

>> THE NEXT CASE, THE LAST
CASE ON THE DOCKET, IS
CADUCEUS PROPERTIES VERSUS
GRANEY.

JUSTICE POLSTON IS GOING TO BE
RECUSED ON THAT CASE.

>> COUNSEL READY TO PROCEED?

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT, MY
NAME IS ROB CLARKE.

I'M HERE WITH MARTY SIPPLE AND
MAJOR HARDING OF THE LAW FIRM
HERE IN TALLAHASSEE.

MAY IT PLEASE THE COURT, WE'RE
HERE TODAY ON A CASE THAT'S
BEEN CERTIFIED CONFLICT AND
WE'RE HERE TO ASK THIS COURT
TO ADOPT THE 5TH DCA DECISION
IN THE CASE OF GATTEN VERSUS
SEBASTIAN INLET.

WHAT HAPPENED IN THIS CASE WAS
THE LAW OF GATTENS WAS BINDING
ON THE TRIAL COURT AT THE TIME
THAT THE CASE WAS TRIED.

THE TRIAL JUDGE PROPERLY
APPLIED THE LAW THAT WAS IN
EXISTENCE IN FLORIDA AT THE
TIME.

AND THEN AFTER THE TRIAL, THE
DISTRICT COURT CHANGED THE LAW
THAT WAS APPLICABLE AT TRIAL
AND THEN REVERSED THE JUDGMENT
THAT WAS DECIDED ON THE
MERITS.

AND THE DECISION

>> YOUR ARGUMENT ON THAT
I'M IT PUZZLES ME BECAUSE
IT SEEMS LIKE IT WOULD LEAD TO
THE CONCLUSION THAT ONCE A
DISTRICT COURT HAS DECIDED AN
ISSUE INSOFAR AS ALL THE
DISTRICTS COURTS ARE
CONCERNED, THE LAW IS FROZEN.
AND IF THAT AND EFFECTIVELY
THERE WOULD BE NO WAY THE
CONFLICT COULD NOT ARISE THAT
WOULD BRING THE ISSUE TO US.
SO IT WOULD JUST BE AND IF
A DISTRICT COURT THAT
ORIGINALLY DECIDED IT WAS

WRONG, THE RULE WOULD KIND OF ENTRENCH THE ERROR IN THE SYSTEM.

BUT TELL ME WHY I'M MISSING SOMETHING WHEN I SEE IT THAT WAY.

>> YES, JUDGE.

FIRST OF ALL, LITIGANTS IN CASES IN FLORIDA ALL THE TIME HAVE TO READ THE CASES AND RELY ON THE LAW THAT IS IN EXISTENCE AT THE TIME.

THE TRIAL COURT IN THIS CASE, OF COURSE, WAS BOUND UNDER PARTO VERSUS STATE TO FOLLOW THE LAW.

I SUPPOSE A DISTRICT COURT OF APPEALS CAN CHANGE THE LAW, BUT IN THIS PARTICULAR CASE THEY CHANGED THEY DID NOT ADHERE TO THE GATTENS DECISION, WHICH AS A SISTER DCA THEY HAVE THE RIGHT TO DO. HOWEVER, THE UNDERPINNINGS OF GATTENS, THIS COURT'S DECISION DID NOT CHANGE.

THE RULES OF CIVIL PROCEDURE THAT INDICATE THAT YOU CAN HAVE AN AMENDMENT ANYTIME, SO LONG AS IT'S WITHIN THE TRANSACTION OR OCCURRENCE, DID NOT CHANGE.

>> I THINK YOU'RE BETTER JUST ARGUING THE CONFLICT, BECAUSE THERE'S NO QUESTION IN MY MIND, JUST LIKE JUSTICE CANADY SAID, THE FIRST DISTRICT HAD A RIGHT TO DISAGREE WITH THE 5TH DISTRICT AND THE TRIAL YOU KNOW, TRIAL COURT DIDN'T ERR AT THE TIME.

BUT THE ISSUE IS JUST WHAT SO WE NOW HAVE A CONFLICT. SO WHY DON'T YOU GO TO THE MERITS OF THE CONFLICT.

>> THANK YOU, JUDGE.

THE MERITS THE UNDERLYING ISSUE HERE IS THE STATUTE OF LIMITATIONS AND WHETHER THIS PARTICULAR DEFENDANT AND IN

THIS CASE WAS SOMEHOW
PREJUDICED BY AN UNEXPECTED
ENFORCEMENT OF THE STALE
CLAIM.

>> ARE THERE ANY LIMITATIONS
ON THE RULE THAT YOU'RE
SEEKING TO BE APPLIED HERE?

>> I'M SORRY, JUDGE.
IF YOU COULD REPEAT YOUR
QUESTION.

>> ARE THERE ANY LIMITATIONS
ON THE RULE THAT YOU'RE
SEEKING TO HAVE APPLIED IN
THIS CASE?

>> ABSOLUTELY.

>> WHAT ARE THOSE LIMITATIONS?

>> THE FIRST LIMITATION,
PROBABLY THE MOST IMPORTANT,
IS THAT IT HAS TO BE WITHIN
THE TRANSACTION OR OCCURRENCE
THAT'S ALREADY BEING LITIGATED
IN THAT CASE.

>> ALL RIGHT.
THE TRANSACTION OR OCCURRENCE

>> I UNDERSTAND THAT.

>> THERE'S 14 TIMES CITED IN
THE RULE.

IT'S WELLESTABLISHED AND
WORKS.

THE SECOND ONE AND PROBABLY
THE MOST IMPORTANT ONE IS THE
TRIAL JUDGE.

THE TRIAL JUDGE HAS DISCRETION
IN ALL CASES TO DETERMINE
WHETHER AN AMENDMENT IS
APPROPRIATE OR NOT.

>> BUT, AGAIN, THAT'S NOT IN
CASES OF STATUTE OF
LIMITATIONS.

