>> THE COURT WILL NOW PROCEED TO TAKE UP THE CASE OF PRENTICE V. R.J. REYNOLDS TOBACCO COMPANY. COUNSEL FOR THE PETITIONER IS RECOGNIZED.
>> THANK YOU, YOUR HONOR. AND MAY IT PLEASE THE COURT, MY NAME IS CELINE HUMPHRIES, AND I'M HERE REPRESENTING THE PETITIONER, LINDA PRENTICE.
THE ISSUE THAT THIS COURT HAS ACCEPTED FOR REVIEW IS THE LEGAL STANDARD REQUIREMENT FOR PROVING FRAUDULENT CONCEALMENT IN PROGENY CASES.
VERY BRIEFLY, IN THE CONTEXT OF REVIEWING A JURY INSTRUCTION, THE FIRST DISTRICT COURT OF APPEAL REVIEWED TO LEGAL QUESTIONS TO FIND THAT, AS IT SAYS THE JURY SHOULD BE EXPRESSLY INSTRUCTED TO, QUOTE: DETERMINE WHETHER OR NOT THE SMOKER, QUOTE, RELIED ON A STATEMENT THAT CONCEAL OR OMITTED INFORMATION.
AND THE VERY BRIEF ROAD MAP FOR MY ARGUMENT TODAY IS THAT THIS IS ERROR FOR THREE REASONS.
FIRST AND FOREMOST, BECAUSE OF RES JUDICATA.
BOTH LEGAL DECISIONS HAVE BEEN PREVIOUSLY DECIDED BY THIS COURT ON MULTIPLE OCCASIONS.
THAT'S THE QUESTION REGARDING THE EXISTENCE OF A DUTY WHICH RELATED TO THE CONDUCT ELEMENTS, AND THAT'S ALSO THE QUESTION OF WHETHER OR NOT RELIANCE ON A STATEMENT IS NECESSARY FOR A CONCEALMENT COUNT.
SECOND AND BRIEFLY, THE REST OF MY ROAD MAP, MY SECOND POINT FOR WHY THIS COURT SHOULD REVERSE THE FIRST DISTRICT COURT OF APPEAL, EVEN IF RES JUDICATA DID NOT APPLY HERE, THIS COURT SHOULD NOT AT THIS LATE DATE RECONSIDER, AND THAT'S FOR TWO REASONS.
ONE MOST FUNDAMENTALLY, JUSTICE CANADY, WE CITED A DECISION BY YOU FROM THE SECOND DISTRICT.

WE CANNOT DO SO WITHOUT A
COMPLETE RECORD.
THE DEFENDANTS HAVE NOT PROVIDED
A RECORD, AND IT'S OUR
UNDERSTANDING IT'S BEEN
DESTROYED.
AND NUMBER TWO, AT THIS LATE
DATE IN THE LITIGATION, CHANGING
THE STANDARD NOW WOULD MAKE A
MESS OF THE LITIGATION.
AND THE FINAL REASON IS TO
DISCUSS WHY THE DEFENDANTS
ORIGINALLY RECOGNIZED THAT
CONCEALMENT DOES THE NOT REQUIRE
RELIANCE ON THE STATEMENT.
>> COUNSEL, CAN I ASK YOU A
QUESTION?
IF YOU LOOK AT WHAT THE ACTUAL
4A FINDING WAS WHERE IT STARTS
OFF SAYING THAT THE DEFENDANTS
CONCEALED OR OMITTED INFORMATION
ON AN OTHERWISE KNOWN OR
AVAILABLE, AND THEN IT SAYS
KNOWING THAT THE MATERIAL WAS
FALSE OR MISLEADING OR FAILED TO
DISCLOSE A MATERIAL FACT
CONCERNING THE HEALTH EFFECTS.
SO ISN'T THE FINDING ITSELF KIND
OF COMPLETELY INTERTWINED WITH
THE IDEA THAT THE PROBLEM IS
THAT IF THERE WAS MATERIAL
DISSEMINATED THAT BECAME
FRAUDULENT BECAUSE IT, YOU KNOW,
CREATED EXPECTATIONS THAT
ACTUALLY IF FULL DISCLOSURE HAD
BEEN MADE HERE, WOULD HAVE BEEN
MORE PROPERLY INFORMED?
SO ISN'T THE STATEMENT, YOU
KNOW, IN THIS PARTICULAR CASE
AND CONTEXT, ISN'T IT REQUIRED?
>> SO I HAVE TWO ANSWERS TO YOU,
BUT FIRST I WANT TO MAKE THE
OBSERVATION THAT WE'RE GOING
STRAIGHT TO RECONSIDER THE ISSUE
AS OPPOSED TO ACKNOWLEDGING THE
RES JUDICATA OR THE RECORD.
I HAVE AN EASY ANSWER, AND I
HAVE A MORE SPECIFIC, MEATY
ANSWER TO REALLY ADDRESS IT.
THE EASIER ANSWER IS, REMEMBER,
THESE FINDINGS COME FROM THE
VERDICT FORM, AND THEY COME FROM
PHASE ONE OF THE ENGEL CLASS
TRIAL.

THE BEST WAY I CAN ANSWER YOU IF YOU'RE HAVING A HARD TIME UNDERSTANDING WHAT THAT LANGUAGE MEANS IS TO DIRECT YOU TO THE PHASE ONE VERDICT FORM.
THE PHASE ONE VERDICT FORM DOES HAVE THAT LANGUAGE REGARDING CONCEALMENT, BUT LISTEN TO THE DIFFERENCE ON THE FINDING FOR FRAUDULENT MISREPRESENTATION, AND THIS IS KEY.
THE VERDICT FORM FOR FRAUDULENT MISREPRESENTATION ASKED DID ONE OR MORE OF THE DEFENDANTS MAKE A FALSE STATEMENT OF A MATERIAL FACT EITHER KNOWING THE FALSE STATEMENT WAS FALSE OR MISLEADING OR BEING WITHOUT KNOWLEDGE OF ITS TRUTH OR FALSITY DID SO WITH THE INTENTION OF MISLEADING THE SMOKERS.
SO YOU HAVE THE FRAUDULENT MISSTATEMENT CLEARLY BEING PREMISED EXCLUSIVELY ON A STATEMENT.
SO WHEN YOU LOOK ON THE FINDING FOR CONCEALMENT-- NOW I'M GOING TO GET MORE TO THE MEAT OF THE ISSUE-- YOU FOCUSED ON ONE-HALF OF THE VERDICT FORM.
THE FIRST WAS DID THEY CONCEAL OR OMIT INFORMATION NOT OTHERWISE KNOWN OR AVAILABLE, AND YOU FOCUSED ON THE QUALIFYING LANGUAGE.
BUT THEN THERE'S AN OR, A DISJUNCTIVE.
AN ALTERNATIVE BASIS FOR THE PHASE ONE JURY FIND TO CONCEALMENT DID THE DEFENDANTS OR DID ONE OR MORE OF THE DEFENDANTS FAIL TO DISCLOSE A MATERIAL-- HEALTH EFFECTS AND/OR NATURE OF SMOKING.
SO THE VERDICT FORM MAKES CLEAR THERE WERE ALTERNATIVE WAYS.
NOW I WANT TO ANSWER YOU DIVING IN ON THE MERITS, AND THAT'S THE JOYNER DECISION.
A CRITICAL FACT-- AND I'M GOING TO KEEP BRINGING YOU BACK TO RES JUDICATA, I ADMIT-- A CRITICAL FACT WAS CITED BY THE TRIAL

