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Kathryn B. Moser vs Barron Chase Securities

GOOD MORNING, AND WELCOME TO THE FLORIDA SUPREME COURT. AND WE WILL PROCEED THIS FRIDAY MORNING, WITH OUR FIRST CASE ON OUR CALENDAR IS MOSER VERSUS BARON CHASE SECURITIES, AND I BELIEVE IT IS MR. FEDOR, WHO IS GOING TO BEGIN. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I WILL BE PEEKING -- SPEAKING FOR 15 MINUTES AND MY CO-COUNSEL, RICHARD LOGSDON, WILL BE DOING REBUTTAL.

> YOUR HONOR, I PRACTICE, IN ARBITRATION, ALMOST EXCLUSIVELY BEFORE THE NASD AND THE STOCK EXCHANGE AND SOMETIMES BEFORE AAA, DOING ALMOST ALL ARBITRATION WORK, AND THERE IS A PROBLEM WITH THE WAY THE STATUTES CONFLICT WITH THE CASES. THIS COURT, BACK, LAST YEAR, STRAIGHTENED OUT A LOT OF PROBLEMS THAT ALL OF US HAD AT THE TRIAL LEVEL, WITH THE ECONOMIC LOSS DOCTRINE, AND IT DID HELP WAS LOT, BECAUSE THE CASES WERE COMING IN ALL OVER THE LOT. NOBODY COULD UNDERSTAND THEM, AFTER A WHILE. WHAT WE HAVE, HERE, IS A SITUATION, YOUR HONORS, WHERE WE HAVE A PREVAILING PARTY. WE HAVE A SENIOR CITIZEN. THAT IS MRS. MOSER, PREVAILED IN A SECURITIES ARBITRATION CASE. IT IS A VERY -- THE CASE IS VERY SIMILAR TO THOSE THAT ARE BROUGHT IN SECURITIES ARBITRATIONS. THERE IS, TYPICALLY, A CAUSE OF ACTION, UNDER FLORIDA STATUTE 517.301, WITH ITS AN ATTENDANT ATTORNEYS FEE PROVISION, UNDER 517.211-6, AND THEN THERE ARE COMMON CAUSES OF ACTION TYPICALLY BROUGHT ALONG WITH IT. AGAIN, I SAY, MRS. MOSER PREVAILED, HAVING BEEN AWARDED $82000 IN THE CASE. THE WORD "COURT" EVEN APPEARS IN THAT SUBSECTION OF THE STATUTE. IT, ACTUALLY, SAYS YOU HAVE TO GO TO A COURT. IT WOULD BE, IF WHAT WE FEEL HAS HAPPENED, HERE, IS THAT THE SECOND DCA, AND WITH ALL DUE TRS TO WHAT THEY HAVE WRITTEN IN THEIR OPINION, IS THEY ARE EXPRESSING A POLICY DECISION THAT IS PROBABLY BEST LEFT FOR THE POLICY SITUATION, AND WINNING A CASE BY ARBITRATION AND THEN GOING INTO COURT LATER. AS IT IS, THAT IS THE STATE-OF-THE-ART. IF THE LEGISLATURE WANTS TO CHANGE IT, THEN IT IS UP TO THE LEGISLATURE. THIS COURT HAS DEALT WITH ISSUES SIMILAR TO THAT. THE MALELY CASES VERSE -- THE MEALLY CASE VERSUS PRUDENTIAL SECURITIES CASE, IT HAD TO DEAL, FIVE YEARS AGO, WITH THE OLD PUNITIVE DAMAGE ISSUE, AND THE COURT, VERY GENERALLY, OUTSIDE THE STATUTE, FELT THAT, IN THAT PARTICULAR CASE, IN THE MEALY CASE, IT IS SUGGESTED TO ANYBODY THAT READ THE OPINION, THAT IT IS UP TO THE LEGISLATURE TO MAKE THE CHANGE, BECAUSE OF THE PROBLEMS THAT AROSE OUT OF THAT STATUTE, AND THAT IS WHAT OCCURRED. IT ACTUALLY CHANGED THIS LAST OR TWO LEGISLATIVE SESSIONS AGO. THE LEGISLATURE DID MAKE THAT CHANGE. AND, YOUR HONORS, I KEEP GOING BACK TO THE SAME ISSUE, AND I WILL REPEAT THIS, AGAIN AND AGAIN AND AGAIN, THAT MRS. MOSER WAS THE PREVAILING PARTY. SHE DID WIN HER CASE IN THE ARBITRATION. IN THE MOSER CASE, THE ARBITRATOR SPECIFICALLY SAID THE ATTORNEYS FEES ARE REFERRED TO A COMPETENT COURT OF JURISDICTION. IN THE CASE THAT WE CITED TO YOU ALL, IN THE SECURITIES CASE, PARTIES ARE REFERRED TO A COURT OF COMPETENT JURISDICTION.

CAN'T THIS JUST BE SOLVED BY THE ARBITRATOR SAYING THAT YOU PREVAIL ON YOUR STATUTORY CAUSE OF ACTION? IT SEEMS LIKE SUCH A SIMPLE MATTER TO BE CORRECTED BY THE ARBITRATORS, THEMSELVES.

YOUR HONOR, I WISH IT WAS THAT EASY. THE SYSTEM, ITSELF, IS LESS THAN PERFECT. THE SYSTEM, WITH THE NASD, AND I WILL SAY TO YOU THE NEW YORK STOCK EXCHANGE AND THE OTHER FORUMS THAT DO HANDLE THESE CASES, THE NASD HAS, PROBABLY, GOT 90% OF IT. THE

SYSTEM IS LESS THAN PERFECT. AS A PRACTICAL MATTER MR. LOGSDON AND I HAVE BEEN AND MET WITH THE NASD, DOWN IN THEIR OFFICE IN BOCA RATON, AND COMPLAINED TO THEM, BECAUSE THEY ARE THE ONES THAT DRAFTED THE DECISIONS, NOT THE ARBITRATORS, THEMSELVES, SO AS A PRACTICAL MATTER, YES, AND WOULD THERE BE A WAY OF HANDLING THAT? YES. I HAVE SUGGESTED IN THE BRIEFS THAT I HAVE WRITTEN, THAT UNDER FLORIDA STATUTE 682.10, THAT IT COULD BE SENT BACK AND REMANDED BACK TO THE ARBITRATORS AND RECONSTITUTE THE PANEL AND HAVE THEM MAKE A DECISION AS TO WHETHER THEY SPECIFICALLY SHOULD, IN THERE, MAKE A FINDING, UNDER FLORIDA STATUTE 517.301 OR WHAT THE APPROPRIATE STATUTE MIGHT BE, AS THE CASE MAY BE.

WHY NOT REQUIRE IT AT THE OUTSET? THAT IS THAT SURELY, IF THE LEGISLATURE IS GOING TO RESERVE, TO THE CIRCUIT COURT, THE DECISION ABOUT ATTORNEYS FEES,, THAT THEY WOULDN'T HAVE A PROVISION LIKE THAT, UNLESS THEY, ALSO, HAD THE THOUGHT, IN MIND, THAT THE ARBITRATORS WOULD INDICATE, IF THE CAUSE OF ACTION -- IN OTHER WORDS IF WE HAD A SITUATION LIKE WE HAVE, HERE, WHERE THERE IS A MIX OF CAUSES OF ACTION, AS TO WHETHER OR NOT THE PARTY PREVAILED ON THAT CAUSE OF ACTION THAT PROVIDED FOR AN ATTORNEYS FEE. IT DOESN'T MAKE A LOT OF SENSE, DOES IT, TO RESERVE TO THE CIRCUIT COURT, THE A WARD OF THE FEES, BUT, YET, NOT HAVE ANY MECHANISM THAT REQUIRES THE ARBITRATORS TO INDICATE THAT AN ATTORNEY FEE IS APPROPRIATE, BECAUSE OF THE ARBITRATOR'S FINDING, DOES IT?

