Major League Baseball vs Frank L. Morsani

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS MAJOR LEAGUE BASEBALL VERSUS MARS AND I -- MORSANI. GOOD MORNING.

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS JOHN FOSTER. WITH ME IS MY PARTNER, LISA MOWITZ, AND WE REPRESENT THE PETITIONERS IN THIS CASE. THE SECOND DISTRICT COURT OF APPEALS WAS WRONG, WHEN IT REVERSED THE TRIAL COURT SUMMARY JUDGMENT FOR TWO REASONS. FIRST, THE SECOND DCA WAS WRONG, WHEN IT, BY JUDICIAL FIAT, CREATED AN EQUITABLE ESTOPPEL TO THE STATUTE OF LIMITATIONS, WHEN THE LEGISLATURE DID NOT. SECOND, THE SECOND DCA OVER LOOKED THE IN DISPUTEABLE FACT THAT THE SO-CALLED PROMISE, UPON WHICH THE PLAINTIFFS ESTOPPEL THEORY IS BASED, WAS TOTALLY NEGATED BY THE PRESUIT CONTEMPORANEOUS ADMISSIONS, BY THE PLAINTIFFS, THEMSELVES, THAT THERE WAS, INDEED, NO PROMISE AFTER FUTURE TEAM. AS TO THE FIRST ISSUE, THIS COURT RECENTLY EXPRESSED, IN THE HERNDON CASE, THAT WITH CASES INVOLVING THE RUNNING OR EXPIRATION OF THE STATUTE OF LIMITATIONS, THE COURT SHOULD LOOK AT TWO THINGS, FIRST, WHETHER A CAUSE OF ACTION HAS ACCRUED AND, SECOND, WHETHER A STATUTORY TOLLING PROVISION APPLIES FORM THE FIRST ISSUE DOESN'T APPLY TO THIS CASE. IT IS IN DISPUTEABLE THAT THE CAUSE OF ACTION IN THIS CASE ACCRUED IN AUGUST OF 1984. THE LAWSUIT WAS FILED BY THE PLAINTIFFS IN NOVEMBER OF 19892, MORE THAN EIGHT -- NOVEMBER OF 1992, MORE THAN EIGHT YEARS AFTER THE FACT, MORE THAN FOUR YEARS AFTER THE STATUTE OF LIMITATIONS HAD RUN, AND THAT IS WITHOUT DISPUTE.

MR. FOSTER, YOU WOULD AGO GROO YOU WOULD AGREE THAT EQUITABLE ESTOPPEL IS SOMETHING THAT IS A DIFFERENT CONCEPT THAN FRAUDULENT CONCEALMENT. DO YOU CONCEDE THAT?

FRAUDULENT CONCEALMENT HAS BEEN FOUND BY COURTS TO BE A SPECIES OF EQUITABLE ESTOPPEL, BUT THEY ARE NOT NECESSARILY ONE AND THE SAME. FRAUDULENT CONCEALMENT CAN BE OR IS A DIFFERENT DISTINCTION DOCTRINE THAN EQUITABLE ESTOPPEL.

IN THE ISSUE, AS TO WHETHER YOU CAN RAISE THE STATUTE -- WHETHER PARTY'S CONDUCT IS SUCH THAT ALLOWS THEM TO RAISE THE STATUTE OF LIMITATIONS AS A DEFENSE, AS OPPOSED TO ANY CONCEPT OF TOLLING, ISN'T THAT A TOTALLY DIFFERENT LEGAL IDEA?

YOUR HONOR, I CAN ANSWER THAT IN TWO WAYS IN THIS CASE. FIRST, EQUITABLE ESTOPPEL AND TOLLING ARE, INDEED, ONE AND THE SAME. EQUITABLE ESTOPPEL MEETS THE DEFINITION OF TOLLING THAT THIS COURT ARTICULATED AND EXPRESSED IN HANKY AND IN HERNDON, BUT, SECONDLY, IT DOESN'T MATTER, AND LET ME FINISH WITH REGARD TO WHY EQUITABLE ESTOPPEL ISN'T THE SAME THING AS TOLLING. FIRST, THIS COURT DEFINED TOLLING AS AN EVENT OR CONDITION THAT ENTER UMENTS OR SUSPENDS THE STATUTE OF LIMITATIONS, AND THAT IS PRECISELY WHAT EQUITABLE ESTOPPEL DOES. NO ONE CAN COME BEFORE THIS COURT AND SAY THAT EQUITABLE ESTOPPEL RESULTS IN ENDLESS LIABILITY BY A DEFENDANT. ITS ARTICULATION BY THE FEDERAL COURTS IS THE SAME AS TOLLING. IN FACT THE FEDERAL COURTS, IN THE SEVENTH CIRCUIT, OUT OF WHICH THE BAMBA CASE A ROSE, AFTER BAMBA, CLEARLY CATAGORIZED EQUITABLE ESTOPPEL TO BE TOLLING.

I THOUGHT THAT EQUITABLE ESTOPPEL, AS A DEFENSE, BASICALLY SAYS THAT THE PARTY WHO SHOULD NOT PROFIT FROM HIS OR HER WRONGDOING, IS NOT ENTITLED TO RAISE AN EQUITABLE

DEFENSE THAT WOULD NORMALLY BE AVAILABLE, SO I DON'T SEE HOW IT IS, IN THAT WAY, AS I HAVE STATED IT, HOW THAT WOULD BE A TOLLING DEFENSE.

WHAT YOU ARE TALKING ABOUT IS A CONDITION THAT GIVES RISE TO THE EQUITABLE ESTOPPEL. THAT CONDITION EXPIRES, AND WHEN IT EXPIRES, THE STATUTE OF LIMIT AGENCIES BEGINS TO RUN, SO IT FITS SQUARELY WITHIN THE DEFINITION THAT THIS COURT ADOPTED IN HANKY AND HERNDON. THAT IS IT IS A CONDITION THAT GIVES RISE TO EQUITABLE ESTOPPEL THAT INTERRUPTS OR SUSPENDS THE STATUTE OF LIMITATIONS, UNTIL THAT CONDITION HAS EXPIRED. MOREOVER, THE FEDERAL CASES, ALSO, HAVE CALLED EQUITABLE ESTOPPEL TO BE A TOLLING. IT IS PARTICULARLY TRUE IN THIS CASE, BECAUSE WHEN YOU REVIEW THE HISTORY, WHAT YOU FIND IS A FLORIDA REPORT DONE ON BEHALF OF THE FLORIDA REVISION COUNSEL, AND WHAT THAT SHOWS IS IT WAS EXPRESSED OR NOTED BY THIS COURT AT NOTE THREE OF THE HERNDON CASE, AND WHAT THAT REPORT SAYS, REALLY, TWO THINGS, AT PAGE ONE, IT SETS FORTH TWO THINGS AS POLICY BEHIND THE STATUTE OF LIMITATIONS, AS WELL AS PROVISIONS THAT WERE BEING CONTEMPLATED BY THE LEGISLATURE AND THAT WERE CODDFIED IN 1974, BUT ADDITIONALLY AT PAGE 13 OF THAT REPORT, IT TALKS ABOUT THE FACTS THAT THE LEGISLATURE WAS CON PLATING -- WAS CONTEMPLATEDING -- WAS CONTEMPLATING IN REGARD TO THE STATUTE OF LIMITATIONS.

ARE YOU SAYING THAT, ONE, THE STATUTE OF LIMITATIONS HAS RUN, BUT FOR SOME REASON IT RAN BECAUSE A PARTY CONCEALED IT OR THROUGH SOME OTHER TYPE OF FRAUD, THAT YOU CAN NOT MAKE AN EQUITABLE ESTOPPEL ARGUMENT? IS THAT WHAT YOU ARE TELLING US?

