

>> ALL RISE.

>> HEAR YE, HEAR YE, HEAR YE,  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, GIVE ATTENTION.

YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA, THE  
HONORABLE COURT.

LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME  
COURT.

THE FIRST CASE ON THE DOCKET  
TODAY IS THE AMENDMENTS TO RULES  
REGULATING THE FLORIDA BAR, FEES  
AND COSTS FOR LEGAL SERVICES.

I BELIEVE, MR. SASSO, YOU'RE UP  
FIRST.

>> YES.

THANK YOU, JUSTICE LABARGA.

I'M HERE THIS MORNING ALONG WITH  
FELLOW BOARD OF GOVERNOR MEMBER  
JAY COHEN, AS THE CHIEF JUSTICE  
SAID, TO ADDRESS THE PROPOSED  
ADDITIONS TO FLORIDA BAR RULE  
4-1.5.

ELIZABETH TARBERT, ETHICS  
COUNSEL FOR THE FLORIDA BAR, IS  
ALSO HERE ON THIS ISSUE.

SPECIFICALLY, MR. COHEN WOULD  
ADDRESS THE PROPOSED ADDITIONS  
TO THE RULE, SUBSECTION F  
REGARDING LIEN RESOLUTION, AND I  
WILL ADDRESS THE PROPOSED  
ADDITIONS TO SUBSECTION E  
REGARDING DEFINITIONS OF THE  
TERMS "RETAINER," "FLAT FEE" AND  
"ADVANCE."

NOW, ALL OF THOSE TERMS ARE USED  
IN THE RULES REGULATING THE  
FLORIDA BAR, BUT IN NO SECTION  
OF THE RULES ARE THOSE TERMS  
DEFINED.

FOR EXAMPLE, IN THE SECTION  
REGARDING TRUST ACCOUNTS,  
CHAPTER FIVE, RULE 5-1.1 IN THE

COMMENTS, THERE'S A DEFINITION OF "RETAINER," WHICH IS THE SAME DEFINITION THAT WE'RE PROPOSING GO INTO 4-1.5.

>> NOW, DO WE HAVE ANY CASE LAW THAT HAS DEFINED ANY OF THESE TERMS?

BECAUSE IT JUST SEEMS TO ME THAT WHEN I READ THE DEFINITIONS THAT YOU HAVE HERE, THAT THEY SEEM TO BE PRETTY COMMON SENSE AND SEEMS TO BE THE KIND OF DEFINITIONS WE'VE ACCEPTED OVER THE YEARS. SO IS THERE ANYTHING OUT THERE THAT HAS DEFINED THESE TERMS IN THIS WAY?

>> YES, JUSTICE QUINCE. THERE IS AN ETHICS OPINION, 93-2, THAT DEFINES THESE TERMS. AND THAT ETHICS OPINION USES THE DEFINITION FROM CJS. FOR EXAMPLE, ON THE TERM "RETAINER."

AND THE CURRENT EXISTING BAR RULE 5-1.1 IN THE COMMENT, YOU KNOW, DEFINES "RETAINER" THE SAME WAY WE'RE PROPOSING TO PUT IT IN THE FEE RULE.

BUT THERE'S BEEN A PROBLEM, YOU KNOW, OVER THE YEARS WITH ATTORNEYS, YOU KNOW, NOT USING THESE TERMS CONSISTENTLY, AND IN ADDITION TO TRYING TO CLEARLY DEFINE THESE TERMS IN THE BAR RULE AND ALSO IN THE PROPOSED COMMENT TO THE BAR RULE, WE'LL CLEARLY STATE WHERE THOSE FUNDS SHOULD GO.

FOR EXAMPLE, A RETAINER SHOULD GO INTO THE LAWYER'S OPERATIONAL ACCOUNT, A FLAT FEE WOULD GO INTO THE OPERATIONAL ACCOUNT, BUT AN ADVANCE WOULD GO INTO THE TRUST ACCOUNT.

