

>> ALL RISE.
>> THE SUPREME COURT OF
FLORIDA IS NOW IN SESSION.
PLEASE BE SEATED.
>> LAST CASE FOR THE DAY IS
PATRICK VERSUS GATEIN.
PLEASE PROCEED.
>> I HAVE THE PLEASURE OF
REPRESENTING MISS PATRICK.
>> WOULD YOU PLEASE TALK MIC?
>> YES.
BETTER?
SORRY.
I REPRESENT MS. PATRICK IN
THIS CASE.
SHE'S THE APPELLANT.
THIS IS A CASE ABOUT COUNTING,
SIMPLY HOW DO YOU COUNT DAYS
IN THIS SOMETIMES MED MAL
STATUTE?
AND MORE SPECIFICALLY HOW DO
YOU ACCOUNT FOR OR TREAT A
37-DAY PERIOD THAT AROSE UNDER
THE FACTS OF THIS CASE?
I WILL TELL YOU -- I'LL GO
STRAIGHT TO IT.
IT IS OUR CONVENTION IN THIS
CASE THAT WHEN A PLAINTIFF
UNDER 766.104 SUB 2 BUYS AN
AUTOMATIC EXTENSION, THAT THAT
-- NO PART OF THAT EXTENSION
SHOULD BE COUNTED AS
766.106(4).
NO PART OF IT, NO WAY.
>> SO WHAT -- WELL, I MEAN,
QUITE FRANKLY, WHAT IN THE
WORLD THEN DOES THE LANGUAGE
MEAN THAT SAYS THAT ONCE YOUR
NEGOTIATIONS ARE OVER, YOU
HAVE WHAT IS EITHER LEFT OF
THE STATUTE OF LIMITATIONS
PERIOD OR YOU HAVE 60 DAYS?
WHAT DOES THAT LANGUAGE MEAN?
AND IF YOU HAVE 37 -- I
THOUGHT IT WAS 42, BUT
WHATEVER MANY DAYS LEFT ON
YOUR STATUTE OF LIMITATIONS
PERIOD BECAUSE YOU BOUGHT THE
90 DAYS, WHAT IN THE WORLD
DOES THAT MEAN?
IT MEANS YOU EITHER -- IT
SEEMS CLEAR TO ME IT MEANS YOU
EITHER HAVE THE 37 DAYS OR YOU
HAVE THE 60 DAYS.
WHY ISN'T THAT CORRECT?
>> WELL, THE PROBLEM IS TRYING
TO HARMONIZE THESE TWO

STATUTES.

THE PROBLEM IS UNDER 766.104
SUB 2 THERE'S A SPECIFIC
COMMANDMENT THAT SAYS THAT
THAT AUTOMATIC EXTENSION IS IN
ADDITION TO ANY AND ALL OTHER
TOLLING PERIODS.

THERE'S ONLY TWO TOLLS PERIODS
IN(4).

THAT'S THE 90 DAY PRE-SUIT AND
A 6 DAY PERIOD THAT FOLLOWS
THAT PRE-SUIT.

SO IN ORDER TO GIVE ANY EFFECT
OR WEIGHT TO 766.104 SUB 2 AND
TO GIVE FULL EFFECT, YOU CAN'T
READ THAT ONE SENTENCE IN
ISOLATION.

>> SO THE ONE THAT -- SO WHAT
DOES THE SENTENCE MEAN OR ARE
YOU WRITING OUT WITH YOUR
INTERPRETATION THAT SENTENCE
THAT SAYS YOU HAVE WHAT'S LEFT
OF THE STATUTE OF LIMITATIONS
OR THE 60 DAYS?

>> I THINK CAFARO ANSWERED
THAT VERY NICELY AND SAID THE
ONLY WAY TO HARMONIZE THAT
SENTENCE IS TO ALLOW THE FULL
90 DAYS TO BE SEPARATE AND
APART AND DISTINCT FROM
766.106(4).

SO I'M NOT ASKING THAT YOU --

>> SO TELL ME, ON OCTOBER 31,
WHEN THE NEGOTIATIONS WERE
OVER, WHAT DID YOU HAVE LEFT
OF -- HOW MUCH TIME DID YOU
HAVE LEFT TO FILE A COMPLAINT?

>> WELL, I CAN TELL YOU THE
WAY WE CALCULATED IT BASED
UPON CAFARO.

WE FELT WE HAD UNTIL FEB
CERTIFICATE 6, 2007 TO FILE
THE LAWSUIT.

>> BASED ON?

>> THAT'S BASED ON THE 60 DAYS
UNDER THE STATUTE AND THE 37
DAYS LEFT OVER FROM THE
EXTENSION.

>> THE PROBLEM WITH YOUR
ANSWER IS -- WE HAVE DIFFERENT
FACTS.

THAT'S THE PROBLEM THAT YOU
FOUND YOURSELF IN.

I LOOKED AT THIS CASE
INITIALLY.

I MUST TELL YOU I THOUGHT YOU
WERE CORRECT.

BUT AS I STARTED STUDYING IT,
I THINK THAT YOU MAY HAVE
MISSED IT.

AND I'D LIKE YOU TO TELL ME
WHY THOSE OTHER CASES, THE
TIME WHEN YOU INITIATED THE
PRE-SUIT PROCESS IN THE EARLIER
CASES, WAS AT A DIFFERENT
POINT IN TIME WITHIN THE FIRST
EXTENSION.

SO YOU DON'T HAVE IDENTICAL
FACTS.

WE GOT THAT 37 DAYS HANGING
OUT THERE.

THEY'RE REALLY NOT DEALT WITH
REALLY UNDER THOSE EARLIER
CASES, IT SEEMS TO ME.

>> NO.

I DON'T THINK THERE'S EVER
BEEN THIS PRECISE CASE WHERE
YOU HAVE 53 DAYS OR SOME
PERIOD OF THE EXTENSION BEING
UTILIZED TO BRIDGE YOU TO YOUR
NOTICE OF INTENT, HAVING
SOMETHING LEFT OVER.

>> RIGHT.

RIGHT.

>> THE REASON I THINK THERE'S
CONFLICT IN THIS CASE IS IF
YOU APPLIED THE METHODOLOGY OF
THE TRIAL JUDGE TO THE FACTS
OF THE OTHER CASES, YOU'RE
GOING TO GET A DIFFERENT
RESULT.

IF ANY PART OF THE 90 DAYS HAD
BEEN RUNNING CONCURRENTLY WITH
THE 60-DAY TOLLING PROVISION,
THEN YOU GET A TOTALLY
DIFFERENT RESULT IN THOSE TWO
CASES.

