

THE COURT WILL NOW PROCEED TO TAKE UP THE CASE OF TRIBECA ASSET MANAGEMENT VERSUS ANCLA. I WOULD LIKE TO RESERVE FOUR MINUTES FOR REBUTTAL.

YOUR HONORS, WE ARE BEFORE THE COURT ON AN OPINION FROM THE THIRD DISTRICT COURT OF APPEAL THAT HOLDS THAT A PLAIN AND UNAMBIGUOUS CHOICE OF LAW PROVISION CAN BE CONVERTED INTO A FORUM SELECTION CLAUSE TO CONFER PERSONAL JURISDICTION OVER OBJECTING DEFENDANT WITHOUT ANY FURTHER ANALYSIS AS TO WHETHER DUE PROCESS IS SATISFIED AND THEREIN LIES THE SOURCE OF DISCOURSE CONFLICT OF JURISDICTION BECAUSE THIRD DCA OPINION IS EXPRESSED IN DIRECT CONFLICT WITH DECISIONS UNDER THE FOURTH DCA, HAMILTON VERSUS HAMILTON AND WHEE VERSUS CITRIX CASES THAT HOLD THAT EVEN IF YOU HAVE FORM SELECTION OR CONSENT JURISDICTION CLAUSE WHICH WE DON'T HAVE, BUT IF YOU DID YOU STILL HAVE TO UNDERGO A DUE PROCESS ANALYSIS.

SECOND, THE THIRD DCA OPINION CONFLICTS WITH CLEAR LAW IN FLORIDA THAT A CHOICE OF LAW PROVISION BY ITSELF CAN'T CONFER PERSONAL JURISDICTION AND WE FILED A NOTICE OF SUPPLEMENTAL AUTHORITY PRODUCT VERSUS ACCESS ELECTRONIC CASE SECOND DCA THAT STANDS FOR THAT PROPOSITION. THIRD DCA HAS DETERMINED THAT THIS CLAUSE, WHICH DOES NOT SPECIFICALLY REFERRED TO WHERE THE SEED OF ARBITRATION WOULD TAKE PLACE IS A FORM SELECTION CLAUSE WHEN THE VERY DEFINITION OF A FORUM SELECTION CLAUSE IS THAT IT SELECTS A FORM, IDENTIFIES A FORM IN WHICH WILL BE RESOLVED.

FOR THESE REASONS THE COURT DOES HAVE JURISDICTION. ONTO THE MERITS OF YOUR THE THIRD DCA OPINION HAS TO BE SQUASHED.

INTERPRETATION OF THE CONTRACT--
CONFLICT IN THE CASE VIOLATES
THE UNAMBIGUOUS LEG WHICH OF THE
CONTRACT AND CREATE A DANGEROUS
PRECEDENT.

IT'S BASICALLY CREATED A
JURISDICTIONAL HOOK FROM THE
CHOICE OF LAW BECAUSE WHEN IT'S
NOT THE LAW.

IF WE DON'T ACTUALLY SELECT A
FORM, DON'T CONSENT TO
JURISDICTION OF A FORM, THAT IS
NOT ENOUGH TO CONFER PERSONAL
JURISDICTION OVER OBJECTION OF
DEFENDANT TOOK NOWHERE IN OUR
JURISPRUDENCE IS THEIR CASE THAT
HOLDS A CHOICE OF LAW PROVISION
BY ITSELF IS SUFFICIENT.

WHAT WE HAVE IS A PROVISION THAT
SAYS THIS AGREEMENT SHALL BE
GOVERNED BY THE LAWS OF THE
STATE OF FLORIDA.

THREE SENTENCES FOLLOWED THIS
CHOICE OF LAW BECAUSE IT DEALS
WITH HOW TO HANDLE ANY
DIFFERENCES THAT ARISE.

THE FOURTH SENTENCE FOLLOWING
THE CLAUSE, FOR SENTENCES AFTER
THE CHOICE OF LAW PROVISION SAYS
AND IF YOU CAN'T RESOLVE YOUR
DISPUTES, WE WILL RESOLVE THEM
IN ARBITRATION BOARD.

>> COUNCIL.