SO THERE'S ALSO BEEN A LOT OF CALLS OVER THE YEARS TO THE BAR HOTLINE ON THESE ISSUES.

SO WE THINK IT WOULD BE REALLY HELPFUL FOR MEMBERS OF THE FLORIDA BAR TO HAVE ALL THESE

TERMS DEFINED IN ONE PLACE IN THE FEE RULE WHERE I THINK MOST OF US WOULD EXPECT TO FIND THE DEFINITIONS AND HOPEFULLY AVOID, YOU KNOW, FURTHER-- OR AT LEAST MINIMIZE FURTHER MISUNDERSTANDING ON THE USE OF THESE TERMS.

SO AGAIN, YOU KNOW, AS WE CAN SEE, THE PROPOSED ADDITION WOULD JUST STATE THAT A RETAINER IS A SUM OF MONEY PAID TO A LAWYER TO GUARANTEE THE LAWYER'S FUTURE AVAILABILITY.

A RETAINER IS NOT PAYMENT FOR PAST LEGAL SERVICES AND IS NOT PAYMENT FOR FUTURE SERVICES. AGAIN, IT'S JUST TO GUARANTEE THE LAWYER'S AVAILABILITY, AND THAT WOULD GO INTO THE LAWYER'S OPERATIONAL ACCOUNT.

A FLAT FEE IS A SUM OF MONEY PAID TO THE LAWYER FOR ALL LEGAL SERVICES TO BE PROVIDED IN THE REPRESENTATION.

A FLAT FEE MAY BE TERMED "NONREFUNDABLE."

AGAIN, THAT WOULD GO INTO THE LAWYER'S OPERATIONAL ACCOUNT BECAUSE IT'S EARNED UPON RECEIPT.

BUT SUBSECTION C DEFINES ADVANCE AND ADVANCES A SUM OF MONEY PAID TO THE LAWYER AGAINST WHICH THE LAWYER WILL BILL THE CLIENT AS LEGAL SERVICES ARE PROVIDED.

SO THAT WOULD GO INTO THE LAWYER'S TRUST ACCOUNT AND WOULD BE WITHDRAWN, YOU KNOW, AT THE TIME THAT THOSE FEES ARE EARNED.

>> I HAVE A QUESTION.

I DON'T KNOW IF YOU'RE THE ONE OR ASK MR. COHEN TO ADDRESS IT, BUT THE PROHIBITIVE CONTINGENT FEES, IT PROVIDES THAT CONTINGENT FEES ARE PROHIBITED IN CRIMINAL AND CERTAIN DOMESTIC RELATIONS MATTERS.

IT SAYS IN DOMESTIC RELATIONS CASES FEES THAT INCLUDE A BONUS

PROVISION OR ADDITIONAL FEE TO BE DETERMINED AT A LATER TIME AND BASED ON RESULTS OBTAINED HAVING HELD TO BE IMPERMISSIBLE CONTINGENCY FEES.

WHY DOES IT LIMIT IT TO DOMESTIC CASES?

I MEAN, DOES THAT MEAN THAT IN A CRIMINAL CASE, FOR EXAMPLE, A LAWYER CAN GET A BONUS IF HE GETS, IF HE GETS A GUY OFF OR IF HE GETS A LESSER CHARGE OR WHATEVER?

>> WELL, FIRST THING I WOULD POINT OUT, JUSTICE LABARGA, THAT'S NOT AN ADDITION OR A CHANGE, THAT'S JUST MOVING IT FROM ONE SECTION OF THE RULE TO ANOTHER.

>> THAT SECTION HAS ALWAYS CONCERNED ME.

>> RIGHT.

>> WASN'T THAT DEALT WITH.

>> YEAH, I DON'T KNOW THE ANSWER TO THAT QUESTION.

PERHAPS ELIZABETH TARBERT MAY HAVE AN ANSWER.