AND THAT'S WHY I THINK THE
METHODOLOGY UTILIZED BY THE
FIRST DC IS INCORRECT.

THIS SITUATION ACTUALLY WAS
FORESEEN AND SOMEWHAT FORETOLD
BY JUSTICE PARIENTE.

ON PAGE 768 OF HER OPINION SHE
SPECIFICALLY SAYS THAT THE
TIMING OF THE PURCHASE OF THE
EXTENSION SHOULD NOT BE THE
CONTROLLING FACTOR AND THAT
THAT WOULD LEAD TO DIFFERENT
RESULTS AS TO DIFFERENT PLANS.

>> YEAH.

THAT'S WHAT YOU HAVE RIGHT
HERE.

I MEAN, THAT'S WHAT I'M

SEEING.
BUT I DON'T KNOW THAT WE CAN
GO AROUND THE STATUTE.
I SEE IT AS A TRAP, BUT OURS
IS NOT DUE TO AGREE OR
DISAGREE WITH THE STATUTE.
I MEAN, IT SAYS WHAT IT SAYS.
AND TO AGREE OR DISAGREE THAT
IT'S CREATED A MATRIX THAT YOU
HAVE TO GO THROUGH.
BUT IT'S JUST YOU HAPPEN TO BE
ONE OF THOSE THAT GOT CAUGHT
ON THIS, IS WHAT IT LOOKS
LIKE.
>> WELL, WHEN YOU SAY THE
STATUTE IS CONTROLLING, I
WOULD SUGGEST THAT THE
CONTROLLING STATUTE WOULD BE
104 SUB 2.

IT COMMANDS, SAYS SHALL BE IN
ADDITION TO ANY AND ALL OTHER
TOLLING PERIODS AND THE
PERIODS IS PLURAL.
>> BUT THIS CASE IS FACTUALLY
DISTINGUISHABLE FROM THESE
OTHER CASES.
>> IN TERMS OF TIMING, YES
SIR.
>> WELL, WHY IS THERE EXPRESS
CONFLICT THEN?
IF THERE'S A MATERIAL FACTUAL
DISTINCTION, IMMATERIAL
DISTINCTION, IT DOESN'T
MATTER.
SO I'M HAVING TROUBLE WITH
UNDERSTANDING HOW THERE IS
EXPRESS AND DIRECT CONFLICT.
>> BECAUSE THE LOGIC AND THE
RATIONALE AND THE COMMAND THE
OF CAFARO WAS NOT FOLLOWED BY
THE FIRST DCA.
IF THE METHODOLOGY EMPLOYED BY
THE FIRST DCA WHERE THEY SAY
THAT THE STATUTE OF
LIMITATIONS COMMENCED UPON THE
TERMINATION OF NEGOTIATIONS,
IF THAT METHODOLOGY AND THAT
PREMISE IS APPLIED TO CAFARO
OR NAFITZKE YOU GET A
DIFFERENT RESULT.
>> THAT'S WITHIN THE CONTEXT
THEY WERE SPEAKING AND GIVEN
THE FACTS.
SOMETIMES THE RATIONALE IS
GOING TO BE THE RATIONALE
REGARDLESS OF THE PARTICULAR

FACTS.

BUT HERE IT SEEMS TO BE THE RATIONALE HAS GOT TO BE UNDERSTOOD AS PRETTY HIGHLY CONTEXT-DEPENDENT BECAUSE THEY'RE ANALYZING THE QUESTION OF INTERACTION OF THESE STATUTES.

>> THE OTHER THING THAT I WOULD SAY ABOUT THAT, WHEN YOU LOOK AT THE HANKIE CASE THERE IS LANGUAGE ON 97 AND 98 THAT TALKS ABOUT 766.106 PUB 4 AS BEING A TOLLING STATUTE AND THAT THE 60-DAY PROVISION IS A TOLLING STATUTE AND IT GOES INTO THE WONDERFUL EXPLANATION WHAT TOLLING MEANS. IT MEANS THE CLOCK STOPS, THAT YOU'RE NOT COUNTING. THAT IS DIRECTLY ADVERSE TO THE METHODOLOGY UTILIZED BY THE FIRST DCA.

>> I WILL RESERVE THE REST OF MY TIME.

>> MAY IT PLEASE THE COURT, GOOD MORNING. MY NAME IS MICHAEL KENDALL AND I AM HERE THIS MORNING ON BEHALF OF RESPONDENT, DR. THOMAS ABBY. I KNOW THE CASE IS CAPTIONED DR. GATIEN, BUT DR. ABBY IS THE DEFENDANT BELOW WHO FILED THE MOTION FOR SUMMARY JUDGMENT IN THE TRIAL COURT LEVEL AND THEN THE SUBSEQUENT APPEAL OF THAT DECISION. SO I HAVE THE PLEASURE OF REPRESENTING DR. ABBY AND DR. ABBY RESPECTFULLY REQUESTS THAT THIS COURT FIND THAT BECAUSE OF THE MATERIAL FACTUAL DIFFERENCES, THERE IS NO CONFLICT BETWEEN THE FIRST DCA DECISION BELOW AND EITHER HILLSBOROUGH COUNTY HOSPITAL AUTHORITY VCAFARO OR THE NAFITZKE CASE AND WOULD REQUEST THAT THE COURT AFFIRM THE DECISION OF THE DCA AFFIRMING THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT. >> WOULD YOU PROVIDE YOUR

ANALYSIS OF THOSE PRIOR CASES?
YOUR OPPOSITION IS SAYING,
OKAY, WE HAD THIS STATUTE COME
OUT.

THEN WE HAD SOME CASES COME
ALONG AND THOSE ANNOUNCED THE
PRINCIPLES OF LAW THAT ARE
APPLICABLE TO HOW YOU ADD,
SUBTRACT AND HOW YOU CALCULATE
TIMES.

AND I BELIEVE HIS ARGUMENT IS
IS THAT THOSE CASES ESTABLISH
A CERTAIN TOLLING PERIODS,
CERTAIN TIMES THE STATUTE
RUNS, WHEN IT DOESN'T RUN, AND
IF YOU FOLLOW THE PRINCIPLES
OF LAW -- I KNOW IT'S NOT A
RED TRUCK AND A BLUE TRUCK.
THIS IS A PRINCIPLE OF LAW,
THAT IF YOU APPLY THOSE SAME
ONES TO THIS CASE, FACTUALLY,
THAT THE COURTS MISAPPLY THOSE
STANDARDS.

