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## **William G. Bell v. Janet Snyder**

NEXT CASE ON THE COURT'S CALENDAR THIS MORNING IS BELL VERSUS SNYDER. MR. BRANNOCK?

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. I AM STEVE BRANNOCK OF HOLLAND AND KNIGHT, HERE ON BEHALF OF THE PETITIONER OF THE BELL ESTATE. THIS CASE PRESENTS TWO IMPORTANT LEGAL ISSUES THAT I WILL BE FOCUSING ON THIS MORNING. THE FIRST IS WHETHER TROUBLE DAMAGES CAN BE AWARDED AGAINST THE STATE AND THE SECOND IS WHETHER THE TRIAL JUDGE MISSED A SPOILIATION. LET ME TURN YOU TO THE TROUBLED ISSUES THAT I BRING BEFORE THE COURT TODAY. THIS COURT HAS HELD, IN THE LOWER CASE THAT, PUNITIVE DAMAGES MAY NOT BE ENTERED INTENSE AGAINST A STATE, BECAUSE IT IS WRONG -- AGAINST AN ESTATE, BECAUSE IT IS WRONG TO PUNISH THE BENEFICIARIES AND CREDITORS OF THE DECEDENT. IN THIS CASE --

THERE HAS NOT BEEN A CASE IN LOWER THAT DID NOT DEAL WITH THE ISSUE OF TROUBLE DAMAGES. STATUTORY TROUBLE DAMAGES. CORRECT?

YES. THERE IS A THIRD DISTRICT COURT OF APPEAL THAT DEALT WITH TREBL DAMAGES, AND THAT HEALTH THAT -- AND THAT COURT HELD, IN THAT PARTICULAR CASE, THAT TREBLE DAMAGES --

WE HAVE GOT TO PROVIDE A LEAP TO GET TO JURISDICTION HERE, DO WE NOT, IN ORDER TO GET JURISDICTION, WE HAVE TO, FIRST, EQUATE PUNITIVE DAMAGES AND TREBLE DAMAGES, AND FIND, THEN, THERE TO BE A CONFLICT WITH LOWER. IS THAT -- I THINK THAT THERE ARE TWO WAYS WE CAN GET HERE. ONE, THERE IS A DIRECT CONFLICT WITH DEALT WITH TREBLE DAMAGES, AND SECONDLY WE HELD WITH THE FACT OF THE LOWER THAT YOU CAN NOT PUNISH IN AN ESTATE, AND AS A CONSEQUENCE IS TREBLE DESIGNED TO COMPENSATE OR IS TREBLE DESIGNED TO PUNISH? THERE ARE MANY FLORIDA CASES, AND EVERY CASE THAT HAS FOCUSED ON TREBLE DAMAGES HAS DETERMINED THAT THE TREBLE DAMAGES ARE, IN FACT, DESIGNED AS PUNITIVE AND DESIGNED TO PUNISH.

IN DEALING WITH A SITUATION OF COMMON LAW, AND WHETHER, AS A MATTER OF COMMON LAW POLICY, IT WAS FAIR TO ASSESS THE PUNITIVE DAMAGES AGAINST THE ESTATE. IN THIS CASE, WE ARE DEALING WITH A STATUTORY CAUSE OF ACTION AND LEGISLATIVELY CREATED DAMAGES. WOULD YOU AGREE THAT, WHETHER YOU CALL THIS PUNITIVE OR COMPENSATORY OR REMEDIAL, THAT, IF THE LEGISLATURE INTENDS FOR THESE DAMAGES TO BE ASSESSED AGAINST THE ESTATE, IF THE PERSON DIES AND, SAY, IN THE COURSE OF THE LITIGATION OR WHATEVER, THERE IS DIFFERENT TIMES THAT THE PERSON COULD DIE, THAT THERE IS NO CONFLICT THAT, IN THAT SITUATION, IN OTHER WORDS, A LEGISLATIVE DETERMINATION, THAT EVEN IF THEY CALLED IT PUNITIVE DAMAGES, THAT THOSE WOULD BE PROPERLY ACCESSIBLE AGAINST THE ESTATE, AS THE SUCCESSOR TO THE DECEDENT.

THE LEGISLATURE, CERTAINLY, HAS THE POWER TO IMPOSE TREBLE DAMAGES AGAINST AN ESTATE OR PUNITIVE DAMAGES AGAINST AN ESTATE. THE LEGISLATURE HAS NOT CHOSEN TO DO THAT HERE. THE TREBLE DAMAGE REMEDY, IN 772.11 AND THE SURVIVOR STATUTE IN 46.021, NEITHER, SAY ANYTHING ABOUT IMPOSING TREBLE DAMAGES AGAINST AN ESTATE. INTERESTINGLY, SECTION -- ALL 46.021 SAYS IS THAT ALL CAUSES OF ACTION SURVIVE. THIS SEPARATION OF POWERS ARGUMENT WAS, ALSO, RAISED IN THE LOWER CASE. THE PLAINTIFF IN

THE LOWER CASE ARGUED THAT, BECAUSE 46.021 SAYS ALL CAUSES OF ACTION SURVIVED, THEN, THEREFORE, PUNITIVE DAMAGES MUST SURVIVE AS WELL. THIS COURT DISAGREED AND SAID THAT THE PUNITIVE DAMAGES DID NOT SURVIVE, SO, YES, IF THERE HAD BEEN A SPECIFIC LEGISLATIVE DETERMINATION THAT PUNITIVE OR TREBLE DAMAGES SURVIVE, THE LEGISLATURE HAS THE POWER TO DO THAT, BUT SINCE THERE HAS BEEN NO SUCH DETERMINATION, THEN IT IS A COMMON LAW DECISION AS TO WHETHER AN ESTATE IS GOING TO BE DER I HAVETIVELY LIABLE FOR THE ALLEGED SINCE OF THE DECEDENT. THE MacARTHUR DAIRY CASE LOOKED SPECIFICALLY AT THAT ISSUE AND DETERMINED THAT ALL THE LEGISLATURE HAS DONE WITH ITS TREBLE DAMAGE REMEDY IS IMPOSE A CAUSE OF ACTION. IT HAS GRANTED A CAUSE OF ACTION. IT HAS NOT BEEN DETERMINED AGAINST WHICH PARTIES YOU ARE GOING TO HAVE A CAUSE OF ACTION. IF THERE IS A QUESTION OF DERIVATIVE LIABILITY OR VICARIOUS LIABILITY, THAT IS A MATTER FOR THE COURTS, AND SINCE THE LEGISLATURE HAS NOT SPOKEN TO THAT ISSUE, THEN THIS COURT HAS THE POWER TO DETERMINE WHETHER AN ESTATE SHOULD BE VIK AREASLY OR, ESSENTIALLY DER I HAVETIVELY LIABLE FOR TREBLE DAMAGES OR PUNITIVE DAMAGES. THIS COURT, IN LOWER, HELD THAT YOU COULD NOT BE DER I HAVETIVELY LIABLE FOR PUNITIVE DAMAGES, AND WE THINK THE SAME RATIONALE HOLDS FOR TREBLE DAMAGES.