YES, MA'AM. THAT IS PRECISELY WHAT THE LEGISLATURE HAS CHOSEN TO DO. THE THING ABOUT, AS THE FOURTH DCA NOTED IN THE INTERNATIONAL BLOTER HOOD -- BROTHERHOOD SKIES -- BROTHERHOOD CASE, ANY TIME YOU APPLY THE STATUTE OF LIMITATIONS AND THE PASSAGE OF TIME, IT MAY RESULT IN A HARSH RESULT, BUT HAFERB RESULTS ARE THE -- BUT HARSH RESULTS ARE THE DECISIONS OR -- ARE THE RESULT OF DECISIONS MADE BY THE LEGISLATURE, WHEN THEY BALANCE THE POLICY REASONS BEHIND THE STATUTE OF LIMITATIONS, AGAINST THE POLICY REASONS BEHIND THE EXCEPTIONS TO THE STATUTE OF LIMITATIONS, INCLUDING EQUITABLE ESTOPPEL, AND THAT IS PRECISELY WHAT THE LEGISLATURE DID, IN CONSIDERING THE CODIFICAITON OF 95.051 AND IN ADOPTING 90.051, BECAUSE WHAT THE LEGISLATIVE HISTORY SHOWS IS THAT THEY COUNTERED A REPORT THAT WAS -- THEY CONSIDERED A REPORT THAT WAS FILED ON BEHALF OR DONE ON BEHALF OF THE FLORIDA LAW REVISION COUNCIL, AND AT PAGE 13, IT TALKS ABOUT WHAT TOLLING EBBS EPINGSS, WHAT EXCEPTIONS SHOULD BE MADE TO THE STATUTE OF LIMITATIONS, AND IN THIS 1972 REPORT, AT PAGE 13, IT SPECIFICALLY STARTS OFF WITH BALANCE OF POLICIES, AND IT SAYS THIS AND INSTRUCTS THIS TO THE LEGISLATURE. IN CONSIDERING WHETHER OR NOT A LIMITATIONS STATUTE SHOULD BE TOLLED, YOU, THE LEGISLATURE, MUST WEIGH THE PUBLIC POLICY CONSIDERATIONS FAVORING THE STATUTE, AGAINST A POLICY WHICH PREVENTS A PLAINTIFF, THROUGH NO FAULT OF HIS OWN OR THROUGH THE FAULT OF THE DEFENDANT, FROM ADDRESSING THE WRONG DONE HIM IN A COURT OF LAW, SO THE LEGISLATURE, PRIOR TO ADOPTING 95.051, SPECIFICALLY CONSIDERED AND WEIGHED AND BALANCED THE POLICIES BEHIND THE STATUTE OF LIMITATIONS AGAINST THE VERY POLICY THAT UNDER LISEC EQUITABLE ESTOPPEL. IN FACT, AT PARAGRAPH THREE OF THIS LEGISLATIVE REPORT, IT SAYS IF ACTION IS PREVENTED THROUGH SOME ACT OF DEFENDANT, HE SHOULD, THEN, BE ESTOPPED FROM RAISING THE STATUTE IN HIS DEFENSE, AND IN SUBPARAGRAPH FOUR, IT GOES ON TO SAY THAT, EVEN IF TOLLING IS ALLOWED, THERE WOULD BE SOME POINT IN TIME WHERE THE POLICY TO PREVENT SELF CLAIMS WOULD OUTWEIGH THE INJUSTICE OF BARRING CLAIM. IN 1974, THE LEGISLATURE CODDFIED 95.051. AFTER SPECIFICALLY WEIGHING THE POLICIES BEHIND THE STATUTE OF LIMITATIONS, AGAINST THE VERY POLICY UNDERLYING EQUITABLE ESTOPPEL, AND IT ENUNCIATEED THE REASONS AND EBBS EPINGSS TO THE STATUTE -- AND EXCEPTIONS TO THE STATUTE, TO THE EXCLUSION OF EQUITABLE ESTOPPEL, AND WHAT THIS CASE BOILS DOWN TO, YOUR HONOR, THE EXPRESSION OF ONE IS TO THE EXCLUSION OF THE OTHER, APPLY, AND THE ANSWER TO THAT IS, YES, IT D THE LEGISLATURE CREATED THE

STATUTE -- YES, IT DOES. THE LEGISLATURE CREATED THE STATUTE OF LIMITATIONS. IT CREATED THE EXCEPTIONS TO IT, AFTER SPECIFICALLY CONSIDERING THE POLICY REASONS BEHIND EQUITABLE ESTOPPEL, AND IT CREATED THE CONCLUSION EXCEPTIONS TO THE EXCLUSION OF EQUITABLE ESTOPPEL, AND IT IS WRONG TO THE FIAT OF EQUITABLE EXCEPTIONS. AND THAT IS THE ANSWER GIVEN BY THIS COURT SINCE AS FAR BACK AS 1952 IN THE DOBBS VERSUS CL HOTEL CASE AND IN 1954, IN THE CARRY VERSUS BEYER CASE, AND JUSTICE PARIENTE, ONE QUESTION THAT YOU MIGHT HAVE BEEN CONCERNED ABOUT, AND THAT IS, JUSTICE, THE BEAUTY OF THIS ARGUMENT, OF THIS POSITION RESPECT OF THIS CASE, IS THAT THIS -- OF THIS POSITION, OF THIS CASE, IS THAT THIS COURT CAN DO TWO THINGS. IT CAN APPLY THE LAW, BY SAYING THE EXPRESSION OF ONE IS TO THE EXCLUSION OF THE OTHER AND THE EXPRESSS OF THE LEGISLATURE TO THE EX -- THE EXPRESSIONS OF THE LEGISLATURE TO THE EXCLUSION OF EQUITABLE ESTOPPEL, EQUITABLE ESTOPPEL, BECAUSE WHAT THIS COURT WANTS IS TO CONTEMPLATE THE SO-CALLED PROMISE OF AN INDEFINITE NATURE, AND KEEP IN MIND THAT THE TEAMS THAT THEY CLAIM THEY WERE BEING PROMISED, COMPETED IN 11 DIFFERENT CITIES, REPRESENTED BY THREE DIFFERENT GROUPS, THREE OF WHICH WERE IN THE TAMPA BAY AREA, AND WHAT THEY WANT THIS COURT TO DO IS PARTICIPATE IN THE ENFORCEMENT OF A PURPORTED PROMISE THAT WOULD GIVE THEM AN UNFAIR ADVANTAGE, TILT THE FIELD IN THEIR FAVOR OVER THESE OTHER COMPETITORS, AND THIS COURT SHOULD NOT PARTICIPATE IN THAT TYPE OF --

ISN'T THAT SOMETHING, THOUGH, THAT SHOULD BE IN DETERMINING WHETHER EQUITABLE ESTOPPEL IS VIABLE? DID THE TRIAL COURT EVER REACH THAT? I GUESS, WHEN WE GO BACK TO WHERE WE WERE, DID THE TRIAL COURT MAKE A DETERMINATION ON THE MERITS, AS TO WHETHER THE ALLEGATIONS THAT HAVE BEEN PLED AND HAD -- THAT IT IS EITHER TRUE OR NOT TRUE? ARE WE IN THAT SITUATION, WHERE WE CAN WAIVE THE RELATIVE MEIR PITTS?