WOULD YOU RESPOND TO IT IN
THAT FASHION?

BECAUSE CERTAINLY THERE ARE
FACTUAL DIFFERENCES, BUT IS
THERE A PRINCIPLE OF LAW HERE
THAT IS GOING TO CAUSE
MISAPPLICATION THROUGHOUT THE
REST OF FLORIDA JURISPRUDENCE?

>> I DON'T BELIEVE IT WILL
CAUSE FURTHER MISAPPLICATION.
THE PART I'D LIKE TO DIRECT
THE COURT TO FOCUS ON FROM
CAFARO, FOR EXAMPLE, IN THAT
PARTICULAR CASE THE PETITIONER
OR THE PLAINTIFF HAD NOT
PURCHASED HER EXTENSION UNDER
766.104 SUB 2 AT THE TIME SHE
DISPATCHED HER NOTICE OF
LITIGATION.

THE OPINION WAS VERY SPECIFIC
AND SAID THAT YOU DO THAT
ANALYSIS OF HOW MUCH TIME IS
GOING TO BE LEFT LATER, YOU DO
THAT ANALYSIS WHEN THOSE
NOTICES OF INTENT ARE
RECEIVED.

SO IN CAFARO THAT 90-DAY
EXTENSION THAT WAS LATER
PURCHASED WHILE THE STATUTE
WAS TOLLED DURING THE PRE-SUIT
PERIOD COULD NOT HAVE BEEN
CONSIDERED AS PART OF THE
CALCULATIONS BECAUSE IT HADN'T
EVEN YET BEEN PURCHASED.

SO I DO BELIEVE THAT THERE IS
A WAY TO RECONCILE IT ALL
BECAUSE THE CAFARO OPINION WAS
VERY SPECIFIC.

IT SAID THAT THE 90-DAY
EXTENSION THAT IS PURCHASED
UNDER SUB 2 IS NOT ADDED TO
WHAT REMAINS ON THE ORIGINAL
STATUTE OF LIMITATIONS.

SO IMPLICIT IN THAT HOLDING IS
THERE HAS TO BE SOMETHING
REMAINING ON THE STATUTE OF
LIMITATIONS, THE ORIGINAL
STATUTE OF LIMITATIONS, WHEN
THOSE NOTICES OF INTENT ARE
DISPATCHED AND RECEIVED BY
PROSPECTIVE DEFENDANTS.

>> AND YOU'RE SAYING HERE THAT
THE PLAINTIFF USED UP --
>> ABSOLUTELY.

>> 60 ODD OR 57 DAYS.

>> 53 DAYS OF THE FIRST
EXTENSION.

>> THEREFORE YOU CAN'T GO BACK
AND RECAPTURE THAT AGAIN.

>> ABSOLUTELY.

THE PURCHASED EXTENSION IN
THIS CASE HAD TO NECESSARILY
BE APPLIED TO THE NATURAL
EXPIRATION OF THE TWO-YEAR
STATUTE OF LIMITATIONS IN
ORDER TO KEEP PETITION'S
CLAIMS ALIVE.

766 REQUIRES, AS THIS COURT
KNOWS, THE POTENTIAL MEDICAL
MALPRACTICE PLAINTIFF HAS TO
COMPLETE THE VARIOUS PRE-SUIT
REQUIREMENTS WITHIN THAT
TWO-YEAR PERIOD.

WHEN THEY KNOW OR THEY THINK
THEY MIGHT NOT BE ABLE TO, THE
STATUTE ALLOWS THEM TO
PURCHASE THIS EXTENSION.

BUT THIS PARTICULAR PETITIONER
NOT ONLY KNEW SHE WASN'T GOING
TO BE ABLE TO, SO THEY
PURCHASED THE EXTENSION.

THEY USED 53 DAYS OF THE
EXTENSION.

SO I DON'T WANT TO
OVERSIMPLIFY THIS WITH AN
ANALOGY, BUT IT'S THE ONLY ONE
I'VE SUCCESSFULLY BEEN ABLE TO
COME UP WITH.

BUT BECAUSE WE'RE TALKING
ABOUT EXTENSIONS, I LOGICALLY
WENT TO EXTENSION COURTS.

AND SO IF THAT 90-DAY
PURCHASED EXTENSION UNDER 104
SUB 2 IS AN EXTENSION THAT
WE'RE SITTING OVER HERE IN
CAFARO BECAUSE WE'RE NOT USING
IT BECAUSE THE PLAINTIFF
HASN'T TAPPED INTO IT YET.
THEY HAVEN'T EVEN PURCHASED IT
YET.

IN OUR CASE THAT EXTENSION
CORD HAS BEEN PLUGGED IN.
THAT PURCHASED EXTENSION UNDER
766.104 SUB 2 HAS ALREADY BEEN
PLUGGED IN TO THE PETITIONER'S
TWO-YEAR STATUTE OF
LIMITATIONS AND IT HAD TO BE
BECAUSE IF IT WASN'T --

>> HE FILED THE ACTUAL NOTICE
IN JULY, RIGHT?

AND THE STATUTE HAD ALREADY
RUN IN JUNE.

IF HE HAD NOT PURCHASED THE 90
DAYS.

>> THAT'S CORRECT.

THE NATURAL STATUTE OF
LIMITATIONS WOULD HAVE EXPIRED
JUNE 10 OF 2006, AND THE
NOTICE OF INTENT WAS RECEIVED
BY DR. ABBY ON AUGUST 2, 2006.

>> I WANT TO MAKE SURE ABOUT
SOMETHING BECAUSE IT SOUNDS
LIKE WHAT YOU'RE SAYING IS
REASONABLE.

OBVIOUSLY, THERE IS A TWO-YEAR
STATUTE OF LIMITATIONS AND
WHEN THE MEDICAL MALPRACTICE
STATUTE WAS AMENDED TO REQUIRE
A LOT OF PRE-SUIT, AND THE
WHOLE IDEA WAS WE CAN'T PUT
THE PLAINTIFF IN A TRAP,
REQUIRE ALL THIS AND THEN THE
STATUTE EXPIRES.

EXPLAIN TO ME HOW BOTH CAFARO
AND THIS CASE ARE CONSISTENT
AND THEY'RE BOTH FAIR TO THE
PLAINTIFFS.

>> SURE.

