

THE NEXT CASE ON THE COURT'S  
AGENDA IS BIFULCO V. PATIENT  
BUSINESS AND FINANCIAL SERVICES.  
MAY I PLEASE THIS HONORABLE  
COURT.

I'M FRIDERIC MORELLO.

I REPRESENT THE PETITIONER  
CHARLENE BIFULCO AND I'M HERE  
TODAY TO HAVE CONVERSATION WITH  
THE COURT ABOUT THE ISSUES THAT  
HAVE BEEN RAISED.

ONE OF THE ISSUES THAT HAPPENED  
BELOW IS THAT THE TRIAL COURT  
APPLIED FOR FORCE 205 INSTEAD OF  
CHAPTER 768286 NOTICE WAS  
REQUIRED AS A MATTER OF LAW.

>> LET ME ASK YOU ABOUT THAT  
ISSUE BECAUSE IT COMES TO US IN  
WHAT SEEMS TO BE A RATHER ODD  
PROCEDURAL ASPECT AND THAT IS --  
[INAUDIBLE]

HE MIGHT FORGET YOUR PETITION FOR  
REVIEW ABOUT IT.

HOW DO YOU HAVE STANDING TO  
BRING THAT ISSUE ON  
JURISDICTION?

>> CATHOLIC JURISDICTION.

>> WOULD YOU SAY THAT AGAIN?

>> CATHOLIC JURISDICTION.

>> YOU STILL HAVE AN OBLIGATION  
TO OUTSTANDING AND USUALLY IN  
THE CONTEXT OF STANDING YOU'RE  
APPEASED BY WHATEVER

APPELLATE --

[INAUDIBLE]

[INAUDIBLE]

>> ON THIS ISSUE WERE TO GRADE  
[INAUDIBLE]

>> THERE'S NO STANDING  
REQUIREMENT THAT SHOULD BE  
AGREED WHEN YOU RAISE  
JURISDICTION?

[INAUDIBLE]

THE CATHOLIC JURISDICTION GETS  
US INTO THE COURT.

THE SIXTH DCA DECISION WAS  
DISTINCT AND OPPOSITE OF KELLY.

>> SO ANY PARTY ON A CASE IN  
WHICH THEY WIN CAN BRING AN  
APPEAL TO THE COURT WHEN THERE'S  
A CONFLICT.

>> I BELIEVE SO IF THERE'S A  
CONFLICT.

>> WELL, YOUR REASON IS YOU WANT  
US TO LOOK AT THE ISSUE WHICH IS  
YOUR SECOND ISSUE.

I'M ASSUMING YOU WOULDN'T HAVE  
BROUGHT THIS IF -- I THINK MS.

POLSTER MAKES A GOOD POINT.  
ONCE YOU WIN, LEAVE WELL ENOUGH  
ALONE.  
SO WHY ARE YOU HERE IS MAYBE THE  
QUESTION?  
MAYBE LEGALLY YOU CAN BE HERE,  
WHY ARE YOU HERE?

>> TWO REASONS.

TO SET THE LAW CLEAR ON THE FIRST ISSUE, THE 44205 BECAUSE I BELIEVE WHAT ANNIKA'S ATTORNEY, MARK ZIKES ABOUT FOR 440.65 HAS NEVER BEEN ARGUED TO THE COURTS BEFORE.

AND I BELIEVE IT'S DISPOSITIVE WHEN IT COMES TO AWAY FOR AS ANYTHING RATHER THAN CHAPTER 440 BOTH SUBSTANTIVELY AND PROCEDURALLY.

SO I THOUGHT THAT WAS A VERY IMPORTANT ISSUE TO BRING UP TO THE COURT BECAUSE IN ALL THE CASES BELOW INCLUDING OURS TOO WASN'T POINTED OUT.

FURTHER, YOUR HONOR, ON THE SAME ISSUE, WE LEFT MAGGIO HANGING.

AND I WANTED TO GET THAT FINALLY RESOLVED.

AND THAT ISSUE IS OUR STATUTORY ACTIONS SUBJECT TO CHAPTER 768?

>> YOU WANT TO DO THAT, THEN LET'S JUST ASSUME THAT THE OTHER SIDE IS OKAY THIS DECISION.

DO WE STILL HAVE -- YOU WOULD SAY THAT WE OUGHT TO TAKE IT IN ORDER TO RESOLVE THIS CONFLICT, BUT, YOU KNOW, DON'T GO FARTHER THAN ACTUALLY WHAT IS AT ISSUE TO SAY TO WE HAVE TO REACH THE BORDER ISSUE THAT 768 IS NOT APPLICABLE TO ANY STATUTORY CAUSES OF ACTION.

>> I KNOW YOU DON'T HAVE TO IN THE SHORT HOLDING, THE CONSERVATIVE HOLDINGS WOULD BE TO FIND THAT FOR 440.55 IS ON POINT FOR THE 44205 CLAIM AND THAT WASN'T EVEN RAISED AT THE FIFTH, BUT THAT IS A SECTION OF

THE STATUTE I THINK EVERYONE  
SHOULD BE AWARE OF.  
BUT THEN I MOVE ON TO MY SECOND  
ISSUE, WHICH IS MORE IMPORTANT.  
A SPECIAL TAXING DISTRICT, WHICH  
WAS HALIFAX MEDICAL CENTER, IT  
CAN'T REPRODUCE ITSELF.  
A SPECIAL TAXING DISTRICT CAN

ONLY BE ESTABLISHED BY THE  
LEGISLATURE.

AND IN THIS CASE, HOW THE FACTS  
ESTABLISH THE NONPROFIT  
CORPORATION TO DO WITH BILLING.

