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Mary Ann Sheffield vs Superior Insurance Co.

GOOD MORNING.

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

GOOD MORNING, AND WELCOME TO THE ORAL ARGUMENT, FLORIDA SUPREME COURT. THE FIRST CASE WE HAVE ON OUR ORAL ARGUMENT CALENDAR THIS MORNING IS SHEFFIELD VERSUS SUPERIOR INSURANCE COMPANY. MS. MORGAN.

MAY IT PLEASE THE COURT, MY NAME IS TERESA MORGAN AND I REPRESENT MARY ANN SHEFFIELD WHO'S THE PETITIONER IN THIS CASE. BASE CHRIS, THIS CASE AROSE OUT OF AN AUTOMOBILE ACCIDENT. MRS. SHEFFIELD WAS A PASSENGER IN A CAR THAT WAS DRIVEN BY HER HUSBAND AND IT WAS REERNDED BY AN UNDERINSURED MOTORIST. SHE FILED A CLAIM AGAINST HER OWN INSURANCE COMPANY BECAUSE THE UNDERINSURED MOTORIST DID NOT HAVE ENOUGH INSURANCE BENEFITS TO PAY FOR ALL OF HER DAMAGES AND SUPERIOR INSURANCE, HER INSURANCE COMPANY, DENIED THE EXCESS DAMAGES. SEVERAL MONTHS PRIOR TO TRIAL MS. SHEFFIELD'S TRIAL COUNSEL FILED A MOTION IN LIMINE SEEKING TO PRECLUDE COLLATERAL SOURCE BENEFITS FROM BEING MENTIONED AT TRIAL.

WAS EVER ANY QUESTION O OR ISSUE AS TO WHETHER THE COLLATERAL BENEFIT, THE MOTION, COVERED WHAT IT REFERRED TO AS THE FREE BENEFITS AT WORK? BECAUSE IT SEEMS THAT AT LEAST IN THE FOOTNOTE IN THE FIRST DISTRICT AND ALSO IN THE JUDGE'S MOTION OR ORDER ON THE NEW TRIAL THAT THERE WAS SOME QUESTION AS TO WHETHER THE MOTION IN LIMINE COVERED THOSE BENEFITS. NOT THAT COLLATERAL BENEFITS COULDN'T BE THAT BUT THAT IT WAS THE UNDERSTANDING WAS IT WAS A MORE RESTRICTIVE MEIGS JUST AS TO THE GROUP INSURANCE POLICY.

YES, MA'AM. I DON'T BELIEVE THERE'S ANYTHING IN THE RECORD THAT SHOWS THAT IT DID NOT COVER THE OTHER EMPLOYMENT BENEFITS. AS A MATTER OF FACT, I WILL AGREE WITH YOU THAT THE MOTION WAS STRICTLY LIMITED TO THE GROUP INSURANCE AND THERE WAS EVIDENCE O OF GROUP INSURANCE THAT CAME IN. BUT AT THE HEARING WHERE H MR. SMITH'S TRIAL COUNSEL WAS PUTTING ON THE RECORD HIS PREVIOUS OBJECTION AND THE FACT THAT THE COURT HAD DENIED THAT OBJECTION, HE SAID AND THIS IS ON PAGE 6 OF THE TRANSCRIPT, "WE HAD VERY EARLY IN THE CASE MONTHS AGO FILED A MOTION IN LIMINE REGARDING KEEPING OUT ANY EVIDENCE OF FUTURE COLLATERAL SOURCE BENEFITS EITHER INSURANCE OR BENEFITS PROVIDED BY THE EMPLOYER." AND MR. WINTER AGREED THAT THAT WAS WHAT THE MOTION IN LIMINE COVERED. SO I BELIEVE THAT IT WAS ARGUED ORALLY THAT IT WAS TO KEEP OUT ALL COLLATERAL SOURCE BENEFITS.

WHILE WE HAVE YOU ANSWERING QUESTIONS, COULD YOU TELL ME HOW THE MOTION IN LIMINE CAME ABOUT. WHAT I MEAN BY THAT IS THAT WAS THERE ANYTHING LIKE A PRETRIAL STATEMENT OR SOMETHING THAT LISTED THE COLLATERAL BENEFIT BILLS OR THINGS LIKE THAT, THAT GAVE SFLIZ OR WAS THIS JUST AN ANTICIPATORY MOTION IN LIMINE BASED ON SPECULATION THAT THE OTHER SIDE WAS GOING TO INTRODUCE EVIDENCE O OF COLLATERAL BENEFITS? CAN YOU HELP US WITH THAT?

YOUR HONOR, I REALLY CAN'T. I BELIEVE IT WAS JUST ANTICIPATORY. I WAS NOT TRIAL

COUNSEL. I ONLY KNOW WHAT'S IN THE RECORD.

CAN YOU TELL US WHETHER OR NOT THERE IS A FOR INSTANCE DEFENDANT'S PRETRIAL STATEMENT THAT ACTUALLY LISTS BILLS THAT WERE PAID OR OTHERWISE EVIDENCE OF COLLATERAL BENEFITS SO THAT WE REALLY KNOW WHETHER OR NOT THE DEFENDANT ANTICIPATED INTRODUCING EVIDENCE O OF COLLATERAL BENEFITS.

I CAN'T TELL YOU THAT, YOUR HONOR.

WHAT'S THE STRONGEST EVIDENCE IN THE RECORD THAT THE DEFENDANT DID INTEND TO INTRODUCE EVIDENCE OF COLLATERAL BENEFITS?

THE FACT THAT HE ARGUED SO VOCIFEROUSLY PRIOR TO TRIAL THAT THE MOTION IN LIMINE SHOULDN'T BE GRANTED.

SO IT'S THE OBJECTION -- ALL RIGHT. WAS THERE ANY STATEMENT IN THAT ARGUMENT THAT WE DO INTEND TO SUBMIT BILLS THAT WERE PAID BY COLLATERAL SOURCES?

WELL UNFORTUNATELY WE DON'T HAVE TRANSCRIPTS OF THE HEARINGS THAT OCCURRED BEFORE TRIAL, SO BASICALLY WE'RE STUCK WITH WHAT HAPPENED ON THE TRIAL RECORD.

SO WHAT -- FOLLOWING THAT, WHAT DOES THIS ORDER FROM THE TRIAL COURT MEAN WHERE IT SAYSETH CLEAR TO THE COURT FROM THE EXAMINATION OF THE RECORD AND FROM THE CONDUCT OF THE TRIAL, THAT COLLATERAL SOURCE BENEFITS REFERRED TO WERE THOSE BY THE AUTOMOBILE INSURANCE FOR WHICH THE COURT WOULD MAKE A DEDUCTION AT THE CONCLUSION OF THE CASE? TELL ME WHAT THE COURT'S TALKING ABOUT THERE.

WHICH ORDER ARE YOU REFERRING TO?

THIS IS THE ORDER ON THE MOTION FOR REHEARING, I BELIEVE. IT APPEARS IN THE RECORD.

THE ORDER DENYING MOTION FOR NEW TRIAL?

RIGHT.

THE COURT IS REFERRING BACK TO THE MOTION -- I MEAN, THE ORDER THAT WAS SBRERD PRIOR WHERE HE RESERVED RULING ON WHETHER THE MOTION IN LIMINE WOULD BE GRANTED AND IT REFLECTS THIS ACT THAT THE PLAINTIFF THAT STATED IN HIS MOTION IN LIMINE THAT HE WAS SEEKING TO PRECLUDE ANY MENTION OF GROUP INSURANCE BENEFITS.

