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Ben Wilson Bane vs Consuella Kathleen Bane

THE NEXT CASE ON THE COURT'S CALENDAR IS BEAN. -- IS BANE.

MR. LEVINE. READY TO PROCEED, SIR?

MAY IT PLEASE THE COURT. ARNOLD LEVINE, IN BEHALF OF BEN BANE. MR. MANEY REPRESENTS HIS FORMER WIFE, CONSUELLA KATHLEEN BANE. WE WERE THE APPELLANT IN THE SECOND DISTRICT, AND BASED UPON A CERTIFICATION, WE ARE HERE BEFORE YOU, ON A CASE THAT IS NEAR AND DEAR TO MY HEART T DEALS WITH ATTORNEYS' FEES, AND THE NICE THING TO KNOW ABOUT THIS CASE IS WHETHER MY CLIENT WINDS UP GETTING STUCK OR NOT. BOTH MR. MANEY AND I ARE GOING TO GET PAID. THE ISSUE IS A MORE IMPORTANT ISSUE, AND THE QUESTION IS DOES 1.540 PROVIDE OR PERMIT THE RECOVERY OF ATTORNEYS FEES, PARTICULARLY IN THIS SETTING? I WOULD LIKE TO ADDRESS 1.540, SECONDARILY, IF I MIGHT, FOR JUST A MOMENT, BECAUSE I BELIEVE THAT THERE IS ANOTHER FUNDAMENTAL ISSUE THAT IS IN THIS CASE, AND THAT HAS TO DO WITH THE FACT THAT FINAL JUDGMENT WAS ENTERED, BASED UPON A MARITAL SETTLEMENT AGREEMENT. SHORTLY THEREAFTER, THE WIFE CLAIMED THAT SHE WAS DEFRAUDED, AND MR. MANEY FILED A 1.540 MOTION.

WHERE IS THAT MOTION FILED? IS THAT FILED IN THE DISSOLUTION CASE?

FILED IN THE DISSOLUTION CASE AND UNDER THE RULE, HE COULD HAVE FILED AN INDEPENDENT ACTION OR HE COULD HAVE FILED IT IN THE CASE, AND THAT WHICH RAISES, IN AND OF ITSELF, AN INTERESTING QUESTION. HAD HE FILED IT AS AN INDEPENDENT ACTION, RAISING THE SAME QUESTIONS, BECAUSE OF THE FACT THAT IT RAISES A QUESTION AND COMES BACK, IF HE IS SUCCESSFUL, TO A 61 PROCEEDING, WOULD HE GETS ATTORNEY'S FEES IN THAT CASE? AND THAT IS THE IMPLICATION OF WHAT HAPPENS HERE.

YOU HAVE A SITUATION, HERE, LET ME MAKE SURE, THIS IS THE CASE FROM THE SECOND DISTRICT, BECAUSE THERE ARE TWO DIFFERENT -- THE ALLEGED CONFLICT, REALLY, COMES IN DIFFERENT PROCEDURAL POSTURES, BECAUSE IN THIS CASE, IF I UNDERSTAND THIS CASE, THE JUDGE DID SET ASIDE THE MARITAL -- THE MARITAL SETTLEMENT AGREEMENT. CORRECT?

THAT IS THE DIFFERENCE BETWEEN THIS AND SPAN-. IN -- IN SPANO THEY DID NOT. DOESN'T HAVE ANY MEANING.

YOU DON'T THINK IT HAS A MEANING THAT, WHEN A SETTLEMENT AGREEMENT WHICH IS IN EFFECT, PROVIDES FOR ATTORNEY'S FEES, AND THAT SETTLEMENT AGREEMENT IS NOT SET ASIDE, THAT THERE WOULD BE VERY STRONG POLICY REASONS FOR HAVING THAT AGREEMENT GOVERNED AND GOVERN THE PAYMENT OF ATTORNEY'S FEES, WHEREAS IF IT IS SET ASIDE, IT IS AS IF THE -- ANOTHER ULTIMATE RULING OF THE CASE --

I AM SORRY. LET ME FINISH THE CASE. WHEN THE AGREEMENT IS SET ASIDE, IT IS AS IF THAT AGREEMENT NEVER EXISTED, AND NOW WE ARE BACK TO THE DISSOLUTION ACTION. YOU DON'T SEE A LEGAL DISTINCTION IN THE POSTURE OF THE TWO CASES?

NOT IN THE LEAST, PAW OF THE FACT THAT THE -- BECAUSE OF THE FACT THAT THE RULING IN THIS CASE HAD NOTHING TO DO WITH THE MARITAL SETTLEMENT PROVIDED FOR THE AWARDING OF ATTORNEYS' FEES.

THERE WAS NO MERIT AT AGREEMENT, AFTER IT WAS SET ASIDE.

CORRECT.

BUT IF IT HAD BEEN UPHELD, THEN THERE WOULD, APPROPRIATELY, BE FEES AWARD ABLE TO, PERHAPS, YOUR CLIENT, UNDER THE SETTLEMENT AGREEMENT, WHICH WAS IN EFFECT.