I WOULDN'T BE UNLIKE HALIFAX  
SUBCONTRACTING THE BILLING  
SERVICES AS TO ANOTHER COMPANY,  
ABC COMPANY.

>> JUSTICE LEWIS.

>> BEFORE YOU GO DOWN AND REALLY  
IN DEPTH HERE.

PLEASE CORRECT ME IF I'M WRONG,  
BUT IT APPEARS THAT THIS CASE,  
YOU FILE YOUR ACTION AND AND A  
NEW FILE SOME REQUESTS FOR  
ADMISSIONS.

AND THE DEFENDANTS ADMITTED THAT  
THEY WERE EMPLOYERS -- CORRECT  
ME IF I'M WRONG BUT FOR THE  
PURPOSES OF THIS ACTION.

IS THAT A CORRECT STATEMENT?

>> AND THEN HOW FAR ALONG DOES  
THIS CASE GO BEFORE THEY  
WITHDREW THAT IN THE TRIAL COURT  
ALLOWED THEM TO WAS THAT AFTER  
THE STATUTE OF LIMITATIONS WAS  
ACQUIRED?

>> YES, UNDER 768 AND JUST ON  
THE EVE AFTER A TRIAL  
CONTINUANCE WHEN THEY SAID  
THERE'D BE NO PREJUDICE.

>> THE STATUTE OF LIMITATIONS IS  
GOING TO EXPIRE BECAUSE YOU  
COULD HAVE FILED UNDER THE  
PUBLIC WHISTLEBLOWER ASPECTS,  
CORRECT?

>> YEAH, BUT THEY NEVER TOOK THE  
PETITION UNTIL SUMMARY JUDGMENT.  
ON THE EVEN THEY SAID WERE  
NOT --

[INAUDIBLE]

LET'S GIVE THE JUDGE THE ABUSE  
OF DISCRETION THERE.

I THINK THE CASE IS BROADER THAN  
THAT.

>> I AGREE THAT IT MAY WELL BE.

BUT AS JUSTICE POLSTON SAYS WHY  
IS THIS NOT AN ISSUE IN THE  
APPELLATE COURT BELOW?

>> IT WAS.

>> THAT WAS AS FAR AS THIS PERMITTING A DEFENDANT TO WITHDRAW ADMISSION AND CONTRARY TO THEM BASICALLY EXTORTING THE CAUSE OF ACTION AFTER A STATUTE HAD ACQUIRED AND IT WOULD'VE BEEN AN ANOTHER STATUTORY PROCEEDING TOWARD IDENTICAL THING.

>> DO YOU ASK TO AMMEND YOUR COMPLAINT UNDER THE PUBLIC WHISTLEBLOWER SUIT RELAYED BACK TO WHAT IS THE STATUTE OF LIMITATIONS?

>> NO, BECAUSE THEN UNDER THE PUBLIC WOULD HAVE TO GET IT DEVOTED IN THE TIME IT ALLOWS. WE TIMED IT SO THE NOTICE TIME TO GET A THREE-YEAR NOTICE HAD ALREADY EXPIRED.

>> IF YOU MAKE AN ARGUMENT TO THE TRIAL JUDGE?

>> NO, I HONESTLY DON'T THINK THAT WHEN SHE MISSED THE STATUTE OF LIMITATIONS YOU CAN GO BACK IN TIME.

I THINK THE THREE-YEAR RULE IS PRETTY HARD AND FAST CASE LAW.

>> DID YOU RAISE THE ARGUMENT IN OPPOSITION TO THE AMENDMENT OFFERED?

>> WELL, YES.

>> DO YOU SEE DISCRETION YES, DON'T DO IT.

THESE ARE RARELY DONE.

>> ARE YOU SAYING THAT THE PUBLIC WHISTLEBLOWER IS SUBJECT TO THE 76826 WHATEVER IT IS STATUTORY NOTICE?

BECAUSE I BET YOU ARE ARGUING THAT NO STATUTORY CAUSE OF



ACTION SHOULD BE SUBJECT TO

768.28?

>> YOU SAID YOU DON'T WANT TO GO  
THERE.

[INAUDIBLE]

>> IF YOU'RE RAISING NOW AS A  
SECOND ISSUE YOU SAY IT COULDN'T

HAVE FILED THE PUBLIC WHISTLEBLOWER BECAUSE I WOULD'VE NEEDED TO GIVE THEM THAT NOTICE WHEN THEY'RE ALREADY FIRST WHILE THEY ARE TO HAVE NOTICED THAT THERE'S A CLAIM UNDER THE PRIVATE WHISTLEBLOWER AND SO THERE'S A DIFFERENT EXCEPTION LIKE THE STATUTE OF LIMITATIONS. SO I'M CONFUSED ABOUT YOUR PETITION ON THIS WHY WOULDN'T HAVE IT TRIED TO ADMINISTER THAT SHE WOULD GET A PUBLIC WHISTLEBLOWER ACTION GOING.

>> YOU'RE OUTSIDE THE THREE YEARS.

>> THREE YEARS OF WHAT?

>> UNDER 768.

>> BUT UNDER THE CIRCUMSTANCES OF THIS CASE YOU'RE TELLING ME THAT SHE DIDN'T EVEN TRY?

>> NO, BECAUSE I BELIEVE THE CASE IS HARD AND FAST.

>> SO THE ISSUE OF WHETHER 768.28 WOULD APPLY TO THE PUBLIC WHISTLEBLOWER IS NOT BEFORE US? THAT'S CORRECT BECAUSE YOU NEVER RAISED THAT.

>> CORRECT.