COURT IN THE CLASS ACTION
PROCEEDING WHEN DENYING DIRECTED
VERDICT, AND THAT'S THE JOYNER
DECISION.
SO THAT IS A DECISION THAT WAS
REVIEWED BY DEFENDANTS.
THE DEFENDANTS COULD HAVE
REVIEWED THE DUTY ISSUE TO THIS
COURT IN ENGEL.
SO THAT'S RES JUDICATA.
BUT HERE'S WHAT JOYNER EXPLAINS.
JOYNER EXPLAINS AND
ACKNOWLEDGES, YES, WE DON'T
WILLY-NILLY IMPOSE A DUTY TO
DISCLOSE ON ANYONE,
MANUFACTURERS OR ANYONE.
BUT WHEN THERE ARE CERTAIN
CIRCUMSTANCES, A DUTY DOES
EXIST.
ACTUALLY, THIS IS ANOTHER REALLY
EASY ANSWER TO YOU, YOUR HONOR.
THE MOST OBVIOUS CIRCUMSTANCE IS
WHEN A PARTY-- HERE, THE
DEFENDANT-- ACTUALLY ASSUMES
THE DUTY TO DISCLOSE.
AND THAT'S ONE THING IGNORED BY
THE DEFENDANTS IN THEIR
BRIEFINGS.
THERE'S MANY INSTANCES OF THIS,
AND ONE OF THEM IS THE FRANK
STATEMENT WHICH WAS A FULL-PAGE
AD PUBLISHED NATIONWIDE IN
NEWSPAPERS WHERE THE DEFENDANTS
AFFIRMATIVELY UNDERTOOK TO
DISCLOSE THE TRUTH ABOUT
CIGARETTES.
THEY CLAIMED THAT THEY WOULD
WORK WITH THE FEDERAL GOVERNMENT
IN RESEARCHING WHETHER OR NOT
CIGARETTES CAUSED HARM.
THEY CLAIMED THAT THEY WOULD DO
THEIR OWN INTERNAL RESEARCH.
AND IT WAS CALLED-- THE TITLE,
ME CALLING IT A FRANK STATEMENT
IS NOT ME BEING CUTE.
THE TITLE OF THE ADVERTISEMENT
BY ALL OF THE ENGEL DEFENDANT
MANUFACTURERS WAS A FRANK
STATEMENT TO SMOKERS AND SAID
WE'RE LOOKING TO FIND OUT THIS
INFORMATION, AND WE'LL LET YOU
KNOW IF WE FIND IT.
SO THAT'S ANOTHER EASY ANSWER TO
YOU, JUSTICE MUNIZ.

BUT NOW GOING ALSO TO THE JOYNER ANALYSIS WHICH THE TRIAL COURT ENGAGED IN, THERE ARE MANY CIRCUMSTANCES BY WHICH A DEFENDANT OR A PARTY CAN ALSO CREATE A DUTY TO DISCLOSE, AND THAT'S BY THEIR STATEMENTS OR BY THEIR CONDUCT.
AND AT THIS POINT I'M NOW RELYING ON THE ANALYSIS OF JUDGE MAKAR, I'M RELYING ON THE ANALYSIS BY THE 11TH CIRCUIT IN THE COTE DECISION.
WHAT THE STANDARD IS, IS IF A PARTY DOESN'T DISCLOSE BUT THEY THROUGH SOME OTHER WAY-- THROUGH ARTIFICE THROW THE INDIVIDUAL OFF THE SCENT, AND THERE'S MANY DIFFERENT WAYS THIS CAN HAPPEN.
NOW I'M ACTUALLY JUST LOOKING AT THE JOYNER DECISION.
FOR EXAMPLE, THE JOYNER DECISION MAKES CLEAR THAT ONE CIRCUMSTANCE IS A HALF-TRUTH, AND THAT'S THE LANGUAGE YOU'RE FOCUSING ON, JUSTICE MUNIZ.
SO A HALF-TRUTH.
A HALF-TRUTH IS A FACTUAL CIRCUMSTANCE THAT, FRANKLY, CAN SATISFY BOTH CAUSES OF ACTION.
A HALF-TRUTH IS A MISREPRESENTATION.
I TELL YOU SOME FACT REGARDING THE CAR, FOR EXAMPLE, THAT IT HAS A GREAT ENGINE, BUT WITH I OMIT THE FACT THAT THE CAR HAS BAD TIRES.
SO THAT'S ARGUABLY A FALSE MISREPRESENTATION REGARDING THE SAFETY OF THE VEHICLE--
>>-- GOING TO GO DOWN ALL THE KIND OF ABSTRACT STUFF THAT WAS IN THE SOLARIO OPINION, BUT IF WE TIE IT, IF WE COME BACK TO THIS CASE AND WE LOOK AT THE INSTRUCTION THAT WAS ACTUALLY GIVEN THAT THE FIRST DCA HAD THE PROBLEM WITH, ONE OF THE PROBLEMS THAT I HAVE IS I DON'T HAVE ANY IDEA WHAT IT EVEN MEANS.
WHEN IT SAYS THAT IN THE SECOND PARAGRAPH THAT YOU'RE RELYING TO

YOUR DETRIMENT ON CONCEALMENT OR
OMISSION IF, I DON'T KNOW WHAT
THAT MEANS.
I DON'T KNOW WHAT, THAT YOU
RELIED ON A CONSPIRACY TO
WITHHOLD INFORMATION.
SO IF WE JUST LOOK AT-- CAN YOU
JUST KIND OF EXPLAIN HOW THAT
EVEN MAKES SENSE IN RELATION TO
WHAT WAS ARGUED TO THE JURY HERE
AND HOW IT RELATES BACK TO THE
ENGEL FINDINGS?
>> SURE.
I DO WANT TO CLOSE THE LOOP ON
THIS POINT I WAS MAKING ABOUT
JOYNER, BECAUSE I THINK THAT'S
NECESSARY TO ANSWER YOU HERE.
WHAT JOYNER MAKES CLEAR IS THAT
THERE'S MANY DIFFERENT WAYS BY
WHICH A CONCEALMENT CAN BE
EFFECT WAITED.
I WAS SAYING A HALF-TRUTH, ALSO
BY MAKING STATEMENTS THAT MAY
NOT BE ON THE POINT AT ISSUE,
BUT THAT SOMEHOW THROW PEOPLE
OFF THE SCENT.
MAKING STATEMENTS THAT--
BASICALLY, SUPPRESS THE TRUTH.
IT CAN BE AXED, LIKE PART OF THE
EVIDENCE HERE IS THAT THE
CIGARETTE COMPANIES ACTIVELY
SUPS PRESSED SCIENTIFIC STUDIES
ON THE TRUTH OF THE
ADDICTIVENESS AND THE DEADLINESS
OF CIGARETTES AND ALSO THAT THEY
GAVE FALSE INFORMATION.
SO NOW TO GO TO YOUR QUESTION,
LIKE WHAT DOES IT REALLY MEAN
HERE.
HONESTLY, THE POINT OR THE
THREAD THAT YOU'RE PULLING IS
ONE THAT WE GAVE UP LONG A AGO,
AND THAT IS THE QUESTION OF HOW
DO YOU RELY ON SOMETHING NOT
SAID, IS I THINK WHAT YOU'RE
SAYING.
AND REALLY IN THIS CONTEXT WHAT
THIS COURT HAS ESSENTIALLY SAID
IS THAT THEIR RELIANCE IS SIMPLY
ANOTHER WAY OF ESTABLISHING
CAUSATION.
AND SO AS ALSO SAID BY THE 11TH
CIRCUIT AND BY SOME OF THE
DISTRICT COURT OF APPEALS, WHAT