ASSUMING WE AGREE WITH YOU ON
THAT WHAT WOULD BE THE RIGHT
THING FOR US TO DO AT THAT
POINT?

>> TO SQUASH THE THIRD DCA'S
DECISION AND REINSTATE THE TRIAL
COURT'S DECISION BECAUSE THE
TRIAL COURT SAID--

>> AND STOP THE ANALYSIS AT
THAT?

>> STOPPED THE ANALYSIS AT THAT
POINT BECAUSE IF YOU DON'T HAVE
FORM SELECTION CLAUSE OR CONSENT
TO JURISDICTION BECAUSE IT'S
OVER.

>> SO WE DON'T NEED TO GET INTO
THE OTHER STOP?

>> YOU DON'T.

REINSTATE THE TRIAL COURT
DECISION IN THE CASE IS OVER.

THE GREATER QUESTION, COURSE, IS

WHAT IF YOU HAVE A VALID FORM
SELECTION CLAUSE OR CONSENT
JURISDICTION CLAUSE AND WE ARE
NOT SAYING YOU CAN'T
CONTRACTUALLY AGREE TO THAT.

IF YOU HAVE TWO PARTIES THAT
SIGNED AN AGREEMENT WHO
VOLUNTARILY WITH INFORMED
CONSENT, THAT'S A DIFFERENT
STORY.

YOU STILL HAVE TO DO DUE PROCESS
ANALYSIS BECAUSE THAT'S WHAT THE
CLAW ASH LAW SAYS.

SECTION 685.02 EVEN WHEN THE
FLORIDA LEGISLATURE SAID WE WILL
CREATE A JURISDICTIONAL HOOK
THAT PARTIES CAN AGREE BY
CONTRACT, IT STILL SAYS YOU
CAN'T VIOLATE THE U.S.
CONSTITUTION.

THERE HAS TO BE DUE PROCESS
ANALYSIS CONTAINED WITH THE
THIRD DCA DID HERE BESIDES
IMPROPERLY CONVERTING THIS INTO
A FORM SELECTION CLAUSE, THEY
DIDN'T EVEN BOTHER WITH THE FACT
THAT IT WAS UNDISPUTED, THAT
TRIBECA HAD NO--

[INAUDIBLE]

IN ADDITION TO THE FACT TRIBECA
ISN'T A SIGNATOR SO DIDN'T EVEN
GET TO THE FIRST ISSUE AS TO
WHETHER THIS WAS A FREELY
NEGOTIATED CLAUSE BETWEEN THE
PARTIES BECAUSE TRIBECA WASN'T A
SIGNATORY.

THAT WOULD BE ESTABLISHED BEFORE
YOU COULD GO INTO AN ANALYSIS OF
THE DUE PROCESS.

TO BE FRANK, THIRD DCA JUST
TORTURED THIS CLAUSE TO CREATE A
FORUM SELECTION CLAUSE WHERE
NONE EXISTED.

FRANKLY, I THINK IT'S A PRETTY
CLEAR CASE BASED ON THE PLANE
AND UNAMBIGUOUS MANAGE OF THE
CONTRACT.

UNLESS THE COURT HAS FURTHER
QUESTIONS I WILL RESERVE THE
REST OF MY TIME FOR REBUTTAL.

>> MAY IT PLEASE THE COURT,
CARLOS SARDI ON BEHALF OF ANCLA
INTERNATIONAL.

