

>> PLEASE RISE OF.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> WE NOW PROCEED TO THE THIRD  
CASE ON OUR DOCKET, SHANDS  
TEACHING HOSPITAL AND CLINICS,  
INC. VERSUS MERCURY INSURANCE  
COMPANY OF FLORIDA.

>> GOOD MORNING.

I'M JOEL WALTERS, HERE ON BEHALF  
OF THE APPELLANT, SHANDS  
TEACHING HOSPITALS AND CLINICS,  
INC. WITH ME AT COUNSEL TABLE, DAVE  
ROBERTS, SENIOR COUNSEL WITH  
SHANDS.

SHANDS HAS RAISED TWO ISSUES ON  
APPEAL.

THE FIRST ISSUE RELATES TO  
WHETHER OR NOT THE DISTRICT,  
FIRST DISTRICT COURT OF APPEALS  
COMMITTED ERROR IN HOLDING THAT  
THE SPECIAL LAW AND IN ALACHUA  
COUNTY ORDINANCE WHICH CREATE  
THE ALACHUA COUNTY HOSPITAL  
LIEN LAW VIOLATE ARTICLE III OF  
THE FLORIDA CONSTITUTION.

THE SECOND ISSUE IS WHETHER THE  
TRIAL COURT COMMITTED  
REVERSIBLE ERROR IN LIMITING  
THE JUDGMENT THAT WAS AWARDED  
TO SHANDS, TO THE POLICY LIMITS  
PAID BY MERCURY INSURANCE  
COMPANY UNDER THE THEORY THAT,  
ANY JUDGEMENT THAT SHANDS WOULD  
HAVE OBTAINED AGAINST MERCURY'S  
INSURED WOULD HAVE BEEN UNDER  
COLLECTIBLE.

THIS MORNING I PLAN TO FOCUS MY  
COMMENTS ON THE CONSTITUTIONAL  
ISSUES.

HOWEVER IF THE COURT HAS ANY

QUESTIONS REGARDING THE SECOND  
ISSUE OR ANY OTHER ISSUE, I  
WILL BE HAPPY TO, HAPPY TO  
ANSWER THEM.

>> I HAVE A SPECIFIC QUESTION  
JUST THAT WILL RELATE TO THE  
CONSTITUTIONAL ATTACK.

IF WE WERE TO HOLD THE, THAT  
THE FIRST DISTRICT WAS CORRECT  
ABOUT THE STATUTE BUT NOT ABOUT  
THE ORDINANCE, DID SHANDS FILE  
ITS LIEN PURSUANT TO THE  
STATUTE AS WELL AS THE  
ORDINANCE OR JUST UNDER THE  
STATUTE?

>> OUR POSITION WOULD BE IT'S  
FILED UNDER BOTH.

>> I UNDERSTAND BUT IS THERE  
EVIDENCE IN THE RECORD AS TO, I  
THOUGHT THERE WAS SOME  
ASSERTION MADE THAT THE ONLY  
REFERENCE MADE WAS TO THE  
STATUTE?

NOW IT MAY NOT MAKE A  
DIFFERENCE OR IT MAY MAKE A  
DIFFERENCE BUT WHAT, WAS IT  
SPECIFICALLY UNDER THE STATUTE?

>> THAT IS CORRECT.

THE HOSPITAL LIEN THAT WAS  
RECORDED IN ALACHUA COUNTY ONLY  
REFERENCES THE SPECIAL LAW.  
HOWEVER, NEITHER THE SPECIAL  
LAW NOR THE ORDINANCE REQUIRE  
THAT REFERENCE BE MADE TO THE  
SPECIFIC AUTHORITY BEING  
GRANTED.

>> BECAUSE THERE IS NO  
DIFFERENCE IN HOW IT IS  
PERFECTED? THEY VIRTUALLY  
MIRROR ONE ANOTHER?

>> THAT IS CORRECT.

AND THERE IS CASE LAW IN

FLORIDA BASICALLY SAYING THAT  
THERE IS NO STRICT PERFECTION  
REQUIREMENTS WHEN IT COMES TO A  
HOSPITAL LIEN AS OPPOSED TO  
SOME OTHER TYPES OF LIEN.

>> DON'T USUALLY THE ORDINANCES  
DESCRIBE HOW IT IS TO BE  
PERFECTED?

>> IT DOES, WELL --

>> THE DADE COUNTY ORDINANCE  
SPECIFIES WHAT YOU NEED TO DO  
AND JUST AS A MATTER OF COURSE  
THAT'S DONE.

THAT IS JUST HOW IT OPERATES,  
SO.

>> AND MY WORDING WAS PERHAPS  
CONFUSING.

IT DOES SPECIFY THE EXACT STEPS  
AS TO WHAT HAS TO BE DONE  
INCLUDING RECORDING, SENDING  
CERTIFIED NOTICE TO ANY THIRD  
PARTY LIABILITY CARRIER THAT  
THE HOSPITAL KNOWS ABOUT.  
DOING IT WITHIN A CERTAIN  
AMOUNT OF TIME OF TREATMENT.  
HOWEVER --

>> THE ORDINANCE DOES NOT  
REQUIRE THAT THE LIEN REFER TO  
THE ORDINANCE?

>> CORRECT.

>> IS THAT YOUR POINT?

>> THAT WAS, THAT WAS ONE  
POINT.

THE SECOND POINT IS THERE IS  
CASE LAW IN FLORIDA BASICALLY  
SAY, UNLIKE A LOT OF LIENS, IF,  
FOR EXAMPLE, YOU DON'T FILE IT  
ON TIME, OR YOU DON'T SEND THE  
COPY ON TIME, IT DOESN'T DEFEAT  
THE LIEN AS IT WOULD, LET'S SAY  
IN A CONSTRUCTION LIEN SETTING  
OR SOME OTHER SITUATION.

HOSPITAL LIENS IN FLORIDA ARE  
COMMONPLACE.

THEY COVER 20 COUNTIES AND 116  
HOSPITALS.

THEY EXIST BY VIRTUE IN SOME  
COUNTIES BY ORDINANCE. IN SOME  
COUNTIES THEY EXIST BY VARIETY  
OF SPECIAL LAW.

AND IN SOME COUNTIES THEY EXIST  
BY SPECIAL LAW AND ORDINANCE.

>> THESE SPECIAL LAWS THAT  
COVER SOME OF THESE OTHER  
COUNTIES YOU'RE TALKING ABOUT  
EVER BEEN CHALLENGED?

>> NO.

>> NEVER?

I THOUGHT THERE HAD BEEN AND  
THAT IS THE REASON THE  
ORDINANCES CAME IN?

>> WELL THE CHALLENGE, IF YOU  
WILL CAME IN THE SECOND  
DISTRICT COURT OF APPEALS IN  
THE CASE OF BOARD OF HOSPITAL  
DIRECTORS OF LEE COUNTY VERSUS  
McCRAE.

AND IN THAT CASE THE COURT  
SPECIFICALLY FOUND THAT UNDER  
ARTICLE III, SECTION 11-A-9,  
THE LIEN WAS NOT BASED UPON A  
PRIVATE CONTRACT BECAUSE IT WAS  
A LIEN CREATED BY STATUTE.  
AND SO THAT IS THE ONE, THAT IS  
THE ONE CASE IN QUESTION THE  
CONSTITUTIONALITY WAS FIRMLY  
RAISED.

THE CONSTITUTIONALITY OF LIEN  
LAWS PASSED BY A GENERAL  
ENACTMENT WAS CHALLENGED AND  
CHALLENGED QUITE FREQUENTLY,  
WHICH ULTIMATELY LED TO THE  
LEGISLATURE CONCLUDING THAT  
INSTEAD OF HAVING TO DEAL WITH

CHALLENGES THAT THIS IS A, IN REALITY NOT A GENERAL LAW BUT A SPECIAL LAW IN THE GUISE OF A GENERAL LAW THAT WAS NOT PASSED WITH THE CONSTITUTIONAL FORMALITIES REQUIRED OF A SPECIAL LAW, WE WILL DO THIS BY SPECIAL LAW.

AND AS NOTED IN OUR BRIEF THIS ALSO COINCIDES IN THE TIME PERIOD IN WHICH COUNTIES WERE GIVEN BROADER HOME RULE POWER AND THE POWER TO DEAL WITH THIS ON AN ORDINANCE BASIS AS WELL, ALSO JUSTIFYING THE MOVE FROM A GENERAL LAW TO SPECIAL LAWS.

THE PURPOSE OF THE HOSPITAL LIEN LAW IS TO ENCOURAGE HOSPITALS TO TREAT ALL PATIENTS WITHOUT RESORT TO WHETHER OR NOT THE PATIENT HAS THE FINANCIAL ABILITY TO PAY.

THIS IS ACCOMPLISHED IN A HOSPITAL LIEN SETTING BY GRANTING THE HOSPITAL A CAUSE OF ACTION IN ITS FAVOR AND AGAINST A TORTFEASOR WHICH HAS CAUSED THE INJURIES FOR WHICH TREATMENT WAS RENDERED.