UNDER THE SETTLEMENT AGREEMENT BUT NOT UNDER 61 AND NOT UNDER 1.5400, AND THAT IS THE REASON WHY I -- 1.540, AND THAT IS THE REASON WHY I SAY IT MAKES NO DISTINCTION. THIS CASE DOESN'T RISE ON WHETHER WE WON OR LOST. THIS CASE RISES ON THE QUESTION OF ARE YOU GOING TO APPLY THE AMERICAN RULE. THE AMERICAN RULE SAYS SHOW ME A CONTRACT, SHOW ME A STATUTE, YOU GET THE ATTORNEYS' FEES. THE QUESTION YOU ASKED, JUSTICE PARIENTE, IS THIS. THE MOTION TO SET ASIDE MADE FOR ATTORNEYS FEES. THE JUDGE, IN SETTING ASIDE, DID NOT CREATE JURISDICTION. THE MATTER CAME UP BEFORE THE APPELLATE COURT, AFTER THERE WAS ANOTHER HEARING, ONCE IT WAS SET ASIDE, AND THE FINAL RESOLUTION, THE MATTER WENT TO THE APPELLATE COURT AND DHONS HERE. WHAT WE HAVE, THEN, A VERY FUNDAMENTAL QUESTION, BEFORE WE GET TO THE QUESTION OF WHETHER OR NOT, UNDER 1.540, IS HE ENTITLED TO ATTORNEYS' FEES AT ALL, AND THAT IS WHEN YOU MAKE A CLAIM FOR ATTORNEYS' FEES IN A PROCEEDING, THERE IS A FINAL RULING. THEY CLAIM IT IS NOT. WE PROVIDED YOU WITH CASES SAYING THE DETERMINATION, UNDER 1.540 IS A FINAL DETERMINATION, AND IT IS SUBJECT TO APPEAL. THERE IS NO RESERVATION OF JURISDICTION! THE APPELLATE COURT MAKES A RULING, AND AFTER THE APPELLATE COURT MAKES A RULING, WITH A PROCURIUM AFFIRMANCE, MR. MAINY, THEN, FILES HIS MOTION FOR ATTORNEYS' FEES, AND THEN IT IS AT THAT STAGE OF THE PROCEEDINGS THAT THE ATTORNEYS' FEES ARE AWARDED. I AM PASSING, IF I MAY, THE ATTORNEYS' FEES THAT WERE AWARDED BY THE TRIAL JUDGE ON THE REVERSAL, INCLUDED APPELLATE ATTORNEYS' FEES, ALTHOUGH THE SECOND DISTRICT NEVER AUTHORIZED THE AWARD OF APPELLATE ATTORNEYS' FEES, BUT THAT IS A PASSING MATTER.

DO I MISUNDERSTAND? YOU SEEM TO BE SUGGESTING THAT THE PROCEDURAL POSTURE WAS ONE IN WHICH THE CASE WOULD NOT GO BACK TO THE CIRCUIT COURT. IT WAS MY UNDERSTANDING THAT THERE WAS SOMETHING IN THE ORDER THAT TALKED IN TIRMS OF THAT -- IN TERMS OF THAT NOW THE PARTY AGGRIEVED MAY REPLEAD OR MAY FILE FURTHER PLEADINGS IN THIS CASE. YOU SEEM TO BE SUGGESTING THAT NO RESERVATION OF JURISDICTION, THE CIRCUIT COURT NO LONGER HAS JURISDICTION OF ANYTHING?

NO. BUT THE LAW IS CLEAR THAT, IN CONNECTION WITH A PROCEEDING THAT ENDS IN A FINAL ORDER, AND WE DISAGREE AS TO WHETHER OR NOT THE RULING SETTING ASIDE IS A FINAL ORDER, IF IT IS A FINAL ORDER, THEN, AS A MATTER OF FACT THERE HAS TO BE A RESERVATION OF JURISDICTION TO AWARD ATTORNEYS' FEES. THE LAW IS CLEAR. IF IT IS NOT A FINAL ORDER THERE NEED NOT BE, AND IT IS STILL A PART OF THE BASIC PROCEEDING.

COULD IT BE A FINAL ORDER, FOR PURPOSES OF APPEAL, BUT STILL NOT BE A FINAL JUDGMENT, IN TERMS OF TERMINATING THE CIRCUIT COURT'S JURISDICTION? COULD THERE BE THAT DISTINCTION?

I GUESS THAT THERE COULD BE THAT DISTINCTION, BUT I WOULD SUBMIT THAT THAT DISTINCTION HAS NO APPLICABILITY HERE, GIVEN THE REQUEST, GIVEN THE LACK OF A RESERVATION OF JURISDICTION, GIVEN THE APPEAL THAT WAS TAKEN AND THE PRO KURM AFFIRMANCE-ON -- THE PROCURIUM AFFIRMANCE. THAT WAS DONE, INSOFAR AS THERE IS A MOTION OUT OF THE BLEW SAYING, OKAY, GUYS, AWARD -- OUT OF THE BLUE, SAYING, OKAY, GUYS, AWARD ATTORNEYS' FEES TO ME, AND I SUBMIT TO YOU THAT THIS IS NO BASIS. THIS CASE WAS NOT BASED UPON THAT, BUT I CERTIFY IT IS A FUNDAMENTAL ISSUE THAT YOU HAVE GOT TO HAVE YOU GONE HE WILL -- THAT YOU HAVE GOT TO STRUGGLE WITH, IN MAKING A

DETERMINATION IN THIS CASE. THE RULING 1.540 PROVIDES FOR SETTING ASIDE A FINAL JUDGMENT. AS I INDICATED, IT, ALSO, PROVIDES AND DOESN'T LIMIT YOU, IN CONNECTION WITH FILING OF AN INDEPENDENT ACTION. MR. MANYY ELECTED TO FILE,, WITHIN THE PROCEEDINGS, A MOTION TO SET ASIDE, AND HE PREVAILED. MAKING THE DISTINCTION IN SPANO, AS YOU SUGGESTED TO ME, JUSTICE PARIENTE, WHAT DOES THAT MEAN? DOES IT MEAN THAT, BECAUSE YOU LOST, YOU DON'T GET ATTORNEYS' FEES, AND BECAUSE YOU WONDER, YOU DO GET ATTORNEYS' FEES? I WOULD SUBMIT THAT THIS IS NOT A 61 PROCEEDING FOR THE SERVICES RENDERED BY MR. MAINEY, ONCE HE PREVAILED. HE DID GET ATTORNEYS' FEES, BUT FOR THOSE PROCEEDINGS THAT INVOLVE THE TIME AND EFFORT, UNDER 1.540, WHERE IS THE AUTHORITY FOR THAT AWARD OF ATTORNEYS' FEES?

WELL, ISN'T IT IMPLICIT, IN THE OVERWHELMING MAJORITY OF THESE CASES, IF NOT, VIRTUALLY, ALL OF THEM, THAT OBVIOUSLY THE SETTING ASIDE OF THE PREVIOUS JUDGMENT AND THE SETTLEMENT AGREEMENT THAT WAS INCORPORATED THERE IN, IS NOT JUST AN INTELLECTUAL OR CLERICAL EXERCISE? THAT IS THAT WHAT THE PARTY THAT IS COMING IN AND SEEKING IT TO HAVE THAT SET ASIDE IS SAYING, I DON'T WANT TO BE BOUND BY THIS. I WANT THE COURT TO SAY WHAT I GET OR WHATEVER.

CORRECT.