IT'S A PLEASURE TO BE BEFORE YOU

FOR THE VERY FIRST TIME.
I FEEL VERY WELCOME.
THANK YOU SO MUCH.
LET'S GET NOW TO THE ARGUMENT
HERE FOR A SECRETARY.
IT APPEARS THAT AT LEAST SEEMS
TO ME THAT WHAT TRIBECA IS
INTENDING TO DO BEFORE YOU TODAY
IS TO HAVE AN APPEAL OVER AGAIN
WHAT THE THIRD DCA ALREADY
DETERMINED.
ESSENTIALLY, ITS OWN FACTUAL AND
NOBLE INTERPRETATION OF THIS
CONTRACTOR WILL LANGUAGE.
THEIR SO-CALLED CONFLICT, IT'S
NONEXISTENT.
WE ARE NOT TRAVELING UNDER THE
LONG ARM STATUTE.
[MUFFLED AUDIO]
WE ARE NOT TRAVELING EVEN UNDER
THAT CHAPTER 685 STATUTE OR BODY
OF LAW REGARDING GENERALLY
CONTRACTS.
WE ARE TRAVELING UNDER A VERY
SPECIFIC STATUTE, VERY MUCH
FAVORED BY THIS COURT IN TERMS
OF ARBITRATION AND ABILITY OF
CASES IN WHICH PARTIES
NEGOTIATED FREELY AND
VOLUNTARILY.
[MUFFLED AUDIO]
THIS IS PRECISELY WHAT HAPPENED
IN THIS CASE.
A COUPLE OF CONFLICTING
AFFIDAVITS, BOTH OF WHICH WERE
WEIGHED AND UNDER WHICH THE
TRIAL COURT ERRONEOUSLY TOOK THE
POSITION THAT ONLY ONE OF THE
AFFIDAVITS HELD THE TRUTH,
POSITION ON A DISMISSAL.
SO, I WANT TO-- YOU TO KEEP IN
MIND DISMISSAL OF THIS CASE HAD
ALREADY BEEN HEARD AT THE FIRST
INSTANCE IN AN ORDER DENYING
THAT DISMISSAL.
A SECOND TIME UPON WHICH THE
COURT HEARD DISMISSAL WAS JUST
AT THE HEELS OF AN EVIDENTIARY
HEARING UPON WHICH THE PETITION
TO COMPEL WAS GOING TO BE HEARD
BY THE COURT WITH EVIDENCE THAT
BOTH PARTIES WERE READY AND
PREPARED TO GO FORWARD.
COURT CUT OFF THAT HEARING,

ESSENTIALLY, TAKING A POSITION
IT COULD RULE ON SUMMARY
JUDGMENT ESSENTIALLY AND TRY TO
DISPOSE OF THE PERSONAL
JURISDICTION ISSUE, WHICH HAD
BEEN PRESERVED BY WAY OF
AFFIRMATIVE DEFENSE AND AT THAT
TIME WITHOUT ANY EVIDENCE IN
PREDICTING AFFIDAVITS RULED THE
PERSONAL JURISDICTION COMMITTING
AN EXTENSIVE ERROR BY HAVING
DONE SO AND NOT ALLOWING
EVIDENCE TO COME FORWARD.
DESPITE THAT, THE THIRD DCA
CORRECTLY TOOK A REVIEW AND
DECIDED AT THE NOBLE REVIEW THAT
WHEN YOU TAKE A LOOK AT THE
PARTICULAR CAUSE HERE, WHICH IS
EXTENSIVE, EXTENSIVE IN NATURE,
144 WORDS.
MY ESTEEMED OPPONENT ONLY LOOKS
AT 13 OF THOSE WORDS TO MAKE HER
ARGUMENTS WHEREAS THE THIRD DCA
IN CORRECTLY INTERPRETING THE
PARTICULAR CONTRACTUAL PROVISION
TOOK A LOOK AT THE WHOLE
PROVISION TO TRY TO GIVE IT
MEANING, SEE WHAT THE PARTIES
ACTUALLY HAD AGREED.
WHAT MY ESTEEMED OPPONENT IS
SAYING IS BASICALLY DISREGARD
THE PORTION OF THAT AGREEMENT
THAT READS A JURISDICTION
ACCEPTED BY THE PARTIES.
>> WELL, BUT COUNSEL, THE
LANGUAGES STARTS OFF OBVIOUSLY
WE HAVE TO LOOK AT THIS IN
CONTEXT.
BUT, IT SEEMS THE TABLE IS
REALLY SET FOR WHAT THIS IS
DOING IN THE FIRST PART OF THAT
SENTENCE OR DISAGREEMENT WILL BE
GOVERNED BY THE LAWS OF THE
STATE OF FLORIDA IN THAT WHAT
FOLLOWS THAT IS UNDERSTOOD IN
THE CONTEXT, SO THAT'S NOT TO
SAY THINGS COULD IT BE SAID
AFTER A REFERENCE TO BEING
GOVERNED BY THE LAWS OF THE
STATE OF FLORIDA THAT WOULD GO
BEYOND THAT, BUT IT SEEMS LIKE
HERE THAT USE OF THE TERM
JURISDICTION IS JUST KIND OF
DESCRIBING FLORIDA, THE STATE OF

A FLORIDA AS USED IN THIS SENTENCE THAT FLORIDA IS A JURISDICTION AND THAT THE GOVERNING OF THE LAWS OF THE STATE OF FLORIDA IS SOMETHING ACCEPTED BY THE PARTIES. WHAT AM I MISSING WHEN I LOOK AT IT THAT WAY?