YOU CAN AMEND YOUR PLEADINGS
ACCORDING TO OUR RULES OF
PROCEDURE, BUT THAT DOESN'T
ANSWER THE STATUTE OF
LIMITATIONS ISSUE THAT'S A
A STATUTORY ISSUE.

>> THE STATUTE OF LIMITATIONS
DOES NOT CHANGE.

WE'RE NOT ASSERTING IT DOES.
BUT IT'S ALSO SUBJECT TO THE

DOCTRINE DEVELOPED BY THIS COURT

>> BUT, AGAIN, THAT'S USUALLY WHEN IT'S DIRECT PARTIES AND IT'S NOT A THIRD PARTY.

I MEAN, THAT'S WHAT'S THE UNIQUENESS ABOUT THIS CASE. SO I'M TRYING TO FISH FOR THE EDGES OF THIS TO SEE HOW THE WHOLE THING OPERATES.

BECAUSE UNDER THIS THEORY IT'S POSSIBLE THAT THE THIRD PARTY WAS NEVER INVOLVED IN THE CASE AS A PARTY AND THEN THEY'RE BROUGHT IN AFTER THE STATUTE AND YOU COULD MAKE THE ARGUMENT, WELL, THEIR DEPOSITIONS WERE TAKEN, THIS RELATES BACK TO THE FILING, BECAUSE EVERYBODY KNEW THAT THAT WAS THE ROOFER THAT WAS INVOLVED WITH THIS PROBLEM, WITH THIS BUILDING, WHATEVER. SO I'M TRYING TO SEE IS THERE NO LIMIT TO THIS?

>> NO.

THERE'S SUBSTANTIAL LIMITS. LET ME GO BACK TO YOUR EARLIER COMMENT ABOUT THE RULE AND WHETHER THAT APPLIES TO A THIRDPARTY SITUATION.

THERE'S ONLY ONE RELATION BACK RULE AND IT IS GENERIC TO ANY TYPES OF PLEADINGS.

AND THE FACT THAT YOU HAVE A THIRDPARTY SITUATION, IT'S STILL THE ONLY RELATION BACK RULE THAT EXISTS.

>> THAT'S WHY I'M QUESTIONING. I DON'T KNOW THAT IF YOU WAIT TEN YEARS TO BRING SOMEBODY IN AS A THIRDPARTY DEFENDANT THAT'S NEVER BEEN IN THE CASE BEFORE, THAT THAT RELATION BACK RULE SHOULD OPERATE TO VOID THE STATUTE OF LIMITATIONS.

>> YOUR HONOR, IF THEY HAD NEVER BEEN IN THE CASE BEFORE, THEN THE CLAIM IS BARRED.

>> IN THIS CASE SO THE
ISSUE WOULD BE THEY HAVE TO
HAVE BEEN A FORMAL THIRDPARTY
DEFENDANT BEFORE THE STATUTE
IS

>> YES, MA'AM.

>> LET ME ASK YOU, THAT'S THE
LIMITATION.

>> THEY ARE IN THE LAWSUIT.
THIS COURT DECIDED IN 1926 IF
YOU'RE CHANGING THE STATUS OF
AN EXISTING PARTY, SO WHEN YOU
TAKE RULE 1.180, WHICH IS A
THIRDPARTY RULE, WHICH MEANS
YOU HAVE EVERYBODY JOINED IN
THE LAWSUIT, EVERYBODY'S A
PARTY, EVERYBODY'S SUBJECT TO
THE CIVIL PROCEDURE RULES,
THEN YOU TAKE THE RELATION
BACK DOCTRINE, 1.190 WHEREBY
YOU CAN HAVE RELATION BACK IF
YOU HAVE EXISTING PARTIES IN
THE CASE.

>> BUT DIDN'T THAT CASE REALLY
INVOLVE A DIFFERENT KIND OF
CHANGE IN STATUS THAN THE
CHANGE IN STATUS HERE?

I MEAN, THIS IS A CHANGE IN
STATUS OF GOING FROM A
THIRDPARTY DEFENDANT, WHERE
THERE MAY BE DIFFERENT KINDS
OF DEFENSES, THE CASE MAY BE
ENTIRELY DIFFERENT, AND THEY
MAY BE IN A GOOD POSITION AS
THIRDPARTY DEFENDANTS, GIVEN
THE RELATIONSHIP WITH THE
DEFENDANT IN THE UNDERLYING
CASE.

BUT WHEN BUT NOW THEY'RE
BROUGHT IN AS DIRECT
DEFENDANTS.

AND ALONG WITH THAT, HERE'S A
QUESTION I'D LIKE TO ASK YOU.
WHY ISN'T THIS SOMETHING THAT
SHOULD BE CONSIDERED NOT
REALLY AN AMENDED PLEADING?
THERE'S NO PLEADING THAT'S
ACTUALLY BEING AMENDED HERE.
THIS IS A NEW PLEADING OF A
DIFFERENT CHARACTER.

IT'S I DON'T SEE HOW YOU
CAN REALLY SAY THAT THIS IS AN
AMENDMENT TO ANY EXISTING
PLEADING.

WHY AM I WRONG IN LOOKING AT
IT THAT WAY?

>> YOUR HONOR, THE PLEADING
THAT IS BEING CHANGED OR THAT
IS BEING AMENDED HAS BEEN
DETERMINED BY ALL COURT TO
HAVE LOOKED AT THIS ISSUE AS
THE DIRECT ACTION AS BEING
IS AMENDING, IF YOU WILL, THE
ORIGINAL THIRDPARTY
COMPLAINT.

THAT IS HOW IT'S BEEN
CONSTRUED.

BECAUSE HERE'S THE KEY.
HERE'S THE REASON THAT IS, AND
THIS GOES BACK TO THE STATUTE
OF LIMITATIONS POLICY.

AT THAT POINT, THE THIRDPARTY
DEFENDANT WAS CALLED UPON TO
DEFEND.