NO, YOUR HONOR.

WHY WOULDN'T AN INTERPRETATION OF THAT, REALLY, GO HAND-IN-HAND, AND THAT IS THE LEGISLATURE CONTEMPLATED THAT THE ARBITRATORS WOULD, IF THERE WAS AN ISSUE ABOUT IT, IN OTHER WORDS IF THERE WAS ONLY ONE CAUSE, AND IT HAD AN ATTORNEYS FEE PROVISION, THAT IS AN EASY ONE, AND IF THE CLAIMANT PREVAILED.

YES.

WHAT ABOUT THAT?

WELL, YOUR HONOR, AS I MENTION ERLEDIER, IT IS A LESS THAN PERFECT SYSTEM, AND WHAT WE ARE HOPING FOR IS THIS COURT WILL GIVE SOME GUIDANCE TO THE NASD AND TO OTHER ARBITRATION FORUMS AND TO ARBITRATORS, IN GENERAL, BY ITS OPINION, TODAY. THE IDEAL SITUATION WOULD BE THE ARBITRATION AWARD SPECIFICALLY SAYS WE FIND LBLT, UNDER FLORIDA STATUTE 517.301. I HAVE BEEN FIGHTING WITH THE NASD FOR 14 YEARS ON THESE ISSUES.

WHAT IS THE RELUCTANCE OF THE NASD TO GIVE THE BASIS OF THEIR RULE SOMETHING.

THANK YOU FOR ASKING, YOUR HONOR.

OTHER THAN SOMEBODY WILL CRITICIZE THEM?

IT IS A BIG BUREAUCRACY, JUDGE, YOUR HONOR,. THE NASD HAS AN INPUT FORM, WHICH WOULD BE SIMILAR TO A JURY VERDICT FORM. I AM AN ARBITRATOR, AS WELL, AND MR. LOGSDON IS AN ARBITRATOR, AS WELL. IT IS A VERDICT-TYPE FORM, BUT THE FORM MAKES NO PROVISION FOR FINDING FOR STATUTORY LIABILITY, AND WE HAVE CALLED THAT TO THEIR ATTENTION REPEATEDLY, IN LETTERS AND MEETINGS AND WHATEVER. IT IS A FLAW WITHIN THE SYSTEM, AND THAT IS THE PROBLEM. WE ARE HOPING TO GET SOME GUIDANCE, FORCE FEED SOMETHING DOWN TO THE SYSTEM FROM THIS COURT, TELLING THEM, EXPRESSLY TELLING ARBITRATION FORUMS, NOT JUST NASD, THAT, IF THERE IS A STATUTORY FINDING, WHERE THERE IS ATTORNEYS FEES INVOLVED, THAT THEY SHOULD AND COULD MAKE A FINDING OR DETERMINATION ON THAT PARTICULAR ISSUE.

IT WORKS BOTH WAYS, DOES IT NOT? THAT IS THAT, IF THEY DID NOT FIND, UNDER THE STATUTE, BUT THEY FOUND ON ONE OF THE COMMON LAW CLAIMS OR WHATEVER, THEN THERE WOULD BE NO FEE. RECOVERY.

THAT'S CORRECT, YOUR HONOR, AND IN FACT, IN THE PAPERS THAT ARE SUBMITTED TO THE COURT, THE APPENDIX THAT WAS SUBMITTED ACTUALLY SUBMITTED TWO ORDERS OF THE COURT,, WHICH AFTER THE MOSER CASE CAME OUT, WHICH KIND OF SHOCKED US, WE WENT BACK TO THE TRIAL COURT AND ASKED THE TRIAL COURT TO REMAND IT BACK OR RECONSTITUTE THE ORDER OR RECONSTITUTION OF THE ARBITRATION PANELS, TO MAKE A SPECIFIC DETERMINATION AS TO WHETHER OR NOT THERE WAS A FINDING, UNDER FLORIDA STATUTE 517.301. THE TWO CASES WHERE I HAVE BEEN ABLE TO DO IT SO FAR, AFTER ARGUMENT FROM BOTH SIDES, THEY MADE THE SPECIFIC FINDING.

WOULD YOU AGREE THAT, IN YOUR EXPERIENCE, AT LEAST, THAT THIS SIGNALING CONCEPT HAS PRON UNSATISFACTORY?

YES. ABSOLUTELY, YOUR HONOR.

TRY TO READ THE LANGUAGE OF THE AWARD AND SEE IF THERE IS A SIGNAL IN THERE.

ABSOLUTELY.

PROVEN UNWORKABLE.

YOU MENTIONED THAT THE SYSTEM IS FLAWED, AND YOU SAY THAT WITH CONFIDENCE. AS IF YOU WOULDN'T BE CHALLENGED, AND YOU ARE PROBABLY RIGHT, BUT HOW LONG HAS IT BEEN FLAWED THIS WAY, AND HOW LONG HAINGS THIS BEEN A PROBLEM THAT -- AND HOW LONG HAS THIS BEEN A PROBLEM THAT NOBODY SEEMS TO WANT TO GRAPPLE WITH?

YOUR HONOR, I HAVE BEEN A NASD ARBITRATOR FOR 17 YEARS. I USED TO DO IT IN SAN FRANCISCO, WHEN I PRACTICED IN CALIFORNIA, AND THEY SEEM NOT TO WANT TO CHANGE. I MEET WITH THE HIGHEST PEOPLE THAT I CAN IN THE NASD AND THEY DON'T WANT TOO CHANGE. IT TAKES -- THEY DON'T WANT TO CHANGE. IT TAKES A STRONG OPINION, FROM PEOPLE LIKE YOURSELVES, A STRONG OPINION TO CLEAN UP THEIR ACT.

BUT THERE IS AN EXTRA LAYER OF SENDING IT BACK AND SO FORTH AND YOU MENTIONED THE FEE. I AM JUST CURIOUS. WHAT IS THE RESPONSE TO THAT?

THE RESPONSE FROM THE NASD IS IT IS A NEW YORK-BASED ORGANIZATION. THEY TEND TO THINK LIKE NEW YORKERS AND NOT BY FLORIDIANS, AND A LOT OF THE THINGS THAT GET DRAFTED ARE DRAFTED BY PEOPLE UP THERE, NOT PEOPLE HERE, IN FLORIDA. THEY TRY TO DO AN ONE-SIZE-FITS-ALL, AND THE ONE STATUTE THAT WE HAVE THAT PROVIDES THAT YOU CAN GET ATTORNEYS FEES FOR A SENIOR CITIZEN WHO WINS A CASE AGAINST A SECURITIES FIRM. MOST OTHER STATES DON'T HAVE THAT. WE HAVE IT HERE. WE HAVE THAT LUXURY HERE, IN FLORIDA. I THINK I WANT TO LEAVE SOME REBUTTAL FOR MR. LOGSDON HERE, SO, AGAIN, LET ME JUST SUMMARIZE. I WOULD ASK THAT THIS COURT DEFER TO THE WISDOM OF THE TRIAL COURTS. WE HAVE SOME VERY FINE JUDGES DOWN IN PINELLAS COUNTY, WHERE THIS CASE EMANATED. JUDGE KATHRYN HARLAND DID THIS CASE, AND THERE WAS A FOUR AND-A-HALF HOUR HEARING ON THIS CASE, ON THIS ISSUE. ONLY A SMART PART OF THAT FOUR AND-A-HALF HOURS WAS DEVOTED TO THE ISSUE OF THE AMOUNT OF THE FEES. MOST OF IT WAS AS TO THE DETERMINATION OF THE FEES, ITSELF. I WOULD ASK THAT THIS COURT DEFER TO THE WISDOM OF THE TRIAL COURT, GIVE US AN OPINION THAT WILL MAKE THE SYSTEM GET BETTER, AND IF THE LEGISLATURE WANTS TO CHANGE THINGS AND MAKE IT -- NOT MAKE IT A BIFURCATED SYSTEM, I WOULD SUGGEST THAT. ONE LAST COMMENT I WOULD LIKE TO MAKE --