>> IT'S ALL ABOUT JUST ONE WORD YOUR HONOR, WHAT DOES JURISDICTION MEAN.

>> IN CONTEXT.

>> IN CONTEXT IN THIS PARTICULAR PROVISIO.

IN DOING SO, THE THIRD DCA JUST LIKE WE HAD SUGGESTED IN OUR BRIEFING TO THE THIRD DCA TOOK A LOOK AT THE DEFINITION OF THAT WORD TO ASSIST THAT COURT IN INTERPRETING THE PROVISION.

I MEAN, IN DOING SO IN LOOKING AT THE BLACK'S LAW, DEFINITION OF THE TERM JURISDICTION--

>> I UNDERSTAND WHAT YOU ARE SAYING, BUT THAT'S ONLY ONE DEFINITION OF JURISDICTION AND THAT'S THE JURISDICTION THAT SUPPORTS THEIR CONCLUSION, BUT THERE ARE OTHER DEFINITIONS OF JURISDICTION MAINLY THAT CUT THE OTHER WAY.

>> ABSOLUTELY.

>> I CAN LOOK THEM UP, I MEAN, I THINK YOU KNOW THERE ARE OTHERS IN THE DICTIONARY.

>> I THINK WITHIN THE CONTEXT OF WHAT THE THIRD DCA HAD ATTEMPTED TO DO AT OUR INSISTENCE IN TERMS OF UTILIZING THE DEFINITION WAS PRECISELY TO GIVE CONTEXT TO THE WHOLE PROVISION AND AS YOUR HONOR FRANKLY POINTS OUT, THERE IS MORE THAN ONE DEFINITION AND THAT'S PRECISELY WHY YOU NEED TO LOOK AT THE WHOLE CONTEXT AND SEE WHAT THE JURISDICTION ACTUALLY MEANT.

I'M SORRY, YOUR HONOR.

I CAN BARELY HEAR YOU.

YES, SIR.

WELL, IF I'M UNDERSTANDING CORRECTLY YOUR QUESTION, IF WE ARE ONLY REFERRING TO JUST THE LAW ITSELF, I LOSE, BUT IF WE

ARE REFERRING AS TO THE VENUE, I STAND ON MY TWO LEGS HERE AND I THINK THAT THE THIRD DCA DOES AS WELL.

JURISDICTION HERE WHEN LOOKED UPON THE QUALIFIER, WHICH IS FLORIDA, THEY WANT YOU TO LOOK AT THE QUALIFIER AS BEING A LAWS, DETERMINE LAWS IN THE PROVISO WHEN IT'S REALLY FLORIDA.

FLORIDA IS THE JURISDICTION THAT THE PARTIES AGREE TO.

THAT'S WHAT THE THIRD DCA CONCLUDED IN INTERPRETING THE TERM JURISDICTION WITH THE PROVISO TO GIVE IT SENSE, OBVIOUSLY YOU NEED TO CONTINUE READING THE WHOLE 144 WORDS CONTAINED WITHIN IT SO YOU CAN DETERMINE THAT FLORIDA IS WHERE THE ARBITRATION IS TO TAKE PLACE.

THE TITLE IS APPLICABLE LAW, BUT AS YOUR HONOR WELL KNOWS THE TITLE IN ITSELF IS NOT DISPOSITIVE IN A QUESTION LIKE THIS.

[INAUDIBLE QUESTION]

>> IN MY HUMBLE OPINION, YOUR HONOR, AND OF COURSE YOU CAN FORM A DIFFERENT OPINION. YOU ARE FREE TO DO SO.