IN THIS CASE, THE DECEDENT WAS THE PERSON WHO STOLE THE MONEY OR THE JURY FOUND THAT HE STOLE THE MONEY FROM HIS WIFE. CORRECT?

THAT'S THE ALLEGATION. YES.

AND SO HE WAS IN CONTROL OF THE ASSETS OF HIS WIFE, SO WAS IT ONLY, THEN, WAS THERE AN ISSUE OF DISCOVERY? IN OTHER WORDS, IF THE ONLY WAY THAT THEY FOUND OUT ABOUT THE CIVIL THEFT WAS SUBSEQUENT TO HIS DEMISE, WOULD THE SITUATION BE DIFFERENT? IN OTHER WORDS HERE IS SOMEONE THAT STEALS MONEY. THEY ARE ABLE TO HIDE IT, BECAUSE THEY ARE IN A POSITION OF TRUST, SO THERE IS NO PRACTICAL WAY TO FIND OUT ABOUT THIS, UNTIL THE PERSON IS DECEASED. IS THAT, FROM A POLICY POINT OF VIEW, HOW DO YOU -- HOW DO WE LOOK AT THAT SITUATION?

THE POLICY BEHIND THE LOWER DECISION IS THAT YOU DON'T PUNISH THE INNOCENT, AND, HERE, THE ESTATE, THE BENEFICIARIES OF THE ESTATE AND THE CREDITORS OF THE ESTATE ARE THE INNOCENT PARTIES. IF TREBLE DAMAGES WERE DESIGNED, SOMEHOW, TO COMPENSATE THE VICTIM, THEN, YES, I THINK THAT THAT POLICY MIGHT JUSTIFY THE IMPOSITION OF TREBLE DAMAGES AGAINST AN ESTATE, BUT ALL OF THE CASES THAT HAVE LOOKED AT THE PURPOSE OF TREBLE DAMAGES, HAVE DETERMINED THAT THE PURPOSE OF TREBLE DAMAGES IS TO PUNISH, NOT TO COMPENSATE, AND SO THE EASY WAY TO ACCOMMODATE BOTH INTERESTS IS TO DO EXACTLY WHAT THE ROGERS DECISION DID, A DECISION OF THE OLD FIFTH CIRCUIT, DEALING WITH ANTITRUST DAMAGES, WHICH IS THAT YOU ALLOW A SINGLE DAMAGE CLAIM TO SURVIVE BUT YOU DON'T IMPOSE TREBLE DAMAGES. IN FACT, ALL OF THE COURTS THAT HAVE LOOKED AT TREBLE DAMAGE REMEDIES, EITHER UNDER THE ANTITRUST LAWS OR UNDER THE CIVIL THEFT LAWS, THE MacARTHUR DAIRY CASE IN FLORIDA OR THE RICO STATUTE, WHICH, ALSO, IMPOSES TREBLE DAMAGES, HAVE, ALL, DETERMINED THAT, ALTHOUGH A SINGLE DAMAGE CAUSE OF ACTION MAY SURVIVE AN ESTATE, A TREBLE DAMAGES CAUSE DOESN'T SURVIVE. THERE ARE A NUMBER OF CASES THAT WE CITED. THE SUMMERS CASE, OF COURSE, THEY ARE ALL DECISIONS DECIDED -- CITED IN OUR BRIEF. IN FACT, WE CANNOT FIND A SINGLE CASE ACTUALLY IMPOSING A TREBLE DAMAGE REMEDY AGAINST AN ESTATE. THE ONLY TWO CASES THAT THE OPPOSITION CITES ON THAT POINT ARE THE FIRST AMERICAN CASE AND THE EPSTEIN CASES. BOTH OF THOSE CASES DO NOTHING MORE THAN SUGGEST THAT A -- THAT A -- IN ONE CASE IT WAS A RICO CASE AND THE OTHER CASE WAS AN ANTITRUST CASE. BOTH CASES SAY THAT THE CAUSE OF ACTION SURVIVED BUT NEITHER CASE SPECIFICALLY HELD THAT THE TREBLE -- THAT TREBLE DAMAGES COULD, IN FACT, BE IMPOSED AGAINST AN ESTATE. BOTH OF THOSE CASES WERE DECIDED VERY EARLY IN THE CASE, ON MOTIONS, AND THE COURT NEVER GOT TO THE ULTIMATE ISSUE, WHICH IS THE ISSUE IN FRONT OF THIS COURT, WHICH IS AT THE END OF THE DAY, CAN YOU, THEN,

IMPOSE TREBLE DAMAGES AGAINST AN ESTATE. ALL OF THE DECISION THAT IS HAVE GRAPPLED SPECIFICALLY WITH THAT ISSUE HAVE GONE OUR WAY, AND WE BELIEVE THAT THAT IS --

DO YOU AGREE, THOUGH, THAT PARKS BURY HILL AND MacARTHUR ARE NOT -- YOU CAN'T USE THOSE AS YOUR BASIS FOR CONFLICT. YOU WOULD HAVE TO DO WHAT IS A CONSIDERABLE EXTRAPOLATION TO USE THOSE?

WE -- I WOULD RESPECTFULLY DISAGREE WITH. THAT WE WOULD BE LEAVE THAT BOTH ARE A STRONG BASIS FOR CONFLICT. THE LOWER DECISION IS A STRONG BASIS FOR CONFLICT, BECAUSE THE HOLDING OF THIS COURT IS, IN LOWER, THAT YOU CAN NOT PUNISH THE INNOCENT BENEFICIARIES AND CREDITORS OF AN ESTATE, FOR THE SINCE OF THE DECEDENT. IT DOESN'T MATTER --

BUT THEY WERE DEALING WITH A STATUTE SPECIFICALLY, WEREN'T THEY? 772.11, WHICH IS DEALING WITH TREBLE DAMAGES, UNDER THAT SPECIFIC STATUTE. THAT WAS THE EXTENT, WAS IT NOT?

THIS CASE DEALS WITH A STATUTE. THE LOWER CASE DEALS WITH PUNITIVE DAMAGES. I THINK, HOWEVER, IT IS IMPORTANT TO NOTE THAT THERE IS NOT THIS BRIGHT-LINE DISTINCTION BETWEEN COMMON LAW REMEDIES AND PUNITIVE DAMAGE REMEDIES, AND, I AM SORRY, STATUTORY REMEDIES. THE LEGISLATURE HAS BEEN VERY INVOLVED IN SHAPING THE PUNITIVE DAMAGE REMEDY. THERE ARE SEVERAL STATUTES IN FLORIDA, NOW THAT, SHAPE AND LIMIT PUNITIVE DAMAGES. THE LEGISLATURE HAS DEFINITELY BEEN INVOLVED, SO WE ARE NOT DEALING WITH COMMON LAW VERSUS STATUTORY. THE IMPORTANT POINT IS WHETHER THE LEGISLATURE, IN THE STATUTE, 772.11, OR 46.021, HAS SPECIFICALLY STATED THE TREBLE DAMAGES MAY BE IMPOSED ON AN ESTATE, AND NEITHER OF THOSE STATUTES, I HAVE REACHED THAT CONCLUSION, AND THIS COURT, SPECIFICALLY, IN THE LOWER CASE, LOOKED AT 46 .0 21, AND SUGGESTED THAT THE FACT THAT CAUSES OF ACTION SURVIVED, IS NOT A SPECIFIC-ENOUGH LEGISLATIVE STATEMENT TO IMPOSE TREBLE DAMAGES AGAINST AN ESTATE, SO IF WE LOOK AT THE PUBLIC POLICY, WHICH IS THAT TREBLE DAMAGES ARE DESIGNED TO PUNISH. PUNITIVE DAMAGES ARE DESIGNED TO PUNISH, AND THAT IN EATS CASE, ONCE -- IN EITHER CASE, ONCE THE DECEDENT HAS PASSED ON AND THAT THE DAMAGE IS ONLY GOING TO BE ASSESSED AGAINST THE BENEFICIARY AND THE CREDITORS, THE PUBLIC POLICY BEHIND TREBLE DAMAGES NO LONGER IS IN PLACE, AND THEREFORE THIS COURT, IN THE LOWER DECISION AND WE THINK IT SHOULD, IN THIS DECISION, AS WELL.