>> SO THE ONLY ISSUE NOW IS WHETHER BECAUSE EITHER OF THEM ADMISSION OR BECAUSE OF THE LANGUAGE OF THE STATUTE THAT YOUR CONTENTION IS THAT THEY WOULD QUALIFY AS A PRIVATE EMPLOYER.

>> YES AND LET ME EXPLAIN WHY. HALIFAX MEDICAL CENTER CREATED A NONPROFIT CORPORATION TO ITS BUILDING. THAT'S A SPECIAL TAXING DISTRICT.

SO THEN WHEN WE LOOK AT FOR THIS  
TO FALL UNDER THE PUBLIC  
WHISTLEBLOWER ACT, WE LOOK AT  
THE DEFINITION OF AGENCY BECAUSE  
THAT'S WHERE THEY WANT TO FALL.  
THAT'S WHAT THE TRIAL JUDGE THAT  
THEIR AGENTS, EVEN THOUGH  
THEY'RE JUST A SET OF HALIFAX.

AGENCY MEANS AND THEN IT GOES ON, GOVERNMENT ENTITY IS ONE OF THE DEFINITIONS FOR POLITICAL SUBDIVISION.

SO THEN I GO BACK TO THE CASE OF ELDER FROM THIS COURT.

AND ELDER SAYS IT'S SPECIAL TAXING DISTRICT IS CREATED BY THE LEGISLATURE FOR PUBLIC PURPOSES AND UNDER 7862 UNDER THAT DEFINITION AS AN INDEPENDENT ESTABLISHMENT OF THE STATE.

THE POINT IS A SPECIAL TAXING DISTRICT CAN'T REPRODUCE ITSELF. THEY DIDN'T HAVE SPECIAL TAXING STATUS FINANCIAL SERVICE AND THAT WAS NEVER CHALLENGED SPECIAL TAXING DISTRICT.

THEY JUST WANTED TO SAY THEY WERE IN AGENCY BECAUSE THEY WORKED FOR THEM.

THEY COULD HAVE SUB COUNTER TO THE WORK TO ABC.

DON'T THINK THE LEGISLATURE OR THIS HONORABLE COURT WOULD EVER SAY ABC COMPANY IS NOW A SPECIAL PASSING DISTRICT AS AN AGENCY.

>> ISN'T IT AN INSTRUMENTALITY IN THE SPECIAL TAXING DISTRICT. IT'S ABSOLUTELY CONTROLLED BY THE NOTION SOMEHOW IS AN INDEPENDENT CONTRACTOR SEEMS TO ME TO BE QUITE A STRETCH WHEN IT'S AN ENTITY THAT IS ESTABLISHED BY THE TAXING DISTRICT FULLY RESPONSIBLE TO AND CONTROLLED BY THE TAXING DISTRICT.

ISN'T THAT THE CASE ABOUT THIS PARTICULAR ENTITY?

>> IT IS AN ENTITY THAT IS NOT A

SPECIAL TAXING DISTRICT.

>> IT ACTUALLY WAS ESTABLISHED  
AS A NONPROFIT CORPORATION.

I MEAN, SO AS OF REGISTERED IN  
THE STATE OF FLORIDA?

>> IT COULD HAVE CREATED  
ANYWHERE THEY WANTED WANTED TO  
PERFORM BILLING SERVICES.

COULD THEY HAVE JUST KEPT IT AND  
DONE IT --

>> THEY KEPT IT TO THEMSELVES.  
THEY CREATED A NONPROFIT  
CORPORATION THAT COULD NOT UNDER  
THE LAWS PRACTICE MEDICINE OR  
HAVE ANYTHING TO DO UNDER  
CHAPTERS SEVEN -- 617 TO  
PRACTICE MEDICINE.

AND THEREFORE THEY SHOULD BE  
TREATED LIKE ANY OTHER  
INDEPENDENT CONTRACTOR.

>> MAYBE I'M NOW MISSING  
SOMETHING.

I KNOW YOU WANT TO SHARE TIME,  
BUT IF THEY'RE NOT A  
GOVERNMENTAL ENTITY, THEN WHY IS  
THE FIRST CLAIM NOT --

[INAUDIBLE]

WHY IS THE FIRST CLAIM NOT ALSO  
DISPOSED OF THAT WAY?

THAT IS THAT THEY'RE NOT SUBJECT  
TO 76.28 AT ALL BECAUSE THERE IS  
NOT A GOVERNMENTAL ENTITY.

>> THAT WAS UNDER THE FIRST  
44205 WHEN THERE WAS TO CASE LAW  
AS TO WHETHER THAT TOO OWES DEAN  
AND KELLY.

>> 72.8 ONLY APPLIES TO  
PRE-NOTICE TO EVER MENTAL ENTITY  
SUBDIVISIONS OF THE STATE.

HOW WAS THIS BILLING ENTITY AND  
OF THE SAME RATIONALE AND ENTITY  
OF THE STATE?

>> I DON'T SEE IT AS AN ENTITY  
OF THIS STATE.

>> THAT IS A SEPARATE ARGUMENT  
THEN.

ISN'T THAT A SEPARATE ARGUMENT?

>> IF YOU LOOK AT SPECIAL TAXING  
DISTRICT TAKING AN ENTITY OF THE  
STATE I SEE IT IS A SIMILAR

ARGUMENT.

MY POINT IS THEY CREATED -- I  
DON'T ALL OF THE LEGISLATURE  
EVER INTENDED A SPECIAL TAXING  
DISTRICT TO REPRODUCE OTHER  
SPECIAL TAXING DISTRICTS.  
THE MERE FACT THAT I CREATE  
ANOTHER CORPORATION TO DO SOME

WORK DOESN'T MEAN THAT I STAND  
AND MOST PROTECTIONS.