IN MY HUMBLE OPINION, THE TERM JURISDICTION HERE WITHOUT REFERENCE LEADS TO THE HEADINGS. IF WE WERE TO REFERENCE EVERY HEADING IN EVERY CONTRACT THEN WE WOULD BE LOST WITH THE SUBSTANCE OF WHAT THE CONTRACT IS REALLY TRYING TO DO, BUT IF WE WORK TO JUST LOOK IN ISOLATION THE WORD JURISDICTION IN TERMS OF THE WHOLE SUBSTANTIVE PART OF THE SECTION, I CAN HONESTLY CONCLUDE, YOUR HONOR, THAT WHAT WE ARE TALKING ABOUT IS NOT ONLY THE LOCATION, BUT ALSO THE POWER OF THE COURTS WITHIN THAT LOCATION, WHICH IS WHAT THE THIRD DCA CONCLUDED, ONE OF THE DEFINITIONS OF THIS JURISDICTION IS THAT POWER OF THE COURTS.

THAT'S WHAT SHOULD NOT SURPRISE YOU TO BE HALED INTO THE CORDOVA FLORIDA.

NOW, IF I MAY CONTINUE WITH MY ARGUMENT.

THE SO-CALLED CONFLICT THAT WE HAVE WITH THE THIRD DCA IS NONEXISTENT.

THERE IS A RECENT CASE THAT WE HAVE CITED IN OUR PAPERS THAT CAME OUT IN JULY OF LAST YEAR BY THAT SAME COURT, THE FOURTH DCA IN WHICH THE FOURTH DCA CHAPTER 685 WITHIN THE CONTEXT OF THE PROVISIONS OF THAT SEPARATE STATUTE, WHICH IS MORE GENERALLY GEARED TOWARDS CONTRACTS.

[INAUDIBLE QUESTION]

>> IT CANNOT.

ALL THOSE CASES ARE IN OPPOSITE. ALL OF THOSE CASES ARE IN OPPOSITE, YOUR HONOR.

IF YOU LOOK AT THAT PARTICULAR STATUTE THAT WE ARE TRAVELING UNDER, ALL YOU NEED TO PROVE TO GAIN PERSONAL JURISDICTION OVER A DEFENDANT IS TO COMPLY WITH TWO THINGS.

NUMBER ONE, PROVISO CALLS FOR THE APPLICATION OF THE LAWS OF FLORIDA.

THAT'S NOT AN ISSUE HERE.

NUMBER TWO, THAT THE AGREEMENT PROVIDES FOR ARBITRATION IN FLORIDA.

ITS OPPOSITION THAT THE ARBITRATION CLAUSE HERE CALLS FOR ARBITRATION HERE IN FLORIDA. WHEN YOU COMPLY WITH THOSE TWO THINGS, MUCH LIKE IN THE BLACK CASE THAT WE HAVE DECIDED-- CITED IN OUR PAPERS CONCLUDES THAT WHEN YOU COMPLY WITH THE PARTICULAR PROVISIONS OF THE STATUTE SUCH AS THE ONES IN CHAPTER 685, WHICH IS WHERE IT'S ALL ABOUT, THEN PERSONAL JURISDICTION IS HAD ON A DISMISSAL POSTURE.

SO, THAT'S HOW YOU RECONCILE HAMILTON WHERE AND YOU HAVE TO TAKE A LOOK AT THAT.

IN FACT, BLACK SITES TO THE SEMINOLE CASE DEALING WITH

JURISDICTION IN COMPLIANCE WITH
JURISDICTION IN TERMS OF DUE
PROCESS, CONSTITUTIONAL DUE
PROCESS AND EVEN IN THAT
SCENARIO--

[MUFFLED AUDIO]

THAT THE PARTIES THROUGH
CONTRACT CAN EXPRESSLY WAIVE
PERSONAL JURISDICTION.

BASED ON THAT, THE BLACK CASE OF
THE FOURTH DCA CONCLUDED YOU
PERSONAL JURISDICTION AS LONG AS
YOU MEET THE REQUIREMENTS OF THE
STATUTE.

ONCE YOU HAVE THAT REQUIREMENT
MET, YOU NEED NOT GO INTO ANY OF
THAT ANALYSIS.