WE'RE HAVING TO ESTABLISH IS A SIMPLENESS.
HAD THE INDIVIDUAL, HAD JOHN PRICE KNOWN THE TRUTH, WOULD HE HAVE ACTED DIFFERENTLY.
SO ONE OF THE QUESTIONS, I'LL BE HONEST, I WENT BACK AND I WATCHED A LOT OF ORAL ARGUMENTS.
I WATCHED DOUGLAS, WHICH MY FIRM HANDLED.
I WATCHED A LOT OF THE ORAL ARGUMENTS WHERE THE DC As HAVE ALL REACHED A DIFFERENT CONCLUSION, AND ONE THING THAT OCCURRED TO ME IS TO HELP YOU UNDERSTAND HOW THIS CONNECTION HAPPENS.
AND SO A CRITICAL WAY OF EXPLAINING IT IS REMEMBERING THAT THERE ARE TWO DIFFERENT FACTS THAT WERE CONCEALED.
NOT JUST ONE.
THERE WERE TWO FACT IFS.
ONE IS THE FACT OF THE HARMFULNESS OF CIGARETTES.
THE SECOND FACT THAT WAS CONCEALED WAS THE ADDICTIVENESS OF CIGARETTES.
PART OF THE EVIDENCE IS THAT THE NICOTINE-- ALL OF THESE CIGARETTES AT ISSUE HERE CONTAIN NICOTINE, AND THE NICOTINE IN CIGARETTES IS AS ADDICTIVE, AS POWERFULLY ADDICTIVE AS NARCOTICS LIKE HEROIN AND COCAINE.
PART OF THE EVIDENCE WE PRESENT AT TRIAL IS WE PRESENT EXPERTS WHO SAY THIS IS SOMETHING THAT WAS NOT EVEN LEAKED OUT TO THE AMERICAN PUBLIC UNTIL 1988.
THAT'S WHEN THE SURGEON GENERAL FINALLY DISCOVERED THIS AFTER YEARS OF OBFUSCATION BY THE DEFENDANTS THROWING THE SURGEON GENERAL OFF THE SCENT.
>> COUNSEL, I'M SORRY TO INTERRUPT YOU, BUT DOESN'T IT ALWAYS COME BACK TO A STATEMENT THOUGH?
BECAUSE EVEN IF YOU'RE SAYING WHAT TRIGGERS THE DUTY IN SOME KIND OF CLAIM, SOME SORT OF, YOU KNOW, THE CREATION OF AN

EXPECTATION THAT THE COMPANIES ARE GOING TO DISCLOSE EVERYTHING THAT FRANKLY, WOULDN'T YOU STILL HAVE TO SHOW THAT THE PERSON, YOU KNOW, WAS EXPOSED TO INFORMATION THAT CREATED THE EXPECTATION IN THE FIRST PLACE AND THAT THAT'S WHAT THEY RELIED ON?
I MEAN, ISN'T THAT-- COULDN'T THAT-- SO THAT COULD BE THE STATEMENT.
OR THE STATEMENT COULD BE, YOU KNOW, A HALF-TRUE AD OR SOMETHING.
BUT ISN'T IT ALWAYS, AT THE END OF THE DAY, DOESN'T IT GET BROUGHT BACK TO RELYING ON SOMETHING THAT THE DEFENDANTS DISSEMINATED AND PUT OUT THERE?
>> SO REALLY THE THREAD YOU'RE PULLING THERE IS THAT IS ONE CIRCUMSTANCE.
REMEMBER, WE'RE ESTABLISHING CAUSATION HERE.
AND THERE IS NO ONE WAY TO ESTABLISH CAUSATION.
>> BUT WE'RE ACTUALLY, I MEAN, RELIANCE IS-- I MEAN, EVERYONE AGREES THAT RELIANCE IS AN ELEMENT, RIGHT?
AND EVERYONE AGREES THAT, YOU KNOW, WHAT THE DISPUTE OVER THIS INSTRUCTION IS AS TO WHETHER IT PROPERLY INSTRUCTED THE JURY ON THAT ASPECT OF THE CASE.
>> RIGHT.
AND SO BEING A LITTLE MORE DIRECT, THE RELIANCE ON THE OMISSION, REMEMBER PART OF WHAT HAPPENED IS WHEN YOU GO UNDER JOYNER, PART OF HOW THE CONCEALMENT IS ACTIONABLE IS THAT A SERIES OF STATEMENTS.
NOT ONE STATEMENT, PLEASE BE CLEAR.
THE FIRST DISTRICT COURT OF APPEALS SAYS WE HAVE TO FIND A SINGLE STATEMENT.
>> WELL, AND THE OTHER SIDE SAYS NOBODY'S SAYING YOU HAVE TO SAY ON MARCH 1, 1980, I SAW THIS AD OR WHATEVER.
THEY CONCEDE IT COULD BE A

GENERIC CLASS OF STATEMENTS,
WHATEVER, BUT YOU'RE STILL
GETTING BACK TO THE IDEA THAT
YOU HAVE TO POINT TO SOMETHING
THAT, YOU KNOW, WAS SEEN, HEARD,
WHATEVER THAT INFLUENCED THE
BEHAVIOR OF THE PLAINTIFF AND
THAT, YOU KNOW, WAS-- AND IT
THEN LED TO THE INJURIES.
I MEAN, ISN'T THAT THE BOTTOM
LINE?
>> I DISAGREE, BUT I'M GOING TO
MAKE AN EARLIER, A CLEAR
STATEMENT BEFORE I KIND OF
EXPLAIN WHY.
TO BE CLEAR, THE FIRST--
REGARDLESS OF WHAT THE
DEFENDANTS ARE CLAIMING NOW TO
YOU, THE FIRST DISTRICT HELD IT
HAS TO BE A STATEMENT.
AND THEN THAT IS, I CAN TELL YOU
AS AN OFFICER OF THE COURT WHO
HANDLES AS AN APPELLATE LAWYER
DOZENS OF THESE TRIALS, THAT IS
WHAT THE DEFENDANTS REQUEST IN
TRIAL, A SPECIFIC STATEMENT.
AND THEY PARTICULARLY WANT THAT
BECAUSE MOST OF THESE SMOKERS
HAVE DECEASED, AND SO THERE'S
SIMPLY NO WAY FOR US TO
IDENTIFY, OR VERY RARELY, A
SPECIFIC STATEMENT.
BUT TO GET TO YOUR QUESTION, I
THINK THE BEST WAY TO TELL YOU
IS ONE WAY-- I'M GOING TO TELL
YOU SOME OTHER WAYS THAT ARE NOT
TIED TO STATEMENTS, ONE WAY OF
ESTABLISHING CAUSATION IS THE
MISINFORMATION CAMPAIGN.
THAT IS A CRITICAL FACT.
I DEVOTED A SECTION OF MY BRIEF
MAKING CLEAR THIS MISINFORMATION
CAMPAIGN UNDER JOYNER, VARIOUS
STATEMENTS TRYING TO THROW
PEOPLE OFF THE SCENT WAS NOT SO
PEOPLE WOULD HEAR THE STATEMENTS
THEMSELVES.
IT WAS TO CREATE THIS GENERAL
PERCEPTION IN THE COMMUNITY AND
GO BACK IN TIME.
I'M NOT SURE HOW MANY OF YOU ARE
AS OLD AS I AM.
GO BACK IN TIME AND REMEMBER THE
GENERAL PERCEPTION OF THE