>> I'M NOT SURE THAT YOU'RE  
ANSWERING HER QUESTION.

HER QUESTION IS THAT THIS THING,  
WHATEVER IT IS, IS NOT  
GOVERNMENT THEN AS TO THE FIRST  
WORKERS COMP RETALIATION FIRING  
THAT THAT NOTICE UNDER THE 768  
CAN APPLY EITHER.

THAT'S WHAT SHE'S ASKING.

>> IS THAT CORRECT?

THAT'S WHAT SHE'S ASKING YOU.

>> THAT IS ABSOLUTELY CORRECT.

>> I MEAN, I DON'T REMEMBER YOU  
MAKING THAT ARGUMENT.

>> I DIDN'T MAKE THE ARGUMENTS  
BECAUSE I BELIEVED THE SECTION  
THAT MARK BROUGHT UP --

>> YOU ARE TRYING TO MAKE THIS  
CASE FOR SOME OTHER PURPOSE THAN  
THE BENEFIT OF YOUR CLIENT IT  
SEEMS TO ME AND THAT'S  
BOTHERSOME.

I MEAN, BECAUSE THIS IS NOT A  
GOVERNMENT ENTITY, THAT WE DON'T  
PICTURE NECESSARILY THE BROADER  
ISSUE OF WHETHER 768.28 APPLIES  
TO WORKERS COMP RETALIATION THAT  
ARE BROUGHT AGAINST GOVERNMENTAL  
ENTITIES.

>> UNDERSTOOD.

>> YOU ARE WELL INTO YOUR  
REBUTTAL IF YOU WOULD LIKE TO  
SAVE SOME TIME.

>> I WILL SAVE SOME TIME.

>> ALL RIGHT.

>> MAY I PLEASE THE COURT?

TOM LEEKS, FROM DAYTONA BEACH  
FOR RESPONDENT.

[INAUDIBLE]

I'M UNHAPPY WITH THE DECISION



OVERTURNING OF THE SUMMARY  
JUDGMENT WERE RECEIVED 44205.

>> WHY DON'T WE START THOUGH  
WHERE HE LEFT OFF, WITH AND THAT  
IS WHETHER OR NOT THIS COMPANY  
CORPORATION IS IMPACT A  
GOVERNMENTAL UNIT.

>> YES, YOUR HONOR, THIS ISSUE

HAS BEEN ADDRESSED MANY TIMES.  
IN FULL, THIS COURT DECIDED THAT  
THE ISSUE OF WHETHER A NONPROFIT  
CORPORATION OR ANOTHER ENTITY  
WAS IN FACT LOOSELY ENOUGH  
RELATED TO THE STATE TO RECEIVE  
SOVEREIGN IMMUNITY WAS ONE OF  
CONTROL AND THEY WENT THROUGH  
SEVERAL FIGHTERS HAD THE FACTORS  
THEY WERE THROUGH OUR WAR THE  
BOARD OF DIRECTORS WILL SEE IN  
OUR CASE THE DISTRICT COURT OF  
DIRECTORS IS ONE OF THE SAME THE  
FINANCIAL SERVICES.

WHAT IS THE PURPOSE OF THE  
SEPARATE CORPORATION?

OUR CASE THE PURPOSE OF THE  
ARTICLE IS PLAINLY STATES IS TO  
ASSIST THE DISTRICT IN CARRYING  
OUT ITS PUBLIC SERVICE.

THE SHORT OF IT IS THIS.

BUT BUSINESS FINANCIAL SERVICES  
WHICH WE CALL PPBS SAYS IS  
SOLELY THE DILEMMA.

IT IS AN ARM OF THE BODY OF THE  
DISTRICT.

SO IT IS ONE IN THE SAME.

>> WHAT IS THE CASE YOU SAY HAS  
DECIDED THIS?

A SUPREME COURT CASE?

>> YES, STOLE V. NO FIXED 94  
SOUTHERN SECOND NUMBER 11997.  
THE ISSUE THAT SOUL DECIDED IS  
PALACE IS PROGRAM TO DETERMINE  
WHETHER HIS ENTITY --

[INAUDIBLE]

>> ALL THE REFERENCES THAT  
DIDN'T REFERENCE TOOL.

>> SO WAS RAISED BEFORE THE  
TRIAL COURT'S IN BOTH ISSUES OR  
JUST ONE OF THE ISSUES THAT WE  
HAVE BEFORE US?

>> THE ISSUE THAT -- I'M A  
LITTLE CONFUSED.  
BUT THE ISSUE ON WHAT THE COMING  
TO THE TRIAL COURT ASKED THE  
PUBLIC WHISTLEBLOWER SITE WAS  
THAT THE PUBLIC  
WHISTLEBLOWER'S -- KEEP IN MIND  
THE UNDERLYING CLAIM IS A

PRIVATE WHISTLEBLOWER ACT CLAIM.  
BUT THE PPBS WAS AN INDEPENDENT  
CONTRACTOR WOULD BE CONSIDERED  
UNDER THE WHISTLEBLOWER ACT IN  
THE CONSIDERATION OF DOLE.

DIRECT THEY DID RAISE IT TO THE  
PUBLIC WHISTLEBLOWER RIGHTS.

WHAT ABOUT THE RETALIATION  
WORKERS COMP?

THEY NEVER SAID THAT THIS ENTITY  
WAS NOT A PUBLIC ENTITY?

>> NO, NOT AS TO THAT SPECIFIC  
ISSUE.

>> I MEAN, I HAVE TO LOOK AT  
THIS BECAUSE IT SEEMS TO ME THE  
LOGIC OF ONE SHOULD PERTAIN TO  
THE OTHER.