>> IS THE LAW AS IT IS STATED RESTRICTED TO THOSE CASES WHERE THE PERSON IS ONLY HAS MEDICARE OR MEDICAID OR, I ALWAYS THOUGHT IN SEVERAL COUNTIES THAT MANY HOSPITALS EVEN IF THEY WEREN'T TREATING POOR PEOPLE THAT THE HOSPITAL LIEN ATTACHED?

>> THE HOSPITAL LIEN IS NOT LIMITED IN TERMS OF, IT CAN ONLY BE EXERCISED AS TO AN INDIGENT.

IN THEORY IF DONALD TRUMP WENT INTO THE EMERGENCY ROOM, THE HOSPITAL COULD TRY TO COLLECT THAT BILL BY VIRTUE OF A HOSPITAL LIEN IF FOR SOME REASON DONALD TRUMP REFUSED TO PAY.

>> THERE IS SEPARATE LAW THAT GIVES MEDICAID A LIEN?

>> THAT'S CORRECT.

THAT IS CORRECT.

MEDICARE AND MEDICAID HAVE LIENS.

IN FACT THERE IS SOME ABILITY, AT LEAST ON THE PART OF MEDICARE AND MEDICAID THROUGH THE LIENS TO RECOVER WHAT THEY HAVE, WHAT THEY HAVE PAID THE LIEN LAW IS SIMILAR BUT THERE'S SOME SIGNIFICANT DIFFERENCES.

>> TO THE ADVANTAGE OF THE HOSPITAL, IF THERE'S, ESPECIALLY IF THERE'S A PRETTY LARGE INSURANCE POLICY, THEY GET TO COLLECT, YOU KNOW, PERHAPS, ALL OF THEIR BILL WHEREAS, YOU KNOW, EVEN IF THEY WERE IN, BLUE CROSS-BLUE SHIELD, THERE IS A CONTRACT AND YOU'RE GOING TO END UP GETTING FAR LESS.

>> WELL, NO QUESTION ABOUT IT THERE IS, THERE IS THE ABILITY UNDER THE HOSPITAL LIEN SETTING TO GET CUSTOMARY CHARGES. IN THE SPECIFIC CASE OF SHANDS, BY STATUTE THE STATE LEGISLATURE APPROPRIATES FUNDS THAT MAKE UP THE DIFFERENCE BETWEEN AMOUNTS INCURRED FOR TREATING INDIGENTS AND THE AMOUNTS RECOVERED.

THAT'S A DIFFERENCE THAT IS  
UNIQUE TO SHANDS AS WELL.

>> BUT THE IDEA THAT IT'S A  
GOOD POLICY BECAUSE THEY'RE  
TREATING POOR PEOPLE, THAT'S A  
NICE THING TO SAY BUT THAT  
DOESN'T REALLY HAVE ANYTHING TO  
DO WITH THE CONSTITUTIONALITY  
OF THE STATUTE, DOES IT?

>> ONLY TO THE EXTENT THAT  
THERE, ONLY TO THE EXTENT THAT  
THE LEGISLATURE, WHEN IT'S  
DEALING WITH LEGISLATION THAT  
DEALS WITH THE HEALTH, SAFETY  
AND MORALS OF THE PUBLIC, IS  
GIVEN BROADER RANGE WITHIN THE  
CONSTITUTIONAL FRAMEWORK TO  
ENACT LEGISLATION.

THE AND CLEARLY I THINK THE  
LIEN LAW IS ONE THAT FALLS IN  
THAT CATEGORY BECAUSE WHAT  
YOU'RE DOING IS, YOU'RE  
MAINTAINING FINANCIAL HEALTH OF  
YOUR HEALTH CARE PROVIDERS IN  
SETTINGS BEYOND EMERGENT  
CARE WHERE  
YOU'RE PROVIDING A SETTING FOR  
HOSPITALS LIKE SHANDS AND OTHER  
FACILITIES THAT HAVE LIEN LAWS  
TO CONTINUE TO TREAT THE  
INDIGENT PATIENT BEYOND THE  
EMERGENCY ROOM, KNOWING THAT  
THERE IS A WAY TO GET PAID.

>> THAT IS WHAT YOU JUST SAID,  
SHANDS GETS WHATEVER IT DOESN'T  
COLLECT BACK FROM THE  
LEGISLATURE?

>> WELL THAT'S SUBJECT TO THE  
ENLIGHTENED CONSCIENCE OF THE  
LEGISLATURE.

>> ALL I'M SAYING IT DOESN'T  
SEEM TO ME WHEN IT COMES TO

THESE AUTOMOBILE ACCIDENTS,  
THAT IT'S REALLY AN ISSUE IF  
THERE'S INSURANCE OR YOU KNOW,  
THERE IS SUBSTANTIAL.  
AMOUNT OF A MEDICAL BILL.  
CERTAINLY THE HOSPITAL'S  
ADVANTAGE AND THE PLAINTIFF'S  
LAWYER HAS TO END UP DEALING  
WITH THE LIEN RATHER THAN THE  
INSURANCE COMPANY BECAUSE THEY  
COULD ACTUALLY GET A LIEN ON  
THE WHOLE AMOUNT.

LET'S GO TO THOUGH, THE  
CONSTITUTIONAL ISSUE THAT THE  
FIRST DISTRICT DECIDED WHICH IS  
WHETHER THESE ARE BASED ON  
PRIVATE CONTRACTS.

>> WELL, THE FIRST POINT TO BE  
MADE WITH REGARD TO THE FIRST  
DISTRICT COURT OF APPEALS  
OPINION IS THAT THE STATUTORY  
RIGHT GRANTED TO A HOSPITAL IS  
NOT A TRUE LIEN WITHIN THE  
CONVENTIONAL SENSE OR AS  
CONTEMPLATED BY ARTICLE III.  
ALTHOUGH THE REMEDY IS REFERRED  
TO AS A LIEN, IT IS NOTHING  
MORE THAN AN ACTION AT LAW TO  
ENFORCE A STATUTORY OBLIGATION  
OF A THIRD PARTY.

UNLIKE THE TRUE LIEN, THE  
HOSPITAL HAS NO RIGHT TO THE  
EXECUTE ON THE PROPERTY OF THE  
INDEBTED PATIENT.

THE LIEN LAW IS NOT BASED ON --

>> WAIT A MINUTE.

WHAT DID YOU SAY?

THEY CAN'T EXECUTE ON THE  
PROPERTY?

>> CORRECT.

>> BUT IF YOU CONSIDER THEIR  
RIGHT TO THE INSURANCE PROCEEDS

AS PROPERTY, ISN'T THAT WHAT THEY'RE ACTUALLY GETTING THEIR LIEN ON?

>> WELL IN A TYPICAL, IN A TYPICAL LIEN OR A TRUE LIEN SITUATION YOU'RE DEALING WITH SOMETHING AKIN TO A MORTGAGE OR SOMETHING WHERE THERE IS A SPECIFIC REST AND THE LIEN ATTACHES TO THE PROPERTY AND YOU LOOK TO THE PROPERTY. YOU LEVY ON THE PROPERTY. THAT ISN'T REALLY TRUE IN TERMS OF THE SETTLEMENT PROCEEDS. AND THAT'S WHY, THAT'S WHY IT'S A MATTER OF NOMENCLATURE I THINK THAT CAUSES SOME OF THE CONFUSION.

WHAT YOU REALLY DO IN A HOSPITAL LIEN IS YOU SAY, OKAY, HOSPITAL, YOU DON'T HAVE A CONTRACT WITH A THIRD PARTY TORTFEASOR. YOU DON'T HAVE A CONTRACT WITH THE THIRD PARTY LIABILITY CARRIER.

THEY HAVE NO OBLIGATION THAT IS OWED TO YOU. THEREFORE WE ARE GOING TO GIVE YOU A DIRECT RIGHT OF ACTION AGAINST THAT PARTY IN THE EVENT THAT SETTLEMENT IS MADE OR RELEASE FROM LIABILITY IS ACCEPTED OR JUDGMENT PAID.

>> OR A FUND IS PAID?

>> YES.

>> YOU DON'T HAVE THE CAUSE OF ACTION TO JUST INDEPENDENTLY TO GO SUE THE THIRD PARTY.

>> WELL IN A SENSE YOU DO BECAUSE IF THE, IF THE LIEN IS IMPAIRED, YOU'RE NOT LIMITED TO

VALUE --

>> IT IS ONLY IMPAIRED IF YOU  
MAKE PAYMENT.

I'M A THIRD PARTY AND I SAY I'M  
NOT PAYING YOU A THING.

YOU DON'T HAVE A DIRECT ACTION  
AGAINST ME UNTIL I AGREE THAT  
I'M GOING TO PAY SOME MONEY TO  
YOUR PATIENT, ISN'T THAT TRUE?

>> ABSOLUTELY TRUE.

>> SO THAT'S THE RACE.

IT REALLY IS A LIEN.

I THINK YOU GOT BETTER  
ARGUMENTS ON THAT ONE BECAUSE  
THAT'S WHEN IT'S APPLIED.