BUT --

WELL, IS THE TRIAL COURT GIVING ANY SIGNAL THERE THAT REALLY THE TRIAL COURT WAS THINKING ABOUT, FOR INSTANCE, THAT THERE MAY BE EVIDENCE OF PIP BENEFITS PAID OR SOMETHING LIKE THAT IN THIS CASE, THAT HE WOULD HAVE TO NOT BEFORE THE JURY, BUT THAT THE TRIAL COURT HIMSELF MIGHT HAVE TO CONSIDER, AFTER A VERDICT IS ENTERED, AS TO WHETHER OR NOT THERE SHOULD BE SOME OFFSET O OR DEDUCTION? IS THERE ANY INDICATION O OR SUGGESTION OF THAT?

NOT TO MY KNOWLEDGE, YOUR HONOR, NO.

I READ WHAT THE TRIAL COURT IS SAYING TO MEAN THAT WHAT WE WERE TALKING ABOUT BEFORE THE COURT REPORTER GOT HERE, PRIOR TO THE BEGINNING OF THE TRIAL WERE MED PAY AND PIP BENEFITS, AND THAT NOW THE PLAINTIFFS ATTORNEY GETS UP AND STARTS TALKING ABOUT GROUP INSURANCE, AND THAT WAS THE FIRST REFERENCE AND THAT'S THE

REASON THAT I CONCLUDED THAT THE PLAINTIFF OPENED THE DOOR.

WELL, YOUR HONOR, I THINK YOU NEED TO GO BACK TO THE TRANSCRIPT THAT WAS RIGHT AFTER VOIR DIRE, RIGHT AFTER OPENING STATEMENTS, WHERE THE COURT REPORTER HAD FINALLY ARRIVED, AND MR. SMITH PUT UPON THE RECORD THAT WHAT THEY HAD DISCUSSED BEFORE THE COURT WAS EITHER INSURANCE OR BENEFITS PROVIDED BY THE EMPLOYER. AND THAT'S WHAT THEY WERE DISCUSSING THROUGHOUT THE TRIAL, AND THAT'S THE EVIDENCE THAT WAS BROUGHT IN THAT WAS SO PREJUDICIAL, WERE THE BENEFITS THAT WERE PROVIDED BY THE EMPLOYER.

AND THERE'S NO OBJECTION TO THAT, RIGHT? THERE'S NO DISPUTE ABOUT THAT? ONCE THOSE STATEMENTS WERE PUT ON THE RECORD.

THERE'S NO DISPUTE. IT NEVER HAS BEEN DISPUTED.

IN THE OPENING STATEMENTS DID THE PLAINTIFF REFER BOTH TO THE FREE BENEFITS AS WELL AS THE GROUP INSURANCE?

I BELIEVE HE DID.

AND THEN THIS COLLOQUY OCCURS AFTERWARDS. WE'RE SPENDING A LOT OF TIME ON THIS, THIS IS VERY CASE SPECIFIC.

RIGHT.

BUT MY PROBLEM, I DON'T HAVE A PROBLEM WITH THE GENERAL IDEA THAT PORTER IS SPEAKING ABOUT WHICH IS THAT IF IT'S A CLEAR RULING ON SOMETHING, SAY ALCOHOL AND THE PLAINTIFF KNOWS THAT IT'S GOING TO COME IN AND THE DEFENDANT HAS ANNOUNCED IT'S GOING TO COME IN, THEN THERE MAY BE LAW THAT SHOULD ALLOW THE PARTY WHATEVER PARTY IT IS, TO DEFUSE WHAT THE MOTION WAS CLEARLY ADD ADDRESSED TO. HERE, THOUGH, YOU'D AGREE THAT THIS RECORD IS LESS THAN CLEAR ABOUT THE SCOPE OF THE MOTION IN LIMINE AND THEN THE SCOPE OF THE JUDGE'S RULING. THAT THEN CAUSES CONCERN AS TO WHETHER THE JUDGE, WHO WAS RULING ON IT, ACTUALLY WAS RULING ON THE QUESTION AS TO WHETHER HE WAS GOING TO ALLOW IN THE FREE BENEFITS OR NOT. AND IF HE NEVER HAD A CHANCE TO RULE ON THAT, THEN THE PLAINTIFF DID OPEN THE DOOR BY JUMPING THE GUN AND NOT BEING CLEAR AS TO WHAT THE SCOPE OF THE RULING WAS.

WELL, YOUR HONOR, I THINK THAT IT IS CLEAR FROM THE FIRST PART POF THE TRIAL THAT WE HAD THE COURT REPORTER THERE THAT THEY WERE TALKING ABOUT GROUP INSURANCE BENEFITS AND ANY BENEFITS THAT WERE PROVIDED BY THE EMPLOYER.

AS A RULE OF LAW, FOR FUTURE CASES, WE WOULD WANT TO ENCOURAGE THAT IF WE'RE GOING TO ALLOW SOME CONCEPT THAT SOMEBODY COULD TAKE A RULING AND THEN RELY ON IT, THAT WE'D WANT TO BE VERY CLEAR ON WHAT THE MOTION WAS STATING, AND WHAT THE COURT'S RULING WAS IN CASE THE COURT, IF THE COURT UNDERSTOOD THE WHOLE ISSUE WOULD RULE DIFFERENTLY. THAT'S WHY YOU WANT THAT MOTION TO BE AS CLEAR AS POSSIBLE AND THE RULING, CORRECT?

YES, YOUR HONOR. I THINK IT'S VERY UNFORTUNATE THERE WASN'T A COURT REPORTER PRESENT AT THE VERY BEFINANCING WHEN THIS MOTION WAS ARGUED BUT I WOULD POINT OUT THAT MR. WINTER TOOK RESPONSIBILITY FOR THAT. THE PARTIES HAD AGREED PRIOR TO TRIAL HE WOULD HAVE A COURT REPORTER THERE, THE COURT REPORTER WASN'T THERE. HE STATED AS SOON AS THE COURT REPORTER ARRIVED THAT HE TOOK RESPONSIBILITY FOR THE FACT THAT SHE WASN'T THERE EARLIER. SO I DON'T THINK THAT SHOULD BE HELD AGAINST MY CLIENT. AND I THINK THAT IT IS CLEAR WHEN THEY STARTED TALKING ABOUT THIS ON THE RECORD THAT MR. SMITH

WAS TALKING ABOUT ALL BENEFITS THAT WERE PROVIDED BY THE EMPLOYER.

YOU'RE TALKING ABOUT THE COLLOQUY THAT OCCURRED AT TRANSCRIPT 6 AND 57.

YES, MA'AM, YES, MA'AM. AND THERE ALSO WAS AN EXCERPT FROM A SUPPLEMENTAL RECORD THAT WAS FILED WHICH THE FIRST DISTRICT COURT OF APPEALS THAT I BELIEVE YOU SHOULD HAVE WITH YOU IN THE RECORD. THIS IS AN EXCERPT FROM THE HEARING O ON THE MOTION FOR NEW TRIAL. AND IN THAT CASE, THE COURT IS TALKING, AND THE COURT SAYS, "IF I LOOK AT THE MOTION IN LIMINE, I PUT IN THERE THAT IT'S PERMISSIBLE TO USE GROUP INSURANCE. I MEAN TO DISCLOSE THE GROUP INSURANCE THAT'S IN MY ORDER." THEN THE JUDGE IS ADMITTING THAT IT SHOULDN'T BE. THAT HE SHOULD NOT IN HIND SIGHT HE SHOULD NOT HAVE ALLOWED EVIDENCE OF GROUP INSURANCE TO COME IN.