>> I THINK SHE'S RIGHT THERE.

>> GOOD MORNING.

YES, JUSTICE LABARGA.

A BONUS WOULD ALSO BE IMPERMISSIBLE IN A CRIMINAL CASE, IT'S JUST THAT WHEN THAT COMMENT-- PART OF THE COMMENT WAS ADOPTED, IT WAS ADOPTED IN RESPONSE TO A PARTICULAR CASE IN WHICH A BONUS WAS FOUND TO BE AN IMPERMISSIBLE CONTINGENT FEE IN A DOMESTIC RELATIONS CASE.

SO THAT COMES FROM F3 WHICH PROHIBITS CONTINGENT FEES IN BOTH DOMESTIC RELATIONS AND CRIMINAL CASES.

>> ALL RIGHT, THANK YOU.

I THINK I USED UP YOUR TIME.

>> YES.

NO, THAT'S FINE, JUSTICE LABARGA.

I DON'T HAVE ANY FURTHER COMMENTS IF THE COURT DOESN'T

HAVE ANY FURTHER QUESTIONS.  
THANK YOU.

>> GOOD MORNING, JUSTICES.  
THERE ARE TWO ISSUES FOR YOU TO  
CONSIDER CONCERNING THIS  
PROPOSAL BY THE FLORIDA BAR WITH  
RESPECT TO 4-1.5, THE  
CONTINGENCY FEE AND, IN  
PARTICULAR, LIEN RESOLUTION  
SERVICES.

THE TWO ISSUES I THINK YOU NEED  
TO FOCUS ON ARE, FIRST AND  
FOREMOST, THE COMPLEXITY AND THE  
LANDSCAPE, THE CHANGE IN THE  
LANDSCAPE WITH RESPECT TO  
MEDICAL LIENS AND WHAT EFFECT  
AND IMPACT THEY HAVE ON THE  
UNDERLYING TORT CASE.

AS A RESULT OF THAT, THE NEED  
AROSE FOR FAIR AND LEGITIMATE  
RECOVERIES BY THE LIEN HOLDERS.

>> OKAY, BUT HERE'S-- I'VE GOT  
A LOT OF CONCERNS.

FIRST OF ALL, WHERE IS THE  
DEFINITION OF WHAT AN  
EXTRAORDINARY SUBROGATION AND  
LIEN RESOLUTION IS?

>> WHAT WE TRIED TO DO WAS  
EXTRAPOLATE AS MUCH INFORMATION  
AS WE CAN FROM ALL THE HEARING,  
AND WE TRIED TO DEFINE  
"ORDINARY" VERSUS  
"EXTRAORDINARY" DEPENDING ON THE  
CIRCUMSTANCES.

EVERY LAWYER WHO UNDERTAKES THIS  
FIELD AND THIS REPRESENTATION  
KNOWS ABOUT MEDICAID AND  
MEDICARE AND ERISA AND TRICARE,  
HOSPITAL LIENS, ALL THE  
COMPLEXITIES INVOLVED IN THOSE.  
THOSE ARE COMPLEX LIENS AS THEY  
EXIST TODAY--

>> OKAY, SO NOW LET ME GO TO  
THIS SITUATION.

SO THERE IS A \$300,000 IN  
MEDICAL AND, THEREFORE, ANY--  
AND IT'S A CLEAR LIABILITY CASE.  
AND ANY LAWYER WITH A CLEAR  
LIABILITY CASE-- AND LET'S JUST  
SAY THERE'S ALSO UNLIMITED

COVERAGE-- GETS A RECOVERY  
BECAUSE THEY LOOK AT \$300,000,  
AND THEY GET A RECOVERY FOR A  
MILLION DOLLARS WHICH SOMEBODY  
ELSE MIGHT SAY IS WAY  
UNDERVALUING THE CASE.

BUT THEY'RE NOT, BUT IT'S--  
THEY HAVE ALL THOSE ISSUES,  
ERISA AND THAT, AND THEY GO, I  
CAN'T DO THAT.

