAW.

WHAT THIS IS GOING TO DO IF YOU RECOGNIZE UNJUST ENRICHMENT AS BEING A VEHICLE FOR THESE KINDS OF CLAIMS, YOU'RE GOING TO SEE

CLAIMS LIKE YOU REJECTED IN QBE  
BROUGHT UNDER UNJUST ENRICHMENT.  
THAT WAS A CASE WHERE THEY TRIED  
TO BRING A VIOLATION OF A FONT  
IN THE INSURANCE CODE AS A  
PRIVATE RIGHT OF ACTION, AND  
THIS COURT SAID THERE'S NO  
PRIVATE RIGHT OF ACTION THERE.  
WHAT YOU'RE GOING TO SEE IS  
ATTEMPTS TO BRING THAT FONT  
STRIKES AS AN UNJUST ENRICHMENT  
CLAIM IF THESE ARE ALLOWED TO GO  
FORWARD.

WE BELIEVE THE TEST OUGHT TO BE  
IS THERE A PRIVATE RIGHT OF  
ACTION, AND IF THERE IS, THEN  
YOU GO FORWARD THAT WAY.  
YOU DON'T EVEN NEED UNJUST  
ENRICHMENT AT THAT POINT.  
BUT CERTAINLY IN CASES WHERE  
THERE'S NO PRIVATE RIGHT OF  
ACTION, WE DON'T THINK THERE'S A  
FIT HERE.

AND I CAN ANSWER ANY OTHER  
QUESTIONS.

I SEE I'M OUT OF TIME.

OKAY.

I WOULD LIKE TO CEDE SOME TIME  
TO THE STATE.

THANK YOU.

>> MR. CHIEF JUSTICE AND MAY IT  
PLEASE THE COURT, DAVID COSTELLO  
FOR THE OFFICE OF FINANCIAL  
REGULATION.

FIRST I'D LIKE TO MAKE CLEAR THE  
OFFICE AGREES WITH ATS.

MR. PINCUS CANNOT STATE AN  
UNJUST ENRICHMENT CODE.

BUT I'D LIKE TO TOUCH ON A POINT  
THAT YOU RAISED, JUSTICE  
POLSTON, AND WE THINK THAT IT  
CAN SUPPORT.

>> WHAT BASIS IN THE  
JURISPRUDENCE OF THE FLORIDA  
COURTS DO YOU HAVE FOR THAT  
POSITION?

>> WELL, I THINK MURPHY  
RECOGNIZES THAT POSITION, YOUR  
HONOR.

THERE THE COURT RECOGNIZED THERE  
WAS NO STATUTORY CAUSE OF  
ACTION, BUT THERE WAS A  
STATUTORY OBLIGATION.  
THERE WAS A STATUTORY DUTY, AND

THE COURT RECOGNIZED THAT  
STATUTORY DUTY COULD SUPPORT A  
COMMON LAW NEGLIGENCE CLAIM.

SO IT JUST RECOGNIZES--

>> WE'RE TALKING ABOUT UNJUST  
ENRICHMENT HERE.

>> OF COURSE, OF COURSE.

>> I MEAN, NO ONE'S CONTENDING  
THAT THERE CAN NEVER BE AN  
IMPLIED RIGHT OF ACTION ARISING  
FROM A STATUTORY VIOLATION,  
RIGHT?

>> I AGREE WITH THAT, YOUR  
HONOR.

I DON'T THINK THAT THAT'S WHAT  
MURPHY STOOD FOR THOUGH.

I THINK IT WAS SIMPLY  
RECOGNIZING THAT THE COMMON LAW  
IS CONSTANTLY EVOLVING, AND IT  
CAN ADOPT AND ADAPT TO MODERN  
STANDARDS, AND SOMETIMES THE  
BEST STANDARDS ARE THE ONES THAT  
HAVE BEEN RECOGNIZED BY THE  
LEGISLATURE.

AND SO IF YOU TAKE THAT PREMISE,  
AND I'LL ALSO NOTE THAT THIS IS  
RECOGNIZED IN THE RESTATEMENT IN  
SECTION 44 AT ILLUSTRATION 12,  
IT RECOGNIZES THAT THERE CAN BE  
UNJUST ENRICHMENT CLAIMS BASED  
ON STATUTORY VIOLATIONS EVEN  
WHEN THERE'S NO STATUTORY CAUSE  
OF ACTION.