>> JUST IN REAL WORLD TERMS SO
THAT WE -- BECAUSE WHAT WE ARE
TRYING TO AVOID IS A TRAP FOR
THE PLAINTIFF.

ABSOLUTELY.

>> AND RIGHT HERE WE MIGHT
HAVE LAWYERS WHO WERE TRAPPED,
BUT MAYBE THEY WERE TRAPPED
BECAUSE OF MISUNDERSTANDING
THE LAW.

SO LET'S TRY TO SEE HOW THAT GOES.

>> ABSOLUTELY.

AND I WILL START BY SAYING THE REASON I DON'T SEE IT AS A TRAP IS BECAUSE THE CAFARO CASE WHILE I THINK PETITIONER HAS AN ARGUMENT IN IT SUGGESTING THAT MAYBE IT STANDS FOR A PROPOSITION THAT IT DOESN'T.

I THINK THAT PETITIONER IS MAKING THAT CASE BIGGER THAN IT WAS INTENDED HERE.

SO THE REASON THAT THIS PETITIONER IS NOT IN A TRAP IS BECAUSE THE CAFARO QUESTION WAS YOU LOOK AT THE ANALYSIS OF HOW MUCH TIME IS GOING TO BE LEFT ON THE CLOCK WHEN THIS PRE-SUIT PERIOD ENDS.

YOU DO THAT ANALYSIS WHEN THOSE NOTICES OF INTENT ARE RECEIVED.

>> I MEAN, THE WHOLE IDEA IS IS THAT THE TWO-YEAR STATUTE OF LIMITATIONS ISN'T TWO YEARS AND 150 DAYS.

>> CORRECT.

>> IN ALL CASES.

>> CORRECT.

>> IT MAY BE THAT MUCH, DIE -- DEPENDING.

>> THAT'S CORRECT.

AND ANOTHER REASON WHY I THINK IT MAKES SENSE IS BECAUSE IF PETITIONER IN THE BRIEF SUGGESTED THAT THIS STATUTE OF LIMITATIONS SHOULD BE 90, 90 PLUS 60, 90 BEING THE PRE-SUIT PERIOD IF YOU'RE ENTITLED TO IT BECAUSE IT DOESN'T TERMINATE EARLY WITH A WRITTEN DENIAL, 90 DAYS FOR THE PURCHASED EXTENSION AND 60 DAYS UNDER(4).

THE PROBLEM WITH THAT --

>> THAT WOULD BE 210 DAYS.

>> CORRECT.

>> AND THE PROBLEM WITH THAT IS IT OVERLOOKS THE QUESTION OR ANALYSIS THAT IS REQUIRED UNDER 104 WHICH IS IT LESS -- OR IS IT GREATER THAN WHAT'S REMAINING ON THE STATUTE OF LIMITATIONS.

SO NO PLAINTIFF IS ENTITLED TO

THE 60 DAYS UNTIL THAT
ANALYSIS IS DONE WHICH THEN WE
ASK OURSELVES HOW MUCH TIME IS
LEFT WHEN THE NOTICES OF
INTENT ARE RECEIVED.

SO I THINK IT WAS A -- I DON'T
WANT TO CALL IT A SIMPLE
CALCULATION, BUT I THINK
THAT'S HOW WE AVOID THE TRAP
IN FUTURE CASES.

AND I DON'T BELIEVE THERE WAS
A TRAP HERE.

I THINK THE CALCULATION WAS
WHEN THE NOTICE OF INTENT WAS
DISPATCHED AND RECEIVED BY
RESPONDENT, DR. ABBY, IT WAS
RECEIVED ON AUGUST 2.

THE QUESTION IS HOW MUCH TIME
DO YOU HAVE ON YOUR STATUTE OF
LIMITATIONS.

>> IS YOUR ARGUMENT THAT THE
90-DAY PURCHASED TIME IS TO
ASSIST THE PLAINTIFF IN
DETERMINING WHETHER TO FILE
THE NOTICE OF INTENT?
ONCE IT'S FILED, THEN THAT
TIME IS CUT OFF.

>> YES.

I BELIEVE SO.

TO THE EXTENT -- I BELIEVE THE
90-DAY PURCHASED EXTENSION IS
THERE SO THAT THEY -- A
POTENTIAL PLAINTIFF CAN
CONTINUE INVESTIGATIONS AND
CAN COMPLY WITH THE NOTICE.

I DON'T NECESSARILY BELIEVE,
THOUGH, THAT ONCE YOU FILE
THAT TIME IS GONE BECAUSE, FOR
EXAMPLE, IN A CASE WHERE THE
PURCHASE -- WHERE A PLAINTIFF
IS OPERATING IN THEIR
PURCHASED EXTENSION, THEIR TWO
YEARS IS ALREADY EXPIRED,
THEY'RE OPERATING IN THEIR
PURCHASED EXTENSION, BUT IF
THEY ONLY USE TEN DAYS, THEN
THE ANALYSIS SAYS HOW MUCH
TIME IS REMAINING ON THE
STATUTE OF LIMITATIONS.

IT'S 80.

80 IS GREATER THAN 60.

IT GOES BACK TO THE
TRADITIONAL ANALYSIS WHERE
THIS --

>> IT'S ONLY CUT OFF TO THE
EXTENT YOU CAN'T USE IT IN

ADDITION TO THE 60.
>> THAT'S BECAUSE WE'RE
RESTRICTED BY THE LANGUAGE IN
106.4 THAT SAYS OR.
>> AGAIN, I WANT TO MAKE SURE
-- TO ME THERE'S FAIRNESS
ABOUT THIS, BECAUSE ONE OF
THOSE REAL DILEMMAS FOR
PLAINTIFFS WAS GETTING
SOMETHING A MONTH BEFORE
STATUTE WAS GOING TO RUN AND
HAVING TO DO A REASONABLE
INVESTIGATION.
HOW DO YOU DO THAT.
AND SO THERE NEVER SHOULD BE A
PROBLEM IF YOU GOT THE CASE
TOWARDS THE BEGINNING OF THE
TWO YEARS.
NONE OF THIS SHOULD BE A
PROBLEM.
THESE COME UP WHEN THERE ARE
CLAIMS THAT COME TO A
PLAINTIFF'S ATTORNEY'S
ATTENTION CLOSER TO THE END.
>> ABSOLUTELY.
I WOULD AGREE.
AND THE STATUTE OF LIMITATIONS
-- THAT'S NOT THE CASE HERE IN
THE CASE BEFORE THIS COURT
BECAUSE THE STATUTE OF
LIMITATIONS BEGAN TO RUN ON
JUNE 10, 2004.
WE DON'T HAVE A TYPICAL CASE
WHERE WE'RE ARGUING OVER WHEN
DID THAT STATUTE OF
LIMITATIONS TRIGGER.
DEFENSE ATTORNEYS ARE OFTEN
SAYING YOU KNEW AT THIS POINT
AND PLAINTIFFS ARE RESPONDING
NO, WE DIDN'T KNOW.
BUT IN THIS CASE THE
PETITIONER HAS CONCEDED THAT
SHORTLY AFTER THE PETITIONER
SENT A REQUEST FOR HER OWN
MEDICAL RECORDS, THAT SHE
WOULD CONCEDE THAT SHE KNEW OR
SHOULD HAVE KNOWN OF THE
REASONABLE POSSIBILITY OF
MEDICAL NEGLIGENCE.
SO WE DON'T HAVE A CASE WHERE
THE LAWYERS CAME IN LATE IN
THE GAME BECAUSE THE CLIENT
DOESN'T UNDERSTAND THE LAW AND
CAME IN AT THE LAST MINUTE AND
SAID PLEASE SUE THIS DOCTOR
FOR ME.
ANOTHER REASON WHY I THINK