ON THAT SUGGESTION, FROM A POINT OF VIEW OF AN ARBITRATOR, IS THERE ANY REASON THAT THERE SHOULD BE THIS BIFURCATED SYSTEM? AND I SAY THAT BECAUSE, MOST OF THE TIME WHEN THE COURT IS AWARDING REASONABLE ATTORNEYS FEES, THEY HAVE HAD THE BENEFIT OF BEING A WITNESS, IN THE FORM OF THE JUDGE, TO THE LITIGATION, AND THEY HAVE ANOTHER WAY OF ASSESSING WHETHER THE -- WHAT THE AMOUNT OF REASONABLE ATTORNEYS FEES SHOULD BE. LOOKING AT THE -- JUDGE STRINGER'S OPINION, AND HE CITES AN ARTICLE THAT TALKS ABOUT THE TWO-TIERED SYSTEM AND THE FLAWS IN IT, FROM YOUR EXPERIENCE, AS AN ARBITRATOR, IS THIS -- IS THIS, STILL, BETTER TO HAVE THIS BE BIFURCATED AND HAVE THE CIRCUIT COURT DECIDE REASONABLE ATTORNEYS FEES, OR IS THE ARBITRATION SYSTEM EQUIPPED, SINCE THE GOAL IS A SPEEDY AND EFFICIENT RESULT, TO DO THE WHOLE THING?

I DON'T THINK THE ARBITRATION SYSTEM IS EQUIPPED FOR IT, YOUR HONOR. LET ME CITE YOU AN EXAMPLE. MOST OF THE ARBITRATORS IN THE NASD SYSTEM AND THE NYSE AND THE LIKE ARE NOT ATTORNEYS. I MEAN, I HAVE HAD A CASE OR TWO WHERE I HAVE HAD ALL THREE ATTORNEYS ON A PANEL. MOST OF THE PANELS ARE THREE. BUT I HAVE HAD NUMEROUS CASES THAT THERE ARE NO ATTORNEYS. A GOOD EXAMPLE IS MY FATHER, WHO WAS A SCHOOL TEACHER AND AN ACCOUNTANT. HE IS A NASD ARBITRATOR. HE IS 84 YEARS OLD. HE, REALLY, DOESN'T HAVE A CLUE, AND HE IS MY DAD AND HE LIVES A MILE AWAY. HE DOESN'T KNOW WHAT THE ATTORNEY RATES ARE IN THE AREA. HE DOESN'T KNOW WHETHER IT IS $10 OR $350. HE HAS NO IDEA. AND THAT IS THE POINT RIGHT NOW IS THAT THE ARBITRATORS ARE, REALLY, NOT CLUED INTO THE AMOUNT AND DETERMINATION OF ATTORNEYS FEES. WE HAVE THIS BIFURCATED SYSTEM. AGAIN, THE SYSTEM IS NOT PERFECT, BUT THAT IS WHAT WE HAVE. THAT IS THE SYSTEM. THANK YOU.

THANK YOU. MS. WILLIAMS.

THANK YOU, YOUR HONORS. I WOULD DISAGREE WITH OPPOSING COUNSEL THAT THERE IS CONFLICT WRITTEN ALL OVER THIS CASE. I AM HERE TO DEFEND THE OPINION OF THE SECOND DISTRICT COURT ON THE MERITS. I UNDERSTAND THAT THE COURT HAS AN INTEREST IN, PERHAPS, ENUNCIATEING A DECISION THAT WILL MAKE THE ATTORNEYS FEES AWARD DECISION CLEARER FOR ARBITRATION PANELS IN FLORIDA AND, PERHAPS, PROVIDE SOME GUIDANCE TO THE DISTRICT COURTS, AS WELL. I WOULD ARGUE, THOUGH, IN DEFENSE OF THE SECOND DISTRICT OPINION, THAT IT WAS -- THAT IT DID COMPORT, IN ALL RESPECTS, WITH THE CASES THAT WERE SUGGESTED TO BE IN CONFLICT. I WOULD ARGUE THAT THERE IS NO CONFLICT WITH THE JOSEPHSON CASE, BECAUSE, IN THE JOSEPHSON DECISION, THE JOSEPHSON ARBITRATORS MADE AN EXPRESS, DIRECT AWARD OF ATTORNEYS FEES, RIGHTLY OR WRONGLY, AND I WOULD SAY THAT IT WAS WRONGLY, BECAUSE THAT WAS, CERTAINLY, IN CONTRAVENTION OF YOUR TURNBERRY DECISION, THAT ARBITRATORS DO NOT HAVE THE RIGHT, IN THEIR DECISION, TO MAKE AWARD OF ATTORNEYS FEES. NONETHELESS IT WAS DONE AND THE SUPREME COURT TREATED THAT AS A SIGNAL THAT THERE MUST HAVE BEEN A PREVAILING PARTY, ON THE BASIS OF THE SECURITIES LAW, THE STATUTORY CLAIM, AND THEY TREATED IT AS A SIGNAL OF ENTITLEMENT TO ATTORNEYS FEES. I WOULD RECOMMEND THAT THE COURT DISPROVE THE JOSEPHSON DECISION, TO THE EXTENT THAT IT READ THAT SIGNAL AS AN INDICATION THAT THE PARTY PREVAILED ON A STATUTORY CLAIM.

WHAT WOULD BE THE RULE THAT YOU WOULD HAVE THE COURT ADOPT?

I WOULD HAVE THE COURT ADOPT A RULE THAT, IF THERE IS NO BASIS ON THE FACE OF THE ARBITRATION AWARD FOR A FINDING, THAT THE PARTY PREVAILED ON THE STATUTORY SECURITIES LAW CLAIM THAT THE PARTY IS UNABLE TO FIND, TO PROVE THEIR ENTITLEMENT TO FEES.

IS IT CORRECT THAT, IN MANY INSTANCES, THE ARBITRATORS, ALTHOUGH THERE ARE A NUMBER OF CAUSES OF ACTION, WILL SIMPLY NOT INDICATE, ON THE FACE OF THE AWARD, AND YET THEY

MAY, WELL, HAVE FOUND, ON A PARTICULAR CAUSE, BUT THEY SIMPLY WON'T INDICATE, AND SO THAT IS, REALLY, NOT A SAFE WAY OF KNOWING WHETHER OR NOT THEY FOUND A PARTICULAR CLAIM. IS THAT A CORRECT STATEMENT OR NOT?

YOUR HONOR, FROM WHAT I CAN GLEAN FROM THE RECORD HAD, THAT IS A CORRECT STATEMENT. HOWEVER, I THINK YOU HAVE TO LOOK AT THE OTHER SIDE FOR THE PARTY SITTING ON THE OTHER SIDE, WHO IS -- WHO THE FEES MAY BE AWARDED AGAINST. I DON'T THINK THERE IS ANYTHING MORE UNFAIR THAN TO AWARD FEES AGAINST A PARTY, WHEN THE A PERSON PERSON CLAIMING THE FEES CANNOT PROVE THAT THEY ARE ENTITLED TO THE FEES, EITHER BY STATUTE OR BY CONTRACT.