IN OTHER WORDS, SOMEONE IS  
EITHER -- OR ARE THEY SEPARATE  
REASONS THAT THE ISSUE OF THE  
IMPLICATION OF 768.28 WOULD BE  
DIFFERENT FROM HOW YOU WOULD  
INTERPRET THE PUBLIC  
WHISTLEBLOWER'S.

>> ABSOLUTELY.

FOR DIFFERENT PURPOSES OF THE  
PUBLIC WHISTLEBLOWER ACT.

>> NO CASES HAVE SAID THAT.

HAS THERE BEEN A CASE SAID THAT?

>> NO.

AND WHEN THEY SPECIFICALLY SAY  
THE CLAIM THAT THE WHISTLEBLOWER  
ACT IS ONE IT HAD BEEN DECIDED  
IN THE FIRST IS FOR THE PUBLIC  
WHISTLEBLOWER ACT IS NOT SUBJECT  
TO 758 NOTICE REQUIREMENTS.

AND TWO, THERE'S A MORE  
RESTRICTIVE LIMITATION.

BUT I'VE NOTICED WITH THE NILE  
YOU ONLY HAVE A LIMITED PERIOD  
OF TIME TO FILE THE PUBLIC  
WHISTLEBLOWER ACT CLAIM.

HAS LONG SINCE PASSED.  
KEEP IN MIND THIS PARTICULAR  
AFTER THE DEMAND LETTER WAS SENT  
TO THE DISTRICT.

THAT SAME ANALYSIS WAS APPLIED  
IN GARRISON.

>> LAST YEAR THE REPORT SAID  
THAT 768 DIDN'T APPLY BECAUSE  
THE FAR RIGHT STATUTE ACTUALLY  
HAD SOME IMMUNITY.  
SO NOW WE CAN APPLY THAT TO THE  
PUBLIC.

>> CORRECT.

>> WHY ISN'T IT ALSO APPLICABLE  
TO 440, THE 440 ACTION FOR THE  
WORKERS COMP?

>> WE HAVE RECOGNIZED THAT THE  
LEGISLATURE HAS DONE US FAVORS  
IN FIGURING OUT WHAT THE 44205  
RETALIATION CLAIM IS.

44205 IS A SINGLE SENSE THAT YOU  
MAY NOT COERCE OR RETALIATE.  
IT IS ESPECIALLY AN ESCORT  
OUTSIDE OF THE STATUTORY SCHEME  
THAT IS WHAT WE KNOW AS WORKERS  
COMP, AND THAT HAS BEEN THE  
PRIMARY ISSUE IN THE MAGGIO  
DECISION AND THE GARRISON  
DECISION.

THE COURT DETERMINED THAT  
BECAUSE THE PUBLIC  
WHISTLEBLOWERS ACT WAS A  
STAND-ALONE STATUTORY SCHEME,  
THAT THEY CAN DERIVE THE  
LEGISLATIVE CONTRARY LEGISLATIVE  
INTENT WOULD NOT APPLY.

YOU DO NOT HAVE THAT IN 44205.  
44205 HAS NO NOTICE PROVISION.  
THE ONLY INDICATION THE STATE  
WILL BE RESERVED FOR RETALIATION

OF THE 44205 COMES WITH THE--  
THAT IS IT.

THERE IS NO NOTICE PROVISION.  
44205 AND CORPORAL DEFINITION OF  
THE INFERENCE, THE DEFINITION OF  
EMPLOYER WHICH INCLUDES STATE,  
THAT IS NOT INCONSISTENT AT ALL  
WITH 768.28

THE ISSUE IS NOT WHETHER THE  
STATE HAD SOVEREIGN IMMUNITY.  
THE ISSUE IS TO WHAT EXTENT AND  
WHERE 206 COMES IN.

>> IN LOOKING AT THE THREE  
REASONS IN MAGGIO, AS FAR AS THE  
STATE AND SOVEREIGN IMMUNITY  
DERIVES FROM THE CIVIL RIGHTS  
ACT, NOT FROM THE WAIVER ITSELF  
IN 768.28.

[INAUDIBLE]

>> THE WAIVER ARRIVES IN THE  
DEFINITION OF EMPLOYER.  
EMPLOYER INCLUDES STATE.

>> SO THEY AGREED THE FIRST PART  
WILL ANALYZE MAGGIO.

>> THE STATE IS AN EMPLOYER  
WITHIN THE DEFINITION.

>> THE OTHER KINDS OF WORKMAN'S  
COMP CLAIMS, THEY DON'T HAVE TO  
GO THROUGH-- THEY DON'T GO  
THROUGH IT?

>> IT IS A STAND-ALONE STATUTORY  
SCHEME ALL IN ITSELF AND THEY  
RECOGNIZE 44205 OUTSIDE OF THAT  
STATUTE.

>> THE OTHER PART IS HOW WE  
ANALYZE MAGGIO DOES NOT APPLY.

>> IT DOES NOT APPLY.

>> TO REACH THE ISSUE, WE WOULD  
HAVE TO APPLY THE STATUTORY  
CAUSE OF ACTION RATHER THAN A  
CAUSE OF ACTION, AND THE  
LEGISLATURE, IF THEY WANT TO

HAVE ANY KIND OF PROOF BETTER  
THAN THE STATUTE.

THAT IS WHAT WE END UP SAYING.

THERE IS NO OTHER STATUTORY  
CONSTRUCTION.

>> I THINK THE STATUTORY  
CONSTRUCTION IS WHAT TORT MEANS  
UNDER 768.28.

THE LANGUAGE OF 768.28 IS THE  
STATE SHALL BE LIABLE IN TORT--  
IS ANY PERSON SHALL BE LIABLE.