NOW, I WILL CONCEDE THAT IN
THE RULE IT IS NOT CLEAN, BUT
THERE'S ONLY ONE RELATION BACK
RULE.

BUT THERE IS THE AUTHORITY TO
FILE MANY KINDS OF PLEADINGS.
AND SO EVERY CASE THAT'S
LOOKED AT THIS, TO MY
KNOWLEDGE, HAS CONSTRUED YOUR
QUESTION TO MEAN THAT THE
ASSERTION OF THE DIRECT ACTION
COMPLAINT RELATES BACK TO THE
THIRDPARTY COMPLAINT.

>> THEY MAY HAVE ASSUMED THAT,
BUT I DON'T I DON'T THINK
THEY'VE EVER I DIDN'T SEE
ANYTHING WHERE ANYBODY'D
ACTUALLY CONFRONTED THE ISSUE
OF THAT IT'S A NEW PLEADING AS
OPPOSED TO AN AMENDED
PLEADING.

AND MAYBE THAT'S LOOKING AT
THE WORDS TOO
LITERALISTICALLY, PERHAPS.

>> THIS IS THIRDPARTY
PRACTICE.

IN THE THIRDPARTY PRACTICE
CONTEXT, AND THIS IS
CRITICALLY IMPORTANT BECAUSE
THIRTPARTY PRACTICE IS NOT
THAT COMMON, THAT THIS
THIRDPARTY DEFENDANT IS NOT
JUST DEFENDING THE CASE
AGAINST THE DEFENDANT.
THE THIRDPARTY DEFENDANT BY
RULE IN THE FIFTH SENTENCE
SAYS THAT THE THIRDPARTY
DEFENDANT IS DEFENDING AGAINST
THE DEFENDANT AND DEFENDING
AGAINST THE PLAINTIFF.

>> I WAS GOING TO ASK YOU THAT
QUESTION.

I WAS THINKING OF IT IN AN
ORDINARY TORT CASE WHICH, YOU
KNOW, THE PLAINTIFF SUES A
DEFENDANT.

THE DEFENDANT BRINGS IN
ANOTHER DEFENDANTS.

THEY'RE ALL AREN'T THEY ON
THE VERDICT FORM AS JOINT TORT
FEASORS?

>> THEY WOULD BE, BUT IN THAT
CASE IT WOULD ALL GO THROUGH
THE DEFENDANT.

THE DEFENDANT WOULD PUT ON ITS
CASE AGAINST THE THIRDPARTY
DEFENDANT.

>> WHAT WOULD BE I MEAN THE
DIFFERENCE IN THE LIABILITY OF
THE THIRDPARTY DEFENDANT,
IT'S NOT A DIFFERENT CAUSE OF
ACTION, BUT WHAT IS DIFFERENT
FOR PURPOSES OF THE STATUTE OF
LIMITATIONS BETWEEN THE STATUS
AS A WHERE'S THE PREJUDICE,
I GUESS IS CAN YOU GIVE ME
THE OTHER SIDE OF WHERE THE
PREJUDICE COULD BE IN A GIVEN
CASE IN ALLOWING THAT TO BE
CONVERTED?

>> YES, MA'AM.

AND LET ME SAY THIS.

IN TERMS OF PREJUDICE, FIRST
OF ALL, THE THIRDPARTY
DEFENDANTS IN THIS CASE
STIPULATED TO THE FILING OF

THE THIRDPARTY OF THE
DIRECT ACTION.
SO IN TERMS OF PREJUDICE
>> THAT WAS WITH PRESERVATION
OF DEFENSES, WHICH WOULD
INCLUDE THE STATUTE OF
LIMITATIONS DEFENSE.
>> YOUR HONOR, I AGREE, BUT TO
THE EXTENT THAT THEY'RE
CLAIMING PREJUDICE, THE
PREJUDICE WAS CURED BY A
SEVENMONTH CONTINUANCE OF THE
TRIAL.
SO THEY CAN RESERVE THEIR
DEFENSES, INCLUDING THE
STATUTE OF LIMITATIONS
DEFENSE, BUT THE PREJUDICE WAS
CURED, WHICH OFTEN IS THE CASE
WHEN A DEFENDANT CLAIMS
PREJUDICE BY AN AMENDMENT.
YOU NEED MORE TIME.
THEY GOT MORE TIME.
SO THERE'S NO PREJUDICE TO
THIS PARTICULAR DEFENDANT.
AND I JUST WANT TO CALL THE
COURT'S ATTENTION TO IN THE
RECORD 198, WHICH IS THE
ANSWER TO THE THIRDPARTY
COMPLAINT, AND THE REASON I
CALL THE COURT'S ATTENTION TO
IT IS BECAUSE IN THIRDPARTY
PRACTICE THERE COULD BE NO
QUESTION WHAT THEY'RE
DEFENDING.
AND IN THIS CASE THEY
INDICATED THAT THEY ARE IN
THEIR AFFIRMATIVE DEFENSES
THAT THE PLAINTIFF'S DAMAGES
WERE CAUSED BY THE PLAINTIFF.
THIS IS BEFORE THE STATUTE
RAN.
PLAINTIFF'S DAMAGES ARE CAUSED
BY THIRD PARTIES.
PLAINTIFF'S DAMAGE SHOULD BE
APPORTIONED.
THE THIRDPARTY DEFENDANT IS
NOT THE PROXIMATE CAUSE OF
PLAINTIFF'S DAMAGES.
THE PLAINTIFF FAILED TO
MITIGATE THEIR DAMAGES.

THEY'RE DEFENDING THE
PLAINTIFF'S CASE BY RULE AND
IN FACT.

SO I THINK THE STATUTE OF
LIMITATIONS PURPOSE BEING ARE
THEY SOMEHOW SUBJECTED TO AN
UNEXPECTED STALE CLAIM.

>> LET ME ASK YOU ABOUT THE
PLAINTIFFS.