COMMUNITY.
SO IT'S THAT, IT'S THE RELIANCE
ON THE COMMUNITY BELIEF THAT
CIGARETTES DON'T CAUSE DEATH.
OR RELIANCE ON THE FACT THAT
NOTHING WAS REVEALING IN ALL OF
THE MISAPPREHENSION AND DOUBT
ABOUT THE CRITICAL QUESTION OF
ADDICTION.
AND SO WHEN YOU'RE PROVING
RELIANCE ON THIS MISINFORMATION
CAMPAIGN, WE DON'T HAVE TO PROVE
SOMEBODY COMING IN AND SAYING,
YOU KNOW WHAT?
I SAW R.J. REYNOLDS ON THE
"DATELINE" SHOW LAST NIGHT, AND
THEY SAID IT'S NOT ADDICTIVE.
I SAW R.J. REYNOLDS SWEAR BEFORE
CONGRESS THAT IT'S NOT
ADDICTIVE.
IT'S THAT THE PERSON FOLLOWED
AND UNDERSTOOD AND ACTED
ACCORDING TO IT.
BUT PLEASE KNOW--
>> MS. HUMPHRIES, MAYBE IT WOULD
BE HELPFUL IF YOU EXPLAINED HOW
FOLLOWING THE JURY INSTRUCTIONS
THAT'S BEEN ASKED ABOUT THAT A
JURY WITH THE FACTS IN THE CASE
COULD HAVE FOUND RELIANCE IN
YOUR CLIENT'S FAVOR UNDER THE
JURY INSTRUCTIONS SPECIFICALLY
TYING WHAT FACTS WERE THERE AND
HOW FOLLOWING THE JURY
INSTRUCTIONS COULD HAVE FIND FOR
YOUR CLIENT.
>> THANK YOU, SIR.
AND THAT'S EXACTLY WHERE I WAS
GOING TO GO.
>> YOU NEED TO GET THERE IN A
HURRY.
>> HERE I GO.
I NEGLECTED TO MAKE CLEAR THE
VOLUME OF EVIDENCE IN HOW THESE
CASES ARE PROVED.
NUMBER ONE, YOUR HONOR, IS THE
PLAINTIFFS PRESENT EXPERT
TESTIMONY.
THE PLAINTIFFS PRESENT EXPERT
TESTIMONY EXPLAINING THE IMPACT
OF THIS MISINFORMATION CAMPAIGN,
EXPLAINING ITS SUCCESS.
SO THE JURY UNDERSTANDS HOW THE
MISINFORMATION CAMPAIGN AFFECTED

SMOKERS.
I KNOW THAT'S NOT THE SPECIFIC SMOKER YET, BUT THAT'S AN INITIAL BACKGROUND.
ANOTHER INITIAL BACKGROUND THAT THE JURY HEARS, AND THIS IS REMARKABLE, IS THE WORDS OF THE DEFENDANTS THEMSELVES.
SO, JUSTICE MUNIZ, THE QUESTIONS YOU'RE PUTTING TO ME ARE ALL ANSWERED BY THE DEFENDANTS.
A REMARKABLE FACT IS FOR DECADES THE DEFENDANTS DOCUMENTED ALL OF THE SUCCESS OF WHAT THEY WERE DOING WITH THE CONCEALMENT IN DOCUMENTS, IN INDUSTRY DOCUMENTS THAT USED TO BE CONFIDENTIAL.
SO THEY THEMSELVES EXPLAIN HOW WHAT THEY'RE DOING MAKES A SUBSTANTIAL PERCENTAGE OF AMERICANS SMOKE WITHOUT UNDERSTANDING THE SIGNIFICANCE BECAUSE THEY'VE EFFECTIVELY CONCEALED IT AND NOT BE WILLING TO QUIT SMOKING WHICH IS ALSO CRITICAL BECAUSE THE SMOKERS DIDN'T UNDERSTAND WHAT THEY WERE DEALING WITH.
SO THAT'S THE DOCUMENT.
ANOTHER CRITICAL POINT IS SIMPLY AN ATMOSPHERIC--
>> COUNSEL, YOU ARE NOW BURNING UP YOUR REBUTTAL TIME.
I WANT YOU TO BE AWARE OF THAT.
I'M GOING TO GIVE YOU A LITTLE MORE TIME, BUT I'M NOT GOING TO GIVE YOU AN UNLIMITED AMOUNT OF TIME.
>> THEN I'M GOING TO GET RIGHT TO THE POINT ABOUT THIS PARTICULAR PERSON.
IN ADDITION TO THIS, YOUR HONOR-- AND THANK YOU, JUSTICE CANADY-- THE JURY HEARD HOW MR. PRICE RESPONDED TO THESE CAMPAIGNS.
FOR EXAMPLE, WHEN THE DEFENDANTS MARKETED FILTERS, FILTERED CIGARETTES AS SAFER, THEY'RE NOT-- WHICH THEY'RE NOT, THEY'RE MORE HARMFUL.
HE RESPONDED.
HE FOLLOWED THEIR RECOMMENDATION.

AGAIN, THIS IS ALL
CIRCUMSTANTIAL EVIDENCE FROM
WHICH THE JURY CAN RELY.
AND PLEASE KNOW THIS IS A VERY
HARD CASE.
THE PLAINTIFFS ACTUALLY LOSE, A
LOT OF THEM, A LOT OF THE COUNTS
ON FRAUD ALSO ESTABLISHING THE
DIFFICULTY THAT IT IS FOR US TO
MEET THIS BURDEN.
I'LL GO AHEAD AND RESERVE THE
REST FOR REBUTTAL WITH THE
COURT'S PERMISSION.
>> RIGHT.
AND I WILL AFFORD YOU FIVE
MINUTES FOR REBUTTAL.
COUNSEL?
>> MAY IT PLEASE THE COURT,
MICHAEL CARVIN FOR REYNOLDS.
I'D LIKE TO BEGIN WITH THE
QUESTIONS THAT JUSTICE MUNIZ WAS
ASKING, POINT OUT THAT I DON'T
REALLY DISAGREE WITH MY OPPONENT
ON THE LAW, APPARENTLY.
WE EMBRACE THE JOYNER OPINION.
IF YOU READ THAT, IT'S AT PAGE 5
OF THEIR BRIEF.
IT SAYS THAT THERE'S NO DUTY TO
SPEAK, IT'S ONLY IF YOU MAKE
MISLEADING OR BAD STATEMENTS.
SHE SAYS THERE WAS A CAMPAIGN OF
MISREPRESENTATION, OF BAD
STATEMENTS.
ALL OF THOSE ARE STATEMENTS.
IT'S QUITE CLEAR UNDER HESS AND
BASIC LAW THAT THE PLAINTIFFS IN
FRAUDULENT CONCEALMENT CASE NEED
TO RELY ON THOSE STATEMENTS.
IF THEY HAVE NEVER HEARD THE
STATEMENTS OR NEVER PAID ANY
ATTENTION TO THEM, IT'S AS IF WE
NEVER SAID THE STATEMENTS.
AND IF WE HAD NEVER SAID THE
STATEMENTS, WE HAVE NO DUTY TO
WARN PEOPLE ABOUT THE BAD PARTS
OF OUR PRODUCT.
THAT'S MARK MARKS, THAT'S THE
SECOND MISSTATEMENT.
THAT'S WELL ESTABLISHED LAW.
WE ARE ONLY REQUIRED TO PROVIDE
NEGATIVE INFORMATION IF WE'VE
INITIALLY MISLED THE PLAINTIFF
THROUGH A HALF-TRUTH.
ALL OF THIS IS ACTUALLY NOT

DISPUTED AS A MATTER OF LAW.
OUR DUTY IS NOT TO DECEIVE THE CONSUMER, IT'S NOT TO VOLUNTEER NEGATIVE INFORMATION ABOUT US.
IN TERMS OF THE QUESTION ABOUT THE INSTRUCTION THAT THEY ADVOCATED, YES, IT DOESN'T MAKE SENSE.
IT'S A NON SEQUITUR.
THEY SAY DID YOU DETRIMENTALLY LIE ON US DECEIVING YOU BY CONCEALING AND OMITTING BAD INFORMATION IN OUR PRODUCT.
WELL, NO ONE DETRIMENTALLY RELIES ON BEING DECEIVED.
THEY'RE ARGUING THAT THERE WAS SOME DUTY TO DISCLOSE.
THAT'S WHAT THEY SAY AT PAGE 29 OF THEIR BRIEF.
THAT'S WHAT THIS INSTRUCTION MEANT.
AND THAT IS CONTRARY TO CLEAR FLORIDA LAW UNDER MARK MARKS AND AGAIN, THEY DON'T REALLY DISPUTE THAT.
THEY CLAIM TO RESCUE UNDER ANGLE.
THAT IS NOT POSSIBLE FOR FOUR REASONS, ONE IS RESCUED ECONOMY FOLLOWS JURY'S FACTUAL FINDINGS, JURIES DON'T MAKE WALL.
YOU CAN'T CHANGE THE LAW THROUGH ANY KIND OF RESCUED A CONDO DECISION WAS THE LATEST COURT CHANGES THE LAWS BY WRITING ABOUT IT, IF YOU READ THE ANGLE OPINION THERE IS NOT A SYLLABLE ABOUT WHAT THE ISLANDS ARE ONE FRAUDULENT CONCEALMENT.
TO ANY OF THE WELL-ESTABLISHED LAW WE CITE AND DISPUTE.
THEY CLAIM YOU CAN INFER THIS COURT WAS CREATING SOME DUTY TO DISCLOSE THE TRIAL COURT, PLEASE TURN TO 374 OF OUR APPENDIX AND SEE WHAT THE INSTRUCTION WAS.
WE COULD HAVE WRITTEN THIS INSTRUCTION AND WE DID, IT SAYS WHETHER ONE OR MORE OF THE DEFENDANTS OMITTED OR CONCEALED INFORMATION THAT IS NECESSARY