BUT MOST OF THE TESTIMONY I THOUGHT THAT WAS OBJECTIONABLE OR THAT YOU HAD PUT ON WAS ABOUT THE BENEFITS AT WORK. THAT IS, THE FREE THERAPY, SO FORTH. AND REALLY, IF IT WERE OTHERWISE DOING A HARMLESS ERROR ANALYSIS IT DOESN'T SEEM TO ME THE REFERENCE TO THE GROUP INSURANCE WAS EXTENSIVE, THAT THE PART YOU REALLY WOULD BE OBJECTING TO WOULD BE THE FREE BENEFITS.

I WOULD AGREE THAT MOST OF THE TESTIMONY WAS ABOUT THE FREE BENEFITS THAT SHE WAS RECEIVING. BUT MR. SMITH ALSO BROUGHT IN EVIDENCE OF THE GROUP INSURANCE. AND HE WOULD NOT HAVE BROUGHT IN EITHER OF THOSE TYPES OF EVIDENCE, HE WOULDN'T HAVE MADE ANY MENTION OF IT, HAD HE NOT BEEN ALYING O ON THE AGREEMENT THAT HE HAD WITH COUNSEL PRIOR TO TRIAL THAT HE WASN'T GOING TO WAVE ANY OBJECTION BY GOING AHEAD AND GOING INTO THIS. HE HAD NO REASON FOR BRINGING THIS IN OTHER THAN TO DIVORCE FUSE WHAT HE THOUGHT MR. WINTER WAS GOING TO BRING IN. SO HE RELIED ON THAT AGREEMENT. THAT'S THE REASON THAT HE BROUGHT IT IN AND I THINK IT CLEAR FROM THIS EXCERPT ON THE MOTION FOR NEW TRIAL, I THINK IT'S ALSO CLEAR FROM WHEN THE COURT REPORTER DID START TRANSCRIBING AT THE BEGINNING OF THE TRIAL THAT THEY WERE TALKING ABOUT ANY BENEFITS THAT WERE PROVIDED BY THE EMPLOYER.

GOING BACK TO WHAT THE JUDGE THOUGHT AND WHAT JUSTICE WELLS READ FROM IT DOES APPEAR THAT THE JUDGE IN THAT ORDER DENYING THE MOTION FOR NEW TRIAL THOUGHT THAT HE WAS ONLY DENYING IT AS TO COLLATERAL BENEFITS FOR WHICH A DEDUCTION WOULD BE MADE, WHICH WOULD HAVE TO BE THOSE FOR WHICH THERE WERE AMOUNTS PAID, CORRECT? HOW ELSE COULD WE INTERPRET WHAT THE JUDGE IS SAYING IN HIS ORDER THAN THE JUDGE THOUGHT IT WAS ACTUALLY A MUCH MORE NARROW MOTION IN LIMINE AND A MUCH MORE NARROW RULING THAT HE WAS MAKING?

WELL, I THINK IT'S VERY CLEAR FROM WHAT THE PARTIES WERE SAYING, WHAT THE ATTORNEYS WERE SAY, THAT THEY THOUGHT IT WAS MORE EXTENSIVE. THAT'S THE REASON MR. SMITH BROUGHT THE EVIDENCE IN.

BUT ISN'T IT THE JUDGE THAT WE WANT TO MAKE SURE KNOWS WHAT IS THE SCOPE OF THE RULING SO THAT GIVING THE JUDGE THE OPPORTUNITY TO MAKE A CORRECT RULING?

YES, BUT I THINK THAT THE EXCERPT FROM THE MOTION FOR NEW TRIAL SHOWS THAT THE JUDGE REALIZED THEY WERE TALKING ABOUT BENEFITS PROVIDED BY THE EMPLOYER.

TELL US WHAT THEN HAPPENED INSOFAR AS WHAT EVIDENCE DID THE LAWYER REPRESENTING YOUR CLIENT IN THE TRIAL COURT OR ON CROSS EXAMINATION OR IN ANY OTHER WAY, WHAT EVIDENCE THEN WAS BROUGHT OUT ABOUT CHRAT ARE RECALL BENEFITS?

BASICALLY HE BROUGHT OUT EVIDENCE THAT SHE HAD GROUP INSURANCE THAT WAS PROVIDED BY HER EMPLOYER AND THAT SHE ALSO ARE RECEIVED FROM SOME FREE MEDICINE SAMPLES,

SOME FREE PHYSICAL THERAPY AND SOME FREE PAIN INJECTIONS BECAUSE SHE WAS A MEDICAL ASSISTANT. AND MR. WINTER EVEN GOT INTO THAT HIMSELF, PARTICULARLY WHEN HE CROSS-EXAMINED CARL ALLISON, WHO WAS A PHARMACIST, AND MADE CLEAR THAT IF SHE WAS RECEIVING MEDICINE SAMPLES THEN SHE WASN'T HAVING TO PAY FOR THEM AND SHE WOULDN'T HAVE TO PAY FOR THEM IN THE FUTURE. I THINK HE REALLY KEPT HAMMERING ON THAT WITH MRS. SHEFFIELD AND ALSO WITH MRS. SHEFFIELD'S MOTHER WHEN HE KEPT BRINGING OUT THE FACT THAT SHE HAD A GOOD JOB SHE LIKED HER JOB, THERE WASN'T ANY CHANCE OF REHER LOSING HER JOB BECAUSE HE WAS TRYING TO SHOW SHE RECEIVED THESE BENEFITS FROM HER JOB. THEREFORE, THERE WAS NO REASON FOR THE JURY TO AWARD HER DAMAGES FOR THE BENEFITS THAT SHE WAS ALREADY RECEIVING.

WHAT WAS THE DISCLOSURE ABOUT THE GROUP INSURANCE WITH HER JOB? WAS IT THAT IT PAID FOR ALL OF HER MEDICAL EXPENSES? OR WHAT DISCLOSURE WAS MADE ABOUT THAT?

THE TRANSCRIPT ON PAGE 38, AND THIS IS MR. SHEFFIELD INQUIRING OF -- EXCUSE ME, MR. SMITH INQUIRING OF MRS. SHEFFIELD, HE SAYS, "DO YOU HAVE GROUP INSURANCE AND THINGS LIKE THAT TO HELP YOU WITH SOME OF THE COSTS OF YOUR PHYSICAL THERAPY AND MEDICATIONS? AND SHE RESPONDED," YES, I DO." THEN OF COURSE HE WENT ON AND SAID IS THERE ANY GUARANTEES YOU'LL HAVE THAT IN THE FUTURE AND SHE SAID NO.