>> THE PETITION POINTS OUT SOME  
I THINK 40 DIFFERENT STATUTES  
WHERE THE LEGISLATURE HAS  
REQUIRED UNDER 768.28 TO MAKE AN  
ARGUMENT THAT WHEN THEY WANT THE  
CLAIMANT TO JUMP THROUGH  
PROCEDURAL HOOPS, AND THEY  
CERTAINLY KNOW HOW TO DO THAT.  
SO WHY SHOULD IT MATTER IN THE  
ANALYSIS HERE?

JUST SAY THERE IS NO SUCH  
REQUIREMENT IN THE STATUTE?

>> THAT WOULD TURN ON CENTURIES  
OF RULES OF STATUTORY  
CONSTRUCTION.

THE LEGISLATURE IS PROUD TO NOTE  
THE EXISTENCE OF THE OTHER  
STATUTES WHEN ENACTING NEW  
STATUTE AND UNLESS THE COURT CAN  
FIND A CLEAR CONTRARY  
LEGISLATIVE INTENT, THIS HAS TO  
REINVEST STATUTES TO THE  
GOVERNMENT.

>> THEY PROVIDE NOTHING BECAUSE  
THE LEGISLATURE PUTS NOTHING IN  
THERE ABOUT 768.28.

>> I DON'T SEE YOUR POINT.

>> THE RULES OF STATUTORY  
CONSTRUCTION REQUIRES TO READ  
THE STATUTE TOGETHER IN HARMONY  
IF WE CAN.

SO THE QUESTION IS NOT WHY  
DIDN'T THEY DO IT.

THE QUESTION IS IT CONTAINS  
CLEAR CONTRARY INTENT THAT THEY  
DID NOT INTEND 768 TO APPLY.

>> OKAY.

THERE ARE AND SOME OTHER 40  
STATUTES OTHERWISE.

WOULDN'T THAT BE THE CASE THAT  
THE LEGISLATURE DOES NOT REQUIRE  
THOSE TO BE INCLUDED?

>> THE LEGISLATURE POINTED OUT  
768.28 EXPRESSLY WITH THAT IN  
THERE.

MR. MAGGIO WENT THROUGH THE  
ANALYSIS OF WHAT THAT MEANS,  
INCLUSION OF A SPECIFIC ISSUE  
THAT PRECLUDES THE APPLICATION.  
THAT IS WHAT WE GLEAN FROM THAT  
BUT WITHOUT THE INCLUSION OF A--  
YOU HAVE TO ASSUME THE  
LEGISLATURE-- SO THE STATUTES  
THAT ARE BEING CITED HERE MAY  
CITE THAT ONE SPECIFIC NOTICE  
BUT INTEND--

WE HAVE TO ASSUME THE  
LEGISLATURE INTENDED NOT TO  
INCLUDE SOME OF THE OTHERS.

>> THAT IS AN INTERESTING ISSUE  
AS TO WHETHER THEY ARE OPPOSED  
TO SAYING WE ARE GOING TO FIGURE  
OUT STATUTES WHERE WE WANT TO  
GET THE NOTICE OF THE 768 .28  
AND IF WE DON'T, WE ARE  
INTENDING IT BECAUSE THE REASON  
BEING IS THAT, AGAIN, WE KNOW  
THE COMMON LAW COULD NOT BE  
BOUGHT IN THE STATES AND 768 IS  
A WAIVER OF SOVEREIGN IMMUNITY.  
IT IS A GOOD ARGUMENT TO BE  
MADE.

>> I KNOW WE DIDN'T REACH IT IN



MY COURT.

WE DIDN'T INTEND FOR THOSE  
PROVISIONS TO APPLY.

ANOTHER WAY-- WHAT IS WRONG WITH  
THAT ANALYSIS?

>> THE ANALYSIS WAS NOT GIVEN  
THE LEGISLATURE THE BENEFIT OF  
THE PLAIN MEANING OF THE  
LANGUAGE OF SUBSEQUENT 768.28.  
THE CASE HAS ACTUALLY SAID  
INITIALLY TRADITIONAL TORTS AND  
I SUGGEST TO YOU THAT PERHAPS  
THAT AMBIGUITY ON WHAT IS A  
TRADITIONAL TORT WAS INTENTIONAL  
BECAUSE 768 .28 LANGUAGE SAYS  
AGAIN THAT IT INVOLVES IMMUNITY  
FOR TORTS AS ANY OTHER QUESTION  
WOULD BE.

WHAT THAT TELLS US IS TORTS THAT  
ARE EXCLUDED ARE CONSTITUTIONAL  
TORTS BECAUSE A PERSON CANNOT BE  
LIABLE FOR DUE PROCESS.

BUT A PERSON CAN BE LIABLE FOR  
TERMINATION, SO IF WE GIVE THE  
LEGISLATURE THE BENEFIT OF  
READING THE STATUTORY LANGUAGE  
AS IT IS EXPRESSLY BROUGHT  
FORWARD, THEN IT WILL INCLUDE  
THE CONSTITUTIONAL--  
THE MAGGIO DECISION, BECAUSE  
THIS TORT IS LOOKING AT THE REST  
OF THE STATUTES AND BOTH STATUES  
THEMSELVES OR STAND-ALONE  
STATUTORY SCHEMES IN SUCH  
AMOUNTS OF CONTRARY INTENT WAS  
GLEANED FROM THOSE STATUTORY  
SCHEMES THAT THIS COURT COULD  
THEN DECIDE.