TO MAKE STATEMENTS.
AND THE ONLY TIME WE HAVE AN AFFIRMATIVE DUTY TO DISCLOSE.
>> TO RECONCILE ANGLE AND DOUGLAS.
TO BE THE DISCUSSION OF JURY INSTRUCTIONS, LET'S ASSUME THAT THERE ARE A LOT OF COMPELLING POINTS AND HOW IS THIS AN APPROPRIATE VEHICLE TO GET TO THE ISSUE OF THE HOW THE DOUGLAS CLAIM PRECLUSION REGIME HAS SO DISTORTED, AND TO MAKE LAW.
MOST IMPORTANT WE MY ANSWER TO YOU IS IF NOT NOW, WHEN?
16 CASES PENDING LOWER COURTS, WE THINK IS A BLATANT VIOLATION OF DUE PROCESS.
THIS CASE ILLUSTRATES THE POINT.
IS THE PRICE SMOKED WINSTON'S, NO JURY ANYWHERE HAS EVER SAID THAT WINSTON'S ARE DEFECTIVE OR FRAUDULENTLY MARKETED OR NEGLIGENTLY MADE, OUR JURY HAD TO ASSUME ALL THAT CONCLUSIVELY AND LEE COULDN'T DISPUTE IT, WE WERE GIVEN NO OPPORTUNITY TO DISPUTE.
IT'S TRUE THE ANGLE JURY SAID OUR CIGARETTES, SOME OF OUR UNIDENTIFIED CIGARETTES WERE PLACED ON THE MARKET AND SUFFERED FROM THOSE FLAWS BUT NEVER SAID WHICH BRAND OF CIGARETTES OR MANY OF THE MANY THEORIES ADVANCED IN ANGLE FOR DEFECT WERE EMBRACING.
MOST OF THE DEFECT THEORIES HAD NOTHING TO DO WITH WINSTON.
ONE OF THE DEFECT THEORIES WAS LIGHT CIGARETTES WERE DEFECTIVE.
ONE, AS THE COURT MADE CLEAR, THE PRINCIPAL DEFECT FINDING WAS BASED ON THE FACT THAT WE INCREASED THE NICOTINE THROUGH AMMONIA --
>> SORRY TO INTERRUPT BUT THE DEFECT YOUR OPPONENT HIGHLIGHTED FOR US TO SWITCH TO FILTERED, CAN YOU ADDRESS THAT ONE.

>> THERE IS A GOOD EXAMPLE.
THE PRECEDING POINT WAS THERE'S
A LOT OF THEORIES HAD NOTHING
TO DO WITH FILTERS WAS ASKED TO
FILTERS THERE WERE SPECIFIC
BRANDS, SPECIFIC PROBLEMS.
THEY HAD GLASS FIBERS, SOME OF
THEM HAD LOSE FIBERS BUT THE
JURY VERDICT, AS THE COURT
RECOGNIZED IN WAS NEVER
SPECIFIED WHICH OF THOSE
MULTITUDE OF THEORIES WAS THE
DEFECT, WHETHER IT HAD ANYTHING
TO DO WITH FILTERS AND EVEN IF
IT WAS LIMITED TO FILTER
CIGARETTES WHICH OF THE BRANDS
AND WHICH OF THE PROBLEMS WITH
FILTERS THEY WERE IDENTIFYING
AS A DEFECT, AND WINSTON'S
DON'T HAVE GLASS FIBERS, THE
JURY WOULD HAVE SAID YES, WE
PUT IN THE MARKET CIGARETTES
WITH A DEFECT THAT THEY NEVER
FOUND WINSTON'S FILTERS WERE
DEFECTIVE MUCH LESS HAD THEY
GONE OFF ON LIGHT CIGARETTES,
THEY WERE NOT SUGGESTING
FILTERED CIGARETTES WERE A
PROBLEM.
THAT OF COURSE IS THE ESSENTIAL
DUE PROCESS AND CLAIM
PRECLUSION PROBLEM.
>> IF WE FOCUS ON SOMETHING
THAT IS MORE DIRECTLY
INTERTWINED WITH THESE
INSTRUCTIONS IT SEEMS HARD TO
JUSTIFY THE COURT IN ANGLE
THROWING OUT THE FOG FINDINGS
KEEPING THESE SO IF WE FOCUS ON
IF I THINK IT WAS CLEARLY WRONG
FOR OUR COURT TO GIVE WHATEVER
EFFECT ANGLE THOUGHT IT WAS
GIVING TO THE FINDINGS IN 4 AND
5 A AND IF WE TOOK THAT OUT OF
THE EQUATION HOW WOULD THAT
AFFECT, WHAT WOULD THAT DO TO
THESE ANGLE CASES GOING
FORWARD?
>> I WANT TO UNDERSTAND YOUR
QUESTION.
IT IS TRUE THAT DOUGLAS DID NOT
DEAL WITH THE FRAUD
INSTRUCTIONS, IS YOUR QUESTION
THAT YOU DID NOT NEED TO AFFECT

THE FRAUDULENT
MISREPRESENTATION OR FRAUDULENT
CONCEALED --
>> THE FRAUD FINDINGS GO OUT
THE WINDOW BUT WE KEPT 4 AND 5
A.
SEEMS BASICALLY WHATEVER
PROBLEMS THERE WERE WITH 4
APPLY EQUALLY TO THE ONES THAT
WERE RETAINED SOFAS WENT AWAY
WHAT WOULD THAT DO?
>> WHAT IT WOULD DO IS NOT HAVE
RESCUED A CAR TO AFFECT AND WE
COULD DISPUTE WHETHER THE
STATEMENTS WERE MISLEADING OR
LITIGATE THAT SO THAT WOULD BE
A PARTIAL SOLUTION BUT I MUST
EMPHASIZE PARTIAL SOLUTION THAT
MIGHT IN SOME WAYS CREATE
CONFUSION.
IF THIS COURT DECIDES
FRAUDULENT CONCEALMENT IS NOT
IN THAT IT WILL EXPLAIN WHY
LIABILITY AND NEGLIGENCE WERE
GIVEN RESCUED ACADA AFFECT AND
THERE WERE IN SPECIFIED
FINDINGS BUT THEY WERE
UNSPECIFIED FINDINGS IN
FRAUDULENT CONCEALMENT CASES DO
NOT DO IT.
I WOULD ARGUE THAT IF THE COURT
IS GOING TO -- LET'S FACE IT,
THE REASON WE RESPECT PRESIDENT
IS TO CREATE STABILITY AND
CONSISTENCY IN LAW.
I WOULD THINK WOULD BE UNSTABLE
AND INCONSISTENT TO HAVE
DIFFERENTIAL TREATMENT OF
RESCUED ACADA DEPENDING WHICH
CLAIM THE ANGLE JURY DECIDED
UNLESS THERE WAS A PRINCIPAL
BASIS FOR DISTINGUISHING STRICT
LIABILITY AND NEGLIGENCE CLAIMS
AS RESPECT TO FRAUDULENT
CONCEALMENT CLAIMS AND I THINK
THERE IS NONE.
IF YOU'RE ASKING ME WILL I TAKE
A THIRD OF A LOAF THE ANSWER IS
YES BUT I DO THINK IN TERMS OF
THE WAY TO PROPERLY MANAGE THE
ANGLE FRAUDULENT CASES GOING
FORWARD THERE NEEDS TO BE A
UNIFORM RULE ON WHETHER OR NOT
THE UNSPECIFIED CLAIMS IN ANGLE