SO THE QUESTION BECOMES WHEN  
DOES THAT HAPPEN IN THE CONTEXT  
OF UNJUST ENRICHMENT, AND YOU  
DON'T NEED TO LOOK FURTHER THAN  
THE ELEMENTS.

A STATUTORY VIOLATION RESULTS  
WHEN THE DEFENDANT WILL HAVE  
INEQUITABLY RECEIVED A RESULT  
FROM THE PLAINTIFF AS A RESULT  
OF THE VIOLATION.

AND EXACTLY RIGHT, JUSTICE  
POLSTON, IF THE STATUTE RENDERS  
A CHARGE UNENFORCEABLE OR VOID,  
THAT IS THE QUINTESSENTIAL  
SCENARIO WHEN SOMEONE IS HOLDING  
ON TO A BENEFIT TO WHICH THEY  
HAVE NO LEGAL ENTITLEMENT.

>> HOW DOES THAT SQUARE WITH THE  
WHOLE CONCEPT THAT UNJUST  
ENRICHMENT ISN'T SUPPOSED TO BE  
FAULT-BASED IN THE FIRST PLACE?

I THINK WHAT THE CHIEF'S QUESTIONS ARE KIND OF GETTING AT IS WHETHER THERE'S A REMEDY THAT YOU MIGHT BE ABLE TO FIND, THIS PARTICULAR REMEDY DOESN'T-- IT SEEMS KIND OF CATEGORICALLY DESIGNED TO DEAL WITH OTHER SITUATIONS.

>> I DO WANT TO BE CLEAR, JUSTICE MUNIZ, THAT THAT DOES NOT TURN ON FAULT.

IF A DEFENDANT IS HOLDING ON TO SOMETHING IT'S NOT LAWFULLY ENTITLED TO HAVE, WE DON'T CARE SO MUCH ABOUT WHETHER THE DEFENDANT IS AT FAULT--

>> WELL, THEY VIOLATED-- SO IN THIS CASE NO ONE'S ARGUING THAT, YOU KNOW, THEY DIDN'T GET, THERE WASN'T SOME BENEFIT CONFERRED BY THE FEE AND ALL THAT AND GETTING INTO THE WEEDS OF HOW MUCH DID THAT COST AND ALL THAT.

THE ONLY THING, THE ONLY REASON WHY WE'RE EVEN HAVING THIS CONVERSATION IS BECAUSE IT'S THE ILLEGALITY, ARGUABLY, OF CHARGING THE FEE THAT MAKES IT UNFAIR TO KEEP IT, RIGHT?

SO ISN'T THAT, ISN'T THAT BASICALLY WHAT YOU'RE TALKING ABOUT WITH STATUTORY VIOLATIONS? I MEAN, IT-- THAT'S THE PROBLEM.

I MEAN, THAT'S WHAT MAKES IT A PROBLEM IN TERMS OF THE INJUSTICE OF KEEPING THE MONEY.

>> I UNDERSTAND YOUR QUESTION, JUSTICE MUNIZ.

I THINK WHAT'S KEY HERE IS THAT WE ARE NOT LIVING OR DYING, SO TO SPEAK, ON THE STATUTORY VIOLATION.

IT IS THE RESULT OF THE STATUTORY VIOLATION THAT RESULTS IN UNJUST ENRICHMENT.

SO IF YOU TAKE SILVER STAR, YOU HAD A LICENSURE SCHEME WHICH LED TO A CONTRACT BEING UNENFORCEABLE.

WE DON'T CARE SO MUCH THAT THE DEFENDANT VIOLATED THE STATUTE. WHAT WE CARE ABOUT IS NOW THERE IS NO BASIS FOR THE TRANSACTION

IN THE FIRST PLACE.

THERE'S NO LEGAL BASIS FOR THE DEFENDANT TO BE HOLDING ON TO A PARTICULAR BENEFIT.

>> ONLY BECAUSE THE STATUTE WAS VIOLATED.

SO I'M-- THE ARGUMENTS THAT TRY TO SEPARATE THE VIOLATION FROM THEN WHAT HAPPENS AFTER, I JUST-- I MEAN, IT DOESN'T MATTER, BUT I JUST DON'T UNDERSTAND.

>> RIGHT.