I THINK THAT IS -- YOU ARE ABSOLUTELY CORRECT THAT THAT -- NOW, WHAT, THOUGH, THE QUESTION WE HAVE, THEN, AS WE TRY TO DECIDE THE MERITS, IS WHAT A FAIR SYSTEM WOULD BE, SO WHY WOULDN'T A FAIRER SYSTEM BE, SINCE THE LEGISLATURE HAS RESERVED TO THE CIRCUIT COURTS, THE ACTUALLY A WARDING OF FEES, UNLESS THE PARTIES AGREE OTHERWISE, WOULDN'T A FAIRER SYSTEM BE THAT, SINCE THE LEGISLATURE HAS DONE THAT, THAT AT LEAST WITH REFERENCE TO ARBITRATION IN FLORIDA, TO MANDATE THAT THE ARBITRATORS, IF THEY, THEN, MAKE AN AWARD IN FLORIDA AND IT INVOLVES A CLAIM, THAT POTENTIALLY HAS AN ATTORNEYS FEE, WITH IT, THAT THE ARBITRATORS HAVE TO INDICATE THE BASIS FOR THEIR AWARD IN THAT INSTANCE. WHY WOULDN'T THAT -- THAT WAY, IF THEY DIDN'T FIND ON THAT CLAIM THAT HAS AN ATTORNEYS FEE THAT GOES WITH IT, THEN THE ATTORNEYS FEE WILL BE FAIR. YOU DON'T HAVE TO PAY IT. BUT IF THEY DID, THEN THAT WILL -- WHY WOULDN'T THAT BE A FAIRER SYSTEM TO BOTH SIDES?

I WOULD AGREE WITH THAT SORT OF MANDATE FROM THIS COURT. THAT WOULD, CERTAINLY, SEND A VERY CLEAR MESSAGE TO THE ARBITRATION PANELS THAT, IF YOU ARE FINDING FOR A PREVAILING PARTY ON THE BASIS OF THE SECURITIES LAW CLAIM, THAT YOU MUST IDENTIFY THE BASIS FOR THE CLAIM. YOU, STILL, YOU DO NOT VIOLATE TURNBERRY BY SAYING THIS PARTY SHOULD BE AWARDED FEES. YOU SIMPLY STATE THAT THE BASIS FOR THE ARBITRATION AWARD IS THE FLORIDA SECURITIES STATUTE. AND THAT WOULD SEND -- THAT WOULD DEFINITELY GIVE A BASIS ON THE FACE OF THE ARBITRATION AWARD. IF NO SUCH BASIS IS LISTED BY THE ARBITRATORS IN THE AWARD, THEN THERE WOULD BE NO BASIS, OF COURSE, AS THE SECOND DISTRICT FOUND IN THIS DECISION FOR AN AWARD OF FEES.

COULD I ASK YOU JUST ONE QUESTION, WITH REGARD TO THE AWARD WE ARE DEALING WITH.

YES, YOUR HONOR.

IF YOUR REASONING IS CORRECT THAT THE ARBITRATORS, REALLY, WERE NOT AWARDING FEES -- NOT AWARDING FEES BUT DID NOT FIND, ON A CAUSE OR A CLAIM THAT WOULD INVOLVE ATTORNEYS FEES, THEN WHY WOULD YOU EVEN PUT IN "REFER THE MATTER TO THE COURT FOR FEES." WHAT IS YOUR INTERPRETATION OF THAT? I AM STRUGGLING WITH THAT.

I THINK YOU HAVE TO KEEP IN MIND THAT, IN THIS PARTICULAR CASE, THE CLAIMANTS REQUESTED AN AN AWARD OF FEES. THERE WAS NEVER ANY STIPULATION. THERE WAS NEVER ANY AGREEMENT BY BOTH PARTIES THAT THE ARBITRATOR HAD SUBJECT MATTER TO DETERMINE FEES, BUT JUST AS PART OF THEIR PLEADING, THEY ASKED FOR FEES, SO I THINK THAT YOU CAN INTERPRET THAT, THAT THE ARBITRATORS WERE TRYING TO ADDRESS EVERY CLAIM AND THEY JUST, ROUTINELY, MATTER OF FACTUALLY, DEALT WITH THE CLAIM FOR ATTORNEYS FEES, BY DOING THE RIGHT THING UNDER TURNBERRY, REFERRING IT TO THE CIRCUIT COURT FOR DETERMINATION.

DID THEY SAY 517, THAT HE PREVAILED UNDER 517 OR DID NOT PREVAIL?

NO, YOUR HONOR. THE AWARD MAKES NO FINDING AT ALL AS TO THE BASIS FOR THE CLAIM.

TO THE OTHERS THERE IS A SPECIFIC FINDING BUT ON THIS BASIS THERE IS NO SPECIFIC FINDING.

I AM SORRY?

IN REGARD TO ANY OTHER CLAIM THERE, IS NO FINDING, WHATSOEVER, WITH REGARD TO KNOWS H THOSE, FAVORABLE OR UNFAVORABLE.

RIGHT. I AM NOT SURE I UNDERSTAND THAT THOUGH. ARBITRATION AWARD MADE NO FINDING FOR A BASIS.

I AM TRYING TO UNDERSTAND UROLOGIC. THEY SEGREGATED OUT THIS CLAIM TO SEND TO THE CIRCUIT COURT BUT THEY DID NOT SEGREGATE ANY OTHER CLAIM WITHIN THIS AWARD.

THEY DID NOT SEGREGATE OUT ANY CLAIM -- JUST FOR THE ATTORNEYS FEES. YES, YOUR HONOR. FINALLY I UNDERSTAND. AND THAT IS A DISTINCTION, ALSO, I BELIEVE, FROM THE FACTS IN THE KIMPBNER CASE THAT HAS,, BEEN CERTIFIED IN CONFLICT. IN KIRSHNER, UNLIKE THE CASES AT HAND, THE ARBITRATION AWARD MADE SPECIFIC FINDINGS THAT STRONGLY SUGGESTED, YOU REALLY COULDN'T MISS THAT THERE WAS A SECURITIES LAW VIOLATION. THE KIRSHNER AWARD FOUND THAT AN OPTIONS TRADING ACCOUNT HAD BEEN ESTABLISHED THAT WAS UNSUITABLE FOR THE CLAIMANT, IN LIGHT OF HER PERSONAL AND FINANCIAL SITUATION. THE FIFTH DISTRICT, IN REVIEWING THE KIRSHNER ARBITRATION AWARD FOUND THAT THIS LANGUAGE WAS UNMISTAKEBLY ESTABLISHED THAT MS. KIRSHNER HAD PREVAILED, ON HER SECURITIES LAW CLAIM, AND THERE WAS NO SIMILAR FACTUAL FINDINGS, NO FACTUAL FINDINGS AT ALL IN OUR INSTANT ARBITRATION AWARD.

IN THIS CASE, IT SAYS, THIS IN THE OPINION, THAT MOSER WHO, IS THE PLAINTIFF, EXPRESSLY ASKED THE ARBITRATORS TO SPECIFY THE BASIS FOR ANY DAMAGES AWARDED, AND THEY FAILED TO DO SO. THERE IS A PRINCIPLE, AT LEAST IN APPELLATE LAW, AS FAR AS WHO BEARS THE BURDEN OF WHERE THERE IS NOT -- WE HAVE A GENERAL VERDICT, IN ESSENCE. SINCE, IF THE PARTIES HAD -- DID YOUR CLIENT OPPOSE THE ARBITRATOR SPEAKS FYING THE BASIS FOR ANY DAMAGES AWARDED?