CAN SOMEHOW FIND FUTURE JURIES
AND WE ARE BEING HELD LIABLE
FOR A DEFECTIVE CIGARETTE AND
NEGLIGENT CIGARETTE WHEN NO
JURY HAS EVER FOUND THAT THIS
CIGARETTE MISTER PRICE SPOKE
WAS EITHER DEFECTIVE OR
NEGLIGENT SO THE MOST BASIC DUE
PROCESS RULE, YOU CAN'T BE HELD
LIABLE UNLESS SOMEONE HOLDS YOU
LIABLE IS BEING VIOLATED.
WE ARE LIABLE AND FORCED TO PAY
DAMAGES, CONVEY PROPERTY
WITHOUT ANY ABILITY TO HAVE A
JURY ACTUALLY DECIDE THE
ELEMENTS OF LIABILITY THAT ARE
COMPELLING US TO MAKE THAT
DAMAGE ASSESSMENT.
IT SEEMS TO ME THAT REGIME IS
ENTIRELY LAWLESS AND THE REASON
IT IS ENTIRELY LAWLESS IS THIS
COURT AND DOUGLAS ABANDONED 200
YEARS OF CLAIM PRECLUSION LAW.
IT MADE THE ASTONISHING
ASSERTION IT DOESN'T MATTER
WHETHER OR NOT THE FIRST JURY
ACTUALLY DECIDED THAT WINSTON'S
WERE DEFECTIVE.
ALL THAT MATTERS IS THE
PLAINTIFFS CLAIMED THEY WERE
DECIDED REGARDLESS WHETHER THE
JURY AGREED WITH THEM.
HOW CAN IT BE THAT WE ARE BEING
HELD LIABLE IF THE ANGLE JURY
MAY OR MAY NOT HAVE DECIDED
THEY WERE DEFECTIVE AND WE HAVE
NO OPPORTUNITY TO ARGUE THAT
THEY ARE NOT DEFECTIVE IN THIS
CASE?
STRIKES US THAT THAT IS A
BLATANT VIOLATION OF DUE
PROCESS AND IS THE SORT OF
THING THAT THE COURT UNDER
PRECEDENT MUST OVERTURN.
EVERY FACTOR THE COURT HAS
ARTICULATED ARGUES FOR
OVERTURNING THE LAWLESS CLAIM
PRECLUSION REGIME OF DOUGLAS.
IT SITS CLEARLY WRONG, CLEARLY
WRONG FOR THE DUE PROCESS
REASONS I JUST ARTICULATED,
CLEARLY WRONG UNDER PRECLUSION
LAW.
CLAIM PRECLUSION HAS NEVER BEEN

APPLIED TO DEFENDANTS TO SAY
THE PLAINTIFFS CLAIMED IN ONE
CASE SO YOU'RE BOUND TO THE
SECOND CASE.
IT HAS ALWAYS BEEN IF YOU
HAVEN'T BROUGHT IT AND YOU
CAN'T BRING IT IN THE SECOND
ONE AND DOUGLAS MADE CLEAR IT
ALWAYS IS A REQUIREMENT A FINAL
JUDGMENT.
ARE WE BOUND BY A PRIOR CLAIM?
YES IF IT IS REDUCED TO FINAL
JUDGMENT BUT THERE WAS NO FINAL
JUDGMENT IN ANGLE.
THERE IS A RESOLUTION OF
CERTAIN ISSUES BUT AS HAS
HAPPENED IN OTHER CLASS-ACTION
CASES IF YOU GIVE THE CLASS A
SPECIFIC ISSUE TO RESOLVE THAT
CAN BE BINDING ON CLASS MEMBERS
IN SUBSEQUENT CASES BUT THERE
WAS NO SPECIFIC ISSUES THAT
WERE EVER ARTICULATED, BY THE
JURY, THERE WAS A BAIT AND
SWITCH.
THEY COVERED ALL THE BOATS ON
THE WATERFRONT, THEN GAVE UP
JURY VERDICT FIRM THAT IF ONE
OF THESE BOATS IS DEFECTIVE YOU
SAY YES, THEN THEY TRIED TO
TURN AROUND AND SAY WHEN YOU
FIND ONE BOAT OR ONE KIND OF
CIGARETTE DEFECTIVE NOW WE CAN
ARGUE PRECLUSION AS TO ALL
CIGARETTES.
THAT IS NOT ONLY BAD LAW,
PRECLUSION AND CONSTITUTIONAL,
IT IS NOT SOMETHING THIS COURT
WANTS TO ENCOURAGE GOING
FORWARD.
WE DON'T WANT CLASS ACTIONS TO
WORK THIS WAY.
INDEED I THINK THE STRONGEST
EVIDENCE WHY THE DOUGLAS CLAIM
PRECLUSION REGIME IS WRONG IS
BECAUSE EVEN IT'S A PROPONENT,
THE PLAINTIFFS HERE CLAIM NOT
THAT DOUGLAS SAID CLAIM
PRECLUSION IS OKAY BUT THAT
DOUGLAS FOUND THE JURY IN ANGLE
HAD ACTUALLY FOUND THAT ALL
CIGARETTES ARE DEFECTIVE.
BUT WE KNOW THAT IS NOT TRUE
BECAUSE THIS COURT CONFRONTED

THAT PRECISE ISSUE IN MAROTTA
IN 2017 AND FOUND WHEN
CONFRONTED WITH THE PREEMPTION
ARGUMENT QUITE CLEARLY THAT THE
ANGLE JURY HAD NOT FOUND ALL
CIGARETTES ARE DEFECTIVE SO THE
ONLY WAY TO RESPECT DOUGLAS IS
DIMINISHING THE EFFECT OF
MAROTTA.
MAROTTA MAKES CLEAR WHAT IS
EVIDENT FROM THE DOUGLAS REGIME
WHICH IS NUMBER OF THEORIES
THEY NEVER SPECIFIED WHICH FEAR
HE THEY WERE GOING ON AND THAT
IS WHY DOUGLAS FOUND ISSUE
PRECLUSION WOULD BE USELESS.
MAROTTA MADE CLEAR ISSUE
PRECLUSION WOULD BE USELESS
BECAUSE IT DIDN'T COVER ALL
CIGARETTES.
>> IN TERMS OF RESOLVING THIS
CASE AS I READ THROUGH THIS I
STRUGGLED TO FIGURE OUT HOW
THIS IS AN ANGLE CASE VERSUS
RAISING POTENTIALLY GENERIC
QUESTIONS ABOUT FRAUDULENT
CONCEALMENT.
WHAT ASPECTS OF ANGLE AND
DOUGLAS TO WE NEED TO RELY ON
OR INCORPORATE INTO HOW WE VIEW
THE ISSUES IN THIS CASE?
>> THE RESCUE ACADA EFFECT OF
THE ANGLE HEARINGS PRECLUDES US
FROM DOING TWO THINGS, FINDING
OUT WHICH STATEMENTS WERE
SUPPOSEDLY MISLEADING AT
ARGUING THEY WERE NOT
DISCLOSED.
BEFORE WE GET TO THE QUESTION
OF WHETHER THE PLAINTIFF SAW
THOSE STATEMENTS AND RELIED ON
THEM SO OUR HANDS ARE TIED.
I DON'T KNOW WHAT STATEMENTS
THEY THINK ARE MISLEADING
BECAUSE THE JURY NEVER TOLD US
WHAT WAS MISLEADING BUT IF THEY
THINK IT WAS THE 1994 TESTIMONY
TO CONGRESS WE CAN ARGUE ABOUT
WHETHER OR NOT THAT WAS
MISLEADING AND WHETHER OR NOT
THE PLAINTIFF RELIED ON IT.
>> IF WE KNOW THAT HE DID NOT
RELY ON ANYTHING ACCORDING TO
HIS TESTIMONY, IT SEEMS LIKE