SO AT THAT POINT THEN THEY GET  
ANOTHER LAWYER INVOLVED.

WHAT IS-- AND THE CLIENT IS  
GOING TO NOW PAY AN ADDITIONAL  
FEE TO GET A LIEN RESOLVED WHEN  
ANYBODY LOOKING AT THOSE LARGE  
MEDICAL BILLS WOULD KNOW THAT'S  
PART AND PARCEL WHAT THEY HAVE  
TO DO.

SO WHAT IS, IN THAT SITUATION  
FIRST OF ALL, WHAT IS THE  
ADDITIONAL FEE THAT SOMEBODY  
ELSE GETS TO CHARGE THIS CLIENT?

>> AFTER OUR COMPLETE-- AND, I  
MIGHT ADD, STATEWIDE--  
INVOLVEMENT WITH A SPECIAL LIEN  
COMMITTEE FROM EVERY  
STAKEHOLDER, PLAINTIFF LAWYERS,  
DEFENSE LAWYERS, MEDIATORS,  
ESTATE LAWYERS, SPECIAL NEEDS  
TRUST LAWYERS AND LIEN  
RESOLUTION LAWYERS, WE ALL CAME  
TOGETHER AND DISCUSSED EXACTLY  
THAT.

IT'S NOT AN ADDITIONAL FEE.  
IT'S A SEPARATE AND DISTINCT FEE  
BASED ON A SEPARATE AND DISTINCT  
AGREEMENT.

>> WHAT DOES THE OTHER LAWYER  
WHO HAS A SPECIALTY GET TO  
CHARGE THE CLIENT?

>> THAT AMOUNT HAS TO COMPLY  
WITH 4-1.5 IN ITS ENTIRETY.

>> SO THEY GET TO CHARGE UP TO  
WHAT?

HOW MUCH?

>> IF IT'S BASED ON A  
CONTINGENCY, THEN IT MUST MEET  
ALL THOSE REQUIREMENTS.

>> SO THE LAWYER-- SO THE

CLIENT THEN AFTER GETTING A RECOVERY OF A MILLION OF WHICH A LAWYER TAKES 30-40%, THEN-- AND ENDS UP WITH THIS, AND SAY THERE IS 50,000 IN COSTS, ENDS UP WITH HALF A MILLION DOLLARS.

NOW THERE'S STILL \$300,000 IN LIENS, THAT OTHER LAWYER CAN CHARGE A PERCENTAGE UP TO 30 OR 40% OF THAT AMOUNT?

>> OF THE NET RECOVERY.

>> I MEAN THAT-- AND, YOU, EVERYBODY IN THIS STATE DOESN'T SEE THAT AS BEING, WHEREAS MR-- YOU, MR. COHEN, MR. SIRCY, MR., YOU KNOW, WHOEVER ELSE AROUND THE STATE SAYS THIS IS WHAT WE DO.

WE DO BIG CASES.

AND WHAT WE KNOW IS WE'RE GOING TO GET A BIG RECOVERY WHEN THERE IS BIG MEDICAL.

WE CAN HANDLE THIS FOR THE CLIENT, AND WE CAN HANDLE IT WELL.

I'M JUST NOT GETTING HOW THIS CAN BE FAIR TO THE CLIENT, MR. COHEN.

I UNDERSTAND WHAT YOU'RE SAYING. THERE'S SOMETHING WRONG TO ME. AND I UNDERSTAND THE LANDSCAPE'S CHANGED IN 21 YEARS SINCE, YOU KNOW, I WAS A LAWYER DOING THIS TYPE OF LITIGATION.

BUT, YOU KNOW, IF YOU'RE NOT ABLE AS A LAWYER TO TAKE A BIG CASE AND THEN ALSO RESOLVE THE FEES, MAYBE YOU SHOULDN'T BE TAKING A 30-40% FEE TO BEGIN WITH?