UNDER A CHAPTER 61 PROCEEDING. BUT I REALIZE THAT I CAN'T PROCEED, UNDER CHAPTER 61, AND HAVE THE COURT MAKE THOSE DETERMINATIONS AND EVERYTHING, UNTIL I GET RID OF THIS OBSTACLE THAT I CLAIM IS THERE, BECAUSE OF FRAUD OR SOME OTHER. SO, IN ALL OF THESE PROCEEDINGS, THE END GAME IS TO HAVE THE COURT DECIDE THE ISSUES OF PROPERTY AND ALIMONY, WHATEVER. UNDER CHAPTER 61. IS IT NOT?

UNQUESTIONABLY THAT IS THE END GAME, JUSTICE ANSTEAD.

IF THAT IS THE END GAME AND THEN YOU ARE SUCCESSFUL IN DEMONSTRATING THAT THE PRIOR JUDGMENT OR AGREEMENT OR WHATEVER WAS IMPOSED BY FRAUD, AND NOW YOU HAVE REMOVED THAT OBSTACLE, WHY ISN'T IT LOGICAL TO CONCLUDE, THEN, IF THE NECESSITY IN REMOVING THAT OBSTACLE, THAT YOU SHOULD, ALSO, RECEIVE YOUR FEES FOR DOING THAT SINCE YOUR GOAL, IN OTHER WORDS WHAT YOU ARE REALLY TRYING TO DO IF YOU DIDN'T HAVE TO DO THAT, YOU WOULDN'T DO IT. WHAT YOUR GOAL IS TO HAVE THE COURT SAY YOU ARE ENTITLED TO A DIFFERENT PROPERTY DISTRIBUTION OR DIFFERENT FINANCIAL CONSIDERATIONS, SO SINCE THE END GAME IS ALL ABOUT HAVING THE COURT ACT UNDER CHAPTER 61, DO THIS, BUT A PREREQUISITE IS THE REMOVAL OF THIS OBSTACLE, WHY SHOULDN'T THAT BE PART AND PARCEL OF IT, AND, OF COURSE, IF YOU RUN THAT RISK, AND YOU DON'T PREVAIL, THEN YOU ARE OUT OF LUCK WITH REFERENCE TO THAT, DEPENDING ON, I GUESS, THE AGREEMENT AND SOME OTHER FACTORS FACTORS. BUT --

I HAVE THREE ANSWERS. THREE ANSWERS. NUMBER ONE, I THINK, IN PART, YOU ANSWERED YOUR OWN QUESTION, IF I MAY RESPECTFULLY SAY, BY SAYING IF YOU DON'T PREVAIL, THEN YOU DON'T GET IT. EITHER YOU GET IT, WHETHER YOU PREVAIL OR NOT, BASED UPON THE RELATIVEABILITY OF THE PARTIES -- UPON THE RELATIVE ABILITY OF THE PARTIES. IT DIDN'T MAKE ANY DIFFERENCE WHO WINS, UNLESS IT IS A SPECIOUS OR A PHALACIOUS LAWSUIT AND THEN YOU HAVE SOME OTHER REASON, BUT FOR WHATEVER REASON, YOU DON'T GET IT IN THE ONE INSTANCE AND NOT GET IT IN THE OTHER INSTANCE, JUST BECAUSE YOU LOST?

WE HAVE BROADENED THAT IN ROSIN, IS THAT CORRECT?

IN TWO PARTS. SIMPLY BECAUSE THE END GAME IS 61, YOU CAN GET TO THE END GAME IN 61, IF YOU FILE AN INDEPENDENT ACTION, AND THE IMPLICATION OF SUSTAINING THE SECOND DISTRICT'S POSITION IN THIS CASE, IS BY SAYING, IF YOUR END GAME IS TO GO 61, AND YOU FILE AN INDEPENDENT ACTION, YOU GET ATTORNEYS' FEES. WELL, THERE IS NO AUTHORITY FOR

THAT! NOW, WHAT WE HAVE HERE IS WE HAVE A SITUATION THAT THEY HAD A CHOICE, AND IN EFFECT, WHAT THE SECOND DISTRICT IS SAYING, IS THAT IMPLICIT IN 1.540, BECAUSE OF THE FACT THAT IT WAS FILED WITHIN THE SAME CASE, IS THE IMPLICATION OF ATTORNEYS' FEES, PER 61, AND I SAY TO YOU, SINCE THE RULE SAYS THEY COULD HAVE DONE IT OTHERWISE, DO THEY GET ATTORNEYS' FEES THERE, AND IF THE ANSWER IS NO, AND I WOULD SUBMIT THAT IT HAS GOT TO BE NO, THEY CAN'T GET IT HERE.

LET ME ASK YOU A QUESTION. I AM SORRY. YOU HAVE GOT ANOTHER ANSWER?

JUST VERY LAST ANSWER IS THAT THE VERY LAST ANSWER IS THAT YOU READ THE RULE. THE RULE DOESN'T PROVIDE FOR IT. THERE IS NOTHING IN THE RULE THAT SAYS IT.

I WOULD LIKE TO JUST, WITH REFERENCE TO YOUR COMMENT THAT A RULE 1.540 PROCEEDING MAY BE FILED AS AN INDEPENDENT ACTION, HOW DOES THAT SQUARE WITH OUR CASE OF DECLARE VYOHIHAN, WHERE WE SAID RELIEF FOR A JUDGMENT IS SOUGHT BY MOTION. THE MOTION IS FILED IN AN ACTION IN WHICH THE JUDGMENT WAS RENDERED, SO MOTION BEING RULE 1.540 MUST BE FILED IN THE DISSOLUTION ACTION, WHERE THE JUDGMENT WAS RENDERED.