>> WELL, AGAIN, IT'S, THE  
POINT, AND AGAIN THE POINT, I  
WILL MOVE ON QUICKLY IS IF THE  
LIEN IS IMPAIRED, UNLIKE A TRUE  
LIEN WHERE YOU'RE ACTUALLY  
FOCUSED ON THE PROPERTY, YOU  
CAN LOOK TO THE INSURANCE  
COMPANY, NOT BASED UPON THE  
VALUE OF THE SETTLEMENT OR THE  
AMOUNT PAID, BUT BASED UPON THE  
HOSPITAL CHARGES IDENTIFIED IN  
THE LIEN.

SO IT IS A PURELY STATUTORY  
RIGHT OF ACTION AS OPPOSED  
TO --

>> I WOULD LIKE YOU TO TOUCH  
UPON, IF YOU WOULD, THE AMOUNT  
OF THAT, BECAUSE I THINK THAT'S  
A SIGNIFICANT POINT HERE.

IS IT THE LIMITS OF THE POLICY?

IS IT SOMETHING BEYOND THAT?

>> WELL THE HOSPITAL LIEN LAW  
VERY CLEARLY BY ITS TERM, AND  
THIS IS NOT JUST TRUE IN THE  
ALACHUA COUNTY LIEN LAW, THIS  
IS ALL LIEN LAWS ACROSS THE  
STATE, THAT IF THE TORTFEASOR

OR THIRD PARTY LIABILITY  
INSURANCE CARRIER DOES NOT  
HONOR THE LIEN, THEN, THEN THE  
INSURANCE CARRIER IS NOT  
LIMITED TO ITS POLICY LIMITS OR  
WHAT ITS PAID.

>> WHY NOT?

>> BECAUSE THE LIABILITY AGAIN,  
IT GOES BACK TO THE POINT I  
REALLY THINK IS IMPORTANT.

IT IS NOT A TRUE LIEN.

IT IS A STATUTORY CAUSE OF  
ACTION.

AND THE STATUTE BY ITS TERMS  
IDENTIFIES THE EXTENT OF  
LIABILITY.

JUST LIKE STATUTORY BAD FAITH  
OR ANY OTHER STATUTE WHERE,  
WHERE IT WILL SPECIFY, IF YOU  
DON'T HONOR THE LIEN, YOU CAN  
BE LIABLE FOR THE FULL AMOUNT  
OF THE HOSPITAL LIEN AND THE  
LIABILITY IS NOT PREMISED ON  
THE CONTRACT OF INSURANCE.

IT'S PREMISED UPON A STATUTE,  
AN INVOLUNTARY STATUTORY  
OBLIGATION.

AND THAT'S WHY, AGAIN, IT COMES  
TO FOCUS, THIS IS NOT THE TYPE  
OF LIEN DEEMED A CONTRACTUAL  
LIEN ENVISIONED BY ARTICLE III.  
THIS IS --

>> IS THERE, I'M SORRY, WHEN  
YOU SAY IT IS NOT A CONTRACTUAL  
LIEN, THE RELATIONSHIP BETWEEN  
THE PRIVATE CONTRACT, DID  
SHANDS HAVE A CAUSE OF ACTION  
AGAINST THE PERSON WHO WAS  
TREATED AT THE HOSPITAL?

>> YES, IT WOULD HAVE A CAUSE  
OF ACTION.

>> AND WHAT WOULD BE THE BASIS

OF THAT CAUSE OF ACTION?

>> WELL IN THIS CASE THERE WAS NO EVIDENCE OF A, OF A WRITTEN OR ORAL CONTRACT BETWEEN THE PATIENT.

OKAY?

SO IN THAT CONTEXT THE HOSPITAL WOULD PROCEED BASED UPON A CONTRACT IMPLIED BY LAW AGAINST THE PATIENT TO PAY FOR SERVICES.

>> IS IT YOUR CONTENTION THAT'S NOT A PRIVATE CONTRACT BECAUSE IT'S NOT WRITTEN OR EXPRESSLY STATED IT ORALLY?

>> WELL, IT'S OUR POSITION THAT TYPE OF ACCOUNT, A QUASI-CONTRACT OR A CONTRACT IMPLIED BY LAW RATHER, IS NOT THE TYPE OF CONTRACT THAT FALLS WITHIN THE PROHIBITION OF ARTICLE III.

>> HOW DO WE KNOW THAT? WE'RE, WHAT IS THE PURPOSE OF THAT CONSTITUTIONAL PROHIBITION?

WHAT'S THE, AND HOW WOULD WE KNOW WHEN THEY SAID PRIVATE CONTRACT THEY ONLY MEANT WRITTEN CONTRACTS, NOT CONTRACTS THAT ARE IMPLIED? WELL THE DISTINCTION.

>> WELL THE DISTINCTION HERE IS VOLUNTARY AND INVOLUNTARY AND THE OBLIGATION WE'RE DEALING WITH IS AN INVOLUNTARY OBLIGATION CREATED BY STATUTE. THE FRAMERS OF THE CONSTITUTION WERE DEALING WITH CONSENSUAL TYPE LIENS.

MORTGAGES, CAR LOANS, CHATTEL MORTGAGES.

OTHER TYPES OF INTERESTS WHERE THERE IS CONSENT ON THE PARTY THAT IS PROVIDING THE SECURITY.

>> I GUESS, WHAT WAS THE, THE PURPOSE OF NOT HAVING A SPECIAL LAW PERTAINING TO THE CREATION OR IMPAYMENT OF LIENS BASED ON PRIVATE CONTRACTS?

TELL ME WHAT YOU, WAS THAT TO PROHIBIT THERE BEING LIENS IN MORTGAGES WHERE THEY REALLY DON'T NEED IT?

WHAT'S --.

>> FOR EXAMPLE, THE LEGISLATURE COULDN'T PASS A LAW GIVING ALL MORTGAGES OF NATIONS BANK A SUPER PRIORITY OVER OTHER MORTGAGES.

IT COULDN'T BASICALLY COMPEL PEOPLE TO GIVE, LET'S SAY SECURITY FOR A CAR LOAN.

THAT WOULD BE SOMETHING THAT WOULD BE NEGOTIATED BETWEEN TWO PRIVATE PARTIES.

IT WAS NEVER INTENDED TO DEAL WITH THE SITUATION WHEREBY STATUTE AS A MATTER OF PUBLIC POLICY THE LEGISLATURE IS CREATING A STATUTORY OBLIGATION ON THE PART OF THESE THIRD PARTIES THAT HAVE, OTHERWISE WOULD HAVE NO DUTY TO THE HOSPITAL TO SEE THAT IT GETS PAID TO DO THAT.

SO, AGAIN, THERE IS, THERE IS A DISTINCTION AND IT DOES GO TO EXACTLY WHAT WAS INTENDED BY THE FRAMERS.

>> IS THERE ANYTHING IN THE RECORD HERE OR IN THE CASE LAW THAT WOULD HELP US UNDERSTAND WHY THERE'S A, THESE LIEN LAWS

ARE SPECIAL LAWS AS OPPOSED TO THE LEGISLATURE HAVING PASSED A GENERAL LAW THAT APPLIES TO PARTICULAR CATEGORIES OF HOSPITALS?

>> WELL, IT'S OUR VIEW THAT BASICALLY THIS WAS VIEWED BY THE LEGISLATURE AS SOMETHING THAT COULD BE HANDLED AS A GENERAL LAW, AND A GENERAL LAW WAS ENACTED AND PROVED TO BE UNWORKABLE.

IT WAS FREQUENTLY THE SUBJECT OF CONSTITUTIONAL CHALLENGES.

>> THERE WERE NEVER, FOR WHATEVER REASON, THEY NEVER TRIED TO MAKE IT A GENERAL LAW OF GENERAL APPLICATION. THEY WERE ALWAYS TRYING TO SAY IT IS COUNTIES THAT ARE 300 OR MORE.

THERE WERE ALL THESE CATEGORIES.

WE KNOW WHY I GUESS, WHY THEY JUST DIDN'T EVER SAY, LISTEN, THIS IS A GOOD IDEA.

I MEAN THE HOSPITAL INDUSTRY IS CERTAINLY HAS CLOUT.

LET'S GIVE HOSPITALS, IF THEY WANT THEM, A LIEN?

>> WELL I THINK IT RELATES TO BASICALLY POLICY DECISIONS AND THE LEGISLATURE CERTAINLY HAS TO BALANCE DIFFERING INTERESTS WHEN IT COMES TO HOSPITAL LIENS JUST LIKE IT DOES EVERYTHING ELSE AND SO I THINK IT'S ENTIRELY LOGICAL TO SAY THAT IN THESE MORE POPULACE COUNTIES WHERE YOU'RE ASKING HOSPITALS TO TREAT A DISPROPORTIONATE NUMBER OF INDIGENT PATIENTS,

WHERE THEIR FUNDING IS  
DIFFERENT, THEY CAN BE TREATED  
DIFFERENTLY.

>> YOU ARE NOW DOWN TO A  
MINUTE.