AND, OF COURSE, JUSTICE MUNIZ, IF THAT WERE A HOLD-UP, WE THINK THE CASES THAT ARE STANDING FOR THAT PROPOSITION ARE FEDERAL DISTRICT COURT CASES, AND WE DON'T THINK THEY SHOULD HOLD THIS COURT BACK HERE.

I DO WANT TO NOTE THOUGH EVEN IF A STATUTE CREATES A LEGALLY-PROTECTED INTEREST AS WE'VE USED IN THE BRIEFS, I THINK ANOTHER WAY IS TO SAY IT'S SETTING UP AN UNLAWFULNESS SCHEME, A SITUATION WHERE A BENEFIT WOULD BE HELD UNLAWFULLY AS A RESULT OF THE VIOLATION. EVEN IF THE STATUTE PROTECTS INDIVIDUAL INTERESTS, NEVERTHELESS, THE LEGISLATURE CAN PREEMPT COMMON LAW. IT CAN TAKE THAT VIOLATION OFF THE TABLE.

AND WE THINK THAT'S ENTIRELY CONSISTENT WITH THE RESTATEMENTS POSITION, AND THIS IS IN SECTION 44 THAT IF THE LEGISLATURE INTENDED FOR SOMETHING TO NOT BE ACTIONABLE PRIVATELY, THEN IT CANNOT BE ACTIONABLE PRIVATELY. AND SO IF YOU JUST LOOK AT THE STATUTE HERE, THE ONE--

>> WELL, SEE, WHAT I'M STRUGGLING WITH IS THE GAP BETWEEN SAYING THERE IS AN IMPLIED RIGHT OF ACTION AND SOMEHOW THAT THE LEGISLATURE DID NOT CREATE AN IMPLIED RIGHT OF ACTION, BUT THEY DIDN'T PRECLUDE A CLAIMS ARISING FROM THE VIOLATION THROUGH SOME OTHER MECHANISM.

>> I SEE I'M OUT OF TIME.

CAN I RESPOND?

>> YEAH, PLEASE.

>> I THINK THAT THE KEY HERE IS THAT THE LEGISLATURE-- WE'RE NOT LOOKING TO WHETHER THE LEGISLATURE HAS CREATED ANYTHING NEW.

THAT'S WHAT WE LOOK TO WHEN WE LOOK TO LEGISLATIVE INTENT, DID THE LEGISLATURE INTEND TO CREATE A CAUSE OF ACTION.

BUT HERE WE ALREADY HAVE THE CAUSE OF ACTION.

IT'S A CHAMPION LAW CAUSE OF ACTION FOR UNJUST ENRICHMENT.

SO IF AS A RESULT OF A PARTICULAR VIOLATION FOR WHICH THERE'S NO STATUTORY CAUSE OF ACTION, SOMEONE IS JUST HOLDING ON TO A BENEFIT THAT AS A RESULT OF THE VIOLATION THERE IS NO JUSTIFICATION TO HOLD ON TO, THEN THE COMMON LAW ELEMENTS OF UNJUST ENRICHMENT ARE JUST NATURALLY MET IN THE FIRST PLACE.

AND JUST TO CLOSE, I WILL SAY I THINK THERE ARE REASONS WHY THE LEGISLATURE WOULD CHOOSE TO TAKE A COMMON LAW CAUSE OF ACTION. FOR ONE THING, COMMON LAW CAUSES OF ACTION THERE IS PLENTY OF LAW TO REST ON.

THEY NEED INTERPRETATION. AND SECOND, COMMON LAW CAUSES OF ACTION HAVE INHERENT LIMITATIONS THAT STATUTORY CAUSES OF ACTION MIGHT NOT HAVE.

FOR EXAMPLE, IN MURPHY THERE WAS A STATUTORY-- THERE WAS NO STATUTORY CAUSE OF ACTION FOR NEGLIGENCE, BUT THERE WAS A COMMON LAW CAUSE OF ACTION, AND THE COURT FOUND THAT IMPORTANT BECAUSE THAT BOUND THAT CLAIM IN THE ECONOMIC LOSS RULE.

BUT THAT MIGHT NOT BE PRESENT IN A STATUTORY CAUSE OF ACTION.

SO FOR THOSE REASONS AND THE REASONS IN OUR BRIEF, WE ASK THAT YOU FIND FOR ATS ON THE MONEY ISSUES.

>> THANK YOU.

REBUTTAL.