AS TO YOUR ARGUMENT THAT THIS WAS THE PREJUDICIAL ERROR THAT WOULD REQUIRE REVERSAL, THERE'S TWO ISSUES. ONE IS THE EXTENT OF THE MEDICAL EXPENSES THAT WERE AWARDED AND THEN THE SECOND QUESTION AS TO THE JURY'S FINDING OF NO PERMANENT SI. IS IT YOUR CLAIM THAT THE ERRONEOUS ADMISSION OF COLLATERAL BENEFITS WENT TO BOTH ISSUES, THAT IS, THE AMOUNT OF THE MEDICAL EXPENSES AS WELL AS THE PERMANENT SI ISSUE? IF SO, HOW CAN REALLY THE ERRONEOUS ADMISSION OF THE COLLATERAL BENEFITS HAVE ADVERSELY AFFECTED THE DETERMINATION ON PERMANENCEY?

I THINK IT'S CLEAR FROM THE RECORD IT PERMEATED THE ENTIRE TRIAL, THAT THE JURY THOUGHT SHE WAS RECEIVING SO MANY OF THESE BENEFITS FOR FREE THAT IT HAD NO REASON TO AWARD HER DAMAGES FOR THOSE BENEFITS. MY BASIC ARGUMENT ON THE PERMANENCEY ISSUE IS THAT THE EVIDENCE WAS CLEAR SHE HAD A PERMANENT INJURY AND THEREFORE A DIRECTED VERDICT SHOULD HAVE BEEN ENTERED FOR HER ON THAT ISSUE.

DID THE DEFENDANTS ARGUE TO THE JURY WHAT YOU'RE SAYING ABOUT THE COLLATERAL BENEFITS AND THE MEDICAL EXPENSES? IN OTHER WORDS, DID THEY ASSERT TO THE JURY THAT YOU DON'T HAVE TO WORRY RABBIT HER MEDICAL EXPENSES?

NO, SIR, NO, SIR THEY DID NOT ARGUE THAT TO THE JURY.

SO THAT WAS NOT USED IN AN ARGUMENT TO THE JURY AS A BASIS FOR NOT AWARDING DAMAGES.

NO, SIR, IT WASN'T.

FOR FUTURE CASES, DO YOU BELIEVE THAT THERE SHOULD BE SOMETHING IN THE RECORD WHICH TRULY INDICATES THAT THE DEFENSE PLANNED TO USE THIS INFORMATION BEFORE THE PLAINTIFF CAN DO A PRE-EMPTTIVE STRIKE LIKE THEY DID IN THIS CASE? IT SEEMS TO ME THAT WE ARE RAS ASSUMING HERE THAT THE DEFENSE WAS GOING TO BRING THIS OUT. SHOULD THERE BE SOME TRUE INDICATIONS THAT THE DEFENSE IS GOING TO USE THIS?

JUSTICE, I DON'T THINK THAT'S NECESSARY. I MEAN, MR. SMITH BROUGHT IT UP IN A MOTION IN LIMINE SEVERAL MONTHS PRIOR TO TRIAL TO MAKE SURE THAT HE DIDN'T BRING THE EVIDENCE IN. HE DID EVERYTHING HE COULD TO TRY TO PRESERVE THE ISSUE. I MEAN, I THINK HE WAS JUST DOING HIS JOB TO MAKE SURE THAT THE ISSUE NEVER DID COME UP.

I GUESS IT GOES BACK TO JUSTICE ANSTEAD'S EARLIER QUESTION, WHICH IS, WHY WOULD YOU DO IT IF YOU DON'T HAVE ANY INDICATION THAT THE DEFENSE IS GOING TO BRING THIS KIND OF INFORMATION BEFORE THE COURT AND THE JURY IN THE FIRST PLACE?

WELL, I THINK THAT THE DEFENSE SURELY SHOWED THAT THEY WERE PLANNING TO BRING THAT INFORMATION IN. OTHERWISE THEY WOULDN'T HAVE ARGUED AGAINST THE MOTION IN LIMINE REPEATEDLY.

BUT THE MOTION IN LIMINE WAS ACTUALLY FILED BY THE PLAINTIFF, CORRECT?

CORRECT.

SO THE FIRST INDICATION WE HAVE ROF ANY KIND OF COLLATERAL SOURCE ARGUMENT, IT REALLY IS BROUGHT TO THE COURT'S ATTENTION BY THE PLAINTIFF.

BY THE PLAINTIFF SEVERAL MONTHS PRIOR TO TRIAL, THAT'S CORRECT.

YOU'RE IN YOUR REBUTTAL TIME.

THANK YOU.

MR. WINTERS.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS ALAN WINTER. AND I WAS THE TRIAL ATTORNEY IN LAKE CITY FOR THREE DAYS IN THE COLUMBIA COUNTY COURTHOUSE. SO I WILL RECEIVE FROM THIS COURT QUESTIONS THAT WERE PROPOUNDED TO MS. MORGAN.

HOW ABOUT PICKING UP ON THE VERY LAST ISSUE THAT JUSTICE QUINCE WAS ASKING YOUR OPPONENT. THAT IS, THAT WE REALLY DON'T HAVE A RECORD BEFORE THIS COURT THAT SHOWS US OBVIOUSLY AS MUCH AS WE WOULD LIKE TO SEE. AND CAN YOU HELP US WITH: WAS THERE A VOCIFEROUS ARGUMENT AGAINST THE MOTION IN LIMINE AND ABSOLUTELY A CONTENTION THAT THE DEFENDANT HAD THE RIDE TO INTRODUCE EVIDENCE OF ANY COLLATERAL BENEFITS THAT THE PLAINTIFFS MAY HAVE RECEIVED?

THE SIMPLE ANSWER TO THAT QUESTION IS YES, I DID ARGUE AGAINST THE MOTION IN LIMINE BUT IT IS A LARGER PICTURE AND I NEED TO EXPLAIN THAT. THERE WAS A QUESTION PROPOUNDED EARLIER I BELIEVE BY YOU, JUDGE ANSTEAD, THAT AS TO HOW WE GOT HERE. AND I STUMBLED UPON THIS BODY OF EVIDENCE IN DISCOVERY. I DON'T WANT TO SPEAK OUTSIDE OF THE RECORD SO I SHALL NOT BUT THAT IS HOW WE GOT HERE. THAT THROUGH THE DAY-TO-DAY PRETRIAL DEVELOPMENT OF THIS CASE, WE DISCOVERED AS WAS PLACED IN MS. MORGAN'S STATEMENT OF FACTS IN THE CASE MISS SHEFFIELD WAS A MEDICAL ASSISTANT. SHE WORKED IN A CLINIC IN COLUMBIA COUNTY, I BELIEVE, AND NOT ONLY DID SHE HAVE A GROUP INSURANCE POLICY THAT SUPPLEMENTED HER PIP PAYMENTS FROM SUPERIOR THAT WERE PAID IN THIS CASE AND THAT WERE NOT INTRODUCED, BUT SHE ALSO TESTIFIED AT GREAT LENGTH AT THE FREE SERVICES SHE GOT. SHE GOT FREE INJECTIONS --

DID SHE TESTIFY ON DEPOSITION?

YES, SHE DID.

WHEN YOU SAY SHE TESTIFIED ARE YOU REFERRING TO HER PRETRIAL DISCOVERY DEPOSITION?