IT DOES LOOK LIKE, UNDER THIS PARTICULAR STATUTE, THE LEGISLATURE DREW A PRETTY FIRM DISTINCTION BETWEEN PUNITIVE DAMAGES AND TREBLE DAMAGES, IN THAT IT SAYS IN NO EVENT SHALL PUNITIVE DAMAGES BE AWARDED.

BUT IT DID THAT FOR PRESEESLY THE OPPOSITE REASON. THE LEGISLATIVE HISTORY INDICATES THAT THE LEGISLATURE MADE THAT DETERMINATION, BECAUSE TREBLE DAMAGES AND PUNITIVE DAMAGES ARE, BOTH, PUNITIVE REMEDIES, AND THEREFORE IT WOULD BE DUPLICATIVE TO ALLOW THE RECOVERY OF TREBLE DAMAGES AND PUNITIVE DAMAGES.

UNDER OUR CASE LAW, THERE, REALLY, IS A DISTINCTION BETWEEN TREBLE DAMAGES AND PUNITIVE DAMAGES, IN THAT IN TREBLE DAMAGES THE LEGISLATURE CAN IMPOSE THOSE WITH NO CONSIDERATION AS TO THE ASSETS OF THE DEFENDANT, WHEREAS YOU CANNOT DO THAT IN PUNITIVE DAMAGES. ISN'T THAT CORRECT?

THAT'S TRUE.

AND SO THERE IS A SUBSTANTIVE DISTINCTION, UNDER FLORIDA LAW, BETWEEN PUNITIVE AND TREBLE DAMAGES.

RIGHT. BUT THE ESSENTIAL HEART OF BOTH TREBLE DAMAGES AND PUNITIVE DAMAGES IS THAT IT IS DESIGNED TO PUNISH, AND THE QUESTION IS CAN YOU PUNISH THE INNOCENT FOR THE SINCE OF THE GUILTY, AND ALL THROUGHOUT FLORIDA LAW, BOTH STATUTES AND THE COMMON LAW, FLORIDA --

BUT, I MEAN, JUST IN THIS INSTANCE, THAT IS PRECISELY WHAT YOU ARE NOT DOING. ISN'T THAT CORRECT? THIS IS SOMETHING THAT THE DECEDENT ISAL EDGED TO HAVE DONE, IN ORDER TO ENHANCE THE VALUE OF THE ESTATE THAT THE DECEDENT LEFT. NOW, THAT IS PREVICELY WHAT THIS IS GETTING TO -- PRECISELY WHAT THIS IS GETTING TO, RIGHT?

THAT IS EXACTLY RIGHT, AND IF YOU AWARD SINGLE DAMAGES TO THE ALLEGED VICTIM HERE, THAT INTEREST HAS, NOW, BEEN TAKEN CARE OF. THE VICTIM HAS BEEN COMPENSATED. WHAT WE ARE TALKING ABOUT, THOUGH, IS THE ADDITIONAL MONIES, THE DOUBLE AND TRIPLE DAMAGES ON TOP OF THAT, THAT ARE COMPLETELY UNNECESSARY, IN ORDER TO COMPENSATE THE VICTIM AND MAKE THE VICTIM WHOLE. FLORIDA LAW, WE THINK, IS VERY CLEAR, AND AS I SAID BEFORE, ALL OF THE CASES TO HAVE LOOKED AT THIS ISSUE FROM AROUND THE COUNTRY HAVE REACHED THIS IDENTICAL CONCLUSION THAT, ALTHOUGH IT MAY BE PERMISSIBLE TO --

THE POINT THAT STRIKES ME, MR. BRANNOCK, THAT WHAT IS GOING ON HERE IS THE LEGISLATURE SAYING, OKAY, IF YOU ENHANCE THE VALUE OF YOUR ESTATE BY COMMITTING A CIVIL THEFT, THEN THIS IS THE REMEDY TO WHICH YOU ARE SUBJECT, JUST AS IF IT WERE AN ANTITRUST-TYPE OF CLAIM. AND THAT THAT IS VERY DIFFERENT THAN THE USUALLY RUN-OF-THE-MILL PUNITIVE -- THAN THE USUAL RUN OF THE MILL PUNITIVE DAMAGE CLAIM, WHICH WOULD BE IN SOME TYPE OF DRUNK DRIVING CASE. ISN'T THAT A REAL DISTINCTION?

THAT IS PRECISELY WHAT THE FIFTH CIRCUIT GRAPPLED WITH IN THE ROGERS CASE. THE ROGERS CASE WAS A TREBLE DAMAGES CASE, AN ANTITRUST CASE, AND WHAT THE FIFTH CIRCUIT SAID WAS, BECAUSE PART OF THE PURPOSE OF THE ANTITRUST LAWS IS TO MAKE SURE THAT THE VICTIM IS COMPENSATED, WE ARE GOING TO PERMIT THE ANTITRUST CAUSE OF ACTION TO SURVIVE, AND THE SAME HERE. WE DON'T ARGUE EW THAT THE CAUSE OF ACTION SURVIVES, BUT, THEN, THE FIFTH CIRCUIT WENT ON TO SAY THAT, ALTHOUGH THE CAUSE OF ACTION SURVIVES, WE THINK IT WOULD BE VERY UNFAIR TO PENALIZE THE BENEFICIARIES OF THE ESTATE AND THE CREDITORS OF THE ESTATE WITH TREBLE DAMAGES. SO THE CAUSE OF ACTION WILL SURVIVE. THE PLAINTIFF, IF THE PLAINTIFF SUCCEEDS AT THE END OF THE DAY IN PROVING THAT THERE IS A ANTITRUST VIOLATION, WILL RECOVER SINGLE DAMAGES AND THEREBY BE COMPENSATED, BUT WE WILL, ALSO, PRESENT -- PREVENT THE RESULT OF THE BENEFICIARIES AND CREDITORS TO BE COMPLICATED. WE ARE GOING TO IMPOSE SINGLE DAMAGES ONLY, SO THE ROGERS CASE DEALS VERY SPECIFICALLY WITH THAT, IN THE ANTITRUST CASE. THE SUMMERS AND OTHER CASES THAT WE CITED IN OUR BRIEF, DEAL WITH DAMAGES IN BOTH THE RICO CONTEXT AND THE ANTITRUST CONTEXT, AND IN EACH OF THOSE CASES DETERMINED THAT THE CAUSE OF ACTION SURVIVED, SO THAT THE VICTIM CAN BE COMPENSATED BY SINGLE DAMAGES, BUT THE VICTIM CANNOT RECEIVE TREBLE DAMAGES, AT THE EXPENSE OF THE ESTATE.