>> OKAY.

THE OTHER CONSTITUTIONAL ISSUE  
THAT'S BEEN RAISED ON APPEAL IS  
ARTICLE III, SECTION A-12 WHICH  
PROHIBITS A SPECIAL LAW OR  
GENERAL LAW OF LOCAL  
APPLICATION DEALING WITH THE  
GRANT OF PRIVILEGE TO A PRIVATE  
CORPORATION.

SHANDS UNDER THE CRITERIA OF  
THIS COURT IN O'MALLEY VERSUS  
FLORIDA INSURANCE GUARANTY  
ASSOCIATION IS BY NO MEANS A  
PRIVATE CORPORATION.

IN O'MALLEY THIS COURT HAD  
OCCASION TO LOOK AT THE STATE  
INSURANCE GUARANTY ASSOCIATION,  
A NONPROFIT FLORIDA  
CORPORATION, CREATED BY GENERAL  
CORPORATION LAW.

AND THIS COURT FOUND THAT THE  
FILING STATUS WITH THE  
SECRETARY OF STATE IS NOT  
DETERMINATIVE.

THE BASICALLY LOOKS, THE COURT  
LOOKS TO WHETHER OR NOT THE  
COMPANY IS BOUND TO PERFORM ANY  
ACT SOLELY FOR GOVERNMENT  
BENEFIT OR WHETHER THE PRIMARY  
OBJECT OF THE COMPANY IS THE  
PERSONAL EMOLUMENT OF ITS  
STOCKHOLDERS.

>> YOU HAVE NOW EXHAUSTED ALL  
YOUR TIME.

>> OKAY.

>> THAT WE HELPED YOU EXHAUST.  
I WILL GIVE YOU A MINUTE FOR

REBUTTAL BUT YOU NEED TO  
CONCLUDE NOW.

>> VERY WELL.

>> MAY IT PLEASE THE COURT.

JEFF KIRSHEMAN WITH THE  
FISHER RUSHMER LAW FIRM FOR  
THE APPELLEE, MERCURY INSURANCE  
COMPANY OF FLORIDA.

THIS CASE BEFORE THE COURT  
TODAY IS TRULY ONE OF FIRST  
IMPRESSION.

NO COURT PRIOR TO THIS CASE  
DETERMINED THE  
CONSTITUTIONALITY OF A SPECIAL  
LAW CREATING LIEN RIGHTS IN  
FAVOR AFTER PRIVATE  
CORPORATION, IN CASE A  
HOSPITAL.

>> HOW ABOUT THE ORDINANCE?  
THE ORDINANCE IS OKAY?

>> NO, THE ORDINANCE IS NOT  
OKAY.

>> AND WHY IS IT NOT OKAY?

>> FIRST OF ALL WE WOULD SAY  
THAT THE ORDINANCE WAS NEVER  
RAISED AS AN ISSUE BY SHANDS  
BELOW.

THE LIEN THAT IS IN QUESTION IN  
THIS CASE WAS SOLELY PURSUANT  
TO THE SPECIAL LAW.

>> THEN WHY DO YOU SAY THAT?

>> WE SAY THAT BECAUSE THE  
ACTUAL LIEN ITSELF PART OF THE  
RECORD EVIDENCE ONLY CITES TO  
THE SPECIAL LAW.

>> THAT IS THE ONLY REASON  
BECAUSE IT IS NOT IN THE BODY OF  
THE LIEN ACTUALLY FILED?

THAT'S THE BASIS FOR THAT?

>> SHANDS IN THIS CASE BROUGHT  
A CLAIM FOR LIEN OF IMPAIRMENT  
BASED UPON THE SPECIAL LAW,

BASED UPON ITS CLAIM.

>> THAT'S WHAT I'M ASKING IT IS  
SET FORTH IN THE LIEN IS WHAT  
YOU'RE SAYING.

>> IT IS SET FORTH IN THE LIEN  
ITSELF.

>> IF THERE WAS NO MENTION OF  
ANY PARTICULAR LIEN IS IT A  
VALID LIEN UNDER THE ORDINANCE?

>> IT IS NOT A VALID LIEN UNDER  
THE ORDINANCE.

THE ORDINANCE IN THIS CASE  
MIRRORS THE SPECIAL LAW.

THIS WAS AN ISSUE JUSTICE  
PARIENTE TALKED ABOUT A MOMENT  
AGO.

THE LANGUAGE MIRRORS THE  
SPECIAL LAW.

>> WELL, IT APPEARS, I MEAN THE  
CONSTITUTION DOESN'T PROHIBIT  
THE LOCAL COUNTY, THAT'S  
REFERRING TO THE STATE, ISN'T  
IT?

>> IT DOES AND THAT'S A GOOD  
POINT BUT IN THIS CASE BECAUSE  
THE LOCAL ORDINANCE MIRRORS  
THE, THE SPECIAL LAW, BECAUSE  
IT CITES TO AND REFERS TO THE  
SPECIAL LAW, IT IS ALSO SUBJECT  
TO THE CONSTITUTIONAL  
PROHIBITION.

IN OTHER WORDS IF WE GET  
BACK --

>> WHY IS THAT THOUGH?  
I MEAN IF THE COUNTY HAS THE  
AUTHORITY TO ADOPT A LIEN  
ORDINANCE AND THERE IS NO  
IMPEDIMENT, NO CONSTITUTIONAL  
IMPEDIMENT TO THE COUNTY'S  
AUTHORITY, THE FACT THEY MAKE  
REFERENCE TO SOMETHING SEEMS  
TO, AND THAT YOU'RE GOING TO

RELY ON A REFERENCE TO A STATUTE TO INVALIDATE WHAT WOULD OTHERWISE BE A VALID ORDINANCE, SEEMS TO BE A HIGHLY FORMALLISTIC APPROACH TO DEALING WITH THE COUNTY'S POWERS.

>> THE ANSWER TO THE QUESTION IS THAT YOU HAVE TO LOOK TO THE PURPOSE BEHIND THE CONSTITUTIONAL PROHIBITION AND THE PURPOSE IN, LIKE TO EXPLORE AT SOME POINT THE CASE OF LONGWOOD VERSUS SEGER, THERE BE GENERAL STATEWIDE LEGISLATION, THESE AREAS OF STATEWIDE SIGNIFICANCE.

IF THE LEGISLATURE IS PROHIBITED FROM PASSING A SPECIAL LAW FOR THAT REASON, THEN THE LOCAL LAW, THE LOCAL LAW CANNOT EXERCISE ANY POWERS INCONSISTENT WITH THE GENERAL LAW IN THE CONSTITUTION.

>> THAT IS A VERY BROAD PRINCIPLE THAT I THINK WOULD HAVE LOTS OF IMPLICATIONS FOR COUNTY ORDINANCES.

THE COUNTIES CAN DO ALL SORTS OF THINGS THAT THE LEGISLATURE MIGHT NOT BE ABLE TO DO THROUGH A SPECIAL LAW UNDER THE CONSTITUTIONAL PROVISIONS.

I JUST THINK IF YOU, WE WOULD HAVE TO SERIOUSLY CONSIDER THE IMPLICATIONS OF WHAT YOU'RE ARGUING.

>> IS THERE A CASE THAT'S EVER SAID THAT?

>> YES, THERE IS A CASE. WE CITE IT IN OUR BRIEFS.

IT IS CALLED LINDSEY VERSUS THE CITY OF MIAMI AND --

>> AND IT HELD THAT COUNTIES CAN NOT PASS ORDINANCES IF THE LEGISLATURE CAN NOT PASS THE SAME ORDINANCE?

>> ESSENTIALLY, YES, IT HELD THAT THE LOCAL GOVERNMENT CAN NOT PASS A LAW THAT IS INCONSISTENT WITH THE GENERAL LAW.

>> COUNTIES HAVE HOME RULE POWERS AND THEY MAKE ORDINANCES ALL THE TIME THAT PERTAIN JUST TO THAT COUNTY.

THAT DOESN'T MEAN IT IS SOMEHOW UNCONSTITUTIONAL BECAUSE THE STATE COULDN'T DO THE SAME THING.

>> BUT IF THAT ORDINANCE IS IN VIOLATION OR IS INCONSISTENT WITH THE GENERAL LAW, IN THIS CASE THE CONSTITUTION, THE COUNTY CAN NOT PASS AN ORDINANCE THAT VIOLATES THE TENANTS OF THE CONSTITUTION OR THE GENERAL LAW.

>> THAT CASE WASN'T TALKING ABOUT, THAT YOU CITED FOR THAT PROPOSITION WAS NOT TALKING ABOUT VIOLATING THE CONSTITUTION.

IT WAS TALKING ABOUT, TELL ME IF I'M WRONG, AN INCONSISTENCY BETWEEN A LOCAL ORDINANCE AND A STATE LAW OF GENERAL APPLICATION, IS THAT CORRECT?

>> I BELIEVE YOU ARE CORRECT.

>> STATE STATUTE GENERAL APPLICATION?

>> YES. IN THAT CASE THEY COMPARED THE LOCAL ORDINANCE WITH THE SPECIAL LAW.