SO, THAT'S WHY WE ARE SAYING
THAT THIS COURT SHOULD ACTUALLY
DISCHARGE ITS EXERCISE OF
JURISDICTION IN THIS CASE THERE
IS REALLY NO CONFLICT IN THE
CASES THAT ARE CITED BY MY
ESTEEMED OPPONENTS AND THAT THE
COURT AFFIRM THROUGH THE THIRD
DISTRICT COURT OPINION AND ALL
OF ITS TERMS IF THE COURT IS
INCLINED NOT TO DO SO THEN THERE
ARE MANY QUESTIONS THAT
OBVIOUSLY WERE NEVER DEALT WITH.
THAT VERY BRIEF HEARING PRIOR TO
THE EVIDENTIARY HEARING THE PART
WHERE WE ARE ABOUT TO DO GET OUT
AND IF WE-- WE ARE SUGGESTIVE
THE COURT IS INCLINED TO
EXERCISE JURISDICTION
RE-EXAMINING ALL RECORDS NOBLE
THAT IF IT CONCLUDES THAT IT
WOULD SQUASH THE THIRD DCA
OPINION, THAT THEY SHOULD SEND
THEN THE PARTIES BACK FOR AN
EVIDENTIARY HEARING TO CONDUCT A
MINIMUM CONTEXT ANALYSIS, NUMBER
ONE.

THIS ARGUMENT THAT SUPPOSEDLY
THEIR OWN AGENT DID NOT SIGN
THIS AGREEMENT, THERE IS SIMPLY
NO REASON TO BELIEVE ON THE
RECORD HERE THAT THE AGENT, WHEN
LOOKING AT THE FOUR CORNERS OF
OUR COMPLAINT, THAT THE AGENT
DID NOT SIGN ON BEHALF OF ITS
PRINCIPAL.

THAT'S WHAT WE HAVE ARGUED.

>> LET ME MAKE SURE I UNDERSTAND.
IF WE SQUASH AND REMAN, WHAT ELSE NEEDS TO BE DONE AT THE TRIAL COURT LEVEL QUÉBEC WELL, YOUR HONOR, THEN WE NEED TO HAVE THE COURT ANGLE IS ON DUE PROCESS WILL BE TRUNCATED IF WE DO NOT HAVE AN ABILITY TO PROVE UP PERSONAL JURISDICTION.

>> I THOUGHT THE TRIAL COURT MADE A RULING THAT THERE WAS NO PERSONAL JURISDICTION AND DISMISSED THE CASE.
IS THAT NOT RIGHT?

>> THE-- THE TRIAL COURT DID THATCOME ABOUT WHAT WE ARE SUGGESTING IS THAT IT WAS AN ERROR BASED ON THE CONFLICTING AFFIDAVITS THAT WE HAD IN THE THIRD DCA BASICALLY BY ISSUING ITS OPINION CURE THAT AREA. IT DID CURE THE ERROR, AND SO OUR POSITION IS THAT IF YOU ARE INCLINED TO SEND THIS BACK, THEN WE SHOULD ALL HAVE OUR DAY IN COURT AND BE ABLE TO DETERMINE WHAT NEEDS TO BE DETERMINED ACCORDING TO YOUR OWN NOBLE REVIEW.

UNLESS YOU ALL HAVE ANY OTHER QUESTIONS FOR ME, I WOULD RESERVE WHATEVER TIME YOU MIGHT WANT TO YIELD TO ME.
I DON'T KNOW IF I'M OVER MY TIME.

I'M NOT REALLY LOOKING AT THE CLOCK AND I APOLOGIZE.

>> YOU HAVE FIVE MINUTES LEFT, BUT YOU DON'T HAVE TO TAKE IT.

>> OKAY, VERY WELL.

>> BUT, IF YOU SIT DOWN NOW, YOU ARE DEAD.

>> THAT'S RIGHT, YOUR HONOR.

I WILL SIT DOWN NOW.

THANK YOU FOR YOUR TIME AND THANK YOU FOR WELCOMING ME TOO YOUR PRESTIGIOUS COURT.

THANK YOU.

>> THANK YOU, COUNSEL.