HOW DO YOU RESPOND TO THE ARGUMENT THAT THIS IS A REMEDIAL STATUTE, WHICH IS TO BE CONSTRUED, THEN, LIBERALLY IN FAVOR OF THE CLAIMANT, AND SECOND OF ALL, THAT PART OF THE REASON THAT YOU ALLOW TREBLE DAMAGES IS THAT, BECAUSE THE STATE WANTS TO ENCOURAGE CLAIMANTS TO BRING PRIVATE CAUSES OF ACTION FOR CRIMINAL ACTIVITY, AND THAT IN BOTH THOSE SITUATIONS, FAVORS ALLOWING A TREBLE DAMAGE AS WARD TO BE COLLECTED AGAINST AN ESTATE, FOR THE ACTS OF THE DECEDENT?

IN TERMS OF THE REMEDIAL ISSUE, IT IS CLEAR THAT THE OVERALL PURPOSE OF THE CIVIL THEFT STATUTE IS AT LEAST, IN PART, REMEDIAL, TO THE EXTENT IT IS DESIGNED TO COMPENSATE VICTIM. THE IMPORTANT POINT, THOUGH, IS THAT YOU HAVE TO LOOK AT THE PARTICULAR PURPOSE OF THE TREBLE DAMAGES PORTION OF THE STATUTE AND ASK YOURSELF WHETHER

THAT PORTION OF THE STATUTE IS REMEDIAL OR IF THAT PORTION OF THE STATUTE IS PUNITIVE. THAT IS EXACTLY THE ANALYSIS THAT THE SUMMERS CASE, ONE OF THE FEDERAL DISTRICT LEVEL DECISIONS THAT WE CITED, IN THE BRIEF THAT, IS EXACTLY THE ANALYSIS THAT THAT COURT DOES, IN DETERMINING THAT, ALTHOUGH THE OVERALL PURPOSE OF THE STATUTE MAY BE REMEDIAL, THE TREBLE DAMAGE PORTION OF THE STATUTE IS PUNITIVE, AND THEREFORE, ALTHOUGH WE WILL PERMIT COMPENSATION, WE WILL PERMIT IT ONLY AT A SINGLE, OR PERMIT IT ONLY FOR SINGLE DAMAGES AND NOT FOR TREBLE DAMAGES.

HOW FAR, THOUGH, CAN THE COURTS GO, IN ESSENCE, AND IN REWRITING THE LEGISLATIVE SCHEME? THAT IS THAT, IF THE LEGISLATURE HAS CREATED A STATUTORY CAUSE OF ACTION AND REMEDY, AND THEN THEY HAVE SAID, IN THE DAMAGES PROVISION OF THAT, AND THE DAMAGES, FOR A VIOLATION OF THIS CAUSE OF ACTION, SHALL BE AND THEY HAVE JUST SET OUT THAT YOU COMPUTE IT THIS WAY, YOU HAVE DETERMINED, FOR INSTANCE, IN THIS CASE, WHAT THE ACTUAL DAMAGE IS WORTH, AND YOU MULTIPLY IT BY THREE, YOU KNOW, PLUS INTEREST OR WHATEVER ELSE MIGHT GO WITH THE THING, AND THIS IS OUR STATUTORY FORMULA FOR DAMAGES FOR THIS PARTICULAR CAUSE OF ACTION. NOW, HOW FAR CAN THE COURTS GO, IN SAYING, WELL, LEGISLATURE, WE UNDERSTAND YOU HAVE THE AUTHORITY TO DO THIS, BUT WE ARE GOING TO LOOK BACK, AND WE ARE GOING TO IMPOSE A COURT-MADE RULE ON THIS, BEFORE WE ALLOW TO YOU DO IT. AND IN APPLYING OUR COURT-MADE RULE, WE ARE ACTUALLY GOING TO END UP REDUCING THE DAMAGES THAT YOU PROVIDE IN THIS STATUTORY SCHEME, BY TWO-THIRDS OR WHATEVER. YOU KNOW. HOWEVER IT ENDS UP HERE. THERE IS SOME LIMITATION ON THE COURTS BEING ABLE TO TAKE A DAMAGES SCHEME THAT THE LEGISLATURE HAS DRAFTED AND NOW SORT OF REWRITING THAT, ON THE BASIS THAT THERE IS A COURT RULE THAT SHOULD, YOU KNOW, HAVE GREATER MEANING HERE? I AM VERY CONCERNED ABOUT THAT. THAT THE LEGISLATURE HAS -- YOUR ARGUMENT, OBVIOUSLY, IS APPEALING, BECAUSE THE LEGISLATURE HAS APPARENTLY SAID, WELL, AS A SUBSTITUTE FOR AN OPEN ENDED RIGHT TO GET PUNITIVE DAMAGES OR WHATEVER, OR OTHER DAMAGES, THIS IS A PARTICULAR SCHEME WE ARE GOING TO COME -- WE ARE GOING TO COME UP WITH, BECAUSE OF THE NATURE AND THE UNDERLYING DISFAVOR AND THAT KIND OF THING, BUT HOW FAR CAN THE COURTS GO, IN GOING BEHIND THAT AND ACTUALLY REDRAFTING THAT AND SAYING, WELL, NOW, IN SOME CASES, THE LEGISLATIVE DAMAGES PROVISION IS GOING TO BE ENFORCED, WHEN THE DEFENDANT IS STILL ALIVE, BUT WHEN IT IS A AN ESTATE, HERE, -- WHEN IT IT AN ESTATE, HERE, AND IT ENHANCES THE VALUE OF THE ESTATE, WE ARE GOING TO RULE THIS WAY. HELP ME WITH THAT DECISION.

IF THE LEGISLATURE HAD SPOKEN SPECIFICALLY TO THE ISSUE, IF THE LEGISLATURE HAD SAID YOU MAY ENTER A TREBLE DAMAGES AWARD AGAINST AN ESTATE, THAT WOULD BE THE END OF THE ANALYSIS. THIS COURT'S HANDS WOULD BE TIED. THE PROBLEM THAT WE HAVE, HERE, IS THAT THE LEGISLATURE HAS NOT SPOKEN SPECIFIC WLI. IT HAS NOT SPOKEN IN 772.11, AND IT HAS NOT SPOKEN IN 46.21. ALL WE HAVE IS THE GENERAL STATEMENT IN 46.21, THAT IN GENERAL, CAUSES OF ACTION SURVIVE. THIS COURT LOOKED AT 46.21, IN THE LOWER CASE, AND DECIDED THAT THE FACT THAT ALL CAUSES OF ACTION SURVIVE DOES NOT MEAN, NECESSARILY, THAT THE COURT HAS GIVEN UP ITS POWER TO DETERMINE AGAINST WHOM A REMEDY MAY BE ENTERED. THIS COURT, STILL, HAS THE COMMON LAW POWER TO DETERMINE WHEN AN INNOCENT PERSON IS GOING TO BE PUNISHED, BECAUSE THEY ARE TECHNICALLY OR DER I HAVETIVELY LIABLE FOR THE SINCE OF SOMEONE ELSE, AND UNLESS THE LEGISLATURE SPECIFICALLY STEPS IN AND SAYS WHAT THE EXTENT OF THE DERIVATIVE OR TECHNICAL LIABILITY IS, THIS COURT, STILL, MAINTAINS ITS TRADITIONAL COMMON LAW POWERS TO DRAW THAT LINE. THAT IS EXACTLY THE LINE THAT THE MacARTHUR DAIRY --

YOU HAVE USED UP ALL YOUR TIME.