IT IS VERY INTERESTING, YOUR HONOR, BECAUSE WHAT THE TRIAL COURT BASICALLY FOUND WAS THAT, AS OF MAY 17, 1984, WHICH IS A MEETING OUT OF WHICH THIS SO-CALLED PROMISE OR THESE THINGS WERE SAID, OUT OF WHICH THIS INFERENCE OF A PROMISE WAS SUPPOSEDLY MADE, OCCURRED ON MAY 17, 1984. WHAT THE TRIAL COURT DIDN'T GET TO EXPRESSLY IS WHEN DID THE CONDITION AS TO EQUITABLE ESTOPPEL -- WHEN WAS IT SETTLED, BASICALLY THE COURT DID NOT GET TO, AND THAT IS THE SECOND DECISION THAT WE HAVE GOT IN THIS CASE. I WOULD, ALSO, LIKE TO SAY, THE SECOND ISSUE BEING THIS, EASILY STATED. CAN A GROUP OF SOPHISTICATED INVESTORS, WHICH INCLUDE WELL-APPOINTED LAWYERS IN THIS STATE, SAY ONE THING BEFORE A LAWSUIT WAS FILED AND ADMIT TO ONE THING BEFORE A LAWSUIT WAS FILED AND THEN CHANGE THEIR STORY AND SAY SOMETHING, AFTER SUIT, FOR THE PURPOSE OF AVOIDING SUMMARY JUDGMENT? AND THE ANSWER TO THAT IS UNHE QIFCKLY NO -- UNEQUIVOCALLY NO, AND THAT IS BECAUSE THE STATUTE WOULD BE RENDERED MEANINGLESS, AND WHAT OCCURRED HERE, YOUR HONORS, IS DURING THE PRE-SUIT TIME PERIOD, FROM 1984 TO 1992, WHEN THE LAWSUIT WAS FILED, THE PLAINTIFFS, TIME AND TIME AGAIN, EXPRESSLY ADMITTED THAT THERE WAS NO PROMISE OR COMMITMENT OF A FUTURE BASEBALL TEAM. FOR INSTANCE, IN 1987, THE PLAINTIFFS DRAFTED A PROPOSED PURCHASE AGREEMENT FOR AN INVESTOR WHO WAS CONSIDERING INVESTING MONEY WITH THE PLAINTIFFS, AND AT PARAGRAPH SEVEN, THIS CAN BE FOUND AT PAGE 481 OF THE RECORD, THIS IS WHAT THE DRAFT OF THE AGREEMENT SAID. THE BUYER ACKNOWLEDGES AND REPRESENTS THAT BUYER HAS BEEN ADVISED, BY REPRESENTATIVES OF SELLER, THE SELLER BEING THE PLAINTIFFS HERE, AND UNDERSTAND THAT -- UNDERSTANDS THAT SELLER NEITHER HAS ANY COMMITMENT, WRITTEN OR VERBAL, FROM MAJOR LEAGUE BASEBALL, FOR A MAJOR LEAGUE BASEBALL FRANCHISE, BY EXPANSION ORIZE, NOR ANY AGREEMENT, WRITTEN OR -- OR OTHERWISE, NOR ANY AGREEMENT, WRITTEN OR VERBAL, FOR THE PURPOSE OF EXPANSION OF A MAJOR LEAGUE BASEBALL FRANCHISE. PRIOR TO THAT MR. MORSANI AC NALINGD THAT THEY WERE NOT GOING TO GO FORWARD -- ACKNOWLEDGED THAT THEY WERE NOT GOING TO GO FORWARD WITH CONSTRUCTION, UNTIL ASSURANCES. AND ON BEHALF OF THE PLAINTIFFS, MR. MAGENTY SAID THAT THEY WERE NOT GOING TO GO FORWARD WITH CONSTRUCTION OF A STADIUM, UNLESS

THEY RECEIVED THE ASSURANCE OF A TEAM IN THE FUTURE.

WHAT WAS THE AGREEMENT WITH THE TEAM, ITSELF? WAS THE AGREEMENT THAT, IF THIS MINORITY -- THEY HAD TO BUY THE MINORITY SHAREHOLDERS' INTEREST?

YOUR HONOR --

AND THEN, ONCE THEY BOUGHT THAT, THEN THEY WOULD HAVE TO BUY THE MAJORITY? JUST WHAT, EXACTLY, WAS THE AGREEMENT?

THERE WAS A WRITTEN AGREEMENT ENTERED INTO ON BEHALF OF AND BY THE PLAINTIFFS, WITH MR. GABE MURPHY, WHO OWNED A MINORITY INTEREST IN THE MINNESOTA TWINS. THERE HAD BEEN NEGOTIATIONS BETWEEN THE MAJORITY OWNERS, CALVIN GRIFFITH AND THELMA GRIFFITH HAINES, THE PLAINTIFFS, BUT THAT DID NOT RESULT IN THE EXECUTION OF A CONTRACT, AND WHAT ULTIMATELY HAPPENED WAS THE CONTRACT BETWEEN THE PLAINTIFFS AND MR. GABE MURPHY WAS ASSIGNED, BY THE PLAINTIFFS, TO A CORPORATION OWNED OR CONTROLLED BY CARL POLAND, WHO ULTIMATELY ACQUIRED THE INTEREST IN THE MINNESOTA TWINS, BUT THE ISSUE THAT THEY HAVE RAISED IS SOME STATEMENTS THAT WERE MADE, OUT OF WHICH THEY DRAW INFERENCES, FROM THE MAY 17, '84 MEETING, THAT THEY CLAIM GAVE THEM ASSURANCES AFTER FUTURE BASEBALL TEAM, BUT THE RECORD IN DISPUTEBLY SHOWS THAT AFTER THAT, AFTER THAT, THEY, TIME AND TIME AGAIN, ADMITTED THAT THERE WAS NO PROMISE OF A FUTURE TEAM. IN FACT --

JUST SO WE MAKE SURE, THE TRIAL COURT, ACCORDING TO THE SECOND DISTRICT, HAS SIMPLY DECIDED, AS A MATTER OF LAW, THAT, BECAUSE EQUITABLE ESTOPPEL WAS NOT LISTED, THAT THEY WERE -- THAT HE OR SHE WAS LIMITED TO THE LIST OF THE TOLLING DEFENSES, BUT, THEN, I GUESS BELOW, THE QUESTION WAS, ALSO, WHETHER THERE WAS A MATERIAL ISSUE OF FACT, AND THE SECOND DISTRICT SAID, YES, THERE WAS A MATERIAL ISSUE OF FACT THAT COULDN'T BE RESOLVED IN SUMMARY JUDGMENT, SO YOU ARE ASKING, IN THE SECOND PART, FOR THIS COURT, NOT ONLY TO ANSWER THE CERTIFIED QUESTION BUT, ALSO, TO DECIDE THAT THE SECOND DISTRICT WAS WRONG, WHEN THEY SAID THERE WAS AN ISSUE OF MATERIAL -- MATERIAL ISSUE OF FACT?

NO, YOUR HONOR. WHAT WE ARE ASKING THIS COURT TO DO IS ANSWER A QUESTION THAT THE TRIAL COURT DID NOT ANSWER, BECAUSE OF THE FINDING ON THE FIRST ISSUE. IF YOU LOOK AT THE RECORD, AT PAGE 1282, WHICH IS THE JUDGMENT ENTERED BY THE TRIAL COURT JUDGE -- BY THE TRIAL COURT JUDGE AT NOTE ONE. WHAT THE COURT SAYS IS THAT THE COURT HAS NOT RULED ON THE DEFENDANT'S CONTENTION THAT, IF AN ESTOPPEL EXISTED AT SOME POINT IN 1984, AND KEEP IN MIND THE MEETING WAS MAY 17, 1984, THE ESTOPPEL EXPIRED, AS A MATTER OF LAW, OUTSIDE THE STATUTE OF LIMITATIONS. IF YOU GO BACK TO THE HERNDON CASE, AND HANGY, THE ISSUE IS WHEN WAS THE CONDITION SETTLED THAT GIVES RISE TO THEIR EQUITABLE ESTOPPEL THEORY. CLEARLY IT WAS SETTLED IN MAY OF 1984, THE END OF MAY 984, WHEN MAJOR -- 1984, WHEN MAJOR LEAGUE BASEBALL SAID THERE WAS NOT A COMMITMENT FOR A TEAM BUT CLEARLY IN 1984, WHEN MR. MORSANI ADMITTED THERE WERE NO ASSURANCES AND THEY WOULD NOT GO FORWARD WITH THE TEAM. IT WAS SETTLED IN OBLTH OF 19 -- IN OCTOBER OF 1986, WHEN MR. MAGENTY SAID WE ARE NOT GOING TO GO FORWARD WITH CONSTRUCTION OF THE STADIUM BECAUSE WE HAVE NO ASSURANCES. THE STOCK PURCHASE AGREEMENT SAID EXPRIS PRSLY THAT -- EXPRESSLY THAT THERE HAD BEEN NO COMMITMENTS, AND THEY TOLD THE INVESTOR THERE ARE NO COMMITMENTS, WRITTEN OR VERBAL, FOR A TEAM IN THE FUTURE. IT WAS SETTLED IN MAY OF 1988, WHEN THE PLAINTIFFS ASKED MAJOR LEAGUE BASEBALL FOR A SIGNAL, KNOWING THEY HAD NO ASSURANCES, KNOWING THEY HAD NO PROMISES OF A FUTURE TEAM. THEY ASKED MAJOR LEAGUE BASEBALL FOR SOME SIGNAL THAT THEY WOULD GET A TEAM, AND LET ME READ --