NOT THAT I AM AWARE, YOUR HONOR. I DON'T RECALL.

YOU WOULD HAVE NO OBJECTION, THEN, IN THIS CASE, IF WE DON'T GO WITH THE CONCEPT OF SIGNALING, AND GO WITH THIS PERSPECTIVE RULE THAT YOU SEEM TO AGREE WITH, TO SEND THIS CASE BACK TO THE ARBITRATORS, TO DO EXACTLY WHAT THE PLAINTIFF ASKED THEM TO DO.

NO, YOUR HONOR. I WOULD STRONGLY DISAGREE. I DON'T BELIEVE THE COURT HAS JURISDICTION, THE CIRCUIT COURT, TO SEND THE MATTER BACK TO THE ARBITRATORS. UNDER SECTION 68.10, IF THERE IS AN APPLICATION PENDING BEFORE THE COURT, TO CONFIRM THE ARBITRATION AWARD, THEN THERE IS JURISDICTION TO SEND THE MATTER BACK TO THE ARBITRATORS, TO CLARIFY THE AWARD. HOWEVER, THIS ARBITRATION AWARD WAS CONFIRMED. A FINAL JUDGMENT WAS ENTERED, CONFIRMING THE AWARD. NO PARTY HAS APPEALED THE CONFIRMATION OF THE AWARD, SO I BELIEVE THE CIRCUIT COURT HAS LOST JURISDICTION, UNDER 682.10, TO RETURN THE MATTER TO THE ARBITRATORS.

WAS A REQUEST FOR THE FEES A PART OF THE CONFIRMATION PROCEEDINGS?

YES, YOUR HONOR. IT WAS SEPARATE. THERE WAS A REQUEST FOR CONFIRMATION OF THE AWARD. IT WAS THE SAME FILING. IT WAS A SEPARATE REQUEST.

THEY WENT BACK TO THE CIRCUIT COURT AND SAID WE NEED YOU TO CONFIRM THE AWARD. GET

A JUDGMENT FOR THAT. AND WE NEED YOU TO AWARD US ATTORNEYS FEES.

RIGHT, YOUR HONOR.

EXCUSE MY GRAMMAR. BUT THAT IS ABOUT THE WAY -- IS THAT CORRECT?

THAT'S CORRECT.

IT IS ALL A SINGLE PROCEEDING.

A SINGLE HEARING BUT TWO DIFFERENT REQUESTS FOR RELIEF. AND 682.10 ONLY CONTEMPLATES THE CONFIRMATION AWARD. WELL, 682.10 PERMITS YOU TO SEND THE ARBITRATION AWARD BACK TO THE ARBITRATORS. IF YOU HAVE A PENDING MATTER BEFORE THE CIRCUIT COURT, ON ONE OF THREE POSSIBLE MATTERS, ONE IS UNDER 682.12, WHICH DEALS WITH THE CONFIRMATION OF THE AWARD, AND I POINT OUT TO THE COURT THAT 682.12 DOES NOT ADDRESS AWARDS OF ATTORNEYS FEES. IT IS COMPLETELY SILENT TO THAT. IT IS STRICTLY ADDRESSES CONFIRMATION AWARDS, SO I WOULD ARGUE THAT THE SUBJECT MATTER JURISDICTION WOULD BE LIMITED TO THE LANGUAGE OF THE STATUTE.

IN THIS CASE, THOUGH, AN AWARD OF ATTORNEYS FEES WAS MADE BY THE TRIAL COURT.

YES, YOUR HONOR.

SO WHY ISN'T, THEN, IF YOU ARE SAYING THAT WE CAN SEND IT BACK, SINCE THE MOSERS EXPRESSLY ASKED FOR THE ARBITRATORS TO SPECIFY THE BASIS OF THE AWARD, THE DEFENDANT DIDN'T AGREE TO THAT, AND WE DON'T KNOW WHETHER THEY OPPOSED IT OR NOT, THAT WE SHOULD PRESUME THAT, WHEN THE PARTY PREVAILED ON HIS CLAIMS, OR HER CLAIMS, THAT IT WAS INCLUDED, BOTH THE COMMON LAW AND THE STATUTORY CAUSE OF ACTION. ISN'T THAT, REALLY, WHAT THE INTEREST OF JUSTICE WOULD REQUIRE, IN THIS CASE?

NO, YOUR HONOR. TWO REASONS, AGAIN, BESIDES THE FACT THAT THE STATUTE DOES NOT CONTEMPLATE JURISDICTION FOR THE COURT, TO SEND IT BACK ON AWARD OF FEES FOR CLARIFICATION ABOUT THE BASIS --

NOW I AM SAYING, SINCE YOU ARE SAYING THAT IS NOT THE CASE, THEN WHY ISN'T THE BETTER RULE BEING SORT OF LIKE THE TWO ISSUE RULE AND HOW THAT APPLIES THAT, WHEN THERE IS A GENERAL VERDICT, YOU HAD THE OPPORTUNITY FOR A SPECIAL VERDICT. YOU DIDN'T ELECT TO IT. WE CAN ASSUME THAT THE ARBITRATORS FOUND ON BOTH CAUSES OF ACTION, AND YOU LOST YOUR RIGHT BY NOT AGREEING WITH THE PLAINTIFFS, TO HAVE THE AWARD BROKEN DOWN BY THE BASIS ON WHICH THE CLAIM WAS MADE.

EXCUSE ME, YOUR HONOR. YOUR HONOR, TWO REASONS. ONE, BY VIRTUE OF THE PLAINTIFFS OR THE CLAIMANTS SUBMITTING THAT SPECIFIC REQUEST TO THE ARBITRATION PANEL AND THE ARBITRATION PANEL DECLINING TO DO SO, I WOULD ARGUE THAT THE PLAINTIFFS WAIVED THEIR RIGHT TO TURN AROUND AND ASK THE CIRCUIT COURT TO DO THE SAME THING. THEY HAVE, ALREADY, ASKED THE ARBITRATION PANEL TO DO IT. THE ARBITRATION PANEL, EFFECTIVELY RULED, NO, WE ARE NOT GOING TO DO THAT, AND IT WOULD BE GOING -- IT WOULD BE BACK DOORING, I SUPPOSE YOU COULD CALL IT, THE ARBITRATION PANEL, TO, NOW, TAKE IT TO THE CIRCUIT COURT AND SAY, CIRCUIT COURT, PLEASE MAKE THE ARBITRATION PANEL DO WHAT WE ASKED THEM TO DO, AND THEY WON'T DO.

I AM SAYING THAT YOU WAIVED YOUR RIGHT BY NOT ASKING THE ARBITRATORS TO, ALSO, SPECIFY THE BASIS OF THE AWARD. AND THAT WE CAN ASSUME, THEREFORE, THAT THE GENERAL VERDICT MEANT THAT THEY FOUND ON BOTH CLAIMS.

WELL, IF YOU ARE APPLYING THE TWO-ISSUE RULE TO ARBITRATION PROCEEDINGS, I WOULD ARGUE THAT THAT IS NOT AN APPROPRIATE APPLICATION OF THE TWO ISSUE RULE. FIRST, I COULD FIND NO CASE LAW THAT APPLIES THE TWO-ISSUE RULE TO ARBITRATION PROCEEDINGS, AND I THINK THE COURT CAN TAKE NOTE THAT ARBITRATION PROCEEDINGS ARE, BY NATURE, INHERENTLY MUCH MORE INFORMAL THAN COURT PROCEEDINGS. THEY ARE NOT JURY VERDICTS. I AM SORRY, YOUR HONOR.