>> AND THAT MIGHT BE A FAIR CONSIDERATION--

>> BUT WHO DECIDES IT?

WHO MAKES THAT DECISION?

>> THE CLIENT.

>> HOW DOES THE CLIENT AS A CONSUMER, I MEAN, WHY SHOULDN'T THIS AT THE VERY LEAST WHEN IT'S A LARGE LIEN AND SOMEONE KNOWS IT AT THE BEGINNING BECAUSE YOU

KNOW WHAT THAT AMOUNT IS, HAVE TO GO BEFORE THE JUDGE TO GET APPROVAL OF THE ENTIRE SITUATION INCLUDING IF YOU INTEND TO HAVE A SEPARATE LAWYER DO THE LIEN RESOLUTION?

>> BECAUSE AT THE END OF THE DAY, IT'S IN WHAT'S IN THE BEST INTERESTS OF THE CLIENT.

AND IT'S IN THE BEST INTERESTS OF THE CLIENT TO HAVE THE LEVEL PLAYING FIELD AND TO HAVE THE LAWYER WITH THE SKILL SET TO COMPETE AGAINST THE LIEN HOLDER'S LAWYERS.

AND I THINK IT'S A LITTLE UNFAIR TO CHARACTERIZE THE UNDERLYING TORT LAWYER TO HAVE THE SAME SKILL SET TODAY IN THIS SUBSTANTIALLY CHANGED CLIMATE--

>> THAT ORIGINAL LAWYER DOES HAVE THOSE SKILL SETS?

>> THEN--

>> THAT LAWYER CANNOT THEN CHARGE AN ADDITIONAL FEE.

>> EXACTLY RIGHT, AND THAT'S WHAT OUR RULE PROVIDES.

THAT IF THE UNDERLYING TORT LAWYER HAS THE SKILL SET TO COMPETE ON THAT PLAYING FIELD--

>> BUT DON'T YOU SEE THAT THE CLIENT THEN, IF THE CLIENT HAS THE WHEREWITHAL TO FIND A LAWYER WHO HAS THE WHEREWITHAL TO TAKE CARE OF THAT CASE, THAT CLIENT IS GOING TO PAY THE LAWYER, YOU KNOW, 33.3 OR 40% OR WHATEVER IT IS OF THE RECOVERY FOR EVERYTHING.

BUT IF THE CLIENT DOESN'T KNOW AND GOES TO A LAWYER WHO DOES NOT HAVE THAT SKILL SET, THE TWO LAWYERS ARE GOING TO END UP TAKING, YOU KNOW, 75% OF THE RECOVERY.

I MEAN, IT JUST SEEMS LIKE--

>> BUT IT DOESN'T WORK THAT WAY, JUSTICE.

>> AS JUSTICE PARIENTE SAID, IT SEEMS LIKE THERE'S SOMETHING A



LITTLE OFF ABOUT THAT.

>> IT DOESN'T WORK IN THAT FASHION BECAUSE WHAT THE LAWYER IN THE SECOND CASE, THE INDEPENDENT CASE, THE SEPARATE FEE CONCERNING LIEN RESOLUTION DOES IS TAKES A CONTINGENCY, IF THAT'S THE FACT, WITH RESPECT TO THE NET SAVINGS FROM WHAT THE LIEN HOLDER IS CLAIMING.

SO IT'S NOT THAT YOU ADD THEM TOGETHER AND IT COMBINES TO A 75% FEE ON THE GROSS RECOVERY. IT DOESN'T WORK IN THAT FASHION.

>> SO YOU'RE SAYING THAT-- AND I'M TRYING TO UNDERSTAND WHAT THE BAR'S PROPOSAL IS.

SO YOU'RE SAYING THAT THE PERSON WITH THE EXPERTISE IN THE SUBROGATION OR THE LIEN ONLY GETS, CAN ONLY GET A PORTION OF WHAT THEY'RE SAVING THE CLIENT?