THANK YOU.

MR. MATTHEW.

MAY IT PLEASE THE COURT. GOOD MORNING. LAMAR MATTHEWS. MY PARTNER, ART, ARTHUR HARDY. WE ARE IN IN SARASOTA AND WE REPRESENT THE RESPONDENTS, JANET SNYDER, WHO IS THE COURT-APPOINTED CONSERVATORY -- TORE, AS THEY -- CONSERVATOR, AS DHAL IT IN TENNESSEE. THIS -- AS THEY CALL IT IN TENNESSEE. THIS CASE WAS TRIED FOR TWO WEEKS IN TENNESSEE. MS. BELL AT THAT TIME WAS 84. SHE IS 87 NOW. THE COURT CONSIDERED APPEAL AND CROSS APPEALS, AND AFFIRMED UNANIMOUS, EXCEPT FOR THE ONE ISSUE OF TREBLE STATUTORY DAMAGES, WHICH THE TRIAL COURT HAD REFUSED, DID NOT DO. WE ARE BEFORE YOU --

UNDER 9 THE STATUTE, IF YOU FIND THAT THE THEFT ACTUALLY -- UNDER THE STATUTE, IF YOU FIND THAT THE THEFT ACTUALLY OCCURRED, THAT THE DAMAGES HAVE TO BE THREE TIMES THE AMOUNT OF THE THEFT?

THE STATUTE, WHICH IS A LEGISLATIVE PRONOUNCEMENT, AS A MATTER OF LEGISLATIVE POLICY, WHICH IS WHY IT IS DIFFERENT FROM THE COURT POLICY, IN THE AREA OF PUNITIVE DAMAGES AND WHY IT IS NOT THE SAME AS LOWER V BYRD, WHICH IS IF YOU FIND BY CLEAR AND CON FIENNES VINSING EVIDENCE, WHICH -- AND CONVINCING EVIDENCE, WHICH THE COURTS SAY IS A LEVEL OF INTENT, IT IS PURELY AN ADMINISTERIAL FUNCTION, AND AFTER THE JURY COMES BACK WITH THE VERDICT THAT THERE IS A CLEAR AND CONVINCING OF EVIDENCE OF FELONIOUS INTENT, THAT, AS A MATTER OF FACT, THE JUDGE TREBLES THOSE DAMAGES. THAT IS WHAT IT IS. WE ARE BEFORE YOU ON CONFLICT CERTAIN, AND YET THE -- CERT, AND YET THE PARTIES AGREE THAT THERE IS NO APPELLATE CASE, OTHER THAN THIS ONE, THAT HAS RULED WHETHER OR NOT STATUTORY TREBLE DAMAGES CAN BE ASSESSED AGAINST A TAET. IT IS EXACTLY THE -- AGAINST THE ESTATE. IT IS EXACTLY THE SITUATION THAT JUDGE ANSTEAD WAS ON IN THE FOURTH DISTRICT. IT WAS THE POOR MAN WITH ALS AND THE RIGHT TO SUSPEND MEDICAL TREATMENT, AND HE CON OCCURRED IN THE OPINION -- AND HE CONCURRED IN THE OPINION THAT THE TREATMENT COULD BE SUSPENDED, BUT HE FELT IT SHOULD BE CERTIFIED TO THIS COURT, AND HE SAID IN THAT CASE, AND EVERYONE AGREES THAT THIS IS THE FIRST IMPRESSION, AND THAT IS OUR CASE, TOO, WITH THE APPELLATE COURTS IN FLORIDA, AND THAT IS OUR CASE, TOO, THAT THERE WAS NO CONFLICT, AND HENCE HE WANTED A CONFLICT CERT, AND THERE IS NO OTHER WAY TO GET HERE. WE STRENUOUSLY BELIEVE AND ASSERT THAT THE CONFLICT, THERE IS NOT CONFLICT FOR THIS --

YOUR OPPONENT ARGUES THAT THERE IS CONFLICT WITH A CASE OUT OF THE THIRD, MacARTHUR. WHAT IS YOUR SPCK ON THAT?

IT IS NOT A -- WHAT IS YOUR POSITION ON THAT?

IT IS NOT A CASE INVOLVING AN ESTATE. IT IS A CASE INVOLVING, IN THAT CASE, A DRIVER AT MacARTHUR DAIRY, DOWN IN OKEECHOBEE, WAS DELIVERING STUFF TO CUSTOMERS, KEEPING THE MONEY, OR NOT DELIVERING THE STUFF. TAKING THE MONEY AND TURNING IT OVER TO THE BOSS, AND IN THAT CASE THEY FOUND BOTH THE EMPLOYERANT EMPLOYEE LIABLE. IT IS NOT A CASE ABOUT ESTATES AT ALL, AND IT IS NOT CONFLICT. IT, ALSO, WASN'T MENTIONED IN THE JURISDICTIONAL BRIEFS. AS I UNDERSTAND, I BELIEVE THE CONFLICT IS SUPPOSED TO BE WITH LORD VERSUS BYRD. THE REASON THAT IS NOT A CONFLICT IS THIS COURT, IN LORD V BYRD, THIS COURT DECIDED, 6-3, IN DECIDING OVER WHICH THIS COURT HAS HUSBANDRY, THAT THEY FELT IT WAS WRONG TO HAVE ESTATES BE RESPONSIBLE FOR PUNITIVE DAMAGES. THE DISSENT-THE THREE-PERSON DISSENT AUTHORED BY THEN JUSTICE GRIMES, FOUND OUT THAT WHAT THAT WAS IF THE PERSON DIED BEFORE THE JUDGE OR -- THE JUDGMENT OR DIED THE DAY AFTER THE JUDGMENT, DEPENDING ON HOW IT CAME OUT, BUT IN THAT CASE THAT IS THE LAW, AND THIS COURT HAS THE RIGHT TO DO. THAT HOWEVER, AS THE CASES OF VANBIBBER BEING THE PRINCIPLE PAL ONE, WHEN THE -- BEING THE PRINCIPAL ONE, THAT WHEN THE LEGISLATURE