THAT WE CAN -- I CAN SAY OR I CAN ASK THIS COURT TO AGREE THAT THERE IS NO TRAP IN THIS PARTICULAR CASE AND THAT'S BECAUSE I THINK THAT THE ARGUMENT THAT IS BEING PUT FORTH BY THE PETITIONER THAT THEY CALCULATED ON CAFARO, SO THEY THOUGHT THEY HAD UNTIL FEBRUARY 7 BECAUSE OF THE HOLDING IN THAT CASE. I THINK IT'S A LITTLE DISINGENUOUS.

AND THE REASON I SAY THAT IS BECAUSE CAFARO CAME OUT IN 2002.

IN 2003, THE FIRST DISTRICT COURT OF APPEALS CAME OUT WITH THE DECISION OF CORTEZ V WILLIAMS.

IN THAT CASE, CORTEZ WAS OPERATING IN THE PURCHASED EXTENSION.

THE PLAINTIFF WAS THE -- THE TWO YEARS HAD EXPIRED.

THEY HAD PURCHASED AN EXTENSION AND THEY WERE IN THAT PURCHASED EXTENSION.

WHEN THE PRE-SUIT PERIOD ENDED NATURALLY, BECAUSE THE 90 DAYS EXPIRED BECAUSE THE DEFENDANT DID NOT RESPOND TO THE NOTICE OF INTENT, THE FIRST DISTRICT COURT OF APPEALS DID EXACTLY WHAT THEY DID IN THIS CASE.

THEY DECIDED THAT BASED ON THE EXTENDED PERIOD OF THE STATUTE OF LIMITATIONS AND IN CORTEZ THAT PARTICULAR PLAINTIFF HAD, I BELIEVE IT WAS 16 DAYS LEFT ON THE EXTENDED STATUTE OF LIMITATIONS.

THE FIRST DCA SAID YOU'RE ENTITLED TO 90 OF THE PRE-SUIT, THE 90 -- OR THE 16 DAYS IS LESS THAN 60, SO YOU'RE ENTITLED TO ANOTHER 60 DAYS. SO THAT PLAINTIFF HAD 150 DAYS PRE-SUIT, PLUS 60.

>> BUT YOU CAN GET DIFFERENT STATUTES OF LIMITATIONS, LIMITATION PERIODS DEPENDING UPON WHEN THE NOTICE OF THE CLAIM IS PROVIDED TO THE PHYSICIAN.

BECAUSE IF YOU FILE IT BEFORE THE TWO YEARS RUNS, YOU'VE GOT

THE 90 DAYS PLUS THEN ANY
PURCHASE.
BUT IF YOU FILE IT DURING A
PURCHASED EXTENSION, THEN
YOU'RE GOING TO HAVE LESS THAN
THE FULL STATUTE PLUS 90.
>> I WOULD AGREE.
I WOULD AGREE.
AND I THINK THAT THE LAW IS
CLEAR ON THAT.
>> I UNDERSTAND.
BUT THAT IS -- THAT COULD
HAPPEN.
>> TO HOPEFULLY ANSWER THAT
QUESTION AND ADDRESS JUSTICE
PARIENTE'S CONCERN THAT WE
DON'T WANT TO PUT PEOPLE IN A
TRAP, I THINK THAT THE LAW,
ALBEIT CONFUSING AND THE FACT
THAT I THINK JUSTICE PARIENTE
NOTED, THIS WAS ONE OF THE
REASONS WE WENT TO LAW SCHOOL,
SO WE DIDN'T HAVE TO DO THESE
KINDS OF THINGS.
>> I SAID THAT?
>> I THINK YOU SAID SOMETHING
THAT THIS IS WHAT LED US TO
LAW AS OPPOSED TO ACCOUNTING.
>> OH.
>> SUCH A CONVOLUTED PROCESS.
>> THE BOTTOM LINE ABOUT THIS
-- I'M SURE IN THIS REGARD --
I DON'T THINK THE LEGISLATURE
-- I THINK THEY WERE TRYING TO
PUT SOMETHING TOGETHER THAT
WAS REASONABLE TO HELP
PLAINTIFFS AND MAKE SURE THAT
DEFENDANTS HAD A CHANCE TO
RESPOND.
IT JUST DOES SEEM THAT WHAT I
DON'T WANT TO SEE HAPPEN IS
THAT SOMEHOW THERE BECOMES
SOME KIND OF GAME PLAYING AS
TO WHEN A NOTICE GETS FILED
BECAUSE, YOU KNOW, YOU WANT
MORE TIME OR YOU NEED MORE
TIME.
AND SO THAT'S MY -- THAT'S
REALLY MY CONCERN, IS THAT WE
MAKE SURE THAT IT IS CLEAR AND
WHY IT'S CLEAR.
>> SURE.
>> THAT IT NOT BE BECAUSE OF
SOMETHING THAT IS JUST
MANIPULATED BY ONE SIDE OR THE
OTHER.
>> AND THE REASON I THINK IT'S

CLEAR HERE, AND I HOPE THAT THE COURT CAN TAKE COMFORT IN KNOWING AND I DON'T THINK THAT AFFIRMING -- OR FINDING THAT THERE'S NO CONFLICT AND AFFIRMING THE FIRST DISTRICT COURT OF APPEALS IS IN ANY WAY UNFAIR TO THE PLAINTIFF BECAUSE THE CALCULATIONS WERE SENT OUT WHEN THAT NOTICE OF INTENT WAS RECEIVED BY DR. ABBY.