I QUOTE IN CASE, IN VIEW OF THE

RECITAL OF THE ORDINANCE AND  
IDENTICAL LANGUAGE IN IT AND  
THE FACT POWER OF ORDINANCE  
DERIVES FROM THE ACT WE THINK  
THE ORDINANCE MUST FAIL IF WE  
FIND THE ACT IS VOID.

IN THIS CASE IF HAVE A  
CONSTITUTIONAL PROHIBITION FROM  
ENACTING A LAW --

>> THAT IS TALKING ABOUT WHERE  
A LOCAL ORDINANCE, THE  
AUTHORITY FOR THE ENACTMENT OF  
A LOCAL ORDINANCE IS BASED IN A  
STATUTE, CORRECT?

I THOUGHT THAT'S WHAT YOU READ  
THERE.

>> I BELIEVE, I BELIEVE YOU ARE  
CORRECT.

>> THAT'S WHAT YOU SAID.

THAT'S NOT WHAT WE'VE GOT HERE.  
THIS IS NOT, WE'RE, THE  
ARGUMENT THAT SHANDS IS MAKING  
WITH RESPECT TO THE ORDINANCE  
IS NOT THAT THEY HAVE THE, THAT  
THE COUNTY HAD THE AUTHORITY TO  
DO THAT PURSUANT TO A STATUTE  
BUT JUST THE COUNTY BASED ON  
ITS POWERS AS A COUNTY HAD THE  
AUTHORITY TO DO IT, ISN'T THAT  
CORRECT?

>> I BELIEVE THAT'S THEIR  
POSITION BUT WITH ALL DUE  
RESPECT THAT IS ENTIRELY WRONG.  
WHEN YOU'VE GOT, YOU HAVE TO  
LOOK BACK AND LOOK AT THE  
PURPOSE BEHIND THE  
CONSTITUTIONAL PROHIBITION.

>> WHERE IN CHAPTER 88.539 IS  
THERE SOMEHOW SOME  
AUTHORIZATION FOR THE COUNTY TO  
ENACT ORDINANCE?

IT'S NOT THERE, IS IT?

>> NO, IT IS NOT THERE.

YOU ARE CORRECT.

BUT IN THIS CASE THERE IS NOT  
ANY EVIDENCE THAT THE COUNTY  
ENACTED AN ORDINANCE.

WE TRIED TO LOOK BACK AT THIS  
ISSUE BEFORE TODAY'S HEARING.  
AND IT LOOKS LIKE WHAT OCCURRED  
THEY SIMPLY PUBLISHED THE  
SPECIAL LAW BECAUSE THE  
LANGUAGE IS EXACTLY IDENTICAL.  
IN EVERY SECTION --

>> WAIT A MINUTE, THAT IS A  
DIFFERENT CHALLENGE.

I MEAN NOW YOU'RE SAYING THAT  
THERE IS NO ORDINANCE?  
THAT IS NEGATED IN THIS CASE.

>> THERE IS AN ORDINANCE.

>> BUT YOU'RE SAYING IT WAS NOT  
ADOPTED, ACCORDING TO  
PROCEDURES.

THAT'S WHAT YOU JUST SAID.

>> I'M SAYING THERE ARE A  
CATEGORY OF ORDINANCES SIMPLY  
PUBLISHED BY THE LOCAL  
GOVERNMENT.

IN THIS CASE THAT APPEARS WHAT  
HAS HAPPENED BECAUSE EVERY  
SINGLE SECTION SPECIFICALLY  
REFERS BACK, IN THE ORDINANCE  
TO THE SPECIAL LAW,  
EVERY SINGLE SECTION.

>> I'M LOST.

I NEVER HEARD OF A LOCAL  
GOVERNMENT JUST PUBLISHING  
SOMETHING AND THAT BECOMES THE  
LAW WITHOUT SOMEBODY VOTING ON  
IT, WITHOUT GOING THROUGH AND  
THERE'S A PROCEDURE TO  
CHALLENGE THAT.

YOU'RE SUGGESTING THAT THERE'S  
A CATEGORY OF LOCAL ORDINANCES

THAT JUST, THEY JUST PRINT THEM  
UP AS THEY GO ALONG AND NOBODY  
VOTES ON THEM?

THEY JUST PRINT THEM UP AND  
THAT BECOMES AN ORDINANCE?

>> MAY BE I MISSPOKE IT IS AN  
ENACTED ORDINANCE.

BUT IT WAS MERELY REPUBLISHED  
IN THE LOCAL LAW.

THE LANGUAGE IS IDENTICAL.

THE LANGUAGE REFERS BACK TO THE  
SPECIAL LAW.

>> I LIKE TO KNOW GOING BACK TO  
WHETHER IT WAS PRESERVED OR HOW  
IT WAS PRESERVED, THE FINAL  
JUDGEMENT OF THE TRIAL COURT  
REFERS TO THE PREVAILING PARTY  
AND THE LIEN UNDER THE  
APPLICABLE CHAPTER 88.359.

SO THE QUESTION IS, DID YOU  
HAVE AN OPPORTUNITY, DID THEY  
ARGUE IN THE ALTERNATIVE THAT  
THIS WAS, IF IT IS  
UNCONSTITUTIONAL, FIRST OF ALL,  
WAS CONSTITUTIONALITY OF THIS  
STATUTE ATTACKED AT THE TRIAL  
COURT?

>> IT WAS. IT WAS.

SUMMARY JUDGMENT MOTION AND A  
HEARING AS WELL.

>> DID MERCURY, DID THEY ALLEGE  
IN THE ALTERNATIVE THEN THE  
ORDINANCE WOULD GIVE THEM THE  
BASIS FOR THE LIEN?

>> NO. SHANDS, AND THAT'S AN IMPORTANT  
POINT, SHANDS HAS NEVER AT THE  
TRIAL LEVEL NEVER RAISED OR AT  
FIRST DCA RAISED WHETHER OR NOT  
THEIR CLAIM OF LIEN IS UNDER  
THE LOCAL ORDINANCE VERSUS THE  
SPECIAL LAW.

THE CLAIM HAS ALWAYS BEEN UNDER

THE SPECIAL LAW.

>> WHAT I UNDERSTAND, ISSUE WHETHER THERE WAS PROPERLY ENACTED, YOU DIDN'T HAVE A CHANCE, ARE YOU TELLING US TODAY THAT YOU DIDN'T HAVE A CHANCE AT THE TRIAL COURT LEVEL TO MAKE THAT ATTACK BECAUSE IT WASN'T THE BASIS FOR THEIR LIEN?

>> WELL, I BELIEVE TO BE FAIR, IN OUR MOTION, AND AT TRIAL COURT WE MADE REFERENCE TO AND ADDRESSED THE UNCONSTITUTIONALITY OF THE LOCAL LAW AND THE SPECIAL LAW. THEY WERE REFERRED TO INTERCHANGEABLY, BECAUSE THEY ARE EXACTLY THE SAME, THEY MIRROR EACH OTHER.

WHAT I WAS SAYING THE FIRST CLAIM THE SHANDS WAS NOT BROUGHT INTO THE LOCAL ACT. NOT IN THE CLAIM OF LIEN. WASN'T IN THE COMPLAINT. WAS NEVER REFERENCED AND NOT UNTIL I BELIEVE BEFORE THE SUPREME COURT.

SO IN OUR VIEW THAT IS NOT DISPOSITIVE OF ANY ISSUE IN THE CASE BECAUSE IT WAS NEVER RAISED BY SHANDS AS PART OF THEIR CLAIM.

IT WAS EVER IN BASED ON THE LOCAL ORDINANCE.

IT WAS ALWAYS BASED ON THE SPECIAL LAW.

THEY FILED AN AFFIDAVIT WHEN THEY MOVED TO STAY THE MANDATE AND SPECIFICALLY INDICATED AGAIN, EVEN AT SUPREME COURT LEVEL THAT THEIR CLAIM WAS

PURSUANT TO THE LOCAL LAW, AS  
TO THE SPECIAL LAW, NOT THE  
LOCAL ORDINANCE.

SO I DON'T --

>> THE FIRST DCA DOESN'T SEEMS  
TO HAVE RULED ON THE ORDINANCE  
BUT IT DOES HAVE A STATEMENT IN  
THE OPINION THAT SAYS, MERCURY  
INSURANCE COMPANY OF FLORIDA  
ASSERTS THAT CHAPTER 88.359 AS  
WELL AS THE ALACHUA COUNTY  
ORDINANCE ENACTED TO THAT LAW  
VIOLATES ARTICLE III.

>> THAT DOES APPEAR IN THE  
OPINION, YOU'RE CORRECT.

>> DID THEY NOT RAISE THAT IN  
BRIEFING OR ARGUMENT BEFORE THE  
FIRST DCA?

>> I DON'T BELIEVE THAT WAS  
RAISED BEFORE THE FIRST DCA I  
MAY HAVE BE INCORRECT ABOUT  
THAT.

IT CERTAINLY WASN'T RAISED AT  
THE TRIAL LEVEL.