>> YES.

WHICH IS WHY IN ALL MY 30--SOME--ODD YEARS OF PRACTICE--

>> DOES THIS RULE SAY THAT?

>> IT DOES.

IT SAYS THAT--

>> I MEAN, BECAUSE I GUESS I DIDN'T QUITE UNDERSTAND IT THAT WAY.

SO DO WE NEED TO CLARIFY IT?

>> THE LIEN RESOLUTION LAWYER IS ONLY ENTITLED TO A FEE BASED ON THE RESOLUTION OF THE LIEN, NOT ON THE GROSS PROCEEDS OF RECOVERY.

>> WELL, THAT'S FINE.

WHY SHOULDN'T THE CLIENT UP FRONT KNOW THAT IN THE CONTINGENT FEE AGREEMENT, I-- YOUR CASE MAY INVOLVE EXTRAORDINARY SUBROGATION AND LIEN RESOLUTION?

>> WE PROVIDE FOR THAT.

>> IN THE CONTRACT?

>> YES.

AND CONTRACTS--

>> NO, I'M ASKING YOU, DOES THE RULE SAY THAT?

LET ME JUST GO OVER THIS.  
WE-- YOUR CASE MAY INVOLVE  
EXTRAORDINARIES-- GO OVER  
THIS-- SUBROGATION AND LIEN  
RESOLUTION.

WE WILL ONLY TAKE A FEE ON THE  
AMOUNT THAT WE RECOVER IN EXCESS  
OF THE AMOUNT OF YOUR LIEN.  
IN OTHER WORDS, SO THE LAWYER  
WHO IS NOT GOING TO PERFORM  
THESE SERVICES DOES NOT GET A  
PERCENTAGE OF THE AMOUNT OF THE  
LIEN.

SO THEN THERE IS NO DOUBLE-- I  
MEAN, DID ANYONE CONSIDER THAT?  
IN OTHER WORDS, YOU KNOW AT THE  
BEGINNING YOU'VE GOT A LOT OF  
MEDICAL BILLS.

>> RIGHT.

>> YOU OUGHT TO KNOW WHERE THE  
LIENS ARE AND WHETHER IT IS, AND  
YOU KNOW WHETHER YOU HAVE THE  
ABILITY TO TAKE THIS OR NOT.  
THE LAWYER OUGHT TO THEN NOT BE  
ABLE TO TAKE A CONTINGENT FEE ON  
THE AMOUNT THAT IS SUBJECT TO  
THE LIEN, AND THEY OUGHT TO BE  
ABLE TO TELL THE CLIENT UP FRONT  
THAT WE WILL NOT BE ABLE TO DO  
YOUR LIEN AND, THEREFORE, WE'RE  
NOT TAKING A FEE.

>> UH-HUH.

>> AND THAT WOULD SOLVE-- THAT  
WOULD LEVEL THE PLAYING FIELD  
BECAUSE MR. CITRIN SAYS, LISTEN,  
YOU OR HE OR SOMEBODY MAY HAVE  
THIS ABILITY TO DO IT.

SO WHY SHOULD THEY BE TREATED  
LESS, LESS FAIRLY, SO TO SPEAK,  
THAN AS JUSTICE QUINCE SAYS THE  
LAWYER THAT IS, YOU KNOW, THE  
ADVERTISER THAT JUST WANTS TO  
GET THE CASE IN, GET IT RESOLVED  
BUT REALLY DOESN'T HAVE THESE  
ABILITIES?

>> IF IN THE SETTLEMENT OF THE  
CASE IT WAS SO DEFINED IN THAT  
FASHION THAT X AMOUNT OF DOLLARS  
WAS SETTLED PURSUANT TO PAIN AND  
SUFFERING, FUTURE LOSS OF

EARNINGS, LOST AND PAST EARNINGS AND THEN ON-- WITH RESPECT TO THE MEDICAL BILLS AND OUTSTANDING LIENS, THAT COULD POSSIBLY BE A SOLUTION TO ONE OF YOUR CONCERNS.