I DON'T DISAGREE, JUSTICE PARIENTE. THE MOTION HAS TO BE FILED IN THAT ACTION, BUT THE VERY RULE THAT THEY RELIED UPON, ALSO, SAYS THAT THEY CAN FILE AN INDEPENDENT ACTION, AND ALL THAT I AM SAYING IS --

BUT IT WOULDN'T BE A RULE 1.540 MOTION. AN INDEPENDENT ACTION TO SET ASIDE A PROPERTY AGREEMENT WOULD GO TO SOME OTHER --

BUT RULE 1.540 IS NOTHING MORE THAN THE SUBSTANTIVE CORUM NOBIS AND THE OTHER LATIN PHRASES THAT WAS SUBSTANTIVE THAT, NOW, IS IN THE NATURE OF A RULE. YOU COULD FILE AN INDEPENDENT ACTION TO SET ASIDE FOR FRAUD, TO SET ASIDE THE MARITAL SETTLEMENT AGREEMENT AND THE FINAL JUDGMENT, TO GET BACK TO 61, AND WHAT I AM SAYING IN THAT CONTEXT IS, BECAUSE OF THE FACT THAT THE END GAME IS TO COME BACK TO 61, BECAUSE THE FRAUD WAS PERPETRATED IN THE BASIC DIVORCE PROCEEDINGS, MERELY PAUF THE FACT THAT YOU FILED AN INDEPENDENT ACTION, CLAIMING SOMETHING AMISS IN THE BASIC DIVORCE PROCEEDINGS, DOESN'T GIVE YOU A RIGHT OF ATTORNEYS' FEES. I BELIEVE THAT EVERYBODY WILL AGREE WITH THAT. THE QUESTION, THEN, IS MERELY BECAUSE OF THE FACT THAT YOU ELECTED TO FILE IT UNDER THE RULE THAT SAYS YOU FILE IT IN THE DIVORCE PROCEEDING, AND THAT RULE DOES NOT PROVIDE FOR ATTORNEYS' FEES, EITHER BY VIRTUE OF WHAT IT SAYS, BY THE BREADTH OF THE RULE OR ANYTHING ELSE, HOW DO YOU, THEN, GET ATTORNEYS' FEES, FOR THE SERVICES, THE LIMITED SERVICES IN SETTING IT ASIDE, AND I THINK THE DISTINCTION THAT WAS MADE WAS THAT, IN THE 1.540 PROCEEDING, IT IS NOT THE KIND OF LITIGIOUS MATTER THIS HAPPENED TO BE THAT, BECAUSE MR. MANEY AND I ARE LITIGIOUS PEOPLE, AND SO ARE THE CLIENTS, BUT IT IS NOT THE KIND OF YOU ARE NOT RESOLVING THE QUESTION OF LIFESTYLE. YOU ARE MAKING A MORE SIMPLISTIC DETERMINATION, AND THAT IS WHY THERE IS AN EXPEDITED APPELLATE PROCEDURE FOR THIS, ALSO. IT IS A DIFFERENT ANIMAL.

LET ME UNDERSTAND THIS. WHAT YOU ARE SAYING IS THAT THE HUSBAND COULD COMMIT FRAUD UPON A WIFE, IN GETTING HER TO ENTER INTO A SETTLEMENT AGREEMENT THAT GIVES HER VIRTUALLY NOTHING, BECAUSE HE HIDES ASSETS, AND WHEN SHE SUCCESSFULLY SETS IT ASIDE, EVEN IF SHE DOESN'T HAVE THE NEED AND THE ABILITY TO PAY THAT, THE JUDGE IS PRECLUDED, EVEN THOUGH WE ARE BACK INTO THE 61 PROCEEDING, FROM EVER AWARDING ATTORNEYS' FEES, UNDER --

THAT IS EXACTLY WHAT I AM SAYING. IT IS NOT FAIR. IT MAY BE IMMORAL. IT IS NOT FAIR, BUT UNDER THE RULE, UNDER THE AMERICAN RULE, I SAY SHOW ME WHERE IT SAYS, IN THE STATUTE. SHOW ME WHERE IT SAYS, IN THE RULE.

BUT HERE YOU DID FILE -- HE TILED FEE HIS 1 -- HE FILED HIS 1.540 IN THE UNDERLYING ACTION. RIGHT?

THERE IS NO DISPUTE ABOUT THAT, AND I AM NOT HERE TO ARGUE THE MORALITY OF WHAT MY CLIENT DID, BASED UPON JUDGE GREEN'S FINDING. I WOULD MAKE THE OTHER OBSERVATION THAT JUDGE GREEN SAID WE NEVER WOULD HAVE BEEN HERE, HAD MRS. BANE FOLLOWED THE ADVICE OF HER ATTORNEY, AND THEN HE WENT ON TO SAY THAT SHE WAS NEGATIVE AND HE WAS A DEFRAUDER, AND THE TOTALITY OF THE SITUATION WAS SUCH THAT FRAUD WAS MORE EGREGIOUS THAN NEGLIGENCE, AND THEREFORE I AM GOING TO SET IT ASIDE. I SEE THAT I HAVE GOT BUT A COUPLE OF MOMENTS.

YOU MAY.

I AM SURE THAT THERE MAY BE SOMETHING MORE FOR ME TO SAY. THANK YOU.

THANK YOU VERY MUCH. I AM DAVID MANEY, AND I DID FILE THE MOTION, UNDER RULE 1.54, FOR A VERY SPECIFIC REASON. IF YOU LOOK AT THE HISTORY OF RULE 1.540, WHAT YOU FIND IS THAT IT REPLACED THE OLD WRITS, THE COMMON LAW WRITS, THE CORUM NOBIS, CORUM PHOBIS, AND IT IS PREVIOUSLY BY WAY OF A COMMON LAW SYSTEM OF APPLICATION FOR WRITS. THAT HAVING BEEN SAID, LET'S GO TO THE FUNDAMENTAL PROBLEM IN THIS CASE. FRAUD, IN THE PROCUREMENT OF A JUDGMENT. THE MAN PUT A GUN TO A WIFE'S HEAD AND FORCED HER TO SIGN THE SETTLEMENT AGREEMENT. FINAL JUDGMENT IS ENTERED. AT THAT POINT, WHEN THE CASE CAME TO ME, YOU HAVE THE OPPORTUNITY TO MAKE A CHOICE. DO YOU FILE INDEPENDENT ACTION TO SET ASIDE THE JUDGMENT FOR FRAUD, ORALITYTIVELY, DO YOU LOOK AT RULE 1.540 AND SET ASIDE THE FINAL JUDGMENT? NOW, WE CHOSE TO GO UNDER RULE 1.540, AND WE FILED THAT, AND UNDER THE DECLARED DECISION OF THIS SUPREME COURT, WHAT WE ARE DOING IS CONTINUING THE ORIGINAL PROCEEDING. NOW, THE PROBLEM THAT MR. LEVINE HAS IS HE WANTS TO SEGMENT THE ANALYSIS BY SAYING THAT THE ACTION FOR RELIEF, UNDER RULE 1.540 IS AN ACTION. I SUBMIT TO YOU IT IS A MOTION IN THE UNDERLYING PROCEEDING.

WELL, WHAT IS THE OTHER INDEPENDENT ACTION YOU COULD HAVE FILED?