IF ONE WERE TO FOLLOW THE ANALYSIS AND THE HOLDING IN CAFARO, THE QUESTION HAD TO BE ASKED WHEN THAT NOTICE OF INTENT WAS RECEIVED.

WHEN IT WAS RECEIVED, THE PURCHASED EXTENSION WAS 53 DAYS GONE.

AND WE ONLY HAD 37 DAYS LEFT.

>> YOU'VE DONE YOUR PUBLIC SERVICE.

YOU HAVE CLARIFIED ANY CONFUSION FOR OUR COLLEAGUE, JUST -- JUSTICE PARIENTE.

>> THERE WOULD PROBABLY BE CONFUSION AGAIN.

I THINK IT'S ALL CONTINGENT ON WHEN CERTAIN THINGS ARE FILED, BUT I DON'T THINK THE CONFUSION IS NECESSARILY THE RESULT OF MANIPULATION.

I THINK THE COURT CAN BE EASED IN THE SENSE THAT THIS WAS A CALCULATION BASED ON TIMING AND BASED ON THE FACT THAT THIS PARTICULAR PLAINTIFF HAD ALREADY USED 53 DAYS OF HER PURCHASED EXTENSION WHEN SHE DISPATCHED HER NOTICES OF INTENT TO INITIATE LITIGATION.

FOR THOSE REASONS --

>> I JUST WANT TO BE CLEAR ON THIS.

I WAS QUOTING JUDGE BLUE OF THE SECOND DISTRICT AS TO WHY THIS TYPE OF MATHEMATICAL PUZZLE CAUSED MANY OF US TO CHOOSE LAW RATHER THAN ACCOUNTING.

I WANT TO MAKE SURE IF YOU'RE GOING TO GET IT FROM JUDGE BLUE.

>> FOR THOSE REASONS AND THE REASONS SET FORTH IN RESPONDENT'S ANSWER BRIEF, WE

WOULD RESPECTFULLY RESPECT
THIS COURT FIND THERE IS NO
CONFLICT BETWEEN THE FIRST
DISTRICT COURT OF APPEALS
DECISION AND EITHER CAFARO OR
THE NAFITZKE CASE AND REQUEST
THE COURT AFFIRM THE DECISION.

>> THE BOTTOM LINE IS IT'S
BEEN TEN YEARS SINCE THERE'S
BEEN THIS SORT OF CASE BEFORE
THE COURT AND THE REASON FOR
THAT IS THAT CAFARO WORKED.
IT PROVIDED GUIDANCE AND
PREDICTABILITY.

>> BUT ISN'T THERE A REAL
DIFFERENCE WHEN YOU HAVE
STARTED YOUR NOTICE, DOING
YOUR ORIGINAL TWO-YEAR STATUTE
OF LIMITATIONS PERIOD VERSUS
USING PART OF YOUR 90-DAY
EXTENSION TO SEND YOUR NOTICE?
ISN'T THERE A REAL DIFFERENCE
IN THOSE TWO SITUATIONS?

>> WELL, I GUESS THE PROBLEM
IS ANALYTICALLY HOW DO YOU
DEAL WITH 37 DAYS THAT
REMAINED?
HOW DO YOU ACCOUNT FOR THAT
AND HOW DO YOU ALLOCATE THAT
TIME.
UNDER HENKE YOU'RE NOT ALLOWED
TO APPLY ANY PART OF THE 90
DAY PURCHASE.
IT'S TOLLED.
UNDER CAFARO THE EXTENSION IS
NOT TO BE APPLIED TOO.
ANALYTICALLY I DON'T KNOW HOW
YOU CAN ESCAPE THE FACT THAT
WE SHOULD HAVE GOTTEN 60 PLUS
37.

IF IT REALLY IS A TOLLING
PROVISION.

>> BUT IN THIS CASE IF THERE
WAS -- THE 90 DAYS HADN'T BEEN
PURCHASED AT THE TIME THAT IT
WAS, YOUR CLIENT WOULD BE OUT
OF COURT BECAUSE THE NOTICE
WAS FILED AFTER THE TWO-YEAR
STATUTE OF LIMITATIONS PERIOD.

>> I FULLY UNDERSTAND.
AND, AGAIN, CONCEPTUALLY,
INTELLIGENTLY, HOW DO YOU
ACCOUNT FOR THE 37 DAYS?
IS THE PLAINTIFF, WHO

PURCHASED THAT EXTENSION, NOT ENTITLED TO THE BENEFIT OF THEIR BARGAIN AS FAR AS GETTING THE FULL 90 DAYS? AND IT SEEMS TO ME CAFARO STANDS FOR THE PROPOSITION THAT NO PART OF A 90-DAY EXTENSION THAT'S PURCHASED IS GOING TO BE CONCURRENTLY RUNNING WITH THE 60-DAY PROVISION PRE-SUIT. THAT'S WHAT IT STANDS FOR.

>> BUT THIS IS A PERIOD BEYOND THE RUNNING OF THE PRE-SUIT. THIS IS THE PERIOD AFTER THE PRE-SUIT IS COMPLETED. I MEAN, I THINK YOUR ARGUMENT IS CORRECT AS FAR AS THE PRE-SUIT PERIOD. BUT THIS IS THAT PERIOD AFTER. ISN'T THAT WHAT WE'RE TALKING ABOUT?

>> IT IS, YOUR HONOR. ABSOLUTELY. BUT, AGAIN, THE DIFFICULTY IS IN TERMS OF TRYING TO COUNTER OR GIVE INSTRUCTION TO A PARALEGAL, HOW DO YOU DO THIS, CAFARO GAVE US A WORKABLE WAY TO DO THIS. YOU COULD SAY YOU'RE GOING TO HAVE 90 DAY PRE-SUIT, 60 DAYS THEREAFTER AND 90 DAYS.

>> LET ME JUST PUT THIS DOWN IN THE REAL WORLD. WERE YOU THE ATTORNEY BELOW?

>> I WAS.

>> SO WHAT YOU'RE SAYING -- I MEAN -- APPRECIATING THIS, THAT YOU AND/OR YOUR PARALEGAL ASSUMED YOU HAD THIS TIME BASED ON PRIOR CASE LAW.

>> BASED ON TWO THINGS, CAFARO.