WHAT ABOUT YOUR RESPONSE THAT THE DEFENDANTS TOLD THE PLAINTIFFS THAT, IF THEY FAILED TO ASSIGN THE MINORITY INTEREST, THE PLAINTIFFS WOULD NEVER OWN AN INTEREST IN THE MAJOR LEAGUE BASEBALL TEAM? IS-THOUGH IS A ASSERTION IN THE COMPLAINT, ADMISSIONS POSITION.

YOUR HONOR, THAT, AGAIN, GOES BACK TO THE MAY 17, 1984 MEETING. AND, AGAIN, THAT IS -- WHAT THEY ARE TRYING TO DO IS DRAW INFERENCES FROM THAT STATEMENT. AND KEEP IN MIND, HERE, THAT DURESS ISN'T AN ISSUE HERE, BECAUSE, AND IT HAS BEEN CONCEDED BY THE PLAINTIFFS THAT DURESS IS NOT AN ISSUE HERE, BECAUSE WHEN YOU HAVE SOPHISTICATED INVESTORS SUCH AS THIS AND SOPHISTICATED PERSONS WHO ACTUALLY SEEK AND OBTAIN THE REPRESENTATION ADVICE AND COUNSEL, OCCURES IS A -- DURESS IS A NONISSUE, BUT OUR POINT IS THAT, AFTER THIS MAY 17, 1984 MEETING, WHICH IS WHAT JUDGE WHITTAMORE ADDRESSED AS AN ISSUE, IN TERMS OF FACT, THE CONDITION THAT GIVES RISE TO THE SO-CALLED ESTOPPEL WAS SETTLED, BY VIRTUE OF THE FACTS THAT I JUST DISCLOSED TO THIS COURT. GOING BACK TO THE SIGNAL THAT WAS SUGGESTED, LET ME READ YOU THE RESPONSE.

YOU ARE WELL INTO YOUR REBUTTAL TIME.

I WILL READ THIS RESPONSE AND I WILL TERMINATE MY PRESENTATION.

IT IS UP TO YOU.

THANK YOU, YOUR HONOR.

THIS WAS THE RESPONSE BY MAJOR LEAGUE BASEBALL. WE RECOGNIZE THE DECISION YOU FACE, WITH RESPECT TO YOUR UTILIZATION OF FINANCING COMMITMENT. NEVERTHELESS MAJOR LEAGUE BASEBALL IS CONTINUING TO MOVE AHEAD IN ITS SERIOUS CONSIDERATION OF EXPANSION. WE ARE CERTAINLY NOT IN A POSITION TO ESTABLISH AN ULTIMATE TIMETABLE FOR EXPANSION OR MAKE ANY COMMITMENTS FOR A FUTURE FRANCHISE AND GOES ON TO SAY ANY ACTIVITY AT THIS POINT, REFERENCING GOING FORWARD WITH THE STADIUM, WOULD BE DONE ON YOUR OWN AND CERTAINLY WITH REGARD TO WHAT TAMPA MAY HAVE IN ITS FACILITY. THAT WAS MAY 11. PRIOR TO NOVEMBER OF 1988, THE CONDITION THAT THEY CLAIM GAVE RISE TO ESTOPPEL WAS SETTLED. THE LAWSUIT THAT WAS FILED IN NOVEMBER OF 1992 WAS UNTIMELY, AND WE REQUEST THAT THIS COURT REVERSE THE SECOND DCA AND REINSTATE THE SUMMARY JUDGMENT ENTERED BY THE TRIAL COURT JUDGE. THANK YOU.

MAY IT PLEASE THE COURT. MY SNAM JOEL EATON. I REPRESENT -- MY NAME IS JOEL EATON. I REPRESENT MR. FRANK MORSANI AND THE TAMPA AREA MAJOR LEAGUE BASEBALL GROUP. IT IS AN ESTOPPEL DEFENSE, BUT I PRESUME THAT THE COURT IS HERE TO ANSWER THE CERTIFIED QUESTION AND THAT THAT IS THE MORE IMPORTANT OF THE TWO, SO I WILL BEGIN WITH THE CERTIFIED QUESTION. IF THE COURT WILL FORGIVE ME, AFTER 25 YEARS, I WOULD LIKE TO TAKE OFF MY ADVOCATE'S HAT AND PUT ON MY SCHOLAR'S HAT, BECAUSE THIS IS AN AREA OF TREMENDOUS CONFUSION, AS THE COURT RECENTLY RECOGNIZED IN THE HERNDON CASE, AND I THINK MR. FOSTER IS TRYING TO ATTEMPT TO EXPLOIT THAT CONFUSION. THERE ARE, IN MY JUDGMENT, ESSENTIALLY FOUR SEPARATE AND DISTINCT CONCEPTS, WHICH ARE AT THE HEART OF THE PROBLEM, BOTH OF THIS CASE AND THE CASE THAT WAS HEARD BEFORE THIS CASE. MR. FOSTER WANTS TO JUMBLE THEM ALL UP, SHOVEL THEM TOGETHER AND -- SHUFFLE THEM TOGETHER AND CALL THEM EXCEPTIONS TO THE STATUTE OF LIMITATION, AND THEY ARE NOT EXCEPTIONS. THEY ARE NOT ALL EXCEPTIONS TO THE STATUTE OF LIMITATIONS. THERE ARE FOUR SEPARATE AND DISTINCT CONCEPTS TO THE STATUTE OF LIMITATIONS, AND IF I CAN HAVE WITH B TWO MINUTES, I WOULD LIKE TO GO OVER THEM FOR THE BENEFIT OF THE COURT. THE FIRST ONE IS WHEN DOES THE CAUSE OF ACTION ACCRUE. WHAT IS THE DATE ON WHICH THE STATUTE OF LIMITATIONS BEGINS TO RUN? THIS COURT CLARIFIES THAT AREA IN THE HERNDON CASE, AND I WILL COME BACK TO THAT IN A SECOND, BUT LET ME GIVE YOU THE REST OF THE