THAT IS A MOOT POINT HERE.
>> I CANNOT DENY THE SIDE THESE CASES ON NARROW GROUNDS.
WE CAN YES, SHOW THAT IF YOU ASSUME EVERYTHING WAS PERFECT YEARS WAS FRAUDULENT WE CAN STILL WIN.
THIS PLAINTIFF, RELATIVELY, SET
I DIDN'T PAY ATTENTION TO ANYTHING BUT THE QUESTION GOING FORWARD IS WHETHER OR NOT WE NEED TO BE IN A POSITION WHERE WE HAVE TO STRUGGLE WITH PRECLUSIVE EFFECT, THE STATEMENTS WE SUPPOSEDLY MISLED THE AMERICAN PUBLIC ON.
>> WITH THE INSTRUCTION LOOK ANY DIFFERENT IN THE SENSE THAT IF YOU WEREN'T BOUND BY THE FINDINGS FROM BEFORE WOULD THE INSTRUCTION, WOULD IT SAY DID THEY RELY ON THE BLOB LOBLAW CAMPAIGNER WOULD BE THIS CAMPAIGN TO RELY ON A STATEMENT?
>> THE FIRST QUESTION WOULD BE DID REYNOLDS MAKE A STATEMENT THAT WAS A HALF-TRUTH THAT WAS MISLEADING?
PLAINTIFFS HAVE ARGUED THE FRANK STATEMENT AND CONTROVERSIES.
WAS THAT MISLEADING?
IF IT WAS, IT IS NOT FAIR TO ILLUMINATE OUR LIABILITY FROM THE EQUATION AND JUMP STRAIGHT TO WHETHER OR NOT THE CONDUCT OF FAINT -- AFFECTED THE PLAINTIFF BECAUSE IT WAS RELIED ON.
AND THE CASE WITH THIS COURT SAY ASSUME THE DEFENDANT RAN THE RED LIGHT AND HIT THE PLAINTIFF AND FIGURE OUT WHETHER OR NOT HE HAD TO GO TO THE HOSPITAL.
THE FIRST IS TOWARD FEEDS AND WE CAN'T EVEN ARGUE ABOUT THAT.
I AGREE THIS IS AN EASY CASE BECAUSE WE CAN SHOW NO DETRIMENTAL RELIANCE AND THAT THE INSTRUCTION GIVEN HERE IS BASED ON AN ERRONEOUS VIEW OF THE LAW BUT A FUNDAMENTAL

QUESTION, I UNDERSTAND THE
COURT MAY NOT WANT TO WAIT INTO
THESE WATERS, IS AN OPTION.
THEY CREATED A LAWLESS REGIME
WHERE 1600 TRIALS GO FORWARD
WHERE THE ONLY DEFENDANTS IN
FLORIDA WHO ARE NOT ALLOWED TO
CONTEST LIABILITY OUR PEOPLE
SINGLED OUT IN THE ANGLE -- --
ENGLE CASE.
DOES THAT ENHANCE THE STABILITY
OF THE FLORIDA JUDICIAL SYSTEM
THAT IT IS SUPPOSED TO IMBUE OR
DOES THAT CREATE INSTABILITY
AND DISINGENUOUS CYNICISM ABOUT
THE SYSTEM?
SEEMS TO ME SINCE THIS CASE
EXEMPLIFIES HOW THE ENGLE
PROGENY CASES CAN BE MISFIRED
THIS COURT SHOULD USE IT AS AN
OPPORTUNITY TO CLEAN OUT THE
STABLES AND RETURN US TO A
LAWLESS REGIME WHERE IN THE
NEXT CASE, FINDING NUMBER 32 OR
TRIAL RECORD, THERE CANNOT BE
ONE TORT LAW WITH THE DEFENDANT
IN ENGLE WITH SPECIAL DUTIES
THAT DON'T APPLY TO ANYBODY
ELSE BECAUSE THAT IS AN EQUAL
PROTECTION VIOLATION AND THE
ONLY WAY TO STOP THE DUAL
REGIME OF JUSTICE WHERE WE ARE
SUBJECT NOT ONLY TO
DIFFERENTIAL LAW BUT THE
INABILITY TO DEFEND OURSELVES
EFFECTIVELY, THAT IS THE SORT
OF THING THIS COURT AS IT MADE
CLEAR IN POOL AND OTHER CASES,
IS NOT TO TOLERATE IF THE
DECISION IS CLEARLY ERRONEOUS.
THAT IS PARTICULARLY TRUE
BECAUSE THERE IS NO RELIANCE
INTEREST ON THE OTHER SIDE OF
THIS CALCULUS.
ALL THEY'VE GOT TO DO IS
LITIGATE THE PROCEDURAL AND
WHAT ARE THEY MITIGATING?
THE SAME BURDEN AS EVERY OTHER
PLAINTIFF IN ANGLO-AMERICAN
JURISPRUDENCE TO PROVE THE
LIMITS OF THIS CASE.
HOW IS THAT IN ANY WAY
DETRIMENTAL?
FINALLY THEY CLAIM THIS WILL

CREATE LONGER TRIALS.
I REFER YOU TO PHILLIP MORRIS
AMICUS BRIEF.
THE REASON IT IS NOT AS
PLAINTIFFS TRYING TO HAVE IT
BOTH WAYS.
THEY TRY TO ACCEPT THE ENGLE
FINDINGS AND SAY THE JURY CAN'T
DO IT BUT THEY DO A DATA DUMP
OF ALL THE BAD FACTS THEY CAN
FIND TO CREATE AN ENTITLEMENT
TO PUNITIVE DAMAGES AND TO
EXCITE THE JURY.
I WOULD ARGUE THE CASE IS WON'T
GET ANY LONGER, I SEE MY TIME,
IN LESS YOUR HONOR TO HAVE
ADDITIONAL QUESTIONS, NOTHING
ELSE TO SAY.
>> NOW FOR REBUTTAL ARGUMENT.
>> THANK YOU, JUSTICE CANNADY.
I WANT TO REMIND THE COURT OF
PRIMARY ARGUMENTS THAT YOU ARE
HEARING, I'M STARTING WITH THE
FRAUDULENT CONCEALMENT ISSUE,
MADE BY THE DEFENDANTS, THAT
WAS THE PREVIOUS APPEAL WHERE
DEFENDANTS APPEAL THE CLASS
ACTION PLAN.
THEY MADE THE ARGUMENT AND
LOST.
THEY RENEW THE ARGUMENT AFTER
IT PROCEEDED TO THE FIRST TWO
PHASES, EXPRESSLY STATED THE
CONCEALMENT CLAIMS WERE
IMPROPER, NONDISCLOSURE CLAIMS
DID NOT REQUIRE RELIANCE ON A
STATEMENT, THEY SAID THE
CONCEALMENT CLAIMS WERE
IMPROPER BECAUSE THEY ALLOW THE
JURY TO IMPOSE LIABILITIES FOR
CONCEALMENT FOR AFFIRMATIVE
STATEMENT, WHAT YOU'RE PRESSING
ME ABOUT HAS BEEN LITIGATED
EXTENSIVELY IN COURTS, THAT IS
NO TURNING BACK AND
RELITIGATING THE ISSUE YET
AGAIN NUMBER ONE.
NUMBER 2 I ALSO WANT TO MAKE
CLEAR, PART OF WHY THE ISSUE IS
RAISED IS THE SAME QUESTION IN
THE CLASS PLAN FOR THE THIRD
PHASE, THE THIRD PHASE OF THE
CLASS TRIAL WAS FOR SEPARATE
JURIES, NOT THE CLASS-ACTION