NUMBER TWO, THE PLAIN LANGUAGE OF SUB 2 THAT SAYS THAT THAT TIME FRAME, THAT EXTENSION SHALL BE IN ADDITION TO ANY OTHER TOLLING PERIOD, PLURAL. SO THIS IS --

>> SO THEN A PLAINTIFF, IT SEEMS TO ME THAT THEN A PLAINTIFF WHO DOES EVERYTHING WITHIN THE TWO-YEAR TIME PERIOD AND THEN YOU GET THE NEGOTIATIONS ARE OVER ONLY HAS 60 DAYS, RIGHT, WHERE A CLIENT

WHO DOESN'T DO IT ENDS UP WITH
THE 90 DAYS AND WHAT YOU
CONSIDER TO BE ANOTHER 90
DAYS.

>> CORRECT.

I THINK THAT'S WHAT CAFARO
SAYS.

THAT'S WHAT IT STANDS FOR,
THAT THAT 90-DAY PERIOD, THAT
EXTENSION IS SEPARATE,
DISTINCT AND APART FROM ANY
OTHER TOLLING PERIOD.
AND THAT'S THE 90 PRE-SUIT AND
THE 60 THAT FOLLOWS.

>> I MEAN, HERE APPARENTLY IF
THE PRE-SUIT -- IF THE
PHYSICIAN -- IF THEY HAD
DENIED WITHIN TEN DAYS, STILL
WOULD HAVE HAD ONLY REMAINING
UNDER THE REMAINING STATUTE
EITHER THE 60 OR THE 37, BUT
IT SAYS WHICHEVER IS GREATER.
I MEAN, THAT WOULD HAVE EVEN
PUSHED IT TO A LESSER NUMBER
OF DAYS.

>> YOU KNOW, ADOPTING SOME OF
THE THINGS THAT WERE IN THE
BRIEF, THEIR ARGUMENT THAT I
CAN BUY INTO ON THIS LEVEL,
THEY SAY THAT AT THE TIME OF
THE TERMINATION OF
NEGOTIATIONS AND THE DENIAL
LETTER, THAT WE HAD ZERO DAYS
REMAINING BECAUSE OF WHAT
TRANSPIRED EARLIER.
ADOPTING THAT, IF WE HAVE ZERO
DAYS, ZERO IS LESS THAN 60.
WE SHOULD GET THE 60 AND THEN
THE 37 THAT WAS REMAINING ON
THE EXTENSION.

>> YOU WOULD HAVE ZERO DAYS
LEFT OF WHAT?

>> OF A STATUTE OF
LIMITATIONS.

THEY SPEAK CONSISTENTLY IN
TERMS OF THE ORIGINAL STATUTE
OF LIMITATIONS.

THEY ARGUED IN THEIR BRIEF
THAT AT THE TIME OF THE
TERMINATION OF NEGOTIATIONS,
THAT WE HAD ZERO DAYS LEFT.

>> WELL, I THINK IT'S PRETTY
CLEAR THAT YOU HAD YOUR TWO
YEARS PLUS 90 DAYS AND THAT
YOU HAD USED 50 SOME DAYS OF

THAT 90 DAYS.

SO I'M NOT SURE I'M EVEN
FOLLOWING HOW YOU CAN GET TO
ZERO DAYS LEFT.

>> I WAS TRYING TO GIVE THE
COURT AN EXAMPLE OF WHAT HAD
BEEN ARGUED ON BEHALF OF THE
APELLEE AND HOW WE WOULD GET
60 PLUS THE 37 IN ADDITION TO
THAT.

THE LAST THING I'D LIKE TO SAY
IS, AGAIN, THE CORTEZ CASE
THAT THE DEFENSE IS RELYING
UPON IS REALLY NOT APPLICABLE
AT ALL.

IT HAS NOTHING TO DO WITH THE
INTERPLAY BETWEEN THE TWO
STATUTES IN QUESTION.

LASTLY, ALL THE CASES SPEAK IN
TERMS OF ACCESS TO COURTS, IN
TERMS OF PROMOTING THESE
STATUTES OR INTERPRETING THEM
IN A WAY THAT FAVORS ACCESS TO
COURTS AND WE'D ASK THAT YOU
VERY SERIOUSLY ENFORCE THE
RULE OF CAFARO AND THE STATUTE
THAT SAYS THAT THE 90-DAY
EXTENSION IS ABOVE AND BEYOND,
SEPARATE, DISTINCT, FROM ANY
OTHER TOLLING PROVISION.

THE ONLY WAY THAT THAT STATUTE
CAN BE GIVEN FULL FORCE AND
EFFECT AND HARMONIZE IS THAT
NO PART OF THE 30 DAYS RUN
CONCURRENT WITH THE 60-DAY
PROVISION.

>> SO UNDER YOUR ARGUMENT WHAT
PART DID.

WHAT PART OF THAT 90 DAYS RAN
WITHIN A TOLLING PERIOD?

>> ACCORDING TO THE FIRST DCA
THE FIRST 37 DAYS WE'RE
ARGUING ABOUT RAN CONCURRENTLY
WITH THE 60 DAY TOLLING
PROVISION FOLLOWING THE
PRE-SUIT.

THAT WAS THEIR ANALYSIS.

THEY SAID THAT THE STATUTE OF
LIMITATIONS CLOCK RECOMMENCED,
THAT'S VERBATIM FROM THEIR
OPINION, THAT THE STATUTE OF
LIMITATIONS CLOCK RECOMMENCED.
THAT DOESN'T SEEM TO MAKE ANY
SENSE IF IT'S A TOLLING
STATUTE.

>> OCTOBER 31.

>> NOVEMBER 1, YES.