LIST. THE SECOND AND DISTINCT CATEGORY OF PROBLEMS IN THIS AREA IS THE TOLLING PROVISIONS. WHEN IS THE STATUTE OF LIMITATIONS, WHICH HAS, ALREADY, GUN TO RUN, SUSPENDED BY SOME EVENT, AND THEN WHEN THAT EVENT IS OVER, IT CONTINUES TO RUN. THIS COURT DEALT WITH THAT SUBJECT IN THE LESS RECENT BUT STILL, RECENT CASE OF HANGY VERSUS YERY, AND I WILL -- VERSUS YEARY, AND I WILL GET BACK TO THAT IN A SECOND. THE THIRD CONCEPT IS THIS COURT HAS A RULE OF TOLLING, AND THE FEDERAL RULES ON EQUITABLE TOLLING ARE ADOPTED IN THE ADMINISTRATIVE LAW CONTEXT. EQUITABLE TOLLING IS RECOGNIZED IN THE ADMINISTRATIVE LAW CONTEXT, WHEN THE CLAIMANT, THROUGH NO FAULT OF HIS OWN AND WITH REASONABLE CONDUCT, HASN'T GOT HIS PIECE OF PAPER FILED WITH THE GOVERNMENT IN TIME. IT HAS NOTHING TO DO WITH MISCONDUCT OF THE DEFENDANT. AND THE FOURTH CATEGORY ARE THE DEFENSES OF ESTOPPEL AND WAIVER, WHICH HAVE BEEN PART OF THE COMMON LAW FOR NEARLYAL THOUSAND YEARS, BOTH OF WHICH HAVE BEEN -- FOR NEARLY A THOUSAND YEARS, BOTH OF WHICH HAVE BEEN RECOGNIZED IN THIS COURT'S STATEMENT OF EXCEPTION. BOTH HAVE TO DO WITH CAUSE OF ACTION, WHICH THE CAUSE OF ACTION WAS RUNNING, IT HAS NOTHING DO WITH EQUITABLEES ESTOPPEL, WHICH IS WHEN THE STATUTE IS RUNNING. IT HAS NOTHING TO DO WITH ESTOPPEL TOLLING. IT HAS NOTHING DO WITH THE STATUTE RUNING. THE STATUTE OF LIMITATIONS IS NOT SUSPENDED. IT HAS RUN, AND IT WOULD, OTHERWISE, BAR THE CLAIM, AND THOSE TWO DEFENSES, ESTOPPEL AND WAIVER, EXIST TO PROTECT THE PLAINTIFF FROM THE WRONGDOING OR INEQUITABLE CONDUCT OF A DEFENDANT, IN WHICH THE DEFENDANT HAS DONE EITHER ONE OF TWO THINGS. IN THE ESTOPPEL DEFENSE, THE DEFENDANT HAS INDUCED THE PLAINTIFF FOR SOME REASON, TO FORE BEAR FILING SUIT, WITHIN THE STATUTE OF LIMITATIONS PERIOD, AND THE WAIVER CONTEXT IS WHERE THE DEFENDANT HAS GIVEN UP HIS RIGHT TO ASSERT THE STATUTE OF LIMITATIONS, IN EXCHANGE FOR SOME DEAL THAT HE HAS MADE WITH THE PLAINTIFF PREVIOUSLY. AND IF THOSE FOUR CALTGOERS -- CATEGORIES HAVE BEEN CORRECTLY DEFINED BY MY NUTSHELL ANALYSIS, I THINK THE ANSWER TO THE QUESTION BEFORE THE COURT IN THIS CASE IS QUITE SIMPLE.

IS THE -- FROM A PROCEDURAL STANDPOINT, IS IT YOUR CONCEPT THAT EQUITABLE ESTOPPEL IS RAISED AS AN AFFIRMATIVE DEFENSE?

BY THE PLAINTIFF. WHAT HAPPENS, THE PLAINTIFF FILES A COMPLAINT.

OKAY.

DEFENDANT --

OKAY. THE DEFENDANT RAISES THE STATUTE OF LIMITATIONS, AND THEN I MISSED THAT. AND THEN THE PLAINTIFF HAS TO FILE A REPLY.

CORRECT, YOUR HONOR.

AS AN AVOIDANCE?

A REPLY WHICH RAISES THE AFFIRMATIVE DEFENSE OF EQUITABLE ESTOPPEL OR WAIVER TO THE STATUTE OF LIMITATIONS DEFENSE. NOW, IT DIDN'T HAPPEN THAT WAY IN THIS CASE, BECAUSE WE ANTICIPATED THE DEFENSE, SO OUR AVOIDANCE OF THEIR STATUTE OF LIMITATIONS DEFENSE ISAL EDGED ON THE FACE OF THE THIRD AMEND -- IS ALLEGED ON THE FACE OF THE THIRD AMENDED COMPLAINT HERE, BUT THE ANSWER TO YOUR QUESTION IS YES.

FOR THE ARGUMENT THAT SOME OTHER THINGS OCCURRED, YOU GAIN KNOWLEDGE THAT THEY ALLEGE -- THAT THEY ALLEGE THAT YOU GAIN KNOWLEDGE THAT WHATEVER THEY SAID IN THE PAST WAS NOT CORRECT, IS THERE, THEN, IS IT LATCHES, THEN, THAT GETS PLED BACK? I MEAN, IN OTHER WORDS WHAT CAN DEFEAT EQUITABLE ESTOPPEL, OR HOW IS THAT, THEN, RAISED? HOW WOULD THEIR ARGUMENT, THEN, BE RAISED, EITHER BY PLEADING OR AS A MATTER OF FACT, WITHIN THE PROCEEDING?

I DON'T -- THEIR ARGUMENT IS A TOTAL STRAW MAN, AND I HAVE TO --

LET'S ASSUME THAT IS THE CASE THAT SOMEONE HAS SAID, LISTEN, YOU TOLD ME NOT TO FILE SUIT. I DIDN'T. I RELIED ON IT. BUT THERE COULD BE SOME POINT AFTER WHICH THAT RELIANCE IS NOT REASONABLE. THAT IS, ALSO, AN EQUITABLE ISSUE? I MEAN, AGAIN --

THAT IS A FACTUAL ISSUE FOR A JURY, TO DETERMINE WHETHER OR NOT THE PLAINTIFF HAS PROVEN HIS EQUITABLE ESTOPPEL DEFENSE TO THE DEFENDANT'S STATUTE OF LIMITATIONS DEFENSE. CERTAINLY, IF YOU HAVE BEEN INDUCED TO FORE BEAR FILING SUIT BY SOME TYPE OF PROMISE OR SOME TYPE OF DEAL, AND YOU FOREBEAR SUIT FOR THAT REASON AND THEN YOU LEARN THAT THE ASSURANCES THAT YOU WERE GIVEN WERE FALSE, THERE IS A POINT, THERE, AT WHICH YOU HAVE GOT TO FILE SUIT. NOW, THAT HAPPENED IN THIS CASE.

WHERE IS THE POINT? MAYBE SOME OF THE OTHER CASES THAT HAVE DEALT WITH EQUITABLE ESTOPPEL HAVE DEALT WITH IT, BUT JUST AS I AM LISTENING, TODAY, MR. FOSTER, IS THERE A POINT, THEN, THAT IT IS SOMETHING YOU ARE SAYING THEY CAN ASSERT, BUT IS THERE SOME POINT THAT, AFTER -- A YEAR AFTER YOU LEARNED, YOU BETTER HAVE FILED SUIT?

I DON'T BELIEVE THE CASE LAW DEALS WITH THAT SUBJECT. I HAVEN'T FOUND ANY CASES ON THAT POINT. IT WOULD BE A QUESTION OF WHETHER IT IS EQUITABLE TO DEFEAT THE STATUTE OF LIMITATIONS DEFENSE, UNDER THE FACTUAL CIRCUMSTANCES, WHICH INCLUDE, IN YOUR HYPOTHETICAL, A DELAY OF FOUR YEARS OR FIVE YEARS OR SIX YEARS IN FILING SUIT, ONCE YOU LEARN THAT YOU SHOULD HAVE FILED SUIT WITHIN THE STATUTE OF LIMITATIONS PERIOD.

ISN'T -- AND I CERTAINLY THINK THAT YOU HAVE OUTLINED THE -- WHAT HAS AT LEAST IN THE -- THAT CASE OUT OF THE SEVENTH CIRCUIT, BAMB A OR BAMBI OR THAT CASE, IS THE DISTINCTION THAT IS ARE BEING DRAWN BETWEEN THESE DOCTRINES, BUT AREN'T THESE, REALLY, PRETTY SUPERFICIAL DISTINCTIONS HERE, IN THE YEAR 2000, WHERE FRAUDULENT CONCEALMENT, WHICH IS, ALSO, A MATTER OF EQUITY, AND EQUITABLE ESTOPPEL, REALLY, ARE MATTERS WHICH GO TO WHETHER THE STATUTE OF LIMITATIONS SHOULD BAR THIS ACTION? AND OUR LEGISLATURE HAS, IN CHAPTER 95, SAID WE ARE GOING TO SET FORTH THE REASONS THAT STATUTE OF LIMITATIONS IS NOT TO BE APPLIED?