>> MAY IT PLEASE THE COURT, JUST A FEW BRIEF REBUTTAL POINTS, YOUR HONORS.

MR. CHIEF JUSTICE, YOU ASKED A DIRECT QUESTION TO COUNSEL FOR ATS, HAS THERE EVER BEEN A DECISION IN FLORIDA STATE COURTS WHERE UNJUST ENRICHMENT WAS USED TO RECOVER-- I THINK I'M STATING THIS RIGHT-- WAS USED TO RECOVER AN ILLEGAL FEE OR TAX IMPOSED UNDER COLOR OF LAW.

THE ANSWER WAS, NO, AND--

>> ACTUALLY, I ASKED ABOUT A STATUTORY VIOLATION, IS THE WAY I FRAMED THE QUESTION.

>> WELL, THE RESPONSE FROM COUNSEL FOR ATS WAS NO, AND THAT IS NOT CORRECT.

THERE HAVE BEEN A NUMBER OF CASES OUT OF FLORIDA STATE COURTS WHERE UNJUST ENRICHMENT WAS USED IN THIS WAY.

NOW, I DON'T BELIEVE THERE HAS BEEN ANY PRECEDENT OUT OF THIS COURT, BUT THERE ARE NUMEROUS DECISIONS FROM DCAs THROUGHOUT THE STATE THAT SUPPORT OUR POSITION ON THIS, AND THAT FALLS--

>> GIVE ME YOUR LEADING CASE.

>> OKAY.

THE LEADING CASE I WOULD SAY IS BILL STRUP ROOFING--

>> THAT'S THE WHOLE ILLEGAL EXACTION, BUT THOSE ARE UNJUST ENRICHMENT CASES.

AT LEAST THE COURTS DON'T TALK ABOUT THEM THAT WAY.

>> PARKER V. AMERICAN TRAFFIC SOLUTIONS, WHICH ADMITTEDLY IS A DISTRICT COURT CASE, HAS A PRETTY GOOD SUMMARY OF THIS.

SO JUST READING THIS HERE, EXCUSE ME.

JUDGE MORENO STARTS--

>> I ASKED ABOUT, I ASKED ABOUT FLORIDA STATE COURTS.

I LOVE JUDGE MORENO, BUT HE'S NOT A FLORIDA STATE COURT JUDGE. HE'S A FEDERAL DISTRICT COURT JUDGE.

THE WHOLE QUESTION WAS PREMISED,

WAS FOCUSED ON WHETHER THE STATE COURTS OF FLORIDA HAVE RECOGNIZED SUCH CAUSE OF ACTION.

>> YES, YOUR HONOR.

HE'S CITING TO BILL STRUP ROOFING.

I JUST THOUGHT THIS WAS A BETTER SUMMARY--

>> WELL, BUT YOU CAN'T BOOT STRAP IT THAT WAY.

IF THE UNDERLYING CASE IS NOT TALKING ABOUT UNJUST ENRICHMENT, IT DOESN'T FIT THE BILL, DOES IT?

>> WELL, NO, YOUR HONOR.

BUT IT WAS A-- I BELIEVE THAT'S WHY JUDGE MORENO WAS DISCUSSING IT THAT WAY.

IN FACT, READING FROM IT, IN ADDITION TO THIS RESPECTIVE RELIEF, STRUP IS ALSO SEEKING A REFUND ON BEHALF OF ITSELF AND OTHERS FOR PREVIOUSLY PAID ILLEGAL FEES TO WHICH CLAIM MIAMI-DADE COUNTY EXPLAINS THAT IT IS PROTECTED BY ITS SOVEREIGN IMMUNITY.

THAT IS, THE COUNTY CONTENDS IT'S A SOVEREIGN AND IT CAN EXTRACT MONEY FROM ITS CITIZENS--

>> BUT, I THINK THAT THAT IS AN ILLEGAL EXACTION CASE, RIGHT?

>> YES, YOUR HONOR.

BUT I BELIEVE THAT ILLEGAL EXACTION IS A DOCTRINE THAT FALLS UNDER THE HEADING OF UNJUST ENRICHMENT.

I MEAN, IF THE PROBLEM IS THAT WE'VE TITLED THE CAUSE OF ACTION INCORRECTLY, THAT'S JUST AN AMENDMENT PROBLEM.

BUT I DO BELIEVE IT FALLS UNDER THE SAME HEADING--

>> ARE THE ELEMENTS THE SAME?