>> OH.
NOVEMBER 1.
>> YES.
THE FIRST DCA SPECIFICALLY
SAID THE CLOCK BEGAN TO RUN
AGAIN UPON THE TERMINATION OF
NEGOTIATIONS.
DOESN'T MAKE A LOT OF SENSE IN
A TOLLING PROVISION.
PARDON ME?
>> I MEAN, UNDER 766.104 --
106.4 EITHER THAT 37 DAYS YOU
HAD TO FILE YOUR COMPLAINT OR
YOU HAD 60 DAYS TO FILE YOUR
COMPLAINT.
I MEAN, THAT SEEMS TO BE WHAT
THE PLAIN LANGUAGE OF THAT IS.
>> THAT IS THE PLAIN LANGUAGE
OF THAT STATUTE.
THE PROBLEM WITH GIVING IT
THAT MECHANICAL AN APPLICATION
IN THIS CASE, THAT TOTALLY
IGNORES 766.104 SUB 2 THAT
COMMANDS THAT THE TIME FRAME
OF EXTENSION NOT BE COUNTED
DURING A TOLLING PERIOD.
>> AND THE TOLLING PERIOD WAS
THE 90 DAYS ONCE YOU HAD FILED
YOUR NOTICE, CORRECT?
>> THERE ARE TWO TOLLING
PERIODS.
ONE IS 90 DAYS.
>> WHAT'S THE OTHER TOLLING
PERIOD?
>> THE FIRST TOLLING PERIOD IS
THE PRE-SUIT, THE 90 DAYS.
THE SECOND TOLLING PERIOD IS
THE 60 DAYS THAT FOLLOWS THE
PRE-SUIT.
THOSE HAVE BEEN REFERRED TO
REPETITIVELY AS TOLLING
PROVISIONS.
CAFARO DESCRIBED IT THAT WAY.
HENKY DESCRIBED IT THAT WAY.
AND THE STATUTE ITSELF
DESCRIBES TOLLING PERIODS TOO.
WELL, THERE'S ONLY TWO
AVAILABLE IN THIS CONTEXT.
IT'S THE 90 DAYS AND THEN THE
60 DAYS.
I THINK THE MISTAKE THAT I
RECOGNIZE AND HOPEFULLY YOU
CONCUR IS THAT WHEN THE FIRST
DCA SAID THAT THE STATUTE OF
LIMITATIONS COMMENCED AGAIN
UPON THE TERMINATION OF
NEGOTIATIONS, THAT'S AT ODDS

WITH THE 60-DAY PROVISION
BEING A TOLLING PROVISION,
WHICH IT'S CONSISTENTLY BEEN
DESCRIBED AS.

>> BUT WHY IS IT?

BECAUSE IT SEEMS TO ME THAT --
WELL, LET'S ASSUME THAT YOU
HAD -- OF YOUR 90 DAYS, YOU
HAD 80 DAYS LEFT.

SO YOUR ARGUMENT WOULD BE THAT
YOU HAVE 80 DAYS PLUS 60 TO
FILE YOUR COMPLAINT?

OR YOU HAVE 80 DAYS?

>> IT WOULD.

>> THAT'S YOUR ARGUMENT.

>> THAT IS.

I MEAN, WHAT I'M SAYING AND
THE WAY I STARTED MY ARGUMENT
TODAY WAS THAT WHEN A
PLAINTIFF PURCHASES THIS
90-DAY EXTENSION UNDER ANY
CIRCUMSTANCE, THAT SHOULD
NEVER BE COUNTED IN ONE OF THE
TWO TOLLING PROVISIONS SET
FORTH IN 766.106(4).

THERE ARE TWO TOLLING
PROVISIONS AND NO PART OF THE
EXTENSION THAT'S BEEN
PURCHASED BY THE PLAINTIFF
SHOULD EVER BE COUNTED OR RUN
CONCURRENTLY WITH THOSE
TOLLING PERIODS.

TO GIVE LITERAL EFFECT TO --
YOU HAVE 60 DAYS OR THE
STATUTE OF LIMITATIONS, TO
GIVE TOTAL, MECHANICAL
APPLICATION AND EFFECT TO,
THAT YOU HAVE TO IGNORE
766.104 SUB 2 THAT SAYS QUITE
THE OPPOSITE, THAT THAT TIME
PERIOD SHALL BE IN ADDITION TO
ANY OTHER TOLLING PERIODS.

>> TOLLING PERIODS, BUT GIVING
THE 60 DAYS AFTER THE DOCTOR'S
DENIED, PUTTING THAT ABLE,
DOESN'T CALL IT A TOLLING
PERIODS.

>> THE COURTS CONSISTENTLY
HAVE CALLED IT A TOLLING
PERIOD.

AND IN TERMS OF 104 SUB 2, IT
REFERS TO TOLLING PERIODS.
WELL, THERE'S ONLY TWO TOLLING
PERIODS THAT ARE AVAILABLE.

>> WELL, THAT'S IF YOU ASSUME
THAT THE PERIOD FOLLOWING THE

DENIAL OF THE CLAIM IS IN FACT
A TOALINGS PERIOD.

I WAS UNDER THE IMPRESSION
THAT THE TOLLING PERIOD DURING
THIS SUIT ACTIVITY.

>> WELL,
>> LET ME TAKE ANOTHER LOOK.
>> SO IF YOUR 90 DAYS WAS
TOTALLY GONE, YOU WOULD HAVE
THE 60 DAYS.

>> CORRECT.
>> SO THAT'S NOT -- THAT'S
TOLLING WHAT?

>> THAT'S JUST THE 60-DAY
TOLLING PERIOD.
IF ALL THE TIME HAD RUN OUT,
IF YOU'D USED UP YOUR ENTIRE
EXTENSION AND YOU HAD NO MORE
TIME LEFT, YOU WOULD HAVE 60
DAYS TO FILE YOUR SUIT BECAUSE
IT'S A TOLLING PERIOD.

CAFARO --
>> BECAUSE YOU FILED YOUR
NOTICE ON THE 90TH DAY, SO YOU
HAVE NO DAYS LEFT.
YOU WOULD HAVE THE 60 DAYS TO
FILE YOUR COMPLAINT.

>> CORRECT.
EXACTLY.
NO.

I FEEL I NEED TO MAKE IT
ABUNDANTLY CLEAR.
I FEEL THE 60 DAY TIME PERIOD
IS IS A TOLLING PERIOD.
IF YOU READ CAREFULLY CAFARO
AND HENKY, IT DESCRIBES
CLEARLY THAT THAT 60-DAY TIME
PERIOD IS A TOLLING PERIOD AND
THAT THIS EXTENSION SHOULD BE
IN ADDITION TO EITHER ONE OF
THE TWO TOLLING PERIODS.
SO IT LOOKS LIKE THE CASE IS
NOW TURNING ON WHETHER OR NOT
THE 60-DAY PROVISION IS INDEED
A TOLLING PERIOD.
BECAUSE IF IT'S TOLLED AND THE
CLOCK STOPS, THEN THE FIRST DC
A'S ASSUMPTION THAT THE 37
DAYS SHOULD COMMENCE AT THAT
TIME DOESN'T MAKE A LOT OF
TENSE.

THE 60 DAYS IS A TOLLING
PROVISION.

>> THANK YOU.
COURT IS ADJOURNED.
>> ALL RISE.