WHEN DID TNC FIRST APPEAR AS A
PARTY IN THIS CASE, IN THESE
PROCEEDINGS?

>> YES, SIR.

AND LET ME SAY THIS, PREFACE
THIS.

I DO THINK THIS IS AN ISSUE
THAT NEEDS TO BE CLARIFIED FOR
THE COURT.

TO ANSWER YOUR QUESTION.
THEY THEY APPEARED AFTER
THE STATUTE OF LIMITATIONS RAN
AS A PARTY.

SO THAT'S THE ANSWER TO YOUR
QUESTION.

>> WELL, IS THE FIRST TIME
THEY APPEARED WHEN THE DIRECT
ACTION WAS FILED, THE THIRD

>> ROUGHLY ABOUT THE SAME
TIME.

>> OKAY.

>> WE ARE NOT TAKING THE
POSITION THAT TNC IS ALLOWED
TO PARTICIPATE AS AN
ADDITIONAL PLAINTIFF UNDER
GATTENS.

GATTENS DEALS WITH FILING
DIRECT ACTIONS AGAINST
EXISTING THIRDPARTY
DEFENDANTS.

AND I NEED TO CLARIFY THIS
POINT, BECAUSE IN ORDER TO
UNDERSTAND HOW TNC GOT
INVOLVED, THEY HAD TO SATISFY
AN ADDITIONAL CRITERIA.
THERE WAS A SEPARATE MOTION TO
AMEND TO ADD TNC AS A
PLAINTIFF.

AND I'LL TRY TO GIVE THE SHORT
VERSION, BUT IT IS IMPORTANT.

TNC IS A TENANT IN THE BUILDING.
THEY'RE OWNED BY THE SAME DOCTORS.
THEY'RE OWNED BY THE SAME THEY HAVE THE SAME PRESIDENT.
THERE'S PLENTY OF TESTIMONY THAT THEY HAD WHAT WOULD BE CALLED AN UNITY OF INTEREST AND THEREFORE THEY COULD BE JOINED AS AN ADDITIONAL PLAINTIFF.
THE DEFENDANT, THIRDPARTY DEFENDANT, STIPULATED TO THE ADDITION OF TNC.
THEN AT TRIAL, AS THE TRIAL PROCEEDED OR THE RUNUP TO TRIAL PROCEEDED, WE DID A PRETRIAL STIPULATION, AND IT WAS ACKNOWLEDGED AND AGREED THAT THEY COULD BOTH PROCEED IN THE STIPULATION.
THAT'S WHY THE TRIAL JUDGE AWARDED DAMAGES TO BOTH OF THE DEFENDANTS, BECAUSE THAT'S HOW THE PARTIES STIPULATED IT WOULD BE PRESENTED.
SO INITIALLY WE PLED IN THE ALTERNATIVE PURSUANT TO THE STIPULATION OF THE PARTIES.
THEN WE ULTIMATELY TRIED THE CASE AND THE EVIDENCE CAME IN WITHOUT ANY OBJECTION THAT BOTH PLAINTIFFS WERE LIABLE.
LET ME SAY THIS.
BOTH DEFENDANTS WERE LIABLE.
EXCUSE ME.
NOW, IF THERE'S ANY CONFUSION ABOUT THIS, THE AMOUNT AWARDED TO TNC IS \$35,000 PLUS, NOT MUCH MORE THAN \$35,000.
IF THERE'S A CONCERN BY THE COURT, IT CAN BE CARVED OUT.
HOWEVER, I WOULD URGE THE COURT NOT TO BECAUSE IT IS A SEPARATE ISSUE THAT ALLOWED FOR THE ADDITION OF TNC, WHICH THE DEFENDANTS STIPULATED TO AND THEN STIPULATED TO THE WAY IN WHICH IT WAS TRIED.

SO I'M SORRY THAT'S SO
CONFUSING, THAT'S JUST ANOTHER
SIDE ISSUE.

>> I'VE GOT CONCERNS WITH
CIRCUMSTANCES IN WHICH IT IS
CONCEIVABLE THAT A CLAIMANT
WOULD HAVE CERTAIN CLAIMS
AGAINST A DEFENDANT BASED UPON
CERTAIN RELATIONSHIPS.

AS TO THE THIRDPARTY
DEFENDANTS, THOSE MAY BE
TOTALLY FOREIGN TO THE
ORIGINAL CLAIMANT.

THERE'S A RELATIONSHIP THAT IT
MAKES NO DIFFERENCE TO A
CLAIMANT ABOUT WHAT HAPPENED
TO THIS THIRDPARTY DEFENDANT,
IS THAT THEIR RELATIONSHIP IS
WITH THE DEFENDANT.

AND THAT DEFENDANT IS THEN OUT
OF THE CASE FOR WHATEVER
REASON.

HE OR SHE SUGGESTED WHAT,
BANKRUPTCY HERE?

>> YES, SIR.

>> SO TRYING TO AMEND TO
PROCEED AGAINST A THIRDPARTY
DEFENDANT, COULD IT NOT
PRESENT DIFFERENT CLAIMS,
ALTHOUGH ARISING OUT OF THE
SAME TRANSACTION?

DO YOU UNDERSTAND MY QUESTION?

>> I UNDERSTAND IT COMPLETELY
AND, JUDGE, LET ME SAY THIS.
IT IS ALWAYS A BETTER PRACTICE
TO AMEND YOUR PLEADINGS AS
SOON AS POSSIBLE.

TO ANSWER YOUR QUESTION, IN
THIS CASE THE DEFENDANT WE
HAD CONCERNS HE WAS FILING
BANKRUPTCY.

IF HE HAD FILED BANKRUPTCY AND
WE HAD NOT YET FILED A
DIRECTED ACTION, WE WOULD HAVE
NOTHING TO RELATE BACK TO.

AND SO WE WOULD HAVE LOST OUR
RIGHTS TO PROCEED AGAINST THE
THIRDPARTY DEFENDANT.