YES. THAT IS HOW MR. SMITH AND I BOTH BECAME AWARE OF THIS BODY OF EVIDENCE. THIS IS I THINK THE MOST IMPORTANT PART OF THIS FIRST ISSUE THAT COMES BEFORE THE COURT. AND THAT IS THAT UNDER THE GORMLEY CASE AND THE WACKENHUT CASE CITED BY MS. MORGAN

CORRECTLY AS TO THE STANDARD FOR COLLATERAL SOURCE THAT IT SHOULD NOT COME IN BEFORE THE COURT THAT THOSE CASES USED THE WORD RECOVERY. THE PROBLEM WE HAVE IN THIS CASE IS THAT MS. SHEFFIELD, WITH THE ASSISTANCE OF HER VERY ABLE COUNSEL MR. SMITH, WERE NOT ABLE TO BRING BEFORE THE COURT EITHER IN PRETRIAL OR AT THE TRIAL EVIDENCE OF ANY RECOVERY FROR THOSE FREE SERVICES. SHE COULDN'T BRING AN INVOICE FOR A FREE INJECTION, SO THERE WAS NO DLA FOR DOLLAR QUID PRO QUO RECOVERY AND THE WACKENHUT CASE IS VERY SPECIFIC THAT IT DOES DISCUSS RECOVERY WHEN IT TALKS ABOUT COLLATERAL SOURCE.

ARE YOU ARGUING NOW THAT THE THESE BENEFITS RECEIVED AT WORK WERE NOT COLLATERAL BENEFITS?

NO. I BELIEVE THEY WERE COLLATERAL BENEFITS BUT HERE'S THE PROBLEM, YOUR HONOR. I THINK THAT THE WACKENHUT AND GORMLEY CASES AND THEIR PROGENY ANTICIPATE EXACTLY WHAT WAS PUT IN MR. SMITH'S MOTION IN LIMINE. AND I KNOW THAT THE COURT IS TROUBLED BY THE FACT THAT THERE IS A DIFFERENCE BETWEEN WHAT IS REQUESTED, THE RELIEF THAT IS REQUESTED IN THE MOTION IN LIMINE WHICH IS VERY SPECIFIC AND EXPRESS VERSUS WHAT NOW THEY WANT THE COURT TO EXPAND ON AND GRANT RELIEF FOR, THAT IS, ALL THIS EXTRA BODY OF UNDOCUMENTED, FREE EVIDENCE.

WHAT WAS THE REFERENCE IN THE TRIAL TRANSCRIPT WITH REGARD TO THE EXPANDED NATURE IF IT'S NOT YOU'RE SUGGESTING I GUESS IT'S ONLY WHAT'S IN THE MOTION. BUT YOUR OPPOSING COUNSEL HAS READ TO US ASPECTS OF THE TRIAL TRANSCRIPT I GUESS IS WHAT WE WOULD CALL THAT, WHAT OCCURRED WHEN THE TRIAL WAS UNDER WAY, WITH REGARD TO THAT SCOPE. AND THAT SEEMS CERTAINLY MUCH LARGER, DOES IT NOT?

YES, IT DOES.

THERE WAS NO OBJECTION BY YOU OR YOUR SIDE WITH REGARD TO THAT STATEMENT IN THAT RECORD, WAS THERE?

I DOUBT IT. I TRULY DOUBT IT. MY JOB AS A DEFENSE ATTORNEY, AND I WILL TRY TO FOLLOW UP ON MY ANSWER TO MY FIRST QUESTION FROM THE PANEL. MY JOB IN THIS CASE WAS TO BE REACTIVE. CERTAINLY I HAVE TO PREPARE MY CASE AS DEFENSE COUNSEL IN THIS CASE AND I HAVE TO BE REACTIVE. MR. SMITH HAD THE BENEFIT AND THE OPPORTUNITY OF GOING FIRST. SO HE PRESENTED HIS CASE AS HE SAW FIT. THE QUESTION CAME FROM JUDGE QUINCE, JUSTICE QUINCE, THAT SHOULD THERE BE SOME RECORD THAT PROTECTS OR ASSISTS A PANEL SUCH AS YOURSELF WHEN IT COMES TO REVIEW AS TO THE INTENTIONS OF DEFENSE COUNSEL?

COULDN'T YOU JUST AS EASILY HAVE SAID I DO NOT INTEND TO USE THAT EVIDENCE SO IT'S A NONISSUE? ISN'T THAT HOW IT WOULD HAVE BRN HANDLED HAD YOU NOT PLANNED ON AT LEAST ASKING SOME QUESTIONS IN THAT AREA? IF YOU DID NOT PLAN ON ADDRESSING THE ISSUE AT ALL WHY DOES THE RECORD NOT REFLECT THAT STATEMENT OR THAT CONCEPT AS OPPOSED TO OPPOSITION TO THAT MOTION?

BECAUSE IT GOES TO THE ACTUAL FACTS IN THIS CASE, AND THE MERITS IN THIS CASE, AND HOW THIS CASE WAS PRESENTED TO THE COLUMBIA COUNTY JURY. AND I WILL EXPLAIN THAT. THIS CASE WAS A PERFECTLY GOOD $24,000 CASE WHICH WAS TRIED VERY COMPETENTLY BY MR. SMITH AGAINST ME AND SUPERIOR INSURANCE COMPANY IN LAKE CITY. IT WAS A PERFECTLY GOOD $24,000 CASE. UNFORTUNATELY, MR. SMITH WAS ASKING FOR DAMAGES THAT EXCEEDED A QUARTER OF A MILLION DOLLARS.

WE'RE REALLY GETTING OFF OF WHAT I THINK WE NEED TO UNDERSTAND TODAY. THERE WAS A MOTION IN LIMINE FILED. THERE WAS A MOTION IN LIMINE GRANTED. THERE'S TWO ISSUES AS TO WHETHER THIS MOTION IN LIMINE COVERED THE GROUP INSURANCE AND WHETHER IT COVERED

THE FREE MEDICAL BENEFITS. YOU WERE SAYING EARLIER THAT DURING DEPOSITIONS, YOU FOUND OUT THAT THE PLAINTIFFS HAD RECEIVED A LOT OF MEDICAL BENEFITS AND WAS IT YOUR INTENTION THEN TO OFFER THAT EVIDENCE, THAT IS, THAT SHE GOT FREE MEDICAL BENEFITS, TO THE JURY? AND WAS THAT THE SUBJECT OF YOUR CONVERSATION WITH MR. SMITH BEFORE THIS CASE GOT STARTED? THAT'S A VERY SIMPLE QUESTION.

YES, YOUR HONOR.

OKAY AND THE JUDGE AND YOU UNDERSTOOD AND MR. SMITH UNDERSTOOD THAT IF THERE WASN'T A MOTION COVERING IT THAT YOU WERE INTENDING TO OFFER TO THE JURY EVIDENCE THAT SHE RECEIVED THESE FREE MEDICAL BENEFITS, CORRECT?

NOT IF MR. SMITH DIDN'T BRING IT UP. MR. SMITH HAD THE ABSOLUTE RIGHT TO FASHION HIS CASE THE WAY HE SAW FIT. IT WOULD HAVE BEEN BETTER, IN MY OPINION, IF MR. SMITH HAD SIMPLY RELIED ON THE INVOICES, THE MEDICAL DOCUMENTS THAT WERE APPROVED PRETRIAL THAT SHOW THE HISTORY OF THE MEDICAL CARE AND TREATMENT THAT WAS RECEIVED IN THIS CASE THAT WAS PROPOUNDED FOR PAYMENT FOR COLLATERAL SOURCE RECOVERY IN THIS CASE.

JUSTICE SHAW HAS A QUESTION, EXCUSE ME.

THANK YOU.