CHOOSES TO EXERCISE ITS PREROGATIVE, IN A MATTER THAT IS NOT UNCONSTITUTIONAL, THIS COURT, OF COURSE, ESTABLISHED A SEPARATE POLICY, UNDER ITS DOMAIN, A SEPARATE POLICY THAT DEFERS TO THE LEGISLATURE, A VERY PAINFUL ONE, EXCEPT FOR PERSONS REPRESENTING INJURED PERSONS IN FLORIDA, WAS THE VAN BIB BMENT -- VAN BIBER CASE, THAT THE COURT COULD BE JOINED AS DEFENDANTS, THAT IS HOW I STARTED OUT PRACTICING LAW, IN THE LATE FIFTIES, THAT THE COURT COULD JOIN AS A THIRD PERSON BECAUSE THE COURT WAS THE BENEFICIARY OF THAT THIRD PARTY'S CONTRACT. AS YOU KNOW, INSURANCE COMPANIES WERE THIRD PARTY DEFENDANTS. MR. JONES AND ALLSTATE OR WHATEVER IT WERE. THE JONES CASE ADOPTED A DIFFERENT POLICY THAT, WHATEVER, SAID WE ARE GOING TO LET THE POLICY ATTACH BUT NOT AS A THIRD PARTY DEFENDANT. THE RESULT WAS THAT WAS REALLY PAINFUL FOR FOLKS THAT WERE INJURED, AND THE COURT NOTED THAT, BUT THEY SAID, YOU KNOW WHAT? THAT IS THE LEGISLATIVE PREROGATIVE, AND IN THAT INSTANCE, SPECIFICALLY THAT INSTANCE, IT IS OVERCOMES WHAT HAD BEEN OUR PRIOR JUDICIAL POLICY. THAT IS WHAT SEPARATION OF POWERS ARE ALL B.

BUT YOUR OPPONENT, HERE, SAID THAT THE LEGISLATURE, REALLY, HASN'T ADDRESSED THE ISSUE OF ESTATES, AND THAT REALLY SEEMS TO BE THE ARGUMENT IS THAT THEY HAVE THE POWER TO DO IT BUT NOT WITH REGARD TO ESTATES.

I CAN, WITH RESPECT TO MY COLLEAGUE, MR. BRANNOCK, THE, OF COURSE, DOESN'T SAY. THAT IT SAYS THE KIND OF PERSON THAT IS INJURED, BEEN STOLEN FROM, AND IT SAYS, IF YOU PROVE IT BY CLEAR AND CONVINCING EVIDENCE, AND THE CASE LAW IS THAT THAT IS FELONIOUS INTENT, YOU GET THREE-FOLDED DAMAGES. IT DOESN'T SAY YOU GET IT AGAINST SUPREME COURT JUSTICES OR SHORT LAWYERS FROM SARASOTA IT DOESN'T SAY ANYTHING. IT DOES SAY THAT YOU DON'T GET PUNITIVE DAMAGES, AND HOW THEY CAN GET AROUND A STATUTE THAT SAYS SPECIFICALLY YOU CAN'T HAVE PUNITIVE DAMAGES AND SAY THIS IS PUNITIVE DAMAGES BEYOND ME, THE LEG YOUR KNOWS HOW TO EXEMPT. THEY EXEMPTED 772.19. NO DAMAGES MAY BE RECOVERED UNDER THIS CHAPTER AGAINST THE STATE OR ITS AGENCIES, INSTRUMENTALITY, SUBDIVISIONS OR MUNICIPALITIES. THEY DIDN'T.

SURELY THE NO PUNITIVE DAMAGES LANGUAGE IS A TWO-EDGED SWORD. WHAT DO YOU SAY TO YOUR OPPONENT, WHO POINTS OUT THE FACT THAT ONE OF THE POSSIBLE INTERPRETATIONS OF THAT IS THAT, SINCE THEY ARE ALLOWING TREBLE DAMAGES FOR FELONIOUS CONDUCT, HERE, THAT, OF COURSE, THEY WOULDN'T ALLOW PUNITIVE DAMAGES, BECAUSE IN EFFECT THAT IS WHAT THEY HAVE ALLOWED BY TREBLE DAMAGES.

WELL, THAT COMES DOWN TO, AND I THINK, PROBABLY --.

WHAT PURPOSE DO YOU THINK THE LEGISLATURE HAD IN MIND FOR ALLOWING SOMEBODY TO RECEIVE THREE TIMES THE AMOUNT OF THEIR DAMAGES? IT HAS NOTHING TO DO WITH PUNISHMENT?

IT IS PART OF A STATUTORY SCHEME, IN WHICH THE STATUTES WILL REFLECT THERE ARE SOME 20 STATUTORY DAMAGE CLAIMS THAT THE LEGISLATURE HAS ENACTED. THEREFORE IT IS EGREGIOUS CONDUCT THAT THE LEGISLATURE WANTS TO SAY SOMETHING ABOUT IT, AS A MATTER OF POLICY.

BUT AREN'T ALL OF THESE STATEMENTS, THOUGH, USUALLY RELATED TO THE AWARD OF PUNITIVE DAMAGES. JUST BY THE TERMS THAT ARE USED, YOU AGREE, DO YOU NOT, IT IS THREE TIMES THE COMPENSATORY DAMAGES. THAT IS THE AMOUNT SOMEBODY HAS ACTUALLY BEEN DAMAGED, SO IT ACTUALLY HAS TO BE SOMEBODY SOMETHING BEYOND COMPENSATORY DAMAGES AND WHAT IS THERE LEFT?

STATUTORY DAMAGES IS WHAT IS LEFT, AND I WILL ADDRESS. THAT LET ME -- AND I WILL ADDRESS. THAT A WOMAN THROWN OUT BY HER HUSBAND, HATE CRIMES, STREET TERRORISM,

DRUG DEALING, THE LEGISLATURE HAS A WHOLE GROUP OF THESE TYPES OF CRIMES. YOUR QUESTION, JUSTICE ANSTEAD, GOES TO THE FACT IS A STATUTORY DAMAGE REMEDIAL OR IS IT PUNITIVE, AND IN FACT THAT IS NOT THE DISPOSITIVE ISSUE OF THIS CASE, ALTHOUGH IT WAS PRESENTED, I THINK, IN THE PETITION FOR CERT. THEY PARTAKE OF BOTH. THEY ARE, BOTH THE STATUTES, CLEARLY SAYS IT IS TO BE CONSTRUED IN LIGHT OF ITS REMEDIAL PURPOSES.

WELL, THEY ARE NOT FOR COMPENSATION. WOULD YOU AGREE? BECAUSE COMPENSATION HAS BEEN AWARDED, IF YOU GET YOUR BASIC DAMAGES AND INTEREST AND WHATEVER. IT, OBVIOUSLY, IS ABOVE COMPENSATORY DAMAGES, IS IT NOT?

IT IS A CATEGORY OF DAMAGES WHICH PARTAKES OF BOTH COMPENSATORY AND PUNITIVE. THE LEGISLATURE HAS SAID THIS PARTICULAR ONE IS REMEDIANIAL, BUT STATUTE -- IS REMEDIAL, BUT STATUTORY DAMAGES. FIRST OF ALL, THEY PENNSYLVANIA TAR OF --

HOW DO -- THEY PARTAKE OF --

HOW DO YOU APPLY THAT TO PARTAKE OF COMPENSATION? HOW DOES THE ADDITIONAL TWO-THIRDS OR WHATEVER SMACK OF COMPENSATION?