YES, MA'AM. FRAUD. JUST SUED HIM FOR FRAUD. JUST A PLAIN-OLD-FASHIONED SUIT FOR FRAUD.

WHAT WOULD HAVE BEEN THE EFFECT ON THE FINAL JUDGMENT IN THE DISSOLUTION?

THEY WOULD HAVE STILL BEEN DIVORCED, BUT I WOULD HAVE BEEN SEEKING DAMAGES AS A RESULT OF THE FRAUD SHE PERPETRATE -- THAT HE PERPETRATED ON MY CLIENT, BY OBTAINING THE FINAL JUDGMENT.

BUT THE -- AND THE EFFECT ON THE SETTLEMENT AGREEMENT, ITSELF ITSELF.

NOW, THAT IS THE POINT JUSTICE PARIENTE WAS MAKING. IF I HAD ELECTED TO SUE FOR FRAUD, AND HAD I BEEN SUING TO SET ASIDE, BASED ON THE FINAL JUDGMENT -- NOT ON THE FINAL JUDGMENT, BASED ON THE PROPERTY SETTLEMENT AGREEMENT, MR. LEVINE WOULD HAVE IMMEDIATELY ENTER POSED THAT CONTRACT BETWEEN THE -- ENTER POSE HAD THAT CONTRACT BETWEEN THE PORTS AS -- INTERPOSED THAT CONTRACT BETWEEN THE PARTIES AS THE BASIS FOR SETTING ASIDE, AND UNDER THAT BASIS, THERE WOULD HAVE BEEN A PARTY STANDARD. HAD THE CONTRACT PARTIES PROVIDED PREVAILING ATTORNEYS' FEES TO PREVAILING PARTY, SO ABOUT SO BE IT. THE PREVAILING PARTY WOULD HAVE GOTTEN IT.

DIDN'T THIS PROVIDE THAT THEY PAY THEIR OWN?

INDEED IT MADE THAT PROVISION IN THE SETTLEMENT AGREEMENT, ITSELF. AND WE NEVER GOT TOO THAT QUESTION THAT JUSTICE PARIENTE WAS QUOTING, WHICH WAS APPROPRIATE IN

SPANO, WITH RESPECT TO WHO WOULD BEAR THE ATTORNEYS' FEES?

IF YOU WERE SUING IN COMMON LAW -- I TAKE IT THAT YOUR SUIT WOULD BE IN COMMON LAW FRAUD.

YES, IT WOULD, JUSTICE WELLS.

WOULD YOU BE ABLE TO RECOVER ATTORNEYS' FEES?

DISCRETIONARY POINT.

WHAT AUTHORITY?

AS I UNDERSTAND, THE COMMON LAW FRAUD, UNDER CERTAIN THINGS, IF I BROUGHT INTO THE REGISTRY OF THE COURT A CERTAIN FUND THAT WOULD BE AVAILABLE FOR THE DEPOSITION, -- THE DISPOSITION, THE COURT WOULD GET IT, BUT ORDINARY FRAUD WOULD NOT BEAR ATTORNEYS' FEES. THE SANCTITY OF JUDGMENTS AND THE FLOOD GATES OF LITIGATION ISSUE WAS WELL ANSWERED BY JUSTICE ANSTEAD, WHEN HE POINTS OUT ROSSIN. ROSE I KNOW -- ROZ I KNOW -- ROSIN APPLIES HERE, UNDER 1.540, EVEN THOUGH IN SPANO, THE COURT CONCEDED THAT THERE WERE CERTAIN CIRCUMSTANCES, WHERE THE PARTIES SET ASIDE A FINAL JUDGMENT AND IN THE MAKING OF A FRAUD OF PROCURING JUDGMENT, MATE BE BASED ON 1.541, UNDER ATTORNEYS FEES. TO MAKE A DETERMINATION, THAT SITUATION WOULD BE THERE.

UNDER YOUR VIEW IN THIS CASE, IF WE WERE TO ADOPT THE POSITION OF THE SECOND DISTRICT, WOULD IT MEAN THAT A TRIAL COURT WOULD AWARD ATTORNEYS' FEES IN AN ACTION, EVEN IF THE SETTLEMENT AGREEMENT WASN'T SET ASIDE?

THE SECOND DISTRICT DIDN'T GO THAT FAR. STRANGELY ENOUGH, SPANOD.

SPANO WAS THAT SITUATION. IN SPANO, THE AGREEMENT WAS SHE HAD TRIED TO SET IT ASIDE AND WAS UNSUCCESSFUL. WOULDN'T, IF WE WERE GOING TO SEE IF THERE WAS ANY RESOLUTION TO THIS, WOULDN'T IT BE THAT, IF YOU ARE NOT SUCCESSFUL, THE AGREEMENT GOVERNS?

STRANGE ENOUGH, MISS GREEN SUGGESTED THAT DISTINCTION, AND THAT MAY VERY WELL BE THE CASE, BUT I WOULD TAKE ONE STEP FURTHER. I THINK THIS COURT, IN ITS ROSEN DECISION, HAS, ALREADY, GIVEN GUIDANCE TO THE TRIAL JUDGES AS TO THOSE CIRCUMSTANCES UNDER WHICH ATTORNEYS' FEES WOULD BE APPROPRIATE, AND CERTAINLY SUCCESS IN THE LITIGATION WOULD BE ONE OF THE ELEMENTS. COURSE AND SCOPE OF THE LITIGATION, WHICH WAS ANOTHER ONE OF THE LPTS SET FORTH BY THIS COURT, IN ITS ROSEN DECISION, WOULD, ALSO, BE EXTREMELY HELPFUL TO ANYONE, AND THAT, OF NECESSITY, WOULD EMBRACE SUCCESS OR FAILURE IN THE MACHINES OF THE PROCEEDING. I AM BROAD -- IN THE MAINTENANCE OF THE PROCEEDING. I AM TRYING TO BROADEN MY RESPONSE TO YOUR QUESTION, JUSTICE PARIENTE.

HOW ABOUT IF THE SETTLEMENT AGREEMENT ISN'T SET ASIDE? WOULD THE COURT BE AUTHORIZED TO AWARD -- THE PARTIES, TWO CONTRACTING PARTIES HAVE AGREED ON HOW THEY ARE GOING TO PAY THE FEES, IF AN ACTION IS BROUGHT. HOW -- WHAT WOULD BE THE GOOD PUBLIC POLICY, IN ALLOWING CHAPTER 61 TO TRUMP IT, WHEN YOU HAVE GOT A VALID AGREEMENT BETWEEN TWO PARTIES, WHERE THE JUDGE HAS FOUND THAT THERE WAS NO FRAUD OR OVERREACHING?