IF THE COURT RULES INCORRECTLY ON A MOTION IN LIMINE TO EXCLUDE ON THE ISSUE OF COLLATERAL SOURCE EVIDENCE AND THEN -- BUT THE CASE HAS PROGRESSED IN SUCH A FASHION THAT OBVIOUSLY, THIS IS GOING TO LEAVE -- THE JURY'S GOING TO HAVE SOME QUESTION ABOUT THIS, AND -- OR IN THE MINDS OF THE PLAINTIFF, THERE'S GOING TO BE A QUESTION ABOUT COLLATERAL SOURCE THAT COUPLED WITH THE FACT THAT DEFENSE HAS VIGOROUSLY ARGUED ARE RELATIVE TO LETTING IT IN, WHAT'S WRONG AT THAT POINT WITH THE PLAINTIFFS BEING ABLE TO BRING THIS ISSUE BEFORE THE JURY A PREEMPTIVE STRIKE MORE OR LESS? SINCE THE ISSUE'S OUT THERE. THE COURT HAS INCORRECTLY RULED AGAINST THE PLAINTIFF. AND IN ORDER TO CLARIFY THIS ISSUE BEFORE THE JURY, OR CONSISTENT WITH THE PLAINTIFF'S FEELING THAT THE JURY WILL HAVE QUESTIONS RELATIVE TO THIS COLLATERAL SOURCE, WHY SHOULDN'T THE PLAINTIFF BE ALLOWED TO RAISE IT WITHOUT PENALTY?

I DON'T BELIEVE -- I GUESS THE DIFFERENCE IS I DON'T BELIEVE THAT MR. SMITH'S CLIENT WAS PENALIZED. I BELIEVE MR. SMITH DID BRING IT TO THE JURY'S ATTENTION. I BELIEVE IN FAIR CROSS-EXAMINATION, I ASKED THE APPROPRIATE QUESTIONS AND I BELIEVE THE COLUMBIA COUNTY JURY RELYING ON THEIR REASON AND GOOD SENSE BROUGHT BACK THE CORRECT VERDICT.

YOU'RE REALLY ARGUING THE HARMLESS ERROR THEN.

YES, I AM.

JUSTICE SHAW, YOU HAD A FOLLOW-UP QUESTION?

WELL, MY QUESTION I GUESS IS MORE OR LESS OF THE NATURE OF JUSTICE LEWIS': WHY WOULD THE DEFENSE ARGUE SO -- AGAINST IT IF IT DIDN'T INTEND TO - PUT IN COLLATERAL SOURCE? WHY WOULD IT PUT UP SUCH AN ARGUMENT?

CLEARLY, JUSTICE SHAW --

THAT'S ALMOST MISLEADING TO MAKE THE GREAT ARGUMENT AGAINST IT.

YES, YOUR HONOR. AND IN MY 15 YEARS OF DOING DEFENSE WORK, AND BEING REACTIVE I MUST

CERTAINLY PREPARE MY CASE SO THAT AS THE SECOND PERSON IN LINE, I MUST ADOPT MY BODY OF EVIDENCE AND MY ATTACK, AS IT WERE, TO BEST SERVE MY CLIENT. CLEARLY IF MR. SMITH HAD NOT BROUGHT THIS EVIDENCE IN, CLEARLY IF HE HAD SIMPLY TRIED HIS CASE ON THOSE DOCUMENTED MEDICAL BENEFITS, SERVICES THAT MS. SHEFFIELD DID RECEIVE, AND SHE RECEIVED AN ENTIRE BODY OF THEM, AND OMITTED THIS FREE BODY OF SERVICES, IT WOULD HAVE BEEN A MUCH CLEANER CASE, AND I WOULD HAVE BEEN IN GREAT PERIL IN THEN OPENING THE DOOR AND CAUSING THE ARGUMENT MYSELF. MR. SMITH CHOSE NOT TO DO THAT.

JUSTICE LEWIS, I THINK, HAD A QUESTION.

YES, SIR.

SO YOU WOULD HAVE TRIED THE CASE ON THE BASIS THAT THE PLAINTIFF HAD NO TREATMENT AT ALL, BECAUSE THERE WOULD BE NO REFERENCE TO ANY OF THIS FREE TREATMENT BECAUSE IT COULD NOT BE MENTIONED. SO THE EXTENSIVE TREATMENT WHATEVER IT WAS OR WAS NOT, THE JURY WOULD NEVER KNOW EXTENT THE LADY HAD TO HAVE INJECTIONS FOR PAIN, A HAD TO HAVE WHATEVER SHE HAD TO HAVE, THAT WOULD NEVER COME BEFORE THE JURY AND THAT WOULD OPERATE TO YOUR BENEFIT BECAUSE IT WOULD APPEAR AS THOUGH THE PERSON HAD NOT SUSTAINED AN INJURY AT ALL.

THAT MAY BE TRUE, YOUR HONOR. THAT MAY BE TRUE.

THAT'S WHAT YOU REALLY WANTED TO KEEP OUT IS THAT THE PERSON HAD HAD ANY TREATMENT WHATSOEVER THEN.

WELL, ISN'T THE COROLLARY TRUE YOUR HONOR THAT IF SHE FELT THAT SHE NEEDED THESE TREATMENTS AND IF SHE KNEW THAT SHE NOT ONLY HAD PIP BUT GROUP HEALTH INSURANCE ALSO, COULDN'T SHE HAVE GONE EITHER IN HOUSE OR OUT HOUSE AND HAD THESE TREATMENTS AND HAD THEM DOCUMENTED? SO WHAT HAPPENED IS WE AROSE -- WE ARRIVED AT THE COLUMBIA COUNTY COURTHOUSE TO TRY A CASE WHERE THERE WAS A BODY OF EVIDENCE CONCERNING MEDICAL CARE AND TREATMENT FOR WHICH THERE WAS NO --

LET ME FOLLOW UP ON JUSTICE SHAW'S QUESTION THAT REALLY THE REASON THAT WE HAVE -- WE'RE HERE IN THIS CASE IS ON THE ASSERTED CONFLICT BETWEEN THE FIRST DISTRICT AND THE THIRD DISTRICT ON THE ISSUE OF INVITED ERROR. CAN YOU REALLY SAY THAT THERE IS INVITED ERROR IN AN INSTANCE IN WHICH IT IS -- I DON'T SAY THAT YOU CONCEDE IT, BUT IT SEEMS LIKE THAT THE DISTRICT COURT AGREED IN THE MAJORITY THAT THERE WAS ERROR IN RESPECT TO THE MOTION IN LIMINE RULING AS TO COLLATERAL SOURCE ISSUE? AND SO YOU HAD ERROR IN RESPECT TO THE MOTION IN LIMINE, AND IT SEEMS TO ME THAT THE VERY SIMPLE QUESTION HERE IS WHETHER ONCE THERE IS ERROR IN A PRETRIAL RULING, IS IT INVITED ERROR FOR THE PLAINTIFF THEN TO STEP IN, OR THE DEFENDANT, WHICHEVER SIDE LOSES THE PRETRIAL RULING, AND MAKE A PREEMPTIVE PRESENTATION IN ORDER TO PROTECT AGAINST THAT PRETRIAL RULING WHICH LATER TURNS OUT TO EVERYBODY AGREES IS ERROR? ISN'T THAT THE BOTTOM LINE HERE OF WHAT WE'RE STRUGGLING WITH?