THE LEGISLATURE HAS SAID THEY ARE NOT PUNITIVE DAMAGES AND THERE IS A DIFFERENCE. PUNITIVE DAMAGES ARE A COURT CREATION FROM THE COMMON LAW. STATUTORY DAMAGES FOLLOW FROM THE LEGISLATURE'S ACTS. PUNITIVE DAMAGES ARE ASSESSED BY A JURY, EVALUATING WHAT, IN FACT, IT WANTS TO DO.

BUT DIDN'T YOU READ A LITANY OF THE STATUTORY LIST OF THE VERY KINDS OF THINGS THAT ORDINARILY, UNDER THE COMMON LAW, WOULD GIVE RISE TO PUNITIVE DAMAGES? THAT IS INTENTIONAL MISCONDUCT IS THE THEME THAT RUNS THROUGHOUT THOSE THING THAT IS YOU JUST READ THAT THE LEGISLATURE IS ADDRESSING, IS IT NOT?

EGREGIOUS CONDUCT THAT THE LEGISLATURE, AS A MATTER OF ITS LEGISLATIVE POLICY, CHOSE TO ENACT, AND RESPECTFULLY, SIR, AS YOU DID IN THE -- A CASE INVOLVING THIRD PARTY BENEFICIARY YAERZ, THE VAN BIBER CASE -- BENEFICIARYS, THE VAN BIBER CASE, THIS COURT HAS TO GIVE DEFERENCE TO THAT. NOW, IN TERMS OF AN ONGOING DISCUSSION OF THIS IS IN DELGADO, WHICH IS A SECOND DISTRICT CASE WRITTEN BY THEN THEN-JUDGE LAZARO, AND AT PAGE 609, AND I WILL JUST READ ONE SENTENCE, "ANY TENSION BETWEEN LEGISLATIVE POLICY EMBODIED, IN THAT CASE, AND THE JUDICIAL POLICY EMBODIED IN, AND THIS WAS AN ECONOMIC RULE CASE, MUST BE RESOLVED UNDER THE DOCTRINE OF THE SEPARATION OF POWERS, IN FAVOR OF THE LEGISLATIVE WILL, SO LONG AS IT PASSES CONSTITUTIONAL SCRUTINY." NOW, THIS IS NOT NECESSARY, FOR, I BELIEVE, OUR ARGUMENT AND OUR POSITION, BUT I WILL SAY TO YOU, SIR, THAT, IF THE LEGISLATURE HAD WANTED TO SAY, AS LEGISLATIVE POLICY, WE ARE GOING TO PERMIT PUNITIVE DAMAGES, TO BE AWARDED, IN MY OPINION THAT WOULD BE AN ACTION OF THE LEGISLATURE THAT IS WITHIN THEIR AUTHORITY, BUT THEY DIDN'T DO THAT. THEY SPECIFICALLY SAID WE ARE NOT GOING TO HAVE PUNITIVE DAMAGE. WE ARE GOING TO HAVE STATUTORY DAMAGES, AND I THINK IT IS VERY CLEAR THERE IS NOT A LOT WRITTEN ON THIS. PERHAPS IT IS ONE REASON YOU WANTED TO LOOK AT THE CASE, BUT THERE ARE CLASSES OF DAMAGES. THERE IS COMPENSATORY DAMAGES. THERE ARE PUNITIVE DAMAGES, AND THERE ARE LEGISLATIVE STATUTORY DAMAGES. THE THIRD CATEGORY PAR TAKES OF THE NATURE OF BOTH -- PARTAKES OF THE NATURE OF BOTH KINDS OF DAMAGES. YOU WOULD HAVE TO SAY, I SUPPOSE THAT COUNSEL MENTIONS THAT THE ONLY PART AGAINST THE ESTATE THAT THEY WOULD NOT WANT TO SEE ENFORCED IS THE TREBLE PART. WELL, 772.11, THAT IS ALL THERE IS. ALL THAT STATUTE SAYS IS THERE SHALL BE THREE-FOLD DAMAGES IN THESE EGREGIOUS SITUATIONS, AND THE ATTORNEYS FEES, SO THE ISSUE IS NOT WHAT COURTS THINK ABOUT, EITHER, THE REMEDIAL OR THE PUNITIVE NATURE OF THE STATUTORY TREBLE DAMAGES. IT IS WHETHER THE LEGISLATURE'S POLICY DECISION TO PROVIDE STATUTORY TREBLE DAMAGES FOR



PERSONS SUCH AS FRANCIS BELL -- FRANCES BELL, STOLEN FROM WHILE A STROKE VICTIM, HAVING BEEN PUT OUT OF THE HOUSE BY HER HUSBAND, WHO, THEN, FORGES HER NAME TO A CHECK FOR OVER \$100,000 AND PUTS IT IN HIS OWN BANK ACCOUNT, WHETHER THE LEGISLATURE THINKS THAT IS WHAT IT WANTS TO DO TO PROVIDE THAT STATUTORY REMEDY, WHETHER THAT PASSES CONSTITUTIONAL MUSTER, AND I DON'T BELIEVE THERE HAS BEEN ANY QUESTION IN THIS CASE, OF A CONSTITUTIONAL ISSUE AT ALL. AND THERE IS NO CONTENTION THAT THIS IS A CONSTITUTIONAL ISSUE, AND IF IT IS NOT CONSTITUTIONAL, IF IT IS SOMETHING THAT THE LEGISLATURE HAS THE AUTHORITY TO DO, UNDER THE SEPARATION OF POWERS, I BELIEVE THAT THE LAW IS VERY CLEAR, AND YOU ALL HAVE HONORED IT OVER AND OVER AND OVER.

WELL, ARE YOU SAYING THIS IS A CLEAR STATUTE THAT CLEARLY HE INFLUENCE YATES AN INTENT -- THAT CLEARLY ENUNCIATES AN INTENT TO THE TREBLE POSITION. IS THAT WHAT YOU ARE SAYING?

ABSOLUTELY.

BUT THERE IS A LINE IN THE STATUTE WHERE THEY TALK ABOUT ANY PERSON WHO HAS A CAUSE OF ACTION UNDER THE SECTION MAY RECOVER DAMAGES ALLOWED, UNDER THE SECTION, FROM THE PARENTS OR LEGAL GUARDIAN OF ANY UNEMANCIPATED MINOR WHO LIVES WITH HIS OR HER PARENTS OR LEGAL GUARDIAN AND WHO IS LIABLE FOR DAMAGES. SO THERE IS A -- THIS IS SHOWING A SITUATION WHERE THEY ARE HOLDING SOMEONE OTHER THAN THE PERSON WHO COMMITTED THE WRONG LIABLE. THE FACT THAT LORD HAS BEEN THE CASE LAW IN THIS STATE FOR OVER TEN YEARS, THE LEGISLATURE IS PRESUMED TO KNOW THE CASE LAW. THE FACT THAT THE ESTATE IS NOT SPECIFICALLY MENTIONED AS SOMEBODY THAT WOULD BE LIABLE, WOULDN'T, FROM A STATUTORY CONSTRUCTION POINT OF VIEW, WE HAVE TO SAY THAT THE ESTATE IS NOT LIABLE, ABSENT A POSITIVE STATEMENT FROM THE LEGISLATURE THAT THE ESTATE WOULD, ALSO, BE LIABLE?