I AM GOING TO ASK YOU TO FOCUS ON WHAT ACTUALLY HAPPENED IN THIS CASE.

I AM ASKING FOR THE BROADER SITUATION, BECAUSE WE ARE NOT JUST HERE ON THIS CASE.

I AM GOING TO ANSWER YOUR QUESTION BY ILLUSTRATING THAT THIS CASE PRESENTS A

SITUATION WHERE THE COURT MAY VERY WELL NOT HAVE GRANTED THE RELIEF REQUESTED AND STILL FOUND THAT THE NONPREVAILING PARTY WAS ENTITLED TO ATTORNEYS' FEES, BECAUSE IF YOU RECALL IN THIS CASE, THE TRIAL JUDGE STRUGGLED WITH WHETHER IT WAS REALLY BAD TO PUT A GUN TO A WIFE'S HEAD TO MAKE HER SIGN AN AGREEMENT AND CONTRASTED THAT WITH WHERE SHE REFUSED TO FOLLOW THE ADVICE OF HER ATTORNEY. THE TRIAL JUDGE SAID HE FOUND BOTH PARTIES WERE GUILTY OF INAPPROPRIATE CONDUCT, BUT HE FOUND IT MUCH WORSE TO PUT A GUN TO A HEAD THAN TO HAVE NOT FILED -- FOLLOWED THE ADVICE OF AN ATTORNEY. UNDER THOSE CIRCUMSTANCES, HE MAY VERY WELL HAVE SAID IT IS WORSE NOT TO FOLLOW THE ADVICE OF YOUR ATTORNEY, ALTHOUGH IT IS TERRIBLE TO PUT A GUN TO YOUR HEAD, AND UNDER THOSE CIRCUMSTANCES, HE MIGHT HAVE SAID EVEN THOUGH SHE IS NOT GOING TO BE SUCCESSFUL, I AM GOING TO CONSIDER THAT THIS WAS A CHAPTER 61 PROCEEDING. I AM GOING TO CONSIDER THE SCOPE AND HISTORY OF THE LITIGATION, AND UNDER ROSEN, I AM GOING TO GRANT HER THE FEES FOR THE WORK SHE WAS PUT TO, ALTHOUGH SHE WAS NOT SUCCESSFUL IN SETTING ASIDE THIS FINAL JUDGMENT.

I TAKE IT YOUR ARGUMENT IS THAT THE 1.540 MOTION IS WITHIN THE BOUNDARIES OF THE UNDERLYING 61 ACTION.

YES, SIR. THAT IS EXACTLY WHAT I AM SAYING.

AND THAT ANYTHING, THEN, IS -- THAT IS WITHIN THOSE BOUNDARIES IS GOVERNED BY ROSEN.

YES, SIR. IF THIS IS A FINAL JUDGMENT OF DIVORCE, THAT IS EXACTLY WHAT I AM SAY. AND THAT IS WHY -- WHAT I AM SAYING, AND THAT IS WHY YOU MUST LOOK TO THE UNDERLYING CAUSE, AND THAT BRINGS ME BACK TO THE POINT I WAS MAKING, WITH RESPECT TO THE NATURE OF THE ORIGINAL WRITS. YES, MA'AM.

BUT LET ME ASK YOU THIS. DOES THAT REQUIRE US TO DISAPPROVE YOUR POSITION? DOES IT REQUIRE US TO DISAPPROVE SPANO?

NO. IT REALLY DOES NOT, AND THAT IS WHY I AM TRYING TO SAVE SPANO AND HAVE YOU EXPLAIN SPANO AND AFFIRM THE PROVISION OF THE SECOND DISTRICT COURT OF APPEAL AND NOT SET ANY PREVAILING PARTY STANDARD AND SAY THIS IS THE KIND OF CASE THAT SPANO DEFINED THAT THERE WERE, TOO, CERTAIN CIRCUMSTANCES UNDER WHICH THE TRIAL COURT MAY VERY WELL HAVE GRANTED RELIEF, UNDER THE APPLICATION FOR RULE 1.540.

DESPITE THIS CASE AND AS IN SPANO, AS I UNDERSTAND IT, THE AGREEMENTS SAY THAT THE PARTIES WOULD BEAR THEIR OWN COSTS AND FEES.

YES, MA'AM.

AND SO DESPITE THAT LANGUAGE, IF YOU ARE UPHOLDING THE AGREEMENT, THE TRIAL COURT COULD STILL PROCEED WITH FEES, UNDER 61, IS WHAT YOU ARE SAYING.

NOT QUITE. NOT QUITE. AND I AM GOING TO SAY NOW YOU HAVE BROUGHT ME BACK TO THIS. I WAS TRYING IT TO ANSWER VERY BROADLY AND I WOULD SAY NO. IF THE TRIAL COURT FOUND THAT THE PROPERTY SETTLEMENT AGREEMENT COULD NOT BE SET ASIDE UNDER 1.540, AND IF IT, FURTHER, FOUND THAT THE PROPERTY SETTLEMENT AGREEMENT PROVIDED EACH PARTY SHOULD BEAR HIS OWN FEES, UNDER THOSE CIRCUMSTANCES, I DON'T THINK THE FEE AWARD WOULD BE APPROPRIATE.

I GUESS I THOUGHT THAT IS WHAT I WAS ASKING YOU.

I HOPE I ANSWERED IT CORRECTLY.