>> WHEN THE LEGISLATURE CREATES  
A CAUSE OF ACTION, AND PROVIDES  
FOR A REMEDY AGAINST THE STATE,  
IN JUDGMENT WITH THAT CAUSE OF

ACTION, THAT IS ADMITTEDLY  
SEPARATE FROM 768.

THEY ACTED SEPARATELY FROM  
WHATEVER THEY PREVIOUSLY HAD  
DONE AND THAT SEEMS TO, I GUESS  
WHAT I'M SAYING, THAT SEEMS TO  
SUPPORT WHAT JUDGE POSTON WAS  
SAYING, SOMETIMES THEY RECOGNIZE  
THEY ARE GOING TO INCORPORATE  
THESE REQUIREMENTS IN 768.

HERE, THEY DIDN'T DO THAT.

>> THAT IS CORRECT BUT AGAIN--

>> BUT YOU SEE IF YOU TOOK 768,  
THIS STATUTE THAT WE ARE TALKING  
ABOUT WITH RESPECT TO  
RETALIATION-- THERE IS A CLAIM  
AGAINST THE STATE.

THE ISSUE IS NOT GOING AGAINST  
THE STATE.

THE ISSUE IS TO WHAT EXTENT.

WHAT WE HAVE IS, BECAUSE OF THE  
CLIENT WAIVER IT IS THE  
INCLUSION OF THE DEFINITION.

>> ARE YOU ARGUING THAT THE  
STATUTORY CAUSE OF ACTION, THERE  
IS NO CAP AGAINST THE  
GOVERNMENT?

>> I AM ARGUING IF YOU ARE GOING  
TO REMOVE THE 760, SAYING THE  
ANALYSIS OF 44205--

>> WAS THAT AN ISSUE IN MAGGIO?  
IS THAT WHAT WE DID?

[INAUDIBLE]

>> I AM ASKING YOU.

ARE PEOPLE ASSUMING UNDER THE  
CIVIL RIGHTS ACT THERE IS NO CAP  
ON INDEMNITY?

>> YES.

IN FACT, AS A LAWYER IN  
APPELLATE LAW, ONE OF THE  
REASONS IS BECAUSE, UNLIKE  
FEDERAL COURT, THERE ARE NO

CAPS.

>> IS THERE A CASE THAT SAYS THAT?

>> YOU WILL HAVE TO FORGIVE ME. PERHAPS MS. MORELLO CAN HELP US OUT.

>> IS THERE A SPECIFIC PROVISION THAT THE CIVIL RIGHTS ACT ADDRESSES THE LIMITATION? I BELIEVE THERE IS.

OKAY.

>> IT SPECIFICALLY ADDRESSES THE CIVIL RIGHTS ACT.

I DON'T KNOW OF A CASE.

AND IF I MAY-- I WOULD LIKE TO SUGGEST, ONE OF THE STEPS BEFORE THE TRIAL COURT WAS THAT THIS ADMISSION THAT PBFS AS AN EMPLOYER STOOD ALONE IN STARK CONTRAST TO EVERY OTHER POSITION THAT PBFS HAD TAKEN FROM THE BEGINNING.

THAT PRECISE ADMISSION, MERELY-- MY PRECISE LANGUAGE WAS INCLUDED WHERE PBFS HAD DENIED.

[INAUDIBLE]

WHERE THE RUBBER MEETS THE ROAD IS A REQUEST FOR PROVISIONS THAT YOU HAVE TO PAY TO ESTABLISH THESE THINGS.

THAT IS WHAT REALLY LAWYERS LOOK TO, TO ACTUALLY PROVE WHEN YOU STEP IN FRONT OF THE JUDGE OR THE JURY.

>> PRECISELY, CORRECT.

>> THAT IS VERY IMPORTANT TO LEARN.

>> THIS IS NOT A SEPARATE CASE. THIS IS ABOUT THREE YEARS OLD.

[INAUDIBLE]

WHATEVER THE ENTITY IS AS A PUBLIC ENTITY.

>> THE NOTICE, BUT HOW ABOUT  
STATUTE OF LIMITATIONS?  
WHEN YOU FILE THE SUIT, IT IS  
TWO YEARS AFTER THE ACT?  
BY THE AGENCY, AND YOU ARE  
SAYING THAT THE STATUTE HAD NOT  
EXPIRED?

>> I AM SAYING THAT I HAVE BEEN  
ALLOWED TO AMEND AT THAT TIME--  
IT WAS TOO LATE BUT THEY GAVE  
THE NOTICE INITIALLY.  
IT WAS SPOKEN TOO LATE.

>> SEEING A SIGNIFICANT  
ADMISSION AFTER THE PERIOD OF  
STATUTE OF LIMITATIONS.

>> WHAT ARGUMENTS DID THEY  
PRESENT WITH REGARD TO THAT?  
[INAUDIBLE]

THAT IS THE CONCLUSION.  
THERE WAS NO TIE-BACK TO THE  
STATEMENTS THAT, IF YOU LET THIS  
HAPPEN, THERE WOULD BE BEYOND  
STATUTE OF LIMITATIONS UNDER THE  
PUBLIC PROVISIONS.

>> I AM TRYING TO REACH IT.  
IT WAS NOT IN THE BRIEFS.

>> AS I WAS LOOKING AT THIS, I  
WAS A LITTLE BIT SHOCKED THAT  
SOMETHING SO CRITICAL COULD BE  
CHANGED AT SUCH A LATE DATE IN  
LITIGATION.

>> ALLOW ME TO SAY THIS, IF I  
WILL.

IT IS SIGNIFICANT WHEN IT STANDS  
IN STARK CONTRAST TO THIS POINT.  
KEEP IN MIND WE HAVE PREVIOUSLY  
HAD A MOTION TO ADVANTAGES WHERE  
THE DEFENSE WAS EXPRESSLY A  
PUBLIC AGENCY.