>> YOU UNDERSTAND, THERE IS A  
NOTICE ISSUE OF FAIRNESS.

IF THE LIEN LOOKS THE SAME  
UNDER EITHER AND IT IS VALID  
UNDER THE ORDINANCE, YOUR  
ARGUMENT, YOU DIDN'T PAY, YOU  
HAD A RELEASE OF THE TORTFEASOR  
AND DIDN'T PAY SHANDS.

IT IS A SIMPLE ISSUE AS FAR AS  
IT'S IMPAIRED EITHER WAY.

IF YOU SAY THERE IS SOME  
PROBLEMS WITH THE ORDINANCE AS  
FAR AS NOT BEING PROPERLY  
ENACTED, AND YOU DIDN'T HAVE A  
CHANCE TO RAISE THAT BEFORE THE  
TRIAL COURT, THEN THAT'S A  
NOTICE ISSUE FOR YOU.

SO THAT'S WHY WE'RE TRYING TO

EXPLORE AND MAKE SURE THAT YOU,  
THAT THERE IS NOT SANDBAGGING  
GOING ON HERE.

>> LIKE I SAID, IN THE TRIAL  
COURT BELOW SHANDS NEVER RAISED  
THE ISSUE OF THE  
CONSTITUTIONALITY OF THE, OF  
THE LOCAL LAW.

>> SO WHY DIDN'T MERCURY RAISE  
IT?

>> WELL, AGAIN I'M NOT SURE  
THAT WE SPECIFICALLY DID.  
I THINK THERE IS LANGUAGE,  
THERE'S LANGUAGE IN THE SUMMARY  
JUDGMENT MOTION AND WAS USED  
BELOW INDICATING, SORT OF USING  
THE TERM INTERCHANGEABLY.  
I DON'T WANT TO GIVE THE COURT  
THE FALSE IMPRESSION THAT IT  
WAS NEVER MENTIONED.

I THINK INTERCHANGEABLY IT MAY  
HAVE.

BUT THE ISSUE BEFORE THE  
SUPREME COURT --

>> SURE MENTIONED IN THE  
DISTRICT COURT OPINION IN THE  
FIRST PARAGRAPH WHERE THEY  
EXPLAIN WHAT THEIR HOLDING IS  
AND WHAT, WHAT MERCURY ASSERTS  
IS, MAKES REFERENCE TO THE  
ORDINANCE.

I MEAN THAT'S, SEEMS TO ME HAVE  
BEEN CLEARLY AT ISSUE.

>> THE OPINION REFERENCES THAT  
AND MAYBE IT WAS IN FACT RAISED  
IN THE BRIEFS BUT AT THE TRIAL  
COURT LEVEL IT WAS NOT, IT WAS  
NOT REALLY AN ISSUE.

LIKE I SAID SHANDS NEVER BASED  
THEIR CLAIM UPON LOCAL LAW,  
NEVER.

IF YOU LOOK AT THE COMPLAINT,

IF YOU LOOK AT THE, YOU LOOK AT THE SUMMARY JUDGMENT MOTIONS, YOU LOOK AT EVERY PART OF THE TRIAL COURT PROCEEDINGS, THEY NEVER EVER ONCE RAISED THAT ISSUE, THAT THEY WERE STILL ENTITLED TO PROCEED UNDER LOCAL LAW EVEN IF THE SPECIAL LAW WAS FOUND UNCONSTITUTIONAL.

LET ME TRY TO CLARIFY --

>> HOW ARE YOU PREJUDICED BY THAT?

IN OTHER WORDS, IF THE TRIAL COURT FOUND THE LIEN TO BE IMPAIRED AND THEN AWARDED A SUM OF MONEY, THEY WOULD, THE TRIAL COURT WOULD HAVE MADE THE SAME RULING AS TO THE ORDINANCE? I MEAN I'M JUST TRYING, UNLESS YOU HAVE SOMETHING ELSE THAT YOU CAN SAY ABOUT THE ORDINANCE OTHER THAN, IT'S A VIOLATION OF THE ARTICLE, THE SAME ARTICLE III, SECTION 11.

>> THERE IS NO SEPARATE CONSTITUTIONALITY ATTACK ON THE ORDINANCE.

IT DOESN'T APPLY REALLY TO THE SPECIAL LAW.

BUT I THINK THE POINT IS, YOU HAVE TO GO BACK TO THE HISTORY WHY THESE PROHIBITIONS ARE IN THE FLORIDA CONSTITUTION AND THE REASON IS, THIS COURT WENT INTO THE RATIONALE IN THE LONGWOOD, LONGWOOD MEDICAL CENTER DECISION.

THE REASON BEHIND ALL THESE PROHIBITIONS TO LIMIT THE POWER OF GOVERNMENT AND LIMIT THE POWER OF THE LEGISLATURE TO ACT IN THESE PARTICULAR AREAS.

>> LIMIT THE POWER OF THE  
LEGISLATURE.

>> THAT'S CORRECT.

>> THIS IS NOT THE LEGISLATURE  
WE'RE TALKING ABOUT WHEN WE'RE  
TALKING ABOUT THE ORDINANCE.  
WE'RE TALKING ABOUT THE COUNTY  
COMMISSION, RIGHT?

>> YES, BUT THE RATIONALE IS  
FOR THESE PROHIBITIONS THERE  
NEEDS TO BE IN THESE AREAS OF  
PROHIBITION UNIFORM AND  
STATEWIDE LEGISLATION IN THESE  
AREAS.

IF YOU LOOK DOWN THE LIST OF  
THE PROHIBITIONS, THAT INCLUDES  
NOT ONLY THE LIEN LAWS BUT ALSO  
OTHER AREAS SUCH AS PENAL  
SYSTEM, PUNISHMENT --

>> THAT IS, THAT IS A  
PREEMPTION KIND OF ARGUMENT.  
ARE YOU SAYING THAT THE LAW IS  
PREEMPTED BY THE STATE IN THIS  
AREA?

>> ESSENTIALLY, YES.

I MEAN WE HAVEN'T USED THOSE  
TERMS TO DESCRIBE IT.

BUT IF THE FLORIDA LEGISLATURE  
CAN'T ACT AND THE REASON THEY  
CAN'T ACT IS BECAUSE THEY'RE  
SUPPOSED TO BE STATEWIDE  
UNIFORM LEGISLATION, THAT'S THE  
REASON BEHIND THESE, THEN A  
LOCAL ORDINANCE CAN NOT --

>> PREEMPTED BY STATUTE YOU  
CLAIM IS VOID?

IS THAT RIGHT?

>> I'M NOT FOLLOWING I'M SORRY.

>> YOU CLAIM THAT THE STATUTE  
THAT DEALS, THE LIEN LAW  
STATUTE IS UNCONSTITUTIONAL AND  
THEREFORE VOID, RIGHT?

>> YES, THAT'S CORRECT.

>> IS THAT WHAT THE ACTION BY THE STATE THAT HAS PREEMPTED THE FIELD AND PREVENTS THE COUNTY FROM ACTING?

>> NO. THE REASON WHY IT'S VOID BECAUSE THESE AREAS OF PROHIBITION NEED TO BE STATEWIDE AND UNIFORM IN LEGISLATION.

THAT'S WHAT THE COURT FOUND IN THE LONGWOOD CASE.

IF THAT IS THE INTENT BEHIND THESE PROHIBITIONS THAT THE STATEWIDE AND UNIFORM LEGISLATION IN THESE AREAS OF STATEWIDE IMPORTANCE, THEN OBVIOUSLY THE LOCAL GOVERNMENT CAN'T ENACT LAWS IN THAT AREA BECAUSE THE REASON FOR THE PROHIBITION THAT THERE BE STATEWIDE, NOT LOCAL LAWS.

>> SO EVERYTHING THE LEGISLATURE IS PROHIBITED FROM DOING THE COUNTY COMMISSIONS WOULD ALSO BE PROHIBITED FROM DOING, THAT'S YOUR ARGUMENT?

>> YES. ESSENTIALLY, YES. ESPECIALLY IN THE CASE OF LIEN LAWS.

>> WHAT DOES ARTICLE III, SECTION 11, IS IT A RESTRICTION ON THE LEGISLATURE OR THE COUNTY?

>> WELL IT'S A RESTRICTION ON THE LEGISLATURE.

>> THERE SHALL BE NO SPECIAL GENERAL LAW OF LOCAL APPLICATION.

HAVE WE EVER HELD THAT THAT TYPE OF RESTRICTION ALSO RESTRICT AS COUNTY FROM ENACTING A LAW? AN ORDINANCE?

>> I'M NOT SURE THERE IS AN EXACT CASE ON POINT, JUSTICE PARIENTE, BUT LOGICALLY HOW COULD THE LOCAL GOVERNMENT ENACT AN ORDINANCE THAT IS INCONSISTENT WITH THE FLORIDA CONSTITUTION?