YES. THAT QUESTION, THANK YOU, I AM GLAD IT WAS ASKED. IT IS IN MY NOTES, WHICH ARE NOW IN DISAR RAY. THAT PARTICULAR, THE PARENT AFTER MINE OR WOULD NOT -- OF A MINOR WOULD NOT OTHERWISE BE LIABLE, EXCEPT FOR THE FACT THAT A STATEMENT HAD TO BE MADE. AN ESTATE, UNDER THE STATUTE, AN ESTATE IS RESPONSIBLE FOR THE ACTS AND CONSEQUENCES AND DEBTS AND EVERYTHING ELSE OF THE DECEDENT. IT IS, ALREADY -- IT STANDS IN THE SHOES OF THE DECEASED PERSON AND HAS FOR AS LONG AS WE HAVE HAD LAWS IN THAT REGARD, AND THE PARENT REQUIRED A SPECIAL COMMENT, BECAUSE OTHERWISE THE GENERAL LAW IS NOT THAT THE PARENTS OF A MINOR CHILDREN THAT DO THESE THINGS WOULD BE RESPONSIBLE. THAT IS HOW THEY, AND THAT IS THE REASON THAT THAT ONE LINE IS IN. THAT DOESN'T MEAN, OBVIOUSLY, THAT THEY WOULD HAVE TO LIST ALL OF THE OTHER CATEGORIES OF POTENTIAL PEOPLE. THAT IS NOT WHAT STATUTES DO. THE STATUTES SAYS THERE IS A CAUSE OF ACTION, AND IT IS AGAINST THE ONES THAT CAUSED THE WRONG. AND HERE IT IS, CHAPTER 46.021, SAYS THE ESTATE IS LIABLE FOR ITS DECEASED. IT IS NOT VICARIOUS. ANOTHER DISTINCTION WITH MacARTHUR DAIRY. THAT WAS TALKING ABOUT A VICARIOUS LIABILITY SITUATION. AN ESTATE IS NOT VICARIOUSLY LIABLE. THE ESTATE BECOMES THE PERSON AND, UNDER 46.021, IS RESPONSEIBLE. THAT IS WHY YOU HAVE THE SITUATION OF WHERE YOU HAVE THAT ONE SENTENCE, CONCERNING THE ONE AREA OF LIABILITY THAT WOULD NOT OTHERWISE BE. THIS, LADIES AND GENTLEMEN OF OUR HIGHEST COURT, IS A CASE IN WHICH THE COURTS HAVE SPOKEN ON A COMMON LAW SITUATION, INVOLVING PUNITIVE DAMAGES, AND ESTABLISHED THEIR POLICY. THEY DID SO IN LORD V BYRD, JUDGE OVERTON'S OPINION. THE LEGISLATURE, SUBSEQUENTLY, IN A STATUTORY SITUATION, INVOLVING LEGISLATIVE POLICY, TO CREATE A SCHEME IN WHICH THE LEGISLATURE, AS A MATTER OF POLICY, WANTS TO SAY SOMETHING ABOUT EGREGIOUS CONDUCT, BY PROVIDING STATUTORY REMEDIES, THAT ARE NOT IN THE COMMON LAW, AS SPOKEN, AND IN THESE SITUATIONS, THIS COURT, IN EVERY INSTANCE THAT I AM FAMILIAR WITH AND HAVE FOUND, IN EVERY INSTANCE, HAS INDICATED, UNDER SEPARATION OF POWERS, IT NEEDS TO DEFER AND DOES DEFER TO THE LEGISLATURE. SOMETIMES

IT IS HURTFUL, AS IN THE CASE OF THIRD PARTY BENEFICIARIES. SOME EDUCATION CASES I HAVE BEEN HERE ON, WHERE IT LOOKED LIKE JUST A BAD DAY FOR PUBLIC EDUCATION, BUT, IN FACT, THE LEGISLATURE HAD THE RIGHT TO DO WHAT THEY DID. WE THINK THE CERT, THERE IS NO CONFLICT CERT HERE, AND WE THINK THAT THE OTHER MATTERS WHICH WERE NOT ADDRESSED ON THE ARGUMENT IN CHIEF, OF COURSE, WE WON'T GET INTO THAT.

YOU SPEAK OF THIS THIRD CATEGORY OF STATUTORY LEGISLATIVE STATUTORY DAMAGES, AS BEING A CATEGORY, IN AND OF ITSELF. ISN'T IT COMMON THAT THE LEGISLATURE GENERALLY, WHEN THEY DESIGNATE STATUTORY DAMAGES, THEY GENERALLY PUT THEM INTO ONE PIGEON HOLE OR ANOTHER, EITHER REMEDIAL OR PUNITIVE. ISN'T THAT THE COMMON PRACTICE?

WELL, THEY SAID THIS IS REMEDIAL. BUT I AM TELLING YOU MY READING OF IT IS IT PAR TAKES OF THE NATURE OF BOTH, BUT THE LEGISLATURE SAYS THE PURPOSE OF THIS STATUTE IS TO ACCOMPLISH THE REMEDIAL PURPOSES OF THIS ACT. SO, YES, SIR, IT DID SAY REMEDIAL, AND I HAVEN'T REVIEWED -- I CAN'T SPEAK FOR ALL OF THEM. THERE ARE SOME 20, BUT IN FACT, THE LEGISLATURE HAS ADOPTED STATUTORY DAMAGES AND, UNDER THE SEPARATION OF POWERS, IF IT IS NOT UNCONSTITUTIONAL, THEY ARE ALLOWED TO DO THAT, AND BIBER SAYS IT AND DELGADO SAYS IT, AND I THINK --

BUT IT HAS TO MAKE SENSE, FOR US TO BE COMPELLED TO HONOR IT, AND IF YOU CALL A COW A HOG, THAT DOESN'T MAKE IT SO. AND YOU, STILL, HAVE THIS PROBLEM, DON'T YOU, THAT YOU ARE TALKING ABOUT SOMETHING OVER AND ABOVE REMEDIAL, HERE, AND THE FACT THAT THE LEGISLATURE PLACES A NOMENCLATURE ON IT AND SAYS IT IS REMEDIAL, OBVIOUSLY DAMAGES THAT ARE THREE TIMES WHATEVER YOUR LOSS IS, THAT IS NOT VERY REMEDIAL, IS IT? AREN'T YOU INTO --

WITH ALL DUE RESPECT, AND IF THE LEGISLATURE SAYS THAT IT IS REMEDIAL, AND THAT IT WANTS TO HAVE A TREBLE, THREE FOLD DAMAGES FOR CERTAIN TYPES OF CONDUCT, AND IT IS NOT UNCONSTITUTIONAL, NOT AN EQUAL PROTECTION PROBLEM OR SOME OTHER PROBLEM, THAT IS THEIR PREROGATIVE, UNDER OUR SEPARATION OF POWERS, EVER EVEN IF THAT POLICY DIFFERS FROM A PRIOR-ANNOUNCED POLICY OF THIS COURT. THANK, SIR.

THANK YOU. MR. BRANNOCK, YOU HAVE USED YOUR TIME. THANK YOU VERY MUCH, COUNSEL.