IT DOESN'T SAY THAT, YOUR HONOR.

BE CAREFUL NOW.

ISN'T THAT THE ESSENCE OF WHAT THAT PROVISION SAYS, IN 95.031?

NO. THAT STATUTE SAYS, OVER AND OVER AND OVER AGAIN AND USES THE WORD "TOLL". TOLL MEANS SUSPEND A STATUTE OF LIMITATIONS THAT HAS ALREADY BEGUN TO RUN, AND THAT IS WHAT THIS COURT SAID, AND JUSTICE ANSTEAD WROTE THE OPINION IN THE HANGY CASE, AND THERE IS A FOOTNOTE IN THERE WHICH ABSOLUTELY REJECTS, OUTRIGHT REJECTS BASEBALL'S ARGUMENT THIS CASE THAT THE WORD "TOLL" MEANS THE NARROW CONCEPT OF SUSPEND. THESE FOUR DIFFERENT CONCEPTS ARE DIRECTED TO DIFFERENT TYPES OF PROBLEMS FOR DIFFERENT POLICY REASONS. THE ESTOPPEL AND WAIVER DEFENSES, WHICH ARE ABOVE BEFORE THE COURT, NOW, ARE A METHOD OF DEALING WITH THE MISCONDUCT, NOT EVEN, NECESSARILY, MISCONDUCT OF A DEFENDANT BUT THE CONDUCT OF A DEFENDANT WHO IN DID YOU SEE SOMEBODY TO FOREBEAR FROM FILING SUIT OR WHO WAIVES THE STATUTE OF LIMITATIONS.

WELL, YOUR OPENENT READ US A REPORT THAT APPARENTLY WAS BEFORE THE LEGISLATURE AT SOME TIME WHEN THIS STATUTE WAS BEING CONSIDERED, THAT INCLUDED THE LANGUAGE OF IF, BASED ON THE CONDUCT OF THE DEFENDANT, NOT JUST PLAINTIFF BUT THE DEFENDANT. WHAT ABOUT THAT? DID THE LEGISLATE YURTION AT THE TIME IT WAS DRAFTING THIS LANGUAGE --

THE LEGISLATURE, AT THE TIME IT WAS DRAFTING THIS LANGUAGE, HAD SOMETHING BEFORE IT, WELL, IT MIGHT BE SOMETHING THAT THE DEFENDANT DOES, BUT WE ARE STILL GOING TO LIMIT THIS.

SOME -- THIS PARTICULAR REPORT WAS NOT DISCLOSED IN THE BRIEFS. IT WAS NOT SENT TO ME IN A NOTICE OF SUPPLEMENTAL AUTHORITY. THIS IS ABSOLUTELY THE FIRST TIME I HAVE HEARD ABOUT IT, WHICH IS NOT FAIR, SO I CAN'T RESPOND TO YOUR QUESTION.

IS THAT CORRECT? THAT IS THE FIRST TIME THAT IT HAS BEEN ALLUDED TO IN THIS CASE?

TO MY KNOWLEDGE IT. MR. FOSTER?

YOUR HONOR, I CITED IT IN FOOTNOTE THREE OF THE CASE.

WHICH I CITED AS A SUPPLEMENTAL AUTHORITY BUT I HAVEN'T SEEN THE REPORT, SO I CAN'T ANSWER YOUR QUESTION AS TO WHAT THE REPORT SAYS. THERE ARE CERTAIN CONDUCTS OF THE DEFENDANT WHICH WILL OR WILL NOT TOLL THE STATUTE OF LIMITATIONS RUNNING, BASED ON A SIMPLE PREROGATIVE, FOR EXAMPLE, A DEFENDANT THAT AND SENSES HIMSELF FROM THE JURISDICTION. SHOULD THAT TOLL THE STATUTE? LEGISLATIVE NOTIFICATION, CONDUCT OF THE DEFENDANT. BUT THE STATUTE SAYS TOLLING. IT SAYS TOLLING ON THE TITLE AND IT SAYS, OVER AND OVER AGAIN, ONLY THOSE TOLLING DEFENSES LISTED ABOVE SHALL TOLL THE STATUTE OF LIMITATIONS. IT DOESN'T HAVE THE WORD ESTOPPEL IN IT. IT DOESN'T HAVE THE WORD WAIVER IN IT. IT DOESN'T HAVE THE WORD EXCEPTIONS IN IT. IT DEALS WITH NUMBER TWO, TOLLING OF THE STATUTE OF LIMITATIONS.

CAN YOU EXPLAIN EXACTLY HOW THE TOLLING EXCEPTIONS IN 95.051 ARE DIFFERENT IN KIND, THAN THE KIND OF SITUATION THAT WE ARE DEALING WITH HERE? AS I AM LOOKING AT IT, IT SAYS "ABS, FROM THE STATE, OF THE PERSON TO BE PSEUDO-ABSENCE, FROM THE STATE, OF OF -- OF THE PERSON BEING SUED". IF YOU CAN GO BACK, THERE, TO WHAT IS THE DIFFERENCE BETWEEN THE QUALITIES THAT ARE LISTED AND WHAT WE ARE TALKING ABOUT IN THIS CASE?

IN THIS CASE, IN SOMETHING LIKE A FRAUDULENT CONCEALMENT, FOR EXAMPLE, THERE MAY NOT BE THAT SIGNIFICANT A DIFREIGNS BETWEEN THE TWO CONCEPTS IN -- DIFFERENCE BETWEEN THE TWO CONCEPTS IN SUBSTANCE FROM THE WAY THAT THEY OPERATE. AND PART OF THE SEMANTIC MORE AS WHICH MR. -- MORASS WHICH MR. FOSTER HAS BROUGHT YOU ARE OTHER JURISDICTIONS WHICH TREAT FRAUDULENT CONCEALMENT AS A TOLLING DEFENSE AND FROM OTHER JURISDICTIONS WHICH TREAT FRAUDULENT CONCEALMENT AS AN EQUITABLE ESTOPPEL DEFENSE. PEOPLE HAVE, AS THE COURT SAID IN THE HERNDON DECISION, THERE IS A AWFUL LOT OF LOOSE LANGUAGE IN THIS AREA, AND I AM SUGGESTING THAT EVERYTHING BE PUT IN ITS FOUR CATEGORIES, AND I WOULD, ALSO, SUBMIT TO THE COURT THAT THE HERNDON DECISION TAKES THE FRAUDULENT CONCEALMENT DEFENSE TOTALLY OUT OF THE TOLLING CONTEXT AND, NOW, FRAUD LEAPT CONCEALMENT RESULTS IN A -- FRAUDULENT CONCEALMENT RESULTS IN A DELAYED CAUSE OF ACTION. THIS COURT FINALLY SAID, IN HERNDON, WE ARE GOING TO ADOPT THE BLAMELESS IGNORANCE DOCTRINE RECOGNIZED IN THE GLUSS CASE. IF THE DISCOVERY HAS BEEN DELAYED FOR ANY REASON, THE CAUSE OF ACTION DOESN'T ACCRUE, UNTIL DISCOVERY. IN MY JUDGMENT, THAT OVERRULES SUBSALENCIO, THE FEDERAL INSURANCE COMPANY CASE, WHICH TURNED ON THE MAJORITY OPINION NOW DRAWN IN FULTON COUNTY AND THE ADMINISTRATOR, IT OVERRULED AND SAID WE ARE NOT GOING TO RECOGNIZE THE DISCOVERY PROVISIONS BY THE STATUTE OF LIMITATIONS. BY ADOPTING THE DISCOVERY DOCTRINE IN THE HERNDON CASE, YOU HAVE TAKEN THE PROBLEM OF DELAYED DISCOVERY, FOR WHATEVER REASON, INCLUDING CONCEALMENT, OUT OF THE TOLLING DEBATE, OUT OF THE EQUITABLE ESTOPPEL DEBATE AND MOVED IT OVER INTO THE CATEGORY ONE, WHEN DOES THE CAUSE OF ACTION ACCRUE. SO, YES, THEY ALL LOOK-ALIKE, BUT THEY HAVE DIFFERENT PURPOSES, AND THEY BELONG IN DIFFERENT CATEGORIES, AND THEY HAVE DIFFERENT EFFECTS