SO IF THAT ANSWERS YOUR
QUESTION.

>> I UNDERSTAND THE PROCEDURAL STEP.

>> YEAH.

AND SO YOU NEED TO HAVE THE THIRD THE ORIGINAL

>> COMPLAINT STANDING BEFORE AND A CLAIM PENDING BEFORE YOU CAN RELATE IT BACK.

>> RIGHT.

>> YEAH.

>> WE NEED THE ORIGINAL THIRDPARTY COMPLAINT TO RELATE BACK TO.

AND IF IT IS DISMISSED, THEN WE CAN'T DO THAT.

SO THAT IS A RISK THAT WE TOOK BECAUSE WE WERE IN THE MIDST OF TRYING TO FIX THE FACILITY AND THERE'S A MOTION TO STAY THAT'S IN THIS RECORD AND I'LL TELL YOU THAT WE SPENT

>> AS YOU CONTINUE TO TELL, I WANTED TO ALERT YOU, YOU ARE IN YOUR REBUTTAL BY A MINUTE.

>> THANK YOU.

IF I CAN JUST TAKE A MINUTE TO TALK ABOUT THE REASONS OF THE DELAY.

>> IT'S UP TO YOU.

>> WE HAD AN ISSUE OF TRYING TO FIX THIS FACILITY.

AND THE FACILITY ITSELF IS A VERY COMPLICATED, IT INVOLVES ACHA STANDARDS, HUMIDITY CONTROL, AIR CIRCULATION.

MR. †GRANEY WAS THE ENGINEER OF RECORD.

HE WAS THE PILOT TRYING TO FIGURE OUT HOW TO RIGHT THE SHIP.

AND WE SPENT A SIGNIFICANT AMOUNT OF TIME TRYING TO GET IT FIXED AND NURSING IT ALONG DURING THIS PERIOD OF TIME.

AND SO IT WASN'T UNTIL AFTER THE STATUTE RAN THAT WE LEARNED THAT HE ACTUALLY WAS CONCEALING INFORMATION, AND HE ADMITTED IT IN THE RECORD, THAT HE KNEW OF SOME COILS

THAT WERE NOT ACTUALLY THE
RIGHT KIND OF COILS THAT HE
APPROVED.

SO I SAY THAT BECAUSE A
QUESTION MAY BE, WELL, WHY DID
WE WAIT?

>> WELL, THAT'S NOT FIGURED
INTO THIS CERTIFIED QUESTION,
THOUGH, IS IT?

>> WELL, IT'S NOT.
YOU'RE CORRECT, YOUR HONOR.
BUT I WOULD SAY THIS.
THE REASON THAT WE WAITED WAS
BECAUSE WE RELIED ON GATTENS.

>> WELL CONCEALMENT.
YOU'RE SAYING THEN SOME KIND
OF CONCEALMENT WOULD COME INTO
PLAY AND YOU'D GET INTO THAT
ARGUMENT.

THANK YOU.

>> THANK YOU.

>> MR. †DELANEY.

>> GOOD MORNING.

MY NAME IS PATRICK DELANEY.
I REPRESENT GRANEY AND
CONSULTING ENGINEERS.

>> IS THIS AN AMENDED PLEADING
OR NOT?

>> YOUR HONOR, IT'S NOT AN
AMENDED WELL, THERE IS NO
DOUBT AN AMENDED PLEADING.
IS IT A PROPER AMENDED
PLEADING THAT WOULD RELATE
BACK TO THE ORIGINAL
COMPLAINT?

>> RIGHT.

>> NO.

>> WELL, WHY DON'T BOCA BURGER
OUT OF THIS COURT ANSWER THAT
QUESTION?

IN BOCA BURGER A PLAINTIFF
FILED AN ACTION, SINGLE PARTY,
AGAINST BOCA BURGERS.
NOBODY FILED ANY RESPONSIVE
PLEADINGS TO IT AND THE
PLAINTIFF THEN AMENDED TO THAT
COMPLAINT TO NOT ONLY BEING
THE ORIGINAL PLAINTIFF BUT
ADDED A BUNCH OF ADDITIONAL
PARTIES AND ATTEMPTED TO MAKE

IT A CLASS ACTION.
THIS COURT ALLOWED THAT TO BE
OR CONSIDERED TO BE THE FILING
OF AN AMENDED COMPLAINT THAT A
DEFENDANT COULD NOT STILL BE
CHALLENGING THE INITIAL
COMPLAINT.

WHY DOES THAT NOT ANSWER THE
QUESTION HERE, THAT THIS IS AN
AMENDED COMPLAINT?

>> WELL, YOUR HONOR, MY
UNDERSTANDING I MAY NOT
FULLY UNDERSTAND ALL THE
PARTIES WHO WERE ADDED IN BOCA
BURGER, BUT I BELIEVE THEY
WERE TIMELY UNDER THE STATUTE
OF LIMITATIONS.

>> YEAH, BUT THERE'S STILL AN
AMENDED COMPLAINT.
HERE'S MY QUESTION.
THAT'S THE NEXT STEP.

MY QUESTION FIRST IS IS THIS
AN AMENDED COMPLAINT?

IS IT TECHNICALLY AN AMENDED
COMPLAINT?

SO

>> YES, YOUR HONOR.
THERE IS THE OPERATIVE
COMPLAINT IS A SECOND AMENDED
COMPLAINT AND IT'S PART OF THE
RECORD.

WHETHER THE SECOND AMENDED
COMPLAINT SHOULD HAVE BEEN
PERMITTED TO RELATE BACK TO
THE ORIGINAL FILING TO INCLUDE
THE ENGINEER

>> WELL, WHY WOULDN'T IT?
IF IT'S CONSIDERED AN AMENDED
COMPLAINT, WHY DOES IT NOT
RELATE BACK?