>> I FIND SOMEWHAT THE POSITION OF MERCURY AND EVEN THE AMICUS TO BE INTERESTING IN THAT EVERYONE SEEMS TO CONCEDE YOU COULD HAVE A GENERAL LAW THAT WOULD HAVE EVERY HOSPITAL ABLE TO HAVE A LIEN, WHEREAS NOW, WE JUST HAVE, YOU KNOW, AT LEAST THERE'S SOME SHOWING I GUESS THAT HAD TO BE MADE THAT THIS IS A HOSPITAL THAT DESERVES TO GET, YOU KNOW, THERE IS NOT EQUAL PROTECTION ARGUMENT BEING MADE.

>> THAT'S CORRECT.

>> SO ARE YOU SAYING THAT THE INSURANCE COMPANY AND THE PLAINTIFFS WOULD RATHER HAVE EVERY HOSPITAL HAVE A LIEN AS OPPOSED TO THE SELECTED ONES NOW?

DOESN'T STRIKE ME AS BEING THE POLICY, I'M JUST NOT SURE HOW THE POLICY OF THE CONSTITUTION IS BEING FURTHERED IN THAT REGARD?

>> WELL I THINK THE ANSWER IS NOT WHAT MERCURY OR INSURANCE COMPANIES WOULD PREFER IN TERMS OF HOSPITAL LIEN LAWS.

IT'S WHAT THE LEGISLATURE CAN DO CONSTITUTIONALLY AND WHAT IT CAN'T.

>> WHAT YOU'RE SAYING THE LEGISLATURE CAN GIVE PRIORITY

IN A GENERAL LAW TO ALL  
HOSPITALS TO HAVE A LIEN ON THE  
PROCEEDS FROM THAT ARE PAID BY  
AN INSURANCE COMPANY.  
AND IF THEY DON'T HONOR IT THEY  
HAVE TO, THEY'RE LIABLE TO THE  
INSURANCE COMPANY?  
THAT THERE IS NO OTHER REASON  
THAT SOMETHING LIKE THAT WOULD  
BE IMPERMISSIBLE UNDER THE  
CONSTITUTION OF THIS STATE, IS  
THAT CORRECT?  
>> THAT IS CORRECT.  
LEGISLATURE COULD ENACT A LIEN  
LAW IN 1951.  
WHICH WAS SINCE REPEALED IN THE  
EARLY 1970s THAT WOULD SOLVE  
THE PROBLEMS WE'RE TALKING  
ABOUT TODAY AND THAT WOULD  
SOLVE THE PROBLEMS WE FACE IN  
FLORIDA.  
>> I DON'T KNOW WHAT THE  
PROBLEMS ARE BUT WOULD JUST  
MAKE IT WORSE FOR INJURED  
PEOPLE.  
THEY WOULD HAVE MORE LIENS, NOT  
LESS LIENS.  
I DON'T SEE HOW THAT HELPS?  
>> IT HELPS IT IN TERMS OF  
NOTICE.  
I MEAN THE PROBLEM IN THE WAY  
THE HOSPITAL LIEN LAWS HAVE  
DEVELOPED IN FLORIDA IS NOW WE  
HAVE LIEN LAWS SPORADICALLY, A  
PATCHWORK OF LIEN LAWS  
THROUGHOUT THE STATE OF  
FLORIDA.  
WE HAVE SOME COUNTIES THAT HAVE  
THEM BUT MOST THAT DON'T.  
>> DID MERCURY MAKE AN ARGUMENT  
THEY WEREN'T AWARE, WAS THAT A  
DEFENSE IN THE CASE OR ARE WE

NOW SORT OF GRASPING AT STRAWS?

>> IT IS TRUE MERCURY WAS NOT PROVIDED ACTUAL NOTICE OF THE LIEN BEFORE IT RESOLVED THE CASE AND PAID THE SETTLEMENT, THAT IS TRUE.

WE'RE NOT SAYING THERE WAS NOT CONSTRUCTIVE NOTICE OF THE CASE IN THE LIEN LAW.

WHAT WE ARE SAYING IT GOES BACK TO THE RATIONALE BEHIND THE PROHIBITION UNDER ARTICLE III, SECTION 11, A-9.

PROHIBITION OF, I'M SORRY SPECIAL LAWS BASED ON PRIVATE CONTRACTS.

A LOT OF TIMES YOU HAVE PEOPLE RELATIVELY UNSOPHISTICATED ENTERING INTO CONTRACTS.

AND WHAT THE CONSTITUTION PROHIBITS IS THE GOVERNMENT PUTTING A TERM IN BETWEEN THE TWO PARTIES THAT ARE, HAVE A CONTRACT OR AGREEMENT.

WHETHER IT IS AN EXPRESS AGREEMENT OR WHETHER IT IS ORAL AGREEMENT.

>> COULD I GO BACK TO YOUR BROADER ARGUMENT THAT WHATEVER THE LEGISLATURE IS PROHIBITED FROM DOING UNDER SECTION 11 OF ARTICLE III THE COUNTY COMMISSIONS ARE PROHIBITED FROM DOING.

IF YOU'RE LOOKING AT SOME OTHER THINGS HERE, RIGHT AFTER 9, WHICH IS THE PROVISION WE'RE TALKING ABOUT, THERE'S 10, DISPOSAL OF PUBLIC PROPERTY INCLUDING ANY INTEREST THEREIN FOR PRIVATE PURPOSES.

10, VACATION OF ROADS.

YOU'RE SAYING THERE CAN'T BE A LOCAL ORDINANCE DEALING WITH THE VACATION OF ROADS OR DISPOSAL OF PUBLIC PROPERTY? I JUST, SEEMS TO BE PRETTY FAR-REACHING.

>> IF YOU LOOK AT --

>> GO AHEAD.

>> THIS COURT HAS ALREADY FOUND THE INTENT BEHIND THESE PROHIBITIONS IN THE LONGWOOD VERSUS SEGER CASE.

THIS COURT HAS ALREADY DELVED INTO THE ISSUE WHY THESE PROHIBITIONS EXIST UNDER SECTION 11.

IF I CAN QUOTE FROM THE LONGWOOD CASE --

>> LONGWOOD WAS DEALING WITH GIVING A HOSPITAL A PRIVILEGE. NOW YOU'VE MADE THAT AS AN ALTERNATIVE ARGUMENT BUT THE, IF THAT FAILS WE'RE NOT IN THE LONGWOOD REALMS WAS WHY YOU WOULDN'T WANT TO GIVE A PRIVATE CORPORATION A PRIVILEGE BY STATE LAW.

THAT'S, TO ME SORT OF A DIFFERENT ARGUMENT.

>> BUT THE IMPORTANCE OF THE LONGWOOD DECISION IS THAT IT DERIVED OR EXAMINED THE INTENT WHEN THE CONSTITUTION WAS REVISED IN 1968.

WHEN A LOT OF THESE PROVISIONS UNDER SECTION 11 WERE EITHER STRENGTHENED OR ADDED TO AT THAT PARTICULAR POINT IN TIME. THE COURT FOUND THE INTENT OF THE FRAMERS AT TIME TO BROADEN THESE PROHIBITIONS, TO STRENGTHEN THE PROHIBITIONS AND

TERMS WITHIN THE PROHIBITIONS  
INCLUDING THE PRIVILEGED TERM  
IN THE LONGWOOD CASE SHOULD BE  
CONSTRUED BROADLY TO EFFECTUATE  
THE FRAMERS INTENT.

IT IS VERY CRITICAL CASE  
LOOKING AT ISSUES BEFORE THE  
COURT IN THIS CASE BECAUSE THE  
COURT IS BEING ASKED TO  
CONSTRUE TERMS WITHIN ARTICLE  
11.

>> I THINK THERE IS A GENERAL,  
WE HAVEN'T EXPLORED IT WITH YOU  
BUT WE'RE ASSUMING A DEFECT  
UNDER ARTICLE III, SECTION 11-A  
FOR THE QUESTIONS WE'VE BEEN  
ASKING YOU, THE ISSUE THAT  
WE'VE BEEN FOCUSED ON, DOESN'T  
THE ORDINANCE THOUGH HAVE A  
SEPARATE BASIS THAT IS NOT  
SUBJECT TO CONSTITUTIONAL  
ATTACK?

AND THAT'S WHAT WE'VE BEEN  
REALLY TALKING ABOUT.

>> COULD I LET YOU JUST RESPOND  
TO ONE THING, IN FAIRNESS TO  
YOU, I'M STILL TRYING TO  
UNDERSTAND HOW THE ORDINANCE GOT  
THRUST IN BECAUSE THE FINAL  
JUDGMENT SECURED BY SHANDS, I'M  
LOOKING AT RIGHT HERE,  
SPECIFICALLY FINDS THAT MERCURY  
IMPAIRED THE LIEN OF THE  
PLAINTIFF SHANDS, UNDER CHAPTER  
88.539, LAWS OF FLORIDA.  
NO MENTION OF THE ORDINANCE.  
THEN IN THE ADJUDICATION, UNDER  
THE ATTORNEY'S FEES, IT IS  
PURSUANT TO CHAPTER 88.539.  
THOSE ARE AWARDED.  
SO SEEMS TO ME SPECIFICALLY IN  
THE FINAL JUDGMENT IT'S THE

STATE STATUTE.