>> COUNCIL, WOULD YOU MIND ADDRESSING THE ARGUMENT THAT THERE IS ACTUALLY NO CONFLICT WITH THE CASES?

>> ABSOLUTELY, YOUR HONOR.
WE HAVE CONFLICT BECAUSE AS THIS
COURT HELD LAST YEAR YOU COULD
HAVE EXPRESS AND DIRECT CONFLICT
WHERE YOU HAVE THE APPLICATION
OF RULE OF LAW WITH
SUBSTANTIATED FACTS THAT LEAD TO
DIFFERENT RESULTS SO WHAT THE
THIRD DCA DID WAS SAY HEY, I'M
GOING TO CONVERT THIS WITH A
FORUM SELECTION CLAUSE AND
THERE'S NO NEED TO GO FURTHER
WHERE'S THE FOURTH DCA IN
HAMILTON VERSUS HAMILTON SAID WE
HAVE A FORUM SELECTION CLAUSE OR
CONSENT TO JURISDICTION CLAUSE
BUT WE NEED TO GO FURTHER TO SEE
IF THERE'S DUE PROCESS BECAUSE
WE CANNOT GO BEYOND.
YOU JUST CAN'T SKIP THE PROCESS.
IT'S WRITTEN DIRECTLY IN THE
CONSENT OF JURISDICTION STATUTE
THAT IT CANNOT VIOLATE THE U.S.
CONSTITUTION.
CORRECT, THAT'S RIGHT.
WHERE THE JURISDICTIONAL FOCUS
BASED ON CONTRACTUAL PROVISION
YOU NEED DUE PROCESS ANALYSIS.
MAYBE IT'S NOT THE TRADITIONAL
MINIMUM CONTEXT WITH A TORT
CLAIM AND IS SOMEONE HAS
SUFFICIENT MINIMUM CONTEXT.
IT'S A DEAL IS-- DIFFERENT
ANALYSIS BECAUSE WE ARE IN
COMMERCIAL CONTEXT SO YOU WOULD
HAVE TO DO AN APPLICATION OF ARE
THESE THE PARTIES WHO AGREE TO
THIS.
WAS THEIR INFORMED CONSENT.
IS IT FREELY NEGOTIATED CLAUSE
BECAUSE OKAY THEN YOU COULD
ARGUE PERSONAL THE-- AVAILMENT.
IS THE ENFORCEMENT UNREASONABLE
OR UNJUST-- IT.
>> I'M SORRY TO INTERRUPT, BUT
IF WE DECIDE THIS AT THE
THRESHOLD THAT THE COURT WAS
WRONG AND THAT THIS IS A CHOICE
OF LAW PROVISION.
>> THEN IT'S DONE.
>> DOES THAT AFFECT OUR
JURISDICTION, THOUGH?
BECAUSE AT THAT POINT WE AREN'T
DOING ANYTHING ON A CONFLICT.

>> WELL, YOU ARE BECAUSE THE SECOND DCA SET THE CHOICE OF LAW PROVISION BY ITSELF IS IMPROVEMENT-- INSUFFICIENT TO CONFIRM PERSONAL JURISDICTION SO YOU STILL HAVE A CONFLICT ON THE GROUND.

>> OKAY.

>> BECAUSE WHAT THE THIRD DCA DID HERE WAS SAY WELL, HERE'S A THIRD-- HE OF JURISDICTION BASED ON THIS ALONE.

>> THE THIRD DCA DID RULE--

[MUFFLED AUDIO]

THEY DIDN'T THINK IT WAS A CHOICE OF LAW PROVISION.

>> TRUE, BUT THEY STILL SAY YOU HAVE A CONTRACTUAL PROVISION SO THAT ALONE IS GROUNDS FOR CONFLICT BECAUSE WE HAVE GOT NOW--

[INAUDIBLE]

HAMILTON AND WARE OUT OF THE FOURTH DCA SAYING CONTRACTUAL PROVISION BY ITSELF IS INSUFFICIENT.

THAT'S WHAT THE FLORIDA STATUTE SAYS.

WHETHER THIS IS THE ARBITRATION STATUTE AS MY ESTEEMED COLLEAGUE IS ARGUING OR A CONSENT TO JURISDICTION BECAUSE UNDER 685.105 IS DISTINCTION WITHOUT DIFFERENCE.