>> BECAUSE UNDER THE RELATION
BACK RULE, WE HAVE A RULE THAT
PROVIDES WHEN A CLAIM OR
DEFENSE THAT'S ASSERTED IN THE
ORIGINAL COMPLAINT IS AMENDED,
THAT IS PROPER AND PERMITTED
AS LONG AS IT'S ARISING OUT
OF THE SAME OCCURRENCE AND
TRANSACTION.

SO YOU ALREADY HAVE THE

LINCHPIN, WHICH IS THE ORIGINAL PARTIES INVOLVED, AND YOU'RE ADDING CLAIMS OR DEFENSES WHICH CAN CHANGE DURING THE COURSE OF DISCOVERY AND GOING BACK TO THOSE ORIGINAL PARTIES.

>> WELL, BOCA BURGER SAYS IF YOU CHANGE PARTIES, IT'S AN AMENDED COMPLAINT.

>> MY UNDERSTANDING AGAIN WAS THAT THERE WAS THAT THE ORIGINAL PARTY WAS RELATED TO THE PARTIES THAT WERE AMENDED. I DON'T BELIEVE THEY WERE ADDING THAT PARTY.

>> IN BOCA?
SURE THEY WERE.
ABSOLUTELY.

THEY WERE ADDING PLAINTIFFS AND CLASS ACTION CLAIMS AND THIS COURT SAID THAT'S CONSIDERED A PROPER AMENDMENT, SO THEREFORE YOU CANNOT HEAR A MOTION TO DISMISS THE PENDING CLAIM.

>> YOUR HONOR, AGAIN, I THINK THAT AND MAYBE I DON'T UNDERSTAND ALL THE PARTIES WHO WERE ADDED UNDER THAT CASE, BUT I THOUGHT THAT THE STATUTE OF LIMITATIONS IN THAT WAS TOLLED IN SOME MANNER.

>> THERE WAS NOT A STATUTE ISSUE, BUT, AGAIN, WE HAVE TO ADDRESS THIS, IS THIS AN AMENDED COMPLAINT OR IS IT NOT?

>> YES.
WELL, YOUR HONOR, IT'S KIND OF AN ODD QUESTION TO TRY TO ANSWER BECAUSE THERE OBVIOUSLY IS A SECOND AMENDED COMPLAINT. SO THERE IS A

>> WELL, WHEN YOU SAY SECOND WHEN YOU SAY SECOND AMENDED COMPLAINT, THAT CONFUSES ME, BECAUSE THE COMPLAINT THAT'S AT ISSUE HERE, THIS DIRECT ACTION, THAT'S NOT AN

AMENDMENT TO ANYTHING, IS IT?

>> IT'S IT WOULD BE AN AMENDMENT AS TO MR.†GORDON, THE ARCHITECT, WHO WAS INCLUDED IN THAT JUNE 3, 2010 AMENDED PLEADING.

THAT AMENDED PLEADING INCLUDED THE ARCHITECT.

SO TO THAT EXTENT IT IS A I WOULD BELIEVE THAT IT'S A PROPER AMENDED PLEADING AS TO THE ARCHITECT, MR.†GORDON.

>> I GUESS MY PROBLEM ON THIS IS THAT IF THE PERSON THE PARTY IS ADDED AS A PROPER AS A THIRDPARTY DEFENDANT, PLAINTIFF MAKES A DECISION DO I WOULD I RATHER HAVE THAT DEFENDANT DEFENDING THIS CASE AS THE THIRD PARTY AND LET THE

YOU KNOW, YOU LOOK AT FINANCIAL RESPONSIBILITY, MAKE A DECISION, WHO DO YOU WANT TO HAVE PRIMARILY ON THE VERDICT FORM AND IN WHAT WAY. THE FACT THAT SOMETHING MAY CHANGE IN THE COURSE OF LITIGATION TO SAY I WANT THAT THIRDPARTY DEFENDANT I'D RATHER HAVE THAT DEFENDANT BE ONE OF MY DEFENDANTS.

THE THIRDPARTY DEFENDANT'S ALREADY IN THE LAWSUIT.

THE CLAIMS ARE ALREADY RAISED AND, YOU KNOW, WHETHER IT'S A NEW COMPLAINT OR IT IS LOOKED AT AS A REALIGNMENT OF THE PARTIES, THE PURPOSE OF THE STATUTE OF LIMITATIONS IS I DON'T SEE HOW IT'S SERVED IN THIS SITUATION.

SO COULD YOU HELP ME WITH THAT?

I MEAN, AGAIN, IN TORT CASES THE IDEA OF WHO THE DEFENDANT'S GOING TO BRING IN FOR PURPOSES OF FABRAY AND THE JOINT TORT FEASOR.

I DON'T WANT THAT THIRDPARTY DEFENDANT BECAUSE THAT

THIRDPARTY DEFENDANT DOESN'T
HAVE ANY MONEY.

USUALLY IT'S AN ISSUE OF
FINANCIAL RESPONSIBILITY.
AND ALL OF A SUDDEN THINGS
CHANGE.

THEY FIND OUT THAT THIRDPARTY
DEFENDANT, YOU KNOW WHAT?
THEY ARE MORE FINANCIALLY
RESPONSIBLE THAN WE THOUGHT.
WE'RE GOING TO MAKE THEM A
DIRECT DEFENDANT.

WHAT'S I DON'T SEE WHERE
THE STATUTE OF LIMIT THE
PURPOSE OF THE STATUTE OF
LIMITATIONS IS SERVED IN NOT
ALLOWING THE RULE OF THE 5TH
DISTRICT WOULD BE THE
APPROPRIATE RULE OF RELATION
BACK.

>> YES, YOUR HONOR.

THE PURPOSE OF THE STATUTE OF
LIMITATIONS THAT'S OFTEN CITED
IN NUMEROUS CASES IS TO AVOID
UNNECESSARY DELAY AND STALE
CLAIMS.