BUT WHY WOULD WE LEAVE, SINCE THE STATUTE REQUIRES THE CIRCUIT COURT TO MAKE THE DETERMINATION ABOUT ATTORNEYS FEES, IT SEEMS TO ME THAT, UNDER YOUR THEORY, WE ARE LEAVING THIS TOTALLY IN THE HANDS OF THE ARBITRATOR. WHY SHOULD WE DO THAT? BY SAYING IF THE ARBITRATOR DOESN'T EXACTLY SAY THAT, AND EVEN IF THE PLAINTIFF REQUESTS THAT THE ARBITRATOR DO IT, THE ARBITRATOR HAS THE TOTAL DISCRETION TO DO IT OR NOT DO IT. WHY WOULD WE WANT TO LEAVE THAT KIND OF DECISION IN THE HANDS OF THE ARBITRATOR?

YOUR HONOR, THAT IS A QUALITY, AN INHERENT PROCESS, PART OF THE PROCESS OF THE ARBITRATION PROCESS. ARBITRATION IS STRONGLY ENDORSED ON THE FEDERAL LEVEL AND THE STATE LEVEL. IT IS NOT A PERFECT SYSTEM, AS HAS BEEN POINTED OUT BY OPPOSING COUNSEL, BUT IT IS THE SYSTEM THAT THIS STATE, THROUGH THE LEGISLATURE, HAS CHOSEN TO ADOPT AND ENDORSE. A LOT OF LEGAL PROTECTIONS THAT ARE AFFORDED PLAINTIFFS AND DEFENDANTS, WHEN THEY GO BEFORE THE CIRCUIT COURT, ARE JUST NOT IN PLACE IN THE ARBITRATION SYSTEM.

TELL ME, AGAIN, YOUR REASONING FOR NOT ALLOWING A DEFENDANT -- A PLAINTIFF TO GO ON TO CIRCUIT COURT, IF THAT PLAINTIFF HAS, IN FACT, PLED WITH THE STATUTORY VERSUS NONSTATUTORY CAUSES OF ACTION.

YES, YOUR HONOR, THE PLAINTIFF --

WOULDN'T YOUR CLIENT, ACTUALLY, BE ON NOTICE THAT THERE IS, IN FACT, A STATUTORY CAUSE, AND UNDER THAT STATUTE, ATTORNEYS FEES COULD BE AWARDED?

YES, YOUR HONOR. THEY WOULD BE. I THINK, WHEN A STATUTORY CLAIM IS PLED IN ARBITRATION THAT, THAT DOES PUT THE DEFENDANT ON NOTICE THAT POSSIBLE FEES WILL -- FEES WILL BE CLAIMED, AND I THINK THE CLAIMANT, IF THEY WIN AN AWARD OF DAMAGES IN -- BEFORE THE ARBITRATION PANEL, THEY SHOULD AND ARE ENTITLED TO GO BEFORE THE CIRCUIT COURT, BUT WHEN THEY GET TO THE CIRCUIT COURT, THEY ARE REQUIRED, UNDER FLORIDA LAW, TO PROVE THEIR ENTITLEMENT TO THE ATTORNEYS FEES AWARD, AND IF THEY CANNOT POINT TO LANGUAGE, TO FINDINGS LIKE THE KIMPBNER FINDINGS, THE STATUTORY CLAIM WAS PREVAILED UPON, AND I AM ASSUMING THAT THE CLAIMS IN OUR STATUTORY CLAIMS, AND BASED ON THE FACT THAT THEY PRETRAILED VEILED ON THE STATUTORY CLAIM.

THAT IS SORT OF A "GOT YOU", THOUGH.

YOUR HONOR, IT IS NOT A "GOT YOU" THAT IS ENGINEERED BY THE DEFENDANTS. THAT IS WHERE THE COURTS COME DOWN HARD ON PARTIES WHO PLAY "GOT YOU" TACTICS. THIS IS THE ARBITRATORS.

YOU KNOW THERE IS A BASIS FOR FEES. YOU KNOW THE ARBITRATOR DID NOT GIVE THE BASIS IN HIS ORDER. YOU KNOW THE ARBITRATOR CANNOT AWARD THE FEES, AND IT GOES UP TO THE COURT AND THE COURT SAYS, ALL RIGHT, WE WOULD LIKE TO AWARD FEES, AND THERE IS ENTITLEMENT TO IT. WHAT IS WRONG WITH SENDING IT BACK TO THE ARBITRATOR AND SAY WHAT IS THE BASIS FOR YOUR RULE SOMETHING ISN'T THAT THE JUST THING AND THE RIGHT THING TO DO?

YOUR HONOR, IT CONTRA VEENS OTHER HOLDINGS OF THE COURT, SAYING THAT ARBITRATION -- CONTRAVENES THE OTHER HOLDINGS OF THE COURT, THAT IF THERE IS SOMETHING ON THE FACE OF THE AWARD THAT IS ILLEGAL. THERE IS A POLICY, IN THIS STATE, OF LEAVING THEM ALONE.

IF I UNDERSTOOD YOUR ANSWER, YOU SAID THAT THIS COURT COULD MANDATE, INSIDE DENIAL TO THE STATUTORY PROVISION ABOUT ATTORNEYS FEES BEING DONE BY THE CIRCUIT COURT, THAT ARBITRATORS HAVE TO DESIGNATE IN THEIR ORDER OR AN ATTENDANT TO THAT.

YES, YOUR HONOR.

NOW, IF WE DO DO THAT AND THEN THE ARBITRATOR DOESN'T DO THAT, AND IT GOES TO THE CIRCUIT COURT, ARE YOU SAYING, NOW, AFTER WE HAVE MANDATED THAT, AND THE ARBITRATORS IGNORE IT, AND THEN IT GOES TO THE CIRCUIT COURT, THAT THE CIRCUIT COURT COULDN'T SEND IT BACK TO THE ARBITRATORS AND SAY HEY, YOU OVERLOOKED WHAT THE SUPREME COURT SAID YOU HAD TO DO, WHEN YOU MAKE YOUR FINDINGS?

I THINK IN ANOTHER CASE, IF THE PARTIES HAD NOT SPECIFICALLY ASKED THE ARBITRATORS TO DO SO, AND THE ARBITRATORS HAD DECLINED TO DO SO, TO GIVE THAT SPECIFIC BASIS, IF THERE IS A MANDATE, THE PARTIES WON'T HAVE TO ASK. IT IS ALREADY BUILT INTO THE CASE LAW, TO THE MANDATE FROM THIS COURT, BUT IN OTHER CASES, YES, THE -- THERE WOULD BE A PROCEEDING PENDING BEFORE THE CIRCUIT COURT. I AM ASSUMING IT WOULD INVOLVE CONFIRMATION, ALSO, AND THE COURT COULD SEND IT BACK. I AM SAYING IN THIS CASE, I THINK IT IS TOO LATE. I THINK TOO MANY THINGS HAVE HAPPENED PROCEDURALLY, AND JURISDICTIONALLY, THAT BAR THE CIRCUIT COURT FROM SENDING THE CASE BACK TO THE ARBITRATORS. I, ALSO, POINT OUT, YOUR HONORS, THAT IN THE ARBITRATION AWARD, YES, THERE WAS A CLAIM FOR STATUTORY DAMAGES, BUT IF YOU LOOK AT THE AWARD, THE AMOUNT OF DAMAGES AWARDED HAS NOTHING TO DO WITH THE STATUTORY FORMULA, SO THERE IS, ALSO, NO MENTION OF INTEREST, AS YOU ARE ALLOWED UNDER THE STATUTE.