DO YOU HAVE A CONTRACTUAL PROVISION THAT BY ITSELF CAN CONFER PERSONAL JURISDICTION WITHOUT DUE PROCESS AND THE ANSWER IS NO.

THE LAW IS CLEAR ON THAT.

>> IT'S AN ODD JURISDICTIONAL THING; RIGHT?

YOU ARE ARGUING THERE'S A CONFLICT, BUT THE CONFLICT EXISTS BECAUSE OF THE ERRONEOUS INTERRELATION OF THE CONTRACT BY THE THIRD AND ONCE YOU REMOVE THAT, YOU ARE ARGUING THEN YOU HAVE RESOLVE THE CONFLICT.

WOULDN'T EXIST ANYMORE IN THE LAW BY CORRECT INTERPRETATION OF THE CONTRACT.

>> THAT IS TRUE.

THIRD DCA IN INTERPRETING THIS

WAY CREATED THE CONFLICT.

>> LET ME ASK ABOUT THE ARGUMENT THAT IF WE WERE TO QUASH THE OPINION THAT THERE IS STILL SOMETHING LEFT TO BE DONE AT THE TRIAL COURT LEVEL.

DO YOU AGREE WITH THAT?

>> NO.

IF YOU QUASH THE OPINION THEN THE TRIAL COURT'S ORDER, THERE IS NO CHOICE OF LAW BECAUSE, I MEAN, IT'S A CHOICE OF LAW BECAUSE AND THAT'S IT AND IT WAS UNDISPUTED THAT THERE WAS NO MINIMUM CONTACT.

ANALYSIS IS OVER BECAUSE A CHOICE OF LAW BECAUSE CANNOT CONFER PERSONAL JURISDICTION. IT'S DONE.

>> WAS THERE THE DETERMINATION BY THE TRIAL COURT THAT THERE WAS NO PERSONAL JURISDICTION, IS THAT STILL AT ISSUE?

>> THEY ARGUE IT IS AND WE ARGUE IT IS NOT.

IT WAS UNDISPUTED.

ATTORNEYS NEVER DISPUTED LACK OF MINIMUM CONTACT.

THEIR ARGUMENT BELOW AS ALWAYS, WE DON'T NEED MINIMUM CONTEXT BECAUSE YOU SIGNED A FORUM SELECTION CLAUSE AND THE TRIAL JUDGE SAID FORUM VENUE IS IT DISCUSSED.

IT'S A CHOICE OF LAW BECAUSE. IF IT'S UNDISPUTED THAT THERE ARE MONO-- NO MINIMUM CONTACTS YOU CAN'T EXERCISE PERSONAL JURISDICTION.

>> THERE WAS NOT A DISPUTE ABOUT SUFFICIENT CONTACT TO ESTABLISH VENUE IN A NORMAL SORT OF WAY WITHOUT THE USE OF A STATUTE.

>> CORRECT.

IT WAS UNDISPUTED.

THEY ARGUE WHILE, THERE WERE AFFIDAVITS AND AT NO POINT DURING THE HEARING WAS A REFERENCE TO AN AFFIDAVIT.

AT NO POINT, NOWHERE IN THE TRIAL COURT'S ORDER OR IN THE SUBSEQUENT ORDER FOR REHEARING DOES THE TRIAL JUDGE REFER AT ALL TO THE AFFIDAVITS.

THERE WAS NO FACTUAL ANALYSIS
DONE BY THE TRIAL JUDGE BECAUSE
THEY HAD ALREADY CONCEDED THAT
TRIBECA DIDN'T HAVE MINIMUM
CONTACTS OF THE TRIAL JUDGE SAYS
I HAVE A CHOICE OF LAW AND NO
MINIMUM CONTACT, I CAN'T
EXERCISE PERSONAL JURISDICTION.
THIS IS CLEAR.

UNLESS THE COURT HAS FURTHER
QUESTIONS, I REST ON MY BRIEFS.
THANK YOU, YOUR HONORS.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE.
THE COURT WILL NOW BE IN RECESS
FOR ABOUT 10 MINUTES.