IT MAY BE, CHIEF JUSTICE. AND IF, IF MR. SMITH HAD KEPT HIS PRESENTATION AND COUNSELED HIS CLIENTS TO KEEP HER PRESENTATION DIRECTLY TO THE MOTION IN LIMINE, THE ONE PAGE MOTION IN LIMINE THAT WAS FILED, YOU MAY BE CORRECT. BUT THEY DID NOT WANT TO DO THAT. THEY WANTED TO EXPAND THEIR DAMAGES PROFILE SO THAT THEY COULD THEN ATTACH A NONECONOMIC RECOVERY TO AN ECONOMIC DAMAGE PROFILE.

BUT IN ANSWER TO THE RESOLUTION OF THE SPECIFIC CONFLICT, WOULDN'T YOU AGREE THAT IF THE COURT MAKES AN ERROR AS TO THE MOTION IN LIMINE, THAT THE PARTY THAT IS THE VICTIM OF THAT ERROR BY THE TRIAL JUDGE SHOULD BE ABLE TO INTRODUCE ITS EVIDENCE, OR MAKE CERTAIN WHATEVER IS APPROPRIATE, TO PROTECT THE RECORD AND THE JURY FROM THE

ERROR THAT HAS BEEN MADE PRETRIAL BY THE TRIAL JUDGE? WOULDN'T YOU AGREE THAT THAT'S THE PROPER CONCEPT?

IT MAY BE, YOUR HONOR. I THINK THAT WAS -- THAT WAS CITED IN THE PORTER CASE. AND SO I UNDERSTAND AND HAVE READ THE PORTER CASE, AND I UNDERSTAND IT. AND THE WAY I WOULD DIFFERENTIATE IN THIS CASE IS THAT CLEARLY, MR. SMITH, WHO HAD EVERY OPPORTUNITY TO FILE THIS MOTION IN LIMINE, TO AMEND IT AND TO EXPAND IT ANY WAY HE WANTED TO CERTAINLY DIDN'T EXPAND IT AT LEAST IN SUPERIOR'S MIND TO INCLUDE THESE FREE SERVICES. AND THE VALUE THEREON. I TRUST THE COURT UNDERSTANDS THAT MR. SMITH THEN CONNECTED THE VALUE OF -- THE FULL VALUE OF THOSE FREE SERVICES AS HE SAW THEM THROUGH THE EYES OF HIS RETAINED EXPERT ECONOMIST. SO THAT HE --

BUT THEN WHY, IF THAT'S THE CASE, WHY DIDN'T SUPERIOR AT THE TIME THAT THE PLAINTIFF'S ATTORNEY MADE THE STATEMENT, ONCE THEY HAD THE COURT REPORTER THERE, THAT INDICATES THAT WE WERE, IN FACT, TALKING ABOUT MORE THAN THE INSURANCE, BUT ALL OF THESE OTHER BENEFITS ALSO? WHY WASN'T THERE SOME KIND OF OBJECTION OR CLARIFICATION MADE BY SUPERIOR?

I DON'T KNOW, YOUR HONOR. MY PERFECT WEST HEAD NOTE IS THERE'S NO SUCH THING AS A PERFECT TRIAL.

WE'RE LEFT AS YOU CAN SEE WE'RE LEFT BELIEVING THAT EVERYONE WAS IN AGREEMENT THAT WE WERE TALKING ABOUT MORE THAN JUST COLLATERAL INSURANCE, BUT OTHER KINDS OF BENEFITS, ALSO.

AND ALL I CAN REPRESENT TO THE COURT IS AS THE TRIAL ATTORNEY, THE ATTORNEY WHO FILED THE ANSWER IN THIS CASE AND WHO WENT TO THE FIRST -- WHO FILED THE BRIEFS IN THE FIRST VCA AND THE REHEARING NOW STANDS BEFORE YOU. ALL I CAN EVER TELL YOU IS THAT SUPERIOR WOULD NEVER HAVE AGREED TO ALLOW THE INTRODUCTION OF FREE BEHIND CLOSED DOORS SERVICES THAT WERE RECEIVED FREE BY THIS LADY WHO WORKED AT THIS FACILITY WHEN SHE HAD GROUP INSURANCE THAT COULD HAVE INVOICED THIS MATERIAL. WE WOULD NEVER AGREED TO THE EXPANSION OF THE MOTION IN LIMINE TO THAT DEGREE. I'M NOT SURE THE CLOCK -- I'D LIKE TO TURN TO THE ISSUE OF PERMANENCEY.

YOU HAVE TWO MINUTES.

THANK YOU, YOUR HONOR. I'D LIKE TO TURN BRIEFLY TO THE ISSUE OF PERMANENCEY WHICH I DON'T BELIEVE ACTUALLY IS AN ISSUE IN THIS CASE FOR THIS REASON. AND I WILL RELY ON THE RECORD THAT THE JURY CERTAINLY HAD AN OPPORTUNITY IN MANY WAYS TO DETERMINE THAT, VERY CORRECTLY SO, THAT MS. SHEFFIELD DID NOT SUSTAIN A PERMANENT INJURY, AND SO THEIR CONCLUSION IN THAT REGARD WAS CORRECT. BUT I WOULD LIKE TO POINT OUT A COUPLE OF POINTS AS TO THAT. FIRST OF ALL, THE FIRST VCA INDICATED THAT, AND THIS EVEN WAS OVERLOOKED BY ME, BUT I WOULD LIKE THIS COURT TO ACKNOWLEDGE THAT DR. PUENTE GUZ GUZMAN, WHO WAS THE TREATING PHYSICIAN FROM GAINESVILLE WHO SAW MS. SHEFFIELD HERKS ALSO HAS AN OFFICE I THINK IN LAKE CITY, AND HIS EVIDENCE WAS BROUGHT TO THE COURT BY TRANSCRIPT. EVEN THE FIRST DCA RECOGNIZED IN CHAPTER 627, 737 HIS POSITION OF PERMY DID NOT REACH A PERMANENT INJURY WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY. THAT'S THE PLAINTIFF'S OWN DOCTOR NOT REACHING THAT LEVEL. WE RETAINED A DOCTOR AND THE COURT IF YOU'VE READ THE BRIEFS CAN UNDERSTAND THAT DOCTOR --

WAS YOUR ARGUMENT IN THE FIRST DISTRICT THOUGH SIMPLY THAT ALTHOUGH YOU HAD ALL THESE DOCTORS SAYING IT WAS A PERMANENT INJURY BECAUSE THERE WAS A VIDEOTAPE SURVEILLANCE THAT THAT WAS ENOUGH TO GO TO THE JURY ON?

IT'S MORE THAN THAT YOUR HONOR ALSO.

WAS THAT YOUR ARGUMENT IN THE FIRST DISTRICT?

YES, IT WAS.

THERE SEEMS TO BE FOR EXAMPLE THERE'S SOMETHING I GUESS THE PLAINTIFF IS CONCERNED ABOUT IN THE FIRST DISTRICT, YOU ARGUED SIMPLY HARMLESSNESS. NOW HERE YOU'RE ARGUING THE FIRST DISTRICT'S OPINION TALKS ABOUT INVITED ERROR, YOU'RE AGRICULTURE RING INVITED ERROR. IN THE FIRST DISTRICT YOU ARGUED SIMPLY THAT IT WAS A VIDEOTAPE. NOW YOU'RE REALLY EMBRACING WHAT THE FIRST DISTRICT SAYS WHICH IS THAT THE EXPERT TESTIMONY WAS CONFLICTING AND THAT THEREFORE ALLOWED THIS CASE TO GO TO THE JURY.