BUT WE SHOULDN'T BE GOING THROUGH THIS PROCESS,, TO BEGIN WITH. HERE WE ARE, AND AS A LOT OF PEOPLE SAY, BEGINNING THE 21st CENTURY, AND WE ARE TALKING ABOUT TRYING TO MUDDLE AROUND IN AN ORDER AWARDING DAMAGES, AS TO WHETHER OR NOT IT INCLUDED THIS CLAIM UNDER THE STATUTE. AND THAT, REALLY, PRESENTS US TO THE PUBLIC AS SORT OF RIDICULOUS, DOES IT NOT?

WELL, YOUR HONOR, IT SHOWS UP A FLAW IN THE SYSTEM THAT, I THINK, SHOULD BE ADDRESSED BY THE SUPREME COURT. I CERTAINLY THINK THE COURT CAN ADDRESS, IT BY ISSUING A MANDATE. I WOULD URGE THE COURT, HOWEVER, IN ADDRESSING THIS PROBLEM% HE CAN'T I FEEL, TO LEAVE -- THIS PROBLEM, PERSPECTIVELY, TO LEAVE THIS CASE INTACT WHERE IT IS. IT MAY SEEM LIKE A HARSH RESULT, BUT THERE, REALLY, IS NO INDICATION, ON THE FACE OF THE ARBITRATION AWARD, THAT PLAINTIFF DID PREVAIL ON THE STATUTORY BASIS, AND AS I HAVE ARGUED, ALREADY, I DON'T THINK THE CIRCUIT COURT HAS JURISDICTION TO SEND IT BACK.

WOULD YOU ADDRESS, IF THE PLAINTIFF HAD NOT PREVAILED, AND IS THE STANDARD PRACTICE THAT THE SAME CLAUSE WOULD GO INTO THE AWARD? IF SOMEONE HAD REQUESTED FEES, THE PLAINTIFF DID NOT PREVAIL AT ALL, THEY WOULD HOLD THAT THE PLAINTIFF DOES NOT PREVAIL BUT THEN SEND IT BACK, REFER IT TO A COURT OF COMPETENT JURISDICTION.

YES, YOUR HONOR.

THAT IS THE PRACTICE FOR THEM TO DO, FOR THE CIRCUIT COURT TO SAY, NO, YOU DON'T GET FEES. THAT SEEMS TO BE UROLOGIC THAT, THIS IS JUST A STANDARD CLAUSE THAT GOES IN, WHETHER YOU WIN OR LOSE, AND THEY JUST DON'T DEAL WITH ANYTHING. IS THAT WHAT HAPPENS?

YES, YOUR HONOR. THAT IS WHAT TURN BERRY SAID, THAT THE ARBITRATION PANEL HAD NO JURISDICTION, SO IF ONE OR BOTH PARTIES, AS PART OF THEIR PLEADING, MAKES A REQUEST FOR FEES, I THINK THE ARBITRATORS ARE OBLIGED TO ADDRESS IT, AND THE CORRECT WAY TO ADDRESS, IT UNDER TURNBERRY IS TO SEND TO THE CIRCUIT COURT, TO SAY THAT WE ABSTAIN.

THIS IS THE WAY IT HAPPENS EVERYDAY.

TO MY KNOWLEDGE, YES, YOUR HONOR.

THANK YOU.

THANK YOU.

YOUR TIME IS UP. REBUTTAL? EYE WANT TO PICK UP ON A THEME THAT I THOUGHT -- MY NAME IS RICHARD LOGSDON. I AM SORRY. I WANT TO PICK UP ON A THEME THAT I THOUGHT WAS BROUGHT UP IN QUESTIONING BY JUDGE ANSTEAD, AND HE WAS ASKING QUESTIONS ABOUT, WELL, SHOULD WE -- THAT BASICALLY, I THINK, LEAD TO THE FOCAL ISSUE THAT YOU ALL NEED TO DECIDE HERE, TODAY. THE FOCAL ISSUE IS WHO DO YOU WANT TO DECIDE THE ISSUE OF ATTORNEYS FEES IN ARBITRATION? DO YOU WANT THE ARBITRATORS TO DECIDE THAT, IN CLEAR VIOLATION OF TURNBERRY AND 682.11, OR DO YOU WANT THE CIRCUIT COURT TO HAVE EXCLUSIVE JURISDICTION TO DETERMINE, NOT ONLY ENTITLEMENT BUT AMOUNT OF ATTORNEYS FEES, UNDER 682.11? GENTLEMEN, IF YOU ADOPT THEIR ARGUMENT, THE ARBITRATORS, AND MAKE THE ARBITRATORS PUT SOMETHING IN THEIR AWARD, THAT THIS AWARD IS UNDER 517.301, YOU HAVE JUST HANDED OFF, INDIRECTLY, THE QUESTION OF ATTORNEYS FEES, TO THE ARBITRATORS IN EVERY CASE. NOW, 682.11 MAY OR MAY NOT BE A GOOD LAW, AND I DON'T THINK IT IS MY PROVINCE OR EVEN YOUR PROVINCE TO TELL THE LEGISLATURE WE ARE GOING TO UNDO 682.11, BECAUSE 682.IS 1 HAS, ALREADY, BEEN CONSTRUED -- 682.11 HAS ALREADY BEEN CONSTRUED BY THIS COURT IN TURN BERRY. THE CIRCUIT COURT HAS EXEXCLUSIVE JURISDICTION ON ATTORNEYS FEES, UNLESS THE PARTIES, BY STIPULATION, CONFERRED IT ON THE ARBITRATORS.

SO IF YOU DON'T WANT THE ARBITRATOR TO HAVE, TO PUT IN HIS OR HER ORDER THE BASIS FOR IT, WHAT DO YOU SUGGEST IS THE WAY TO GET TO ATTORNEYS FEES?

WELL, I WOULD LIKE THE ARBITRATOR TO PUT, IN HIS AWARD, SPECIFIC FACTUAL FINDINGS, LIKE A COURT IS REQUIRED TO DO. THEY JUST DON'T DO IT IN PRACTICE. SO WHEN THEY DON'T DO IT, THE PROBLEM YOU GET INTO, BUT I THINK THAT OBSCURES THE MAIN ISSUE. IF YOU ARE SAYING THAT THE ARBITRATOR HAS TO DO THAT, TO AWARD FEES, WHO, THEN, IS DECIDING THE FEE ISSUE? ISN'T THE ARBITRATOR, THEN, DECIDING THE FEE ISSUE?

SO YOUR POSITION, THEN, WOULD BE WHETHER OR NOT THE ARBITRATOR SAYS ANYTHING AT ALL ABOUT FEES, WHETHER THERE IS ANY SIGNAL OR NOT, THE PLAINTIFF SHOULD HAVE THE RIGHT TO GO TO CIRCUIT COURT AND ASK FOR FEES?

THAT'S CORRECT.

IF HE OR SHE HAS PLED A BASIS FOR FEES.