I DIDN'T KNOW. I THOUGHT YOU SAID THEY COULD AWARD FEES, NO MATTER WHAT. THAT IS WHAT I HEARD YOU SAY. I AM NOT SURE WHETHER YOU WERE --

I AM ACTUALLY TAKING -- TO BE HONEST WITH YOU, I DID SAY THAT, IN RESPONSE TO YOU, BUT I AM STILL GOING TO SAY THERE ARE TWO LEVELS OF APPROACH HERE. IT DEPENDS ON HOW BROADLY YOU WANT TO INTERPRET RULE 1.540, WITH RESPECT TO THE UNDERLYING PROCEEDING. YOU CAN GO AHEAD WITH ROSEN AND SAY, UNDER ROSEN, IF, IN FACT, THE PROPERTY SETTLEMENT AGREEMENT PROVIDED NO IMPMTION POSITION OF FEES -- IMPOSITION OF FEES, SO BE IT. THAT SOLVES THE PROBLEM. ON THE OTHER HAND, IF YOU SAID THE PROPERTY SETTLEMENT AGREEMENT PROVIDES FOR FEES, UNDER THE UNUSUAL CIRCUMSTANCE THAT I HAVE OUTLINED HERE, WHERE THE TRIAL JUDGE FOUND BOTH PARTIES AT FAULT, HE MAY VERY WELL HAVE EXERCISED KMAPTER 61 TO PROVIDE -- CHAPTER 61 TO PROVIDE FOR FEES, AND TO AFFIRM THE CASE BELOW IS TO SAY IN SPANO THE AGREEMENT WAS NOT SET ASIDE AND MAKE THAT DISTINCTION, BECAUSE HERE THE AGREEMENT WAS SUCCESSFULLY SET ASIDE, AND TO ME, THAT IS THE QUICK WAY TO DISPOSE OF THE APPARENT DISPUTE BETWEEN THE TWO CASES. A DOESN'T IT, ALSO, HAVE A GOOD PUBLIC POLICY DEPENDING THAT A SPOUSE HAS JUST ENTERED INTO A SETTLEMENT AGREEMENT AND ISN'T HAPPY ABOUT IT ON THE NOT TO HAVE ANY INCENTIVE TO GO BACK TO A LAWYER AND SAY, LISTEN, LET'S SAY WHAT -- SEE WHAT WE CAN DO, AND THE LAWYER SAYS WE CAN TRY. I MAY BE ABLE TO GET FEES, IF I WIN OR LOSE. ISN'T THE POLICY, REALLY, ONE THAT WOULD MAKE SENSE, TO HAVE THAT DISTINCTION?

YOU CAN MAKE THAT BRIGHT-LINE DICHOTOMY. RIGHT NOW I THINK THAT THE TRIAL COURTS, UNDER ROSEN, ARE FOLLOWING YOUR INSTRUCTIONS VERY CAREFULLY, AND IF THE TRIAL COURT, UNDER ROSEN, HAVE FOUND THAT THERE WAS NO BASIS TO ADVANCE UNDER RULE 1.540, THAT WOULD MAKE FOR APPLICATION FOR ATTORNEYS' FEES.

IN THIS CASE THE SECOND SECOND DISTRICT SAYS WE NOTE THIS IS A CASE WHERE IT WOULD APPEAR IRRELEVANT. IT WOULD APPEAR THE TRIAL COURT RELIED ON ONE FACTOR ONLY, THE HUSBAND'S MISCONDUCT. DO YOU READ OUR DECISION IN ROSEN TO TAKE NEED AND ABILITY TO PAY OUT OF THE EQUATION COMPLETELY?

NO, MA'AM, I DO NOT, AND IN THIS CASE THAT WAS REVERSED ON THAT BASIS, TO GO BACK DOWN, NOT ONLY TO CONSIDER THE HUSBAND'S MISCONDUCT IN THE CASE BUT, ALSO TO CONSIDER ALL OF THE OTHER ELEMENTS, AND THAT IS WHY IT WAS REVERSED. IT HATS BEEN REMANDED TO THE -- IT HAS BEEN REMAPPEDED TO THE TRIAL COURT. AND THAT IS WHY I KEEP COMING BACK TO ROSEN. IT IS GIVING TREMENDOUS POWER TO A TRIAL COURT TO CONTROL THE TYPES OF APPLICATIONS FOR ATTORNEYS' FEES, FRANKLY TO CONTROL THOSE FLOOD GATES OF LITIGATION THAT EVERYBODY WORRIES ABOUT.

SO IS NEED AND ABILITY TO PAY STILL THE PREDICATE, TO GET INTO THE DOOR, AND THEN ROSEN ADJUSTS IT, OR CAN YOU GET IN THE DOOR UNDER ROSEN, UNDER YOUR INTERPRETATION OF ROSEN, EVEN IF THERE IS NO NEED AND ABILITY TO PAY, ESTABLISHED?

I DON'T KNOW THE ANSWER TO THAT QUESTION. I THINK -- I REALLY DO NOT, ANGI DON'T THINK -- AND I DON'T THINK ANYONE ELSE DOES, EITHER. THE TRIAL COURT IS TO CONSIDER COURSE AND SCOPE OF THE LITIGATION AND THE PARTIES, I THINK. THIS IS HOW THE SECOND DISTRICT COURT OF APPEAL INTERPRETED YOUR DECISION IN ROSEN, AND IT DOES GRANT, TO THE TRIAL JUDGE, A GREAT DEAL OF DISCRETION IN MAKING THAT DETERMINATION, WHICH IS WHY THE TRIAL JUDGE, HERE, WAS REVERSED. HE RELIED SOLELY ON THE FAULT OF THE HUSBAND, WHICH WAS SO EGREGIOUS IN THIS CASE, I THINK HE WAS OVERWHELMED BY THE QUALITY OF THE CONDUCT, SO THE SECOND DISTRICT SAID, NO, YOU WON'T JUST CONSIDER HIS FAULT IN PROCURING THE FINAL JUDGMENT. WE REMAND IT TO YOU FOR CONSIDERATION OF ALL OF THE ROSEN FACTORS NOT JUST ONE, SO THE ULTIMATE ENDS OF CONTROL OF THE LITIGATION IS SERVED. IF THERE ARE NO OTHER QUESTIONS? I WILL RETIRE. THANK YOU, JUSTICE.

THANK YOU, MR. MANEY. MR. LEVINE. REBUTTAL.