NOW IN THIS CASE THERE'S NO
DOUBT THAT BOTH THE ARCHITECT
AND THE ENGINEERING FIRM AND
THE ENGINEER, WILLIAM GRANEY,
WERE INVOLVED ALMOST FROM THE
BEGINNING.

THE PROJECT PRACTICALLY WENT
FROM CERTIFICATE OF OCCUPANCY
RIGHT ON INTO LITIGATION.
THERE'S NO DOUBT WE WERE AWARE
OF THE CLAIM AND ALL THESE
FOLKS WERE INVOLVED, INCLUDING
PARTIES THAT WERE NONPARTIES,
THE CONTRACTOR AND OTHERS.
BUT WE WERE DEFENDING A CLAIM
THAT WAS BROUGHT BY THE
ARCHITECT WHO HIRED US.
WE HAD A DIRECT CONTRACTUAL
RELATIONSHIP WITH THE
ARCHITECT.

>> SURE.

WELL, THERE MIGHT BE A
DIFFERENT WAY THAT YOU'RE
GOING TO DEFEND THAT, BUT HOW

IS IT ANY DIFFERENT THAN SAY
YOU'RE GOING ALONG AND THERE
ARE TWO CAUSES OF ACTION AND
THEN ON THE EVE OF TRIAL THEY
THE PLAINTIFF SAYS I'M
GOING TO AMEND TO ALLEGE A
CAUSE OF ACTION FOR FRAUD,
FRAUDULENT CONCEALMENT.
AND YOU GO WE WEREN'T
DEFENDING ON THAT BASIS.
WE WERE DEFENDING ON THE BASIS
OF THIS.
AND THE JUDGE SAYS, WELL, THEY
WE'RE GOING TO ALLOW THAT
AMENDMENT.
AND IF YOU NEED A CONTINUANCE,
YOU'LL HAVE IT.
BUT THE FACT THAT CAUSES OF
ACTION GET AMENDED ALL THE
TIME.
IT'S SOMETHING THAT MAY BE
DIFFERENT AND THERE ARE RULES
ABOUT THE TRIAL COURT BEING
ALLOWED TO YOU KNOW, HAVING
THE DECISION WHETHER THEY'RE
GOING TO AMEND IT, AND THE
IDEA IS IT'S VERY LIBERAL AND
IF THERE'S ANY QUESTION OF
PREJUDICE IN THAT WAY, TRIAL
PREPARATION PREJUDICE, WHICH
IS DIFFERENT THAN THE STATUTE
OF LIMITATIONS PREJUDICE, A
CONTINUANCE IS GRANTED.
SO THAT'S WHY I'M HAVING A
HARD TIME WITH YOUR ARGUMENT.
>> I UNDERSTAND.
AND, YOUR HONOR, IN A
CONTINUANCE WOULDN'T HELP IN
THIS MATTER.
BECAUSE IF THE STATUTE OF
LIMITATIONS HAS RUN, IT'S RUN.
>> THE CONTINUANCE DOESN'T
HELP EXCEPT THAT IT CURES SOME
PREJUDICE BECAUSE THE OTHER
PART OF THE STATUTE OF
LIMITATIONS IS I HAD NO IDEA
THAT I WAS GOING TO BE
INVOLVED IN THIS CASE.
AND AS YOU, FRANKLY, HAVE
ADMITTED, YOU KNEW FROM THE

BEGINNING YOU WERE INVOLVED.
>> WE DID, YOUR HONOR.
THERE'S NO DOUBT ABOUT IT.
BUT WE KNEW THAT WE WERE IN
THE CASE BASED ON A
CONTRACTUAL RELATIONSHIP WITH
THE ARCHITECT.

WE HAD A LIMITED WELL, WE
HAD A CONTRACT WITH THE
ARCHITECT THAT PROVIDED FOR
CERTAIN SERVICES.

OUR CONTRACT DEFINED OUR
SCOPE.

OUR CONTRACT DEFINED OUR
NECESSITY FOR BEING ON SITE.
OUR CONTRACT DEFINED IN
FACT, INCLUDED FINANCIAL
LIMITATIONS, THINGS THE COURT
HAS UPHELD AT LEAST WITH
RESPECT TO AN ENGINEERING
ENTITY, MAYBE NOT THE
INDIVIDUAL

>> SO YOU THOUGHT YOU WERE IN
A BETTER POSITION TO DEFEND.
I APPRECIATE THAT.

BUT I DON'T KNOW WHY IT'S ANY
DIFFERENT THAN IF SOMEONE HAS
A CONTRACTUAL CAUSE OF ACTION
AND THEN THEY ADD, AS I SAID,
A FRAUD.

I WASN'T EXPECTING THAT ONE.
THAT ONE IS NOT WHERE I OH,
OH.

THIS IS NOT HOW WE WERE GOING
TO PROCEED IN DEFENDING
OURSELVES.

IT'S DIFFERENT THAN WHAT WE
THOUGHT.

THAT'S JUST PART OF TRIAL.

>> AND UNDER THAT SCENARIO,
I'M ALMOST ASSUMING THAT UNDER
THAT SCENARIO THE PERSON WHO
IS BEING SUBJECT TO ADDITIONAL
CLAIMS DURING TRIAL
POTENTIALLY WAS A PROPER PARTY
TO BEGIN WITH, THAT THOSE
CLAIMS ARE NOW BEING AMENDED
AS TO A DEFENDANT WHO WAS
PROPERLY SERVED WITHIN THE
STATUTORY TIME PERIOD TO BEGIN

WITH.

WHICH IS NOT THE CASE WITH KTD
AND MR.†GRANEY UNLESS THIS
COURT DETERMINES AS A MATTER
OF PUBLIC POLICY THAT IF
YOU'RE IN FOR A PENNY, IN FOR
A POUND AS FAR AS THIRDPARTY
PRACTICE.