WHAT ACTUALLY HAPPENED IS THE  
POINT PROCEEDED AS IF THE  
DEFENDANT WAS A PUBLIC AGENCY.

THEY DID THAT BECAUSE, BEGINNING FROM THE ANSWER TO THE COMPLAINT THROUGH THE SPECIFIC AFFIDAVIT FILED UNDER GENERAL COUNSEL, THEY PROCEEDED UNDER THE PUBLIC AGENCY AND WHAT THE TRIAL COURT FOUND IS-- I CAN'T LET THIS GO FORWARD ON THE MERITS, BECAUSE THAT WOULD BE-- ON THE MERITS. THE PLAINTIFF IS HAVING TO PREPARE FOR TRIAL AND A PLAINTIFF CAN RAISE THE DEFENDANT MOTION TO WITHDRAW.

>> WITH THAT YOU HAVE THE--

[INAUDIBLE]

THANK YOU VERY MUCH.

>> REBUTTAL?

>> IN RESPONSE TO THE CHANGE FOR ADMISSION AND RESPONSE TO THE TRIAL COURT, WE HAVE A FILED MEMO ON THE ISSUE OF 3205.

>> AGAIN, YOU SAID THE CHANGE WOULD BE FATAL?

BECAUSE?

YOU SAID THAT IN THE MEMO?

>> YES.

WE SAID IT WILL BE FATAL, DON'T DO IT.

>> BUT HE TOLD THE JUDGE IT WAS BECAUSE YOU COULD NOT BRING A PUBLIC WHISTLEBLOWER STATUTE--

[INAUDIBLE]

>> IN THE MEMO TO THE TRIAL JUDGE.

>> I AM INTERESTED IN YOUR VIEW. IF IT DOES NOT APPLY, ARE YOU ALSO SUGGESTING THAT THE CAPS ON DAMAGES DO NOT APPLY TO STATUTORY CLAUSES?

>> YES.

I GO BACK TO MAGGIO AND I GO BACK TO--

WE GO BACK TRIANON PARK.  
WHERE THIS COURT HAS  
CONSISTENTLY FOUND THAT THE SOLE  
PURPOSE OF THE ENACTMENT OF  
768.28 WAS FOR BREACHES OF  
COMMON LAW EXISTING.  
THE SAME WAS SAID IN MAGGIO AND  
WE CAME BACK TO MAGGIO.  
JUSTICE PARIENTE WROTE TO THE  
COURT.

[INAUDIBLE]

SOLELY CREATURES OF STATUTE.  
THAT SAME LANGUAGE IS CONSISTENT  
WITH TECHNOLOGY.

43205 CREATED A STATUTORY.

>> IN MAGGIO, IN THIS CASE, WHAT  
WE ARE SPECIFICALLY TALKING ARE  
THOSE REQUIREMENTS UNDER 768.28.

[INAUDIBLE]

IN MAGGIO, WE DID NOT DECIDE AND  
THAT WAS NOT AN ISSUE IN THIS  
CASE.

>> IT WAS NOT DECIDED.

THAT IS CORRECT.

>> IN MAGGIO, THE QUESTION  
SPECIFICALLY IS THE STATUTORY  
SCHEME AND THERE IS A LIMITATION  
ON PUNITIVE DAMAGES AND QUICKLY  
LOOKING AT IT, THERE IS A  
100,000-DOLLAR LIMITATION ON  
PUNITIVE DAMAGES, SPECIFICALLY  
IN THE PROVISIONS OF 768.28 IN  
THIS SECTION.

SO THAT IS GOVERNED BY THE TEXT.

>> IN MAGGIO, THEY DECIDED  
IMMUNITY FOR STATUTORY, THAT WAS  
NOT GRIEVOUSLY COMMON LAW.

>> IN MAGGIO, WE EXPRESSLY SAID  
THE STATUTORY CAUSES OF ACTION  
WERE WITHIN OR WITHOUT, OR WE  
WOULDN'T BE HERE.

>> AGREED.

>> ANOTHER ARGUMENT, 44205 IS--  
I BELIEVE CLEAR LEGISLATIVE  
INTENT, AS MR. ZIENTZ POINTED  
OUT, IN 4465.  
WHAT I'M ASKING THIS COURT TO DO  
IS TO APPLY THE ANALYSIS.  
THIS IS TRADITIONALLY DONE FOR  
WHAT I CALL PLEA PROTECTION  
STATUTES.  
IT IS CONSISTENTLY OVER MANY  
YEARS.  
THEY ARE NOT COMMON LAW TORTS.  
THEY ARE REMEDIAL STATUTES.  
THEY ARE TO BE INTERPRETED  
LIBERALLY TO GRANT ACCESS TO THE  
REMEDY, AND BOTH THE PUBLIC AND  
THE PRIVATE WHISTLEBLOWER ACT  
SAYS THEY ARE NOT MUTUALLY  
EXCLUSIVE.  
THE DAHL COURT APPLIED THAT AND  
THE HUTCHISON COURT APPLIED THAT  
AND I WOULD LIKE THAT APPLIED  
AGAINST PBFS IN THE INDEPENDENT  
CONTRACTOR AND BE SUED UNDER THE  
PRIVATE WHISTLEBLOWER ACT.  
>> THANK YOU.  
WE THANK YOU BOTH FOR YOUR  
ARGUMENTS HERE TODAY.  
THE COURT WILL BE IN RECESS  
UNTIL TOMORROW MORNING.  
>> PLEASE RISE.  
>> THE SUPREME COURT IS NOW  
ADJOURNED.