JURY, TO DETERMINE THE
CAUSATION QUESTION FOR THE REST
OF THE CLASS MEMBERS.
THAT IS WHAT IS HAPPENING IN
PROGENY TRIAL SO WHAT IS ALSO
RELEVANT, IF YOU CAN LOOK AT
THE VERDICT FORM 2 A WHERE
THE JURY WAS ASKED TO ATTACH
CAUSATION FOR CONCEALMENT.
ALMOST THE SAME QUESTION GIVEN
BY THE JURY, IT IS AS TO EACH
OF THE DEFENDANTS WAS THAT
DEFENDANT'S OMISSION OR
CONCEALMENT OR CONCEALED OR
OMISSION A LEGAL CAUSE OF
INJURY TO CLASS
REPRESENTATIVES.
ANOTHER POINT I DID TO MAKE
CLEAR TO THE COURT IS THESE ARE
ALL FACTUAL QUESTIONS YOU ARE
ASKING, GIVING YOU THE ANSWERS
BUT THE SHIP HAS SAILED.
THERE IS NO RECORD TO REVIEW.
THIS COURT ALBEIT DIFFERENT
JUST -- HELD THE FULL RECORD
FROM A YEAR-LONG TRIAL WHEN IT
REVIEWED ENGLE.
IT WAS BASED ON THAT DECISION.
BETWEEN THE MISREPRESENTATION
COUNTS AND CONCEALMENT ACCOUNTS
AND AS I DELINEATED AT LENGTH
IN MY BRIEF THE DEFENDANTS
REPEATEDLY ACKNOWLEDGED THE
DIFFERENCE, ACKNOWLEDGED THE
CONCEALMENT ACCOUNTS ARE
NATIVITY EXCLUSIVELY TO A
STATEMENT IN THIS COURT BASED
ON A FULL REVIEW OF THE RECORD
MADE THE DECISION THAT THEY
WOULD BE TREATED DIFFERENTLY.
THE ONLY DIFFERENCE BETWEEN
THEM IS THE REQUIREMENTS OF THE
STATEMENT.
THE COURT EXPRESSLY HELD IN
RESPONSE TO A DISSENT BY
JUSTICE WELLS WHERE HE HAD
CONCERN ABOUT THE SPECIFICITY,
HOW WOULD YOU LATER JURY KNOW
WHICH OF THE VARIOUS SPECIFIC
STATEMENTS CONSTITUTED A FRAUD?
THEY WOULD NOT BUT THE
CONCEALMENT HOWEVER IMPLEMENTED
INCLUDING THE PART OF THE JURY
INSTRUCTION YOU FOCUS ON, THE

CONCEALMENT IMPACTED, CREATED A
GLOBAL IMPACT SO THEN YOU GET
TO THE QUESTION OF WHAT WE HAVE
TO PROVE AND DO A LITTLE BETTER
JOB.
THERE ARE MANY WAYS TO
ESTABLISH THE CONNECTION.
LIKE I SAID WE OFTEN ARE NOT
SUCCESSFUL BUT WHEN WE DO IT IS
THINGS LIKE THIS.
WE SHOW THE EXPOSURE TO DECLARE
THE DEFENDANTS HAVE SECURED
DIRECTED VERDICT WHEN THE
ESTABLISH THE SMOKER DOES NOT
READ THE NEWSPAPER, IS A HERMIT
OR WHATEVER.
WE ESTABLISHED THE EXPOSURE TO
THE NEWS, NEWSPAPERS,
MAGAZINES, WHATEVER NUMBER ONE.
NUMBER 2, THERE ARE SOME CASES
WHERE WE HAVE SOME SORT OF
COMMENTS BY SMOKERS SHOWING
THEY HAD A MISAPPREHENSION FROM
EVERYTHING.
OTHERWISE WE SHOW IT FROM THEIR
CONDUCT, WE SHOW IT FROM THEIR
CONDUCT WHERE THEY EXPRESSLY
FOLLOW THE DEFENDANT'S VARIOUS
CAMPAIGNS.
FOLLOW THE CAMPAIGN WHERE IN
THE 1950s WHEN A MEDICAL
COMMUNITY UNDERSTOOD, WE HAVE A
DRAMATIC UPTICK IN LUNG CANCER,
THE FILTER.
ALL THE CONSPIRATORS WORKED
TOGETHER TO PUT FILTERS ON
CIGARETTES AND CONVINCE PEOPLE
WE DON'T THINK THERE'S ANYTHING
WRONG WITH CIGARETTES, THEY
SAID IN A 50s BUT IF SO THERE
IS THIS FILTER.
>> WHAT AM I MISSING?
IT SOUNDS LIKE EVERYTHING YOU
ARE SAYING GOES BACK TO
RELIANCE ON STATEMENTS.
THAT IS NOT COMMUNICATED BY THE
INSTRUCTION THAT WAS GIVEN
HERE.
IT HAS THIS INCOHERENT THING
ABOUT RELYING ON A CONSPIRACY
TO WITHHOLD.
I DON'T EVEN KNOW WHAT THAT
MEANS.
>> I WILL SAY --

>> CONSPIRACY?
WHAT DOES THAT MEAN?
>> IT MEANS YOUR IMPACTED.
IT IS AN ARTIFICIAL WAY OF
SAYING CAUSATION.
AND THE FACT THAT THE
INSTRUCTIONS ARE PHRASED AS
RELIANCE ON A CONSPIRACY IS
ARGUABLY ONE OF THE REASONS WE
HAVE A HARD TIME PROVING IT.
IN A CONSPIRACY OR CONCEALMENT
THE QUESTION IS SIMPLY LEGAL
CAUSE AND THAT IS ALL THAT IS
BEING ASKED FOR THE
MISREPRESENTATION CASE IS LEGAL
CAUSE.
JUST THE MISREPRESENTATION
CASE, JURY INSTRUCTION THAT
REQUIRES RELIANCE ON
STATEMENTS.
>> RELIANCE IS AN ELEMENT.
YOU SHOULDN'T HAVE TO PROVE
RELIANCE, THAT IS THE
DIFFICULTY BUT THAT IS NOTHING,
TO ADMIT THAT IS AN ELEMENT OF
MANURE.
>> I DO NOT ADMIT THAT IT IS AN
ELEMENT OF THE TORT.
THAT IS AN ISSUE WE USED TO
LITIGATE AT LENGTH AND
SUCCESSFULLY.
YOU ARE NOW HERE MORE THAN 10
YEARS AFTER THE ANGLE DECISION.
>> YOU ARE NOT CHALLENGING THAT
IT IS AN ELEMENT OF THE TORT?
>> I PICK AND CHOOSE MY
BATTLES.
I WOULD LOVE --
>> WE HAVE TAKEN A LITTLE OVER
15 SECONDS.
>> I HAVE NOT SAID WORD WHAT
ABOUT DUE PROCESS.
CAN I TAKE 60 SECONDS?
OR JUST LET THE ISSUE GO?
>> I'VE GIVEN YOU EXTRA TIME.
>> THAT I WOULD ASK THE COURT
TO READ THE WRITING OF JUDGE
PRYOR WHEN HE MAKES CLEAR THE
DEFECT IS TOTALITY
ADDICTIVENESS OF CIGARETTES AND
THE TOTALITY THE CARCINOGENS
THAT CAUSE DISEASE.
WE ASK THE COURT TO REVERSE THE
FIRST DISTRICT'S INACCURATE

STATEMENT OF THE LAW AND NOT
RECONSIDER AND UNDO THE COURT'S
RESCUED ACADA AUTHORITY.
THANK YOU FOR THE OPPORTUNITY
TO APPEAR.
>> WE THANK BOTH OF YOU FOR
YOUR ARGUMENTS IN THIS CASE.