IN STOCK MAN VERSUS DOWNS, THIS COURT RULED THAT, IF YOU DON'T ASK FOR FEES, YOU DON'T GET THEM, SO OBVIOUSLY IF YOU MAKE THE STATUTORY CLAIM, YOU ARE GOING TO ASK FOR FEES. OUR POSITION, THE BOTTOM LINE POSITION, NUMBER ONE, THE RULE WE WOULD LIKE THE COURT TO ADOPT, IS THAT, IF THE PLAINTIFF PLEADS FOR FEES, FOR MAKING THE STATUTORY CAUSE OF ACTION AND HAS THE PREVAILING PARTY ATTORNEYS FEES, THAT IF THAT PLAINTIFF WINS, THAT PLAINTIFF GETS FEES AS WELL. IF YOU STOP AND THINK ABOUT THE COROLLARY OF THAT, IN TERMS OF EQUITY.

GETS THE OPPORTUNITY TO GO TO COURT.

TOGO TO COURT AND DEMONSTRATE -- TO GO TO COURT AND DEMONSTRATE THE FEES, THEN YOU HAVE THE OPPORTUNITY WITH THE TRIAL JUDGE.

HOW DOES THE TRIAL JUDGE DETERMINE WHETHER IT PREVAILED ON A STATUTORY CAUSE OF ACTION OR A COMMON LAW CAUSE OF ACTION?

THE ONLY WAY IS TO SEND IT BACK. IF THE TRIAL JUDGE MAKES THAT DETERMINATION, HE OR SHE MAKES IT. IF THEY CAN'T, THEY SEND IT BACK TO THE PANEL.

IT SEEMS TO ME THAT YOUR ARGUMENT IN THAT REGARD IS PRETTY CIRCULAR, BECAUSE YOU ARE SAYING THAT THE TRIAL COURT SHOULD MAKE THE DETERMINATION AS TO FEES, AND IF THE ARBITRATOR IS GOING TO MAKE THE DETERMINATION AS TO WHETHER THIS IS A STATUTORY CAUSE OF ACTION OR A COMMON LAW CAUSE OF ACTION, THE ARBITRATOR IS MAKING THE DECISION AS TO WHETHER THERE IS TO BE AN AWARD OF FEES. ISN'T THAT CORRECT?

YES, SIR. BECAUSE IF YOU STOP AND THINK ABOUT IT, THERE ARE ONLY TWO ISSUES IN A FEE CASE.

RIGHT.

NUMBER ONE IS ENTITLEMENT. NUMBER TWO IS AMOUNT. IF WE GO WITH -- IF YOU ALL DECIDE THAT THE ARBITRATOR MUST ARTICULATE THE BASIS OF A DECISION, UNDER WHETHER IT IS A STATUTORY THEORY OR A COMMON LAW THEORY, IN THEIR AWARD, YOU HAVE JUST HANDED THE ENTITLEMENT ISSUE TO THE ARBITRATOR AND TAKEN IT AWAY FROM THE COURT.

WELL, ISN'T THAT THE WAY IT IS SUPPOSED TO BE. IF YOU HAVE AN ELEMENT OF A STATUTORY CAUSE OF ACTION, FOR INSTANCE, THAT INCLUDES FRAUD, NOW, YOU HAVE EVERYTHING ELSE, UNDER A COMMON LAW ACTION, AND THE STATUTE, WITH THIS ELEMENT OF FRAUD, ALSO, HAS AN AWARD OF ATTORNEYS FEES THAT GOES ALONG WITH IT. IF YOU WENT ON THAT -- IF YOU WIN ON THAT. AND THE ARBITRATORS HEAR ALL OF THIS STUFF, AND THEY FIND NO FRAUD, BUT THEY DO FIND THAT YOU ARE ENTITLED TO AN AWARD, UNDER A COMMON LAW CAUSE OF ACTION, AND SO, BUT, THEY GIVE A GENERAL VERDICT. OKAY. AND YOU GOT WHATEVER YOU GOT. AND NOW YOU ARE SAYING THAT, WELL, IF THE ARBITRATORS, THEN, SAID, WELL, WE JUST FOUND FOR YOU, UNDER THE COMMON LAW CAUSE OF ACTION. WE DIDN'T FIND FOR YOU UNDER THE STATUTORY ONE, THEY HAVE, REALLY, DETERMINED THE ISSUE ABOUT ENTITLEMENT TO ATTORNEYS FEES? WELL, OF COURSE THEY HAVE, BECAUSE THAT IS WHAT THEIR RESPONSIBILITY IS, JUST LIKE THE JURY, WITH AN INTERROGATORY VERDICT, WHEN THEY HAVE GOT ALTERNATIVE CAUSES OF ACTION OR WHATEVER, YOU KNOW, MAY DO THAT, BECAUSE THAT IS THE PREDICATE. YOU HAVE TO FIND, IF YOU HAVE A CLAIM UNDER A BREACH OF CONTRACT, AND THE CONTRACT HAS AN ATTORNEYS FEE PROVISION, WHETHER YOU PREVAILED ON THAT CAUSE OF ACTION FOR BREACH OF CONTRACTOR A COMMON LAW ACTION THAT DOESN'T HAVE IT. I AM AFRAID I HAVE THE SAME QUESTION FOR YOU THAT JUSTICE WELLS DID, AND THAT IS IT SEEMS TO ME YOUR ARGUMENT, HERE, IS CIRCULAR TO THE EXTREME.

WELL, OBVIOUSLY THAT IS YOUR CALL. IT IS YOUR CALL AS TO WHETHER OR NOT YOU WANT TO DEMAND -- A HOW IS THE CIRCUIT COURT EVER GOING TO MAKE A DETERMINATION OTHERWISE?

THEY CAN'T. THEY CAN'T.

WELL?

AND THE BOTTOM -- SO WHAT HAPPENS IS THIS. YOU CAN EITHER SAY THAT, WHEN -- YOU COULD GO WITH THE TWO ISSUE RULE, AND INDICATE WHEN THE PLAINTIFF PLEADS TO THE STATUTORY CAUSE OF ACTION, AND BY THE WAY, IF YOU READ A 17.301, IT HAS ALL OF THE ELEMENTS OF COMMON LAW FRAUD IN IT, SO THAT THEY ARE ESSENTIALLY THE SAME. LET ME --

YOUR TIME, I THINK, IS UP.

I KNOW I AM OUT OF TIME. REAL QUICKLY, YOU CAN EITHER HAVE, SAY, DEMAND SPECIFICITY TO THE ARBITRATOR AND SAY YOU HAVE TO SPECIFY THE BASIS OF YOUR AWARD, AND THAT GIVES THE ENTITLEMENT ISSUE TO THE ARBITRATORS, OR YOU CAN SAY -- OR YOU CAN LEAVE THE SYSTEM MUDDLED, AS IT IS, WITH SIGNALING, AND ALL OF THESE THINGS THAT, PROBABLY, THE COURT DISAPPEAR PROVES OF, OR THEY WOULDN'T HAVE GRANTED CERTIORARI, AND NUMBER THREE, YOU CAN BASICALLY DO IT IN THE NEGATIVE, THAT THE COURT DOES, IF THE ARBITRATORS WANT TO MAKE A A WARD A GENERAL VERDICT, THAT YOU GIVE THAT TO THE AGGRIEVED INVESTOR RATHER THAN GIVE IT TO THE IN VETS TORE.

CAN I ASK ONE QUICK QUESTION? DO YOU AGREE WITH YOUR OPPOSITION, THAT EVEN IF A CLAIMANT LOSES EVERYTHING, TOTAL ZIP, YOU FIND THIS LANGUAGE IN EVERY ARBITRATION AWARD, REFERRING, EVEN THOUGH THERE IS A TOTAL LOSS, YOU REFER IT BACK TO CIRCUIT COURT?

NO. IT WOULD BE REDUNDANT.

OKAY.

THANK YOU VERY MUCH.

NOT. APPRECIATE COUNSEL'S HELP WITH THIS CASE.