IT IS ALWAYS AN INTRIGUE TO TRY A CASE WITH MR. MANEY. THE TWO OF US HAVE GRAY HAIR AND VERY LITTLE OF IT. MR. MANEY, AND I DON'T SAY THIS PERJORATIVELY AT ALL. HE TOLD YOU, JUSTICE PARIENTE, EXACTLY WHAT YOU HEARD. THAT IS WHETHER YOU WIN OR LOSE, YOU GET ATTORNEYS' FEES, AND THE PUBLIC POLICY AGAINST THAT IS YOU SHOULD NOT BEHOLD WILLING THAT CARROT -- BE HOLDING THAT CARROT OUT THERE WITH SOMEONE WHO IS JUST DISSATISFIED TO COME IN AND LITIGATE AND BE ABLE TO GET ATTORNEYS' FEES. THE DISTINCTION SHOULD NOT BE WHETHER YOU WIN OR LOSE, TAN THAT IS THE PROBLEM WITH UPHOLDING THIS DECISION. I WOULD SUBMIT THIS TO YOU. RULE 1.540, THERE IS NO FLORIDA CASE THAT SUPPORTS MR. MANEY'S POSITION. NONE WHATSOEVER. BUT ON THE OTHER HAND, 1.540 CAME FROM THE FEDERAL RULES. IT IS ALMOST VERBATIM FROM THE FEDERAL RULES, AND ALL OF THE FEDERAL CASES, AND WE HAVE CITED THEM TO YOU, SAY NO ATTORNEYS' FEES. NO ATTORNEYS' FEES, AND THE LAW IS CLEAR! THAT IS A PREDICATE. THAT IS A GUIDE. IT IS NOT DETERMINATIVE, BUT MAYBE IN SOME INSTANCES IT MAY, EVEN, BE, SO WHEN YOU LOOK AT THE BODY OF LAW THAT SUPPORTS OUR ARGUMENT, THE BODY OF LAW SAYS DON'T OPEN UP THE FLOOD GATES IN THIS PARTICULAR INSTANCE, UNLESS YOU ARE GOING TO MAKE IT CLEAR. PUT IT IN THE RULE!

BUT AREN'T YOU DIVORCING, EXCUSE THE PUN, OKAY, THE NATURE OF THE UNDERLYING CAUSE OF ACTION, IN WHICH THE 1.540 MOTION IS BEING FILED? OBVIOUSLY IF YOU ARE FILING THAT IN A PERSONAL INJURY CASE, TO SET ASIDE A JUDGMENT OR WHATEVER THEN YOU MAY BE ABSOLUTELY CORRECT INSOFAR AS THAT THERE IS NOTHING ABOUT ATTORNEYS' FEES, AND THERE IS NOTHING ABOUT ATTORNEYS' FEES IN THE UNDERLYING ACTION, BUT IF YOU ARE FILING IT IN A STATUTORILY STATUTORILY-CONTROLLED DIVORCE CASE, THAT HAS PROVISIONS FOR ATTORNEYS' FEES, THEN IT MAY BE A DIFFERENT OUTCOME, AND YOU -- HOW CAN YOU -- CAN YOU DIVORCE OR ISOLATE THE 1.540-B MOTION, WHICH YOU, BOTH, LEGAL SCHOLARS THAT YOU ARE, HAVE PROPERLY SHOWN US WHAT THE ORIGINS, YOU KNOW, ARE, OF THAT RULE, IN, ESPECIALLY IN THE DOMESTIC RELATIONS CONTEXT, WHY ISN'T SPANO A SUFFICIENT PROTECTION, THEN, FOR, EVEN UNDER ROSEN, THAT IF A TRIAL COURT SAYS, WELL THEY HAVE TOLD ME I HAVE GOT THE AUTHORITY, BECAUSE IT IS STILL IN THIS SAME SUIT, AND THE END GAME IS WHATEVER, BUT ON THE OTHER HAND, WHAT I HAVE FOUND IS THAT THERE IS A PERFECTLY VALID SETTLEMENT AGREEMENT HERE THAT HAS AN UNAMBIGUOUS PROVISION THAT SAYS, IN ANY ACTION INVOLVING DISPUTES BETWEEN THESE TWO PARTIES, THAT THEY WILL BEAR THEIR OWN ATTORNEYS' FEES. MATTER OF FACT, IT SAYS IN ANY ACTION, INCLUDING A LATER ACTION UNDER 1.540-B, BECAUSE THEY WERE GOOD ATTORNEYS DRAFTING THAT PARTICULAR AGREEMENT. WHY ISN'T THAT ENOUGH OF A PROTECTION, THEN, IN AN OVERALL PICTURE?

JUSTICE ANSTEAD, THE REASON WHY IT IS NOT OF ENOUGH OF A PROTECTION IS BECAUSE OF THE FACT THAT WHAT YOU HAVE IS YOU HAVE THE FEDERAL AUTHORITY THAT SAYS NO. YOU, THEN, HAVE SPAN--- SPANO, THAT SAYS, IN EITHER INSTANCE --

WE DON'T HAVE DIVORCE CASES IN THE FEDERAL COURTS, DO WE?

THERE ARE VERY, VERY, VERY, VERY FEW. THERE ARE VERY FEW. I TRIED ONE. BUT BE THAT AS IT MAY, THE ISSUE, HERE, IS THIS, I AGREE, 1.540, PERSONAL INJURY MATTER, NO ATTORNEYS' FEES. HAD THERE JUST IS NOTHING IN ROSEN THAT DEALS WITH 1.540. IT IS A 61 PROCEEDING. 1.540, IF IT IS GOING TO BE APPLICABLE AND ATTORNEYS' FEES ARE GOING TO BE PERMITTED, SHOULD SAY, IN THE EVENT THAT THIS ACTION IS BROUGHT, IN THE BASIC DIVORCE PROCEEDING, OR IN A 61 PROCEEDING, THE LAW APPLICABLE WILL BE THAT WHICH IS IN 61. IT IS NOT THERE. AND ALL THAT I AM SAYING TO YOU IS THAT, HOW ARE YOU GOING TO GRAFT IT IN A RULE THAT WE HAVE TO USE EVERY DAY IN THE WEEK. HOW AM I GOING TO ADVISE MY CLIENT, EVERYDAY IN THE WEEK, WHEN IT DOESN'T SAY IT? I SUBMIT THAT THIS CASE WAS WRONGFULLY, WRONGLY

DECIDED BELOW, AND SHOULD BE SET ASIDE, AND IN SO DOING, YOU MUST ADDRESS THE IMPLICATIONS THAT WE HAVE BEEN ARGUING HERE, TODAY, IN SPANO, THAT WOULD PERMIT THE UNSUCCESSFUL LITIGANT, BE IT HUSBAND OR WIFE, TO RECOVER ATTORNEYS' FEES, IN THE EVENT THAT THEY CAN'T SET IT ASIDE. IT HAS REALLY BEEN A PLEASURE. THANK YOU.

THANK YOU. IT HAS BEEN A PLEASURE FOR US TO HAVE BOTH OF YOU APPEAR. WE WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.