ON WHEN THE STATUTE OF LIMITATIONS CAN BE UTILIZED BY A DEFENDANT. NOW, THIS EQUITABLE ESTOPPEL DEFENSE HAS BEEN THE LAW IN THIS STATE FOR 150 YEARS, AND THERE ARE AT LEAST A DOZEN AND PROBABLY MORE -- I STOPPED LOOKING AFTER A WHILE -- DECISIONS WHICH SAY THAT AN EQUITABLE ESTOPPEL DEFENSE CAN BE RAISED AGAINST AN AFFIRMATIVE DEFENSE OF STATUTE OF LIMITATIONS, AND THERE ARE HALF A DOZEN, INCLUDING AT LEAST ONE FROM THIS COURT, WHICH SAY THAT, AFTER THE ENACTMENT OF 95.051, AND THERE IS NOT ONE SINGLE DECISION IN THE STATE OF FLORIDA THAT SAYS YOU CAN'T RAISE AN EQUITABLE ESTOPPEL DEFENSE TO A STATUTE OF LIMITATIONS DEFENSE BECAUSE OF THE TOLLING LIMITATIONS PROVIDED BY SECTION 95.051, AND IF THIS COURT HOLDS, AS THE DEFENDANT HAS ASKED IT TO DO, THAT SECTION 95.051, WHICH KEELS DEALS PRO -- WHICH DEALS PRECISELY WITH AND NO MORE THAN THE TOLLING DEFENSES AND THE RUNNING OF THE STATUTE OF LIMITATIONS, ABOLISHES THE 150-YEAR-OLD ESTOPPEL WAIVER DEFENSES. YOU HAVE OPENED A PANDORA'S BOX, WHICH YOU ARE GOING TO REQUIRE 10 OR 15 OR 20 YEARS TO PUT TO REST. FOR EXAMPLE IN THE FORM NONCONVENIENCE AREA, YOU HAVE RULED THAT A DEFENDANT CAN GET AN EXCEPTION FOR FORUM NONCONVENIENCE, BUT IT ENABLES THE PLAINTIFF TO FILE SUIT IN THE MORE CONVENIENT FORUM. WHAT HAPPENS TO THAT PROBLEM, IF YOU ABOLISH THE STATUTE OF WAIVER AND DEFENSES? AFTER THIS COURT'S DECISION IN THE COMPARATIVE FAULT PROVISION IN THE FABRE CASE, THE PLAINTIFF IS STUCK WITH THE POSSIBLE CHOICE OF HAVING TO SUE EVERYBODY IN THE UNIVERSE AS A DEFENDANT, TO PROTECT HIMSELF, BECAUSE IF YOU DON'T, THE DEFENDANT IS GOING TO BRING THEM IN AS NONPARTIES AND PUT THEM ON THE VERDICT FORM, AND THEY ARE GOING TO DO THAT AFTER THE STATUTE OF LIMITATIONS HAS RUN. THE ONLY WAY YOU CAN PROTECT YOURSELF, WITHOUT FILING A BUNCH OF FRIVOLOUS LAWSUITS, AFTER FABRE, IS TO GO TO THESE NONPARTY DEFENDANTS AND SAY, LOOK, WE DON'T WANT TO SUE YOU. THE DEFENDANT MAY BRING YOU INTO THE LAWSUIT. WE PROMISE NOT TO SUE YOU, IF YOU WAIVE THE STATUTE OF LIMITATIONS AND LET US SUE YOU, AFTER THE DEFENDANT NAMES YOU AS A NONPARTY DEFENDANT. THAT PROCEDURAL DEVICE IS, BOTHS, PRUDENT AND IN -- IS, BOTH, PRUDENT AND IN WIDESPREAD USE, AND IF YOU ADOPT THE DEFENDANT'S POSITION HERE, THAT WILL NO LONGER AVAILABLE HERE. THE RULE OF STATUTORY CONSTRUCTION IS THAT STATUTES, IN DEROGATION TO THE COMMON LAW, ARE TO BE READ VERY NEARLY AND STRICTLY CON -- NARROWLY AND STRICTLY CONSTRUED.

DO YOU SEE A DIFFERENCE IN THE ESTOPPEL, WHERE SOMEONE SAYS I AGREE TO WAIVE THE STATUTE OF LIMITATIONS DEFENSE?

THEY ARE DIFFERENT, BUT THEY, BOTH, FALL INTO CATEGORY FOUR OF DEFENSES RECOGNIZED IN THE DECISION OF LAW, WHICH WILL DEFEAT A STATUTE OF LIMITATIONS DEFENSE, WHERE THE STATUTE OF LIMITATIONS HAS RUN.

NOW, YOU MENTIONED, ABOUT FRAUDULENT CONCEALMENT, AND YOU ARE TRYING TO DECIDE, BASED ON WHAT WE HAVE SAID IN LEARN TON -- ON HERNDON, WHERE IT WOULD FALL. BASED ON YOUR ANALYTICAL FRAMEWORK, WHERE SHOULD FRAUDULENT CONCEALMENT FALL?

IF FRAUDULENT CONCEALMENT PREVENTS THE PLAINTIFF FROM SDOFERING ALL THE ELEMENTS OF HIS CAUSE OF ACTION, THEN THE DELAYED DISCOVERY RULE --

SO IT WOULD BE UNDER A CRUEL.

IT WOULD BE UNDER A CRUEL, I BELIEVE.

NOT A SPECIES OFES QUITO-OF EQUITABLE ESTOPPEL.

-- NOT A SPECIES OF EQUITABLE ESTOPPEL.

NOT UNDER TOLLING, AND IT WOULDN'T BE UNDER EQUITABLE ESTOPPEL, AND THE PROBLEM

WITH THIS FULTON COUNTY AND THE COUNTY ADMINISTRATOR, IT RECOGNIZES THAT ALL OF THE CASES DEALING WITH FRAUDULENT CONCEALMENT AND TREATED IT AS A TOLLING DEFENSE, AND THEREFORE 95.051 WAS DEALT WITH AS A FOLLOWING DEFENSE -- AS A TOLLING DEFENSE AND BARRED THE DON SEALMENT -- BARRED THE CONCEALMENT BY THE DEFENDANT, AND THE LEGISLATURE HAD TO FIX IT, AND I DON'T KNOW WHAT THE POLITICS WENT ON IN THE BACK ROOM, ABOUT GETTING RID OF THAT MAJORITY OPINION, BUT THE PROBLEM THAT THE COURT FACED, IN THAT OPINION WHICH DREW AT LEAST THREE DISENTS, I BELIEVE, WAS SOLVED IN HERNDON, WHEN HERNDON ADOPTS A DISCOVERY RULE. PLAINTIFF IS BLAMELESSLY IGNORANT AND DOESN'T DISCOVER ALL OF THE ELEMENTS OF HIS CAUSE OF ACTION, THEN THE CAUSE OF ACTION HAS NOT ACCRUED. THE STATUTE DOESN'T BEGIN TO RUN, AND THAT FRAUDULENT CONCEALMENT FITS VERY NICELY WITHIN THE HERNDON RATIONALE AND REMOVES ALL OF THE PROBLEMS AS TO WHETHER FRAUDULENT CONCEALMENT IS A TOLLING DEFENSE OR AN EQUITABLE ESTOPPEL DEFENSE OR WHATEVER. SO AFTER HERNDON, I FELT LIKE I WAS ON THE SIDE OF THE ANGELS HERE, AND I AM NOT CONVINCED THAT THAT IS TRUE, BECAUSE NOT EVERYBODY IS AGO GREEK WITH ME AND -- IS AGREEING WITH ME AND NODDING THEIR HEADS ON THE COURT.