>> YOU'RE ABSOLUTELY CORRECT.

AT TRIAL COURT LEVEL.

>> I'M AT A LITTLE LOSS WHEN I THEN READ THE FIRST DCA OPINION IN THE FIRST PARAGRAPH, YOU'RE THE PARTY THAT IS FILING THE APPEAL, CORRECT, IN THE FIRST DCA?

>> YES, THAT'S CORRECT.

>> AND ALL OF A SUDDEN IT IS CONVERTED INTO THE STATUTE AND THE ORDINANCE.

AND I THINK YOU'VE HEARD FROM THE QUESTIONING THAT AT LEAST SOME OF US THINK THERE IS A DIFFERENT STANDARD FOR THE TWO AND THAT MAY BE A QUITE DIFFERENT RESULT.

HOW DID THIS GET THRUST INTO THIS?

>> LIKE I SAID AT THE TRIAL COURT LEVEL AT ALL TIMES IN THIS CASE SHANDS CLAIM WAS PURSUANT TO THE SPECIAL LAW. LIKE I SAID SET FORTH SPECIFICALLY IN THE CLAIM OF LIEN IN THE COMPLAINT.

THAT WAS ONLY ISSUE THAT DEALT WITH THAT.

>> I UNDERSTAND.

>> IT WAS RAISED FOR THE FIRST TIME AT THE FIRST DCA BY SHANDS AND WHETHER OR NOT THEY'RE ALLOWED TO RAISE THAT FOR THE FIRST TIME ON APPEAL BUT THOUGH RAISED FOR THE FIRST TIME ON APPEAL SUGGESTING --

>> THEY ARE THE APPELLEE, THEY COULD RAISE THAT AS A TIPSY COACHMAN BASIS FOR AFFIRMING THE JUDGMENT OF THE TRIAL

COURT, COULDN'T THEY?

>> MAYBE THEY COULD, IF THEIR CLAIM WAS AT ALL OR EVER BASED UPON THE LOCAL ORDINANCE. IT NEVER WAS.

SO THEY WOULD HAVE TO START A WHOLE ACTION ALL OVER AGAIN.

>> THERE WAS NO DISCUSSION AT ALL DURING THE TRIAL ABOUT THE ORDINANCE, IS THAT WHAT YOU'RE SAYING? NO EVIDENCE GIVEN AT ALL DURING THE TRIAL BEFORE THE TRIAL COURT REGARDING THE ORDINANCE?

>> NO, I DON'T BELIEVE THERE WAS.

>> WAS IT EVER CONSIDERED?

>> THE CLAIM WAS BASED ON THE SPECIAL LAW AND THE SPECIAL LAW ONLY.

I THINK THE ORDINANCE DIDN'T COME INTO PLAY UNTIL THE APPEAL BEFORE THE FIRST DISTRICT COURT WHERE SHANDS RAISED IT FOR THE FIRST TIME AT THAT POINT TO SAY EVEN IF YOU FIND THE SPECIAL LAW IS ON DOWN CONSTITUTIONAL THAT IS HOW WE PROCEEDED.

>> THAT IS HOW IT CAME IN.

SHANDS CAME IN AND SAID WE HAVE ALTERNATIVE BASIS ON NOT TO AFFIRM THIS JUDGEMENT ALTHOUGH THAT WAS NOT WHAT FIRST DCA SAID.

>> EVEN THOUGH THAT THE --  
[INAUDIBLE]

>> YOU'RE WAY OVER HERE.

ARE YOU SAYING YOU HAVE A GOOD-FAITH BASIS TO ACTUALLY CHALLENGE THE ORDINANCE AS NOT HAVING BEEN PROPERLY ENACTED THAT YOU WOULD HAVE RAISED BEFORE THE TRIAL COURT IF

SHANDS HAD USED THE ORDINANCE  
AS AN ALTERNATIVE BASIS?

>> NO, I CAN'T SAY THAT.

I DON'T SAY THAT. THAT --

>> WE HAVE TAKEN YOU WELL PAST  
YOUR TIME. BUT WE THANK YOU.

>> THANK YOU VERY MUCH.

I APPRECIATE IT.

WE WOULD RESPECTFULLY REQUEST  
THE COURT TO AFFIRM THE FIRST  
DCA'S OPINION ON BASED ON  
ARTICLE 3, SECTION 11,-A-9.

>> MAY IT PLEASE THE COURT.

>> I WILL GIVE YOU TWO MINUTES.

>> VERY WELL, THANK YOU.

IT WOULD BE DISINGENUOUS TO  
SUGGEST SOMEHOW SHANDS IN ANY  
WAY WAIVED ITS RIGHTS UNDER THE  
LIEN ORDINANCE.

THE CONSTITUTIONAL ISSUES WERE  
NOT RAISED BY DECLARATORY  
JUDGEMENT FILED BY MERCURY.

THE CONSTITUTIONAL ISSUES WERE  
NOT RAISED BY WAY OF AN  
AFFIRMATIVE DEFENSE.

THE ATTORNEY GENERAL WAS NOT  
NOTIFIED AS WOULD BE THE CASE  
WITH A CONSTITUTIONAL CHALLENGE  
AND IS REQUIRED BY STATUTE.

THIS ISSUE CAME INTO PLAY IN A  
MEMORANDUM OF LAW IN SUPPORT OF  
A MOTION FOR SUMMARY JUDGEMENT  
SERVED 14 DAYS BEFORE SUMMARY  
JUDGMENT HEARING.

IN THE BRIEFS MERCURY  
ACKNOWLEDGES THAT THE COURT  
ADJUDICATED ISSUES RELATING TO  
BOTH THE HOSPITAL LIEN SPECIAL  
LAW AND THE HOSPITAL LIEN  
ORDINANCE.

THE ISSUE WAS AGAIN BROUGHT  
BEFORE THE FIRST DISTRICT COURT

OF APPEAL --

>> CAN I ASK YOU THIS?

>> YES.

>> HOW WAS IT THAT THE TRIAL COURT AJUDICATED THE ORDINANCE?

>> BY SUMMARY JUDGMENT.

>> DENYING SUMMARY JUDGEMENT?

>> CORRECT.

THE ISSUE WAS THEN RAISED BEFORE THE FIRST DISTRICT COURT OF APPEALS.

AND THE REASON WHY IT IS AN INTRICATE PART OF THAT RULING IS BECAUSE THAT WAS ONE OF THE ISSUES DECIDED ON APPEAL BEFORE THAT COURT.

ALACHUA COUNTY IS A CHARTER COUNTY UNDER ARTICLE 8, SECTION 1-G OF THE FLORIDA CONSTITUTION AND MAY EXERCISE ALL POWERS OF LOCAL SELF-GOVERNMENT THAT ARE NOT INCONSISTENT WITH GENERAL OR SPECIAL LAW.

QUITE SIMPLY, THERE IS NO GENERAL OR SPECIAL LAW WHICH WOULD IN ANY WAY PRECLUDE THE RIGHT OF ALACHUA COUNTY OR ANY OTHER COUNTY FOR THAT MATTER, FROM ENACTING A HOSPITAL LIEN ORDINANCE.

HOSPITAL LIENS HAVE BEEN PROMULGATED THROUGHOUT FLORIDA BY LOCAL ORDINANCE AND THERE IS SIMPLY NO BASIS FOR THE FIRST DISTRICT COURT OF APPEALS TO HAVE FOUND THAT THIS ORDINANCE IS INVALID.

THE CASE THAT IS CITED IN THE BRIEF BY MERCURY INSURANCE COMPANY DEALS WITH A SITUATION IN WHICH A SPECIAL LAW HAD ENABLING LANGUAGE FOR A COUNTY

TO GO AHEAD AND PROMULGATE AN ORDINANCE IF IT CHOOSES TO DO SO.

THAT IS NOT THE CASE WITH 88.539.

THAT IS NOT THE CASE WITH THIS ORDINANCE.

WE WOULD ASK THAT THE COURT VACATE THE ORDER OF THE FIRST DISTRICT COURT OF APPEALS, RETURN THIS TO THE TRIAL COURT FOR ENTRY OF A FINAL JUDGMENT IN FAVOR OF SHANDS FOR THE FULL LIEN AMOUNT.

>> LET ME ASK YOU THIS QUESTION ON THAT.

>> YES.

>> SHANDS HAS A MILLION DOLLARS IN BILLS IN A CASE.

MERCURY PROVIDES A PIP POLICY, \$10,000, MAX IT CAN PROVIDE. AND TERRIBLE INJURY AND THE INSURED, OUT OF WORK AND MERCURY PAYS THE LOST WAGES, LOST INCOME, AND GETS RELEASE ON THAT.

MERCURY BY THAT ACT IS NOW RESPONSIBLE FOR A MILLION DOLLARS TO SHANDS, IS THAT WHAT YOU'RE SAYING?

>> YES, IT COULD BE.

>> OKAY.

>> WE THANK YOU.

>> THANK YOU BOTH.