>> I'M SORRY.

SAY--

>> ARE THE ELEMENTS THE SAME?

>> THE ELEMENTS ARE NOT, THERE ARE NO DISCREET ELEMENTS THAT ARE DISCUSSED IN THE CASE LAW PERTAINING TO ILLEGAL EXACTION TO MY KNOWLEDGE.

BUT WHAT I WILL SAY IS THAT

COUNSEL SAID THAT IT'S THE WRONG VEHICLE TO OBTAIN REDRESS IN A SCENARIO LIKE THIS, AND I THINK THAT'S INCORRECT.

AND I THINK THIS CASE GIVES THE COURT AN OPPORTUNITY TO CODIFY THIS.

>>-- THE UNJUST ENRICHMENT THING, THAT'S THE HOOK THAT I THINK WOULD PROBABLY BE UNSUCCESSFUL.

BUT AT LEAST IT GIVES YOU AN ARGUMENT ABOUT THE VOLUNTARINESS NOT BEING AN ISSUE.

THE ILLEGAL EXACTION LINE, SINCE THIS OBVIOUSLY WAS NOT SOMETHING YOU WERE FORCED TO PAY, YOU CHOSE TO PAY, YOU COULD HAVE AVOIDED PAYING IT, ILLEGAL EXACTION STUFF IS COMPLETELY UNHELPFUL TO YOU.

I DON'T THINK IT'S JUST A SEMANTIC THING.

>> IF I'M UNDERSTANDING, YOU'RE SAYING IN THE TYPICAL CASE IT'S UNHELPFUL TO US BECAUSE IT'S--

>> NO.

WHAT I'M SAYING IS IN ANY ILLEGAL, YOU'RE SEEING IN AN ILLEGAL EXACTION CASE ALL OF THOSE THINGS ARE THE GOVERNMENT SAID IF YOU WANT A LICENSE, YOU PAY X AMOUNT OF MONEY, AND THE COURT SAID THAT X AMOUNT OF MONEY WAS NOT LEGALLY CHARGED. SO IN THAT SENSE, THERE WAS NO QUESTION OF VOLUNTARINESS.

I'M ASSUMING THE REASON WHY YOU CHOOSE THE UNJUST ENRICHMENT THING IS TO POSSIBLY MAKE THE VOLUNTARINESS IRRELEVANT. THE PURE FACT THAT IT WAS A STATUTORY VIOLATION EVEN IF YOU DID IT VOLUNTARILY MAKES IT UNJUST TO--

>> I SEE THAT I'M OUT OF TIME.

>> YOU MAY ANSWER HIS QUESTION.

>>-- ANSWER THAT QUESTION.

THAT'S CORRECT, YOUR HONOR.

I STILL DISPUTE THE CHARACTERIZATION OF IT BEING VOLUNTARY.

BUT IN ANY EVENT, THE-- GETTING BACK TO THE POINT THAT YOU WERE

MAKING THAT THE VOLUNTARINESS OF  
IT SOMEHOW VITIATES THE UNJUST  
ENRICHMENT CLAIM, I THINK IS  
WRONG.

BECAUSE-- AND GOING, TO THE  
POINT--

>> IT HAS TO BE PREMISED ON IT.  
HOW COULD THAT POSSIBLY BE  
WRONG?

>> WELL, OKAY.

SO UNJUST ENRICHMENT AS HAS BEEN  
STATED IS NOT ABOUT FAULT, IT'S  
NOT ABOUT THE VIOLATION.

IT'S SIMPLY ABOUT MONEY BEING IN  
ONE PERSON'S HANDS THAT SHOULD  
BE IN ANOTHER PERSON'S HANDS.

AND I THINK WE SATISFY THAT.

THERE'S \$7.90 THAT'S IN ATS'  
HANDS THAT SHOULD BE IN  
MR. PINCUS' HANDS BECAUSE IT WAS  
UNLAWFUL FOR THEM TO IMPOSE ANY  
ADDITIONAL FEE, FINE, SURCHARGE  
OR COST AND ILLEGAL TO COLLECT A  
COMMISSION FOR ALL THE OTHER  
REASONS.

SO WITH THAT I'LL CLOSE, YOUR  
HONORS.

>> WE THANK YOU ALL FOR YOUR  
ARGUMENTS IN THIS CASE TODAY.