YES, AND THERE'S ONE OTHER PIECE OF EVIDENCE I THINK AND I WANT THIS COURT -- WE SIT HERE IN THESE HALLOWED HALLS AND I LABOR IN TRIAL COURTS AROUND NORTHEAST FLORIDA, CERTAINLY ANOTHER BIT OF EVIDENCE THAT IS A PART OF THE RECORD IN A WAY IS THE PLAINTIFF THEMSELVES, MS. SHEFFIELD. THAT COLUMBIA COUNTY JURY CERTAINLY HAD AN OPPORTUNITY AND A RIGHT FOR THREE DAYS TO BE IN CLOSE PROXIMITY TO MS. SHEFFIELD AND THEY CAN CERTAINLY AS THE JURY INSTRUCTIONS ALLOW BRING INFERENCES IN REASON TO THE DEVELOPMENT OF THAT APPEARANCE.

YOU'RE REAL ARGUMENT IF I COULD WITH THE INDULGENCE OF THE CHIEF IS THAT THE JURY'S NOT BOUND BY THE MEDICAL TESTIMONY. THAT IS, IF THERE IS OTHER EVIDENCE THAT THE DEFENDANT IS FUNCTIONING ALL RIGHT AND NOT EXHIBITING SIGNS OF DISABILITY OR WHATEVER, THAT A LAY JURY CAN RELY ON THAT EVIDENCE TO FIND AN INJURY IS NOT PERMANENT. AM I CORRECT?

YES, YOU ARE, YOUR HONOR. I COULD CLEARLY SAY, WHEN I WAS THINKING ABOUT THIS, I COULD CLEARLY SEE WHERE THERE WOULD BE AN INCIDENT WHERE THERE WOULD HAVE TO BE APPELLATE REDRESS. SAY FOR INSTANCE SOMEBODY LOST A LIMB AND A JURY CAME BACK AND SAID THERE WAS NO PERMANENT INJURY. THAT WOULD FLY IN THE FACE OF REASON AND FACT.

BUT MOST SOFT-TISSUE INJURY CASE YOU WOULD HOLD THAT JUST LAY TESTIMONY THAT A DEFENDANT'S DOING -- I MEAN A PLAINTIFF IS FUNCTIONING ALL RIGHT WOULD BE ENOUGH TO TAKE IT TO THE JURY.

WHEN ATTACHED WITH ALL OF THE MEDICAL EVIDENCE, YES.

JUSTICE -- YOUR TIME HAS EXPIRED, MR. WINTERS. THANK YOU VERY MUCH.

THANK YOU UL. -- ALL.

IF I COULD JUST BRIEFLY DEAL WITH THE PERMANENCY ISSUE, I THINK THAT THE CASE LAW IS CLEAR THAT THE DEFENDANT HAS TO EITHER PRESENT COUNTER VAILING EXPERT TESTIMONY THAT CONTRADICTED WHAT ALL THE EXPERTS HAD SAID, CONFLICTING RELEVANT LAY TESTIMONY, OR HE HAD TO SEVERELY IMPEACH THE EXPERT WITNESSES THAT WERE PRESENTED.

HOW DO WE SQUARE THIS RELIANCE ON THE EXPERTS WITH THE ORDINARY INSTRUCTIONS TO THE JURY THAT THEY CAN ACCEPT OR REJECT EXPERT OPINIONS OR THE TESTIMONY OF WITNESSES? IN OTHER WORDS, ISN'T IT DISCUSSED THROUGHOUT OUR CASE LAW THAT ALTHOUGH EXPERTS CAN OFFER THEIR OPINIONS AND EVERYTHING, THAT EVEN WITHOUT A COUNTERVAILING EXPERT OPINION THAT A JURY IS FREE TO EXAMINE AND PLACE THEIR OWN VALUATION ON AN EXPERT'S TESTIMONY? I MEAN, ISN'T IT --

JUDGE, I THINK THAT'S THE REASON THAT WE HAVE A MOTION FOR DIRECTED VERDICT IN THIS KIND OF CASE. THAT'S THE REASON WE HAD THE CASE LAW THAT WE HAVE, THAT THIS SHOULD

NOT HAVE BEEN PRESENTED TO THE JURY AT ALL. BECAUSE YES, THE JURY ORDINARILY CAN ACCEPT OR REJECT EVIDENCE THAT'S PRESENTED FROM WITNESSES. BUT IN THIS CASE, THE CASE LAW IS VERY CLEAR THAT IF YOU HAVE CONSISTENT EVIDENCE, MEDICAL EVIDENCE, OF A PERMANENT INJURY, THEN A DIRECTED VERDICT SHOULD BE ENTERED FOR THE PLAINTIFF.

SO WE END UP WITH IF THERE'S EXPERT TESTIMONY BY ONE SIDE IN A CASE ABOUT AN ISSUE, BUT THERE'S NO EXPERT TESTIMONY PRESENTED BY THE OTHER SIDE, THAT THERE ALWAYS HAS TO BE A DIRECTED VERDICT ON THE RESOLUTION OF THAT ISSUE AS LONG AS THERE'S EXPERT TESTIMONY JUST ON ONE SIDE?

ON MOTION BY THE PLAINTIFF, YES, SIR. AND I BELIEVE THAT'S WHAT THE CASE LAW SAYS, THAT UNLESS THEY CAME ALONG AND THEY PRESENTED OTHER EXPERT TESTIMONY TO THE CONTRARY OR THEY SEVERELY IMPEACHED OREXPERT TESTIMONY, NEITHER OF WHICH THEY DID --

SO YOU CAN HAVE A FILM OF SOMEBODY RUNNING THE BOSTON MARATHON AND AS LONG AS THE DOCTOR SAID, WELL, YOU KNOW, SHE WAS JUST IN PRETTY GOOD SHAPE THAT DAY, THAT SHE COULD DO THAT AND THAT'S NOT INCONSISTENT WITH MY OPINION THAT SHE HAS A PERMANENT INJURY, NOT WITHSTANDING THAT, THAT ISSUE WOULD BE TAKEN AWAY FROM THE JURY. THERE WOULD HAVE TO BE A FINDING --

IT MIGHT NOT BE INCONSISTENT WITH THE MEDICAL TESTIMONY. IN THIS CASE SHE HAD SOFT-TISSUE INJURIES. ALL HE PRESENTED WAS A SURVEILLANCE TAPE WHICH SHOWS SHE SEEMED TO BE MOVING AROUND OKAY. THAT DOESN'T DISCOUNT THE FACT SHE HAD SOFT-TISSUE INJURIES.

BUT IT'S THE OPPOSITE OF THAT THAT I'M ASKING ABOUT. DOES IT MANDATE A FINDING THAT THERE IS A PERMANENT INJURY AS A MATTER OF LAW?

I BELIEVE THE LAW DOES MANDATE THAT A DIRECTED VERDICT SHOULD BE ENTERED WHEN ALL OF THE MEDICAL EVIDENCE IS CONSISTENT THAT THERE IS A PERMANENT INJURY AND WHEN THE PLAINTIFF MOVES FOR A DIRECTED VERDICT, YES, SIR.

THANK YOU, MS. MORGAN. I THINK YOUR TIME IS UP. THANK YOU, COUNSEL.