>> IT'S AS FAR AS WHETHER THE
5TH DISTRICT AND ITS OPINION
HAS A CORRECT LEGAL REASONING.
IT'S NOT REALLY PUBLIC
THEY'RE TALKING ABOUT

>> AND I DID JUMP THE GUN A
LITTLE BIT.

GATTENS IS SORT OF A
POLICYBASED DECISION.
AND MOST OF THE DECISIONS OUT
THERE IN OTHER JURISDICTIONS
COME DOWN TO IT.

AND TRUTHFULLY I COULD TELL
YOU ONE THAT GOES EACH WAY.
THE DUFFY CASE IN NEW†YORK
SAYS THEY HAVE A RULE THAT
READS VERY SIMILAR TO
FLORIDA'S RULE AS FAR AS
RELATION BACK AND THE NEW†YORK
CASE SAID IT DOESN'T COVER
ADDING PARTIES SO WE'RE NOT
GOING TO CONSIDER IT.

WE'RE JUST GOING TO LOOK AT
HIS PUBLIC POLICY.

THE TEXAS CASE ELUDES ME AT
THE MOMENT SIMPLY SAYS IT
DOESN'T APPLY, IT DOESN'T
MATTER ANYWAY, YOU MISSED THE
STATUTE, YOU'RE OUT.

SO THERE ARE CASES ON EITHER
SIDE OF THAT.

I DON'T KNOW HOW MUCH IT
MATTERS.

I DON'T KNOW THAT THE RELATION
BACK INQUIRY IS ALL THAT
IMPORTANT ULTIMATELY.

>> I APPRECIATE AND THE
COURT APPRECIATES YOUR CANDOR.
WE JUST FINISHED A CONFERENCE
WHERE WE WERE TALKING ABOUT
WHAT GOOD APPELLATE ADVOCACY
WOULD BE AND IT IS EXACTLY

WHAT YOU ARE DOING, WHICH IS
SHOWING CASES ON BOTH SIDES,
AND WE APPRECIATE THAT CANDOR
AND THE LEVEL OF
PROFESSIONALISM IN THIS
ARGUMENT.

>> I BELIEVE WE BOTH ACTUALLY
POINTED THEM OUT, SO I CAN
JUST THROW A BONE TO MY
COCOUNSEL THERE.

IF THERE AREN'T ANY OTHER
QUESTIONS, I'M ACTUALLY GOING
TO SIT DOWN.

>> THANK YOU.

>> THANK YOU.

>> REBUTTAL.

>> THANK YOU, YOUR HONOR.

JUST A COUPLE OF POINTS.

ONE, I DO WANT TO MENTION THAT
IN THE THIRDPARTY PRACTICE
PROCEEDINGS, ONE OF THE
REQUIREMENTS IN THE RULE THAT
ACTUALLY IS REQUIRED WHEN
ASSERTING THE THIRDPARTY
COMPLAINT IS TO ATTACH A COPY
OF THE PLAINTIFF'S COMPLAINT
THAT ALERTS THE THIRDPARTY
DEFENDANT WHAT THEY'RE
DEFENDING.

AND THE FORMS THAT THIS COURT
HAS REQUIRED TO BE USED FOR
THIRDPARTY PRACTICE CASES
SPECIFIES THAT YOU MUST ATTACH
THE COMPLAINT.

SO I SAY THAT TO PUT IN BETTER
FOCUS WHAT THE THIRDPARTY
DEFENDANT IS DEFENDING.

THE SECOND THING I WANT TO
MENTION, YOUR HONOR, IS THAT
THE QUESTIONS ABOUT IS THIS AN
AMENDMENT, THE PARTIES AND
I'LL CITE TO THE RECORD AT
R352 JOINTLY STIPULATED FOR
LEAVE TO AMEND.

AND SO THE NOMENCLATURE IF IT
BECOMES IMPORTANT TO THE
COURT, I THINK IT IS IMPORTANT
TO NOTE THAT THEY STIPULATED
TO THE AMENDMENT AND OF COURSE
THEY DID THAT IN EXCHANGE FOR

A CONTINUANCE.

>> YEAH.

BUT, AGAIN, I DON'T IN
FAIRNESS, AGAIN, BECAUSE WE'RE
SEEING THE LEVEL OF
PROFESSIONALISM, I DON'T SEE
HOW THAT AMOUNTS TO A WAIVER
OF THE STATUTE OF LIMITATIONS.

>> NO, MA'AM, AND I'M NOT
SUGGESTING THAT, BECAUSE THEY
DID NOT WAIVE THAT.

IN FACT, THEY LATER THEY
DIDN'T INCLUDE THE STATUTE OF
LIMITATIONS IN THEIR INITIAL
DEFENSE AND WE AGREED TO ALLOW
THEM TO AMEND TO INCLUDE IT
BECAUSE WE UNDERSTOOD THAT
WAS PART OF THE ARRANGEMENT
FOR THE CONTINUANCE.

THE LAST THING I WOULD SAY,
YOUR HONOR, IS IF THERE IS
SOME WORK TO BE DONE ON THIS
PARTICULAR RULE, IT IS A
LITTLE IT MAY NEED WORK,
AND IF YOU COULD CONSIDER THE
IDEA OF A REFERRING IT TO A
CIVIL PROCEDURE RULES
COMMITTEE OR SOMETHING OF THAT
SORT, THAT'S ALWAYS AN OPTION,
BUT WE WOULD URGE THE COURT TO
AFFIRM THE GATTENS DECISION
AND TO ALLOW THE LAW THAT WAS
APPLICABLE AT THE TRIAL TO
CONTINUE TO BE THE LAW THAT
GUIDES TRIAL COURTS.

THANK YOU, YOUR HONOR.

>> THANK YOU VERY MUCH.

THANK YOU TO BOTH PARTIES.

IT WAS A VERY PROFESSIONAL AND
REFRESHING ORAL ARGUMENT.

THE COURT WILL STAND
ADJOURNED.

>> ALL RISE.