MR. FOSTER, WOULD YOU AGREE THAT WHAT SEEMS TO BE GET FOR THE COURT AND FOR THE PARTIES IS THAT WE HAVE THIS THING CALLED EQUITABLE ESTOPPEL TO APPLY, BUT THERE COMES A TIME WHEN IT IS CLEAR. LET'S SAY THERE IS A SPECIFIC DEMARCATION, WHEN A PARTY KNOWS THAT, NO, THIS IS NOT RIGHT. YOU SHOULD GO AHEAD AND BRING YOUR ACTION. THE DEFENSE, HERE, SEEMS TO BE SAYING WE NEED TO HAVE SOME ABSOLUTES AND SOME TIME PERIODS RUNNING FROM THAT "X" DAY, AND IF THAT IS NOT THE CASE, THEN IT SHOULD BE OPEN ENDED OR SHOULD IT BE OPEN-ENDED? WHAT IS YOUR RESPONSE THERE? I SEE THAT, REALLY, AS THE -- WHERE THE RUBBER MEETS THE ROAD IN THIS CASE. HOW DO WE DRAW THAT, BECAUSE IT CAN'T GO ON FOREVER.

IT CAN'T GO ON FOREVER, AND I BELIEVE THAT IS A FACTUAL QUESTION FOR A JURY TO DECIDE, WHETHER OR NOT IT IS EQUITABLE TO IMPOSE AN ESTOPPEL IN THE CASE.

SO A JURY WOULD DECIDE WHETHER FIVE, SIX, SEVEN, EIGHT YEARS IS EQUITABLE UNDER THESE CIRCUMSTANCES, AND WE WOULD NOT HAVE REFERENCE BACK TO A LIMITATIONS PERIOD.

CORRECT, YOUR HONOR. THE STATUTE OF LIMITATIONS PERIOD WOULD SIMPLY DISAPPEAR IN THE CASE AS A DEFENSE, AND ON THE FACTS IN THIS CASE, A JURY CAN CERTAINLY FIND THAT THERE WAS NO DELAY. OF COURSE WE DIDN'T GET A FORMAL COMMITMENT. WE DIDN'T GET A FORMAL COMMITMENT FOR A TEAM, BECAUSE THE DEFENDANT TORTIOUSLY INTERFERED WITH A CONTRACTURAL RELATIONSHIP THAT WE HAD. THEY ARE SAYING THAT THEIR TORT CONDUCT MAKES THEM WIN ON THE STATUTE OF LIMITATIONS CASE, DEFENSE, AND THAT IS NOT WHAT HAPPENED HERE. WHAT HAPPENED HERE WAS WE HAD A DEAL WITH THE MINNESOTA TWINS, AND THE VARIOUS ACTORS OF MAJOR LEAGUE BASEBALL CAME IN AND SAID YOU CANNOT DO THAT. WE ARE NOT GOING TO ALLOW THAT. YOU HAVE GOT TO ASSIGN THIS CONTRACT, AND WE SAID WAIT A MINUTE. IT IS GOING TO COST US ABOUT 15 MILLION BUCKS, AND THEY SAID ASSIGN THE CONTRACT TO ANOTHER OUTFIT, AND THEN WHEN WE STARTED MAKING NOISE ABOUT THE 15 MILLION BUCKS THAT WERE OUT OF POCKET, WE WERE TOLD DO YOU WANT BASEBALL FOR TAMPA OR DO YOU WANT TO MAKE MONEY? ARE YOU GOING TO COOPERATE WITH US OR ARE YOU GOING TO SUE US? YOU CAN GET YOUR MONEY OR YOU CAN HAVE A BASEBALL TEAM AND SO FORTH AND SO ON. ALL OF THIS IS LISTED IN HERE. THEY AGREED THAT THEY HAD SOME LIABILITY TO US FOR TORTIOUS INTERFERENCE, BUT MR. REINSDORF SAID YOU ARE GOING TO GET AN EXPANSION TEAM AND EVERYBODY IS GOING TO BE HAPPY, SO IT IS IRRELEVANT. THEY SAID AND DID A LOT OF THINGS, INCLUDING PERMITTING US TO GO AHEAD WITH THE TEXAS RANGERS DEAL, WHICH THEY, THEN, INTERFERED WITH, THEN THE EXPANSION TEAM THAT THESE PEOPLE INFORMALLY ASSURED US THAT WE PROBABLY WOULD GET, WAS GIVEN TO WAB HUENZINGA, THE -- TO WAYNE HUENZINGA OF THE MIAMI MARLINS, AND IT WAS THEN

DISCOVERED THAT THIS WAS ALL MADE JUST TO KEEP US FROM GETTING OUR 15 MILLION BUCKS BACK, AND WE FILED SUIT THEREAFTER.

MR. EATON, YOUR TIME IS UP.

YES, SIR.

ESTOPPEL IS TOLLING BUT IT DOESN'T MATTER. IT DOESN'T MATTER, BECAUSE THE LEGISLATURE, WHEN IT DON'TED AND CODDFIED 9 -- WHETHER IT ADOPTED AND CODDFIED 95.051, SPECIFICALLY ADOPTED EQUITABLE ESTOPPEL AND SPECIFICALLY EXCLUDED EQUITABLE ESTOPPEL, SO REGARDLESS OF WHETHER IT IS ONE AND THE SAME OR NOT, THE EGGS PRESSION OF ONE IS TO -- THE EXPRESSION OF ONE IS TO THE EXCLUSION OF THE OTHERS AND IT IS NO IT THE AN EQUITABLE DEFENSE. -- AND IT IS NOT AN EQUITABLE DEFENSE. THE PREVEX OF -- THE PREVENTION OF THE BARRING OF THE STATUTE OF LIMITATIONS, IN FACT, THE DOCTRINE SAYS THERE IS TWO FACTORS, TOLLING AND EQUITABLE ESTOPPEL.

WHAT ABOUT WAIVER?

WAIVER IS DIFFERENT. WAIVER IS THE WAIVER AFTER KNOWN RIGHT FOR CONSIDERATION. IT IS TOTALLY DIFFERENT THAN ESTOPPEL, WHICH IS A JUDICIALLY-CREATED DOCTRINE THAT IS PUT UPON A PARTY. IT IS CREATED BY FIAT.

SO YOU AGREE THAT WAIVER PROVIDES THE EXCEPTION TO SAY THE TOLLINGS DEFENSES.

YES, MA'AM. -- TO THE TOLLING DEFENSES.

YES, MA'AM. WAIVER IS A KNOWN ESTOPPEL. IT IS A ADDITIONALLY CREATED DOCUMENT AND THE SUPREME COURT SAID, IN THIS CASE, THAT IT WAS CREATED BY FIAT CREATED, WHEN THE LEGISLATURE DID NOT, THAN IS THE DIFFERENCE BETWEEN FEDERAL LAW AND THE CASES LIKE BAMBA. HERE THE LEGISLATURE HAS A STATUTE WHICH IS UNEQUIVOCAL. IT SHALL BE COMMENCED IN FOUR YEARS. CHAPTER 95.011 SAYS THAT ACTIONS THAT ARE NOT COMMENCED WITHIN THE TIME PRESCRIBED BY 95 ARE BARRED. THE QUESTION IS DID THE LEGISLATURE GO FORWARD AND CREATE EXCEPTIONS? IT DID SO.

THANK YOU VERY MUCH. WE APPRECIATE COUNSEL'S ASSISTANCE. THE COURT WILL BE IN RECESS