>> HAVE THINGS CHANGED WHERE YOU LOOK AT A CASE AND YOU LOOK AT THE MEDICAL BILLS AND THEN YOU START TO LOOK AND SAY, LISTEN, WHEN I LOOK FOR A SETTLEMENT, IF THIS HAS A LOT OF MEDICAL IN THERE, I'M GOING TO TAKE A-- I'M GOING TO FIGURE THAT A CASE INVOLVES \$300,000 IN MEDICAL BILL IS GOING TO BE WORTH AT LEAST A MILLION OR MORE. HAVE THINGS CHANGED WHERE THE AMOUNT OF THE MEDICAL HAS NOTHING TO DO WITH THE AMOUNT OF THE RECOVERY?

>> ONLY TO THE EXTENT THAT THE LAW HAS CHANGED WITH RESPECT TO--

>> NO, I'M ASKING YOU ABOUT THE AMOUNT OF THE SETTLEMENT. THE AMOUNT OF SETTLEMENT OR IT GOES TO TRIAL.

>> NO QUESTION, THE AMOUNT OF A SETTLEMENT TAKES INTO FAIR CONSIDERATION THE AMOUNT OF LIENS, YES.

>> AND SO IN A CASE THAT GOES TO TRIAL, THEY ACTUALLY LIST THOSE.

>> EXACTLY.

IT WOULD BE A LOT EASIER AS A RESULT OF A VERDICT AS OPPOSED TO A SETTLEMENT.

>> ARTICLE I, SECTION 26 HAS CERTAIN CONSTITUTIONAL RESTRICTIONS ON CONTINGENCY FEES.

IT CAN BE WAIVED, THIS COURT HAS SAID.

AND WHEN THE CONTRACT HAS BEEN ENTERED INTO, IT CAN BE WAIVED BY THE CLIENT.

HOW IS ANY OF THAT IMPACTED BY THIS?

>> YOU'RE RIGHT, JUSTICE.

FOR EXAMPLE, THE AMENDMENT CONCERNING THE LIMITATION ON ATTORNEYS' FEES IN MALPRACTICE CASES CONSTITUTES THE ACCEPTABLE WAIVER PROVISION.

IN THIS CONTEXT ONE OF THE THINGS THAT WE'VE PROVIDED IN CONTEMPLATION OF THAT.

SO I THINK IT CONTEMPLATES UNDER OUR PROPOSAL TO LEVEL THIS PLAYING FIELD SO THAT THE SAME SKILL SET LAWYER IS REPRESENTING THE BEST INTERESTS OF THE TORT VICTIM AS THE SAME SKILL SET LAWYER IS REPRESENTING THE LIEN HOLDER CONTEMPLATES CLIENT HAS TO AGREE, HAS TO CONSENT, HAS TO ACCEPT.

>> LET ME ASK YOU THIS, JUST TO PUT IT IN PROPER PERSPECTIVE.

LET'S ASSUME THERE'S A \$1 MILLION RECOVERY.

AND LET'S ASSUME THAT IT OCCURRED AFTER FILING SUIT WHICH, I GUESS, THE 40% PROVISION KICKS IN.

SO THE LAWYER'S GOING TO GET 400,000 PLUS COSTS.

AFTER LITIGATION, THAT COULD BE EXTENSIVE.

\$100,000 COSTS ARE NOT UNUSUAL.

SO-- AND THEN THERE'S A \$400,000 LIEN BECAUSE THE CLIENT HAS ONLY HAD A \$10,000 PIP POLICY, AND THE REST CAME FROM MEDICARE, MEDICAID, WHATEVER.

SO THE NEXT LAWYER, THE EXTRAORDINARY LAWYER'S GOING TO GET 40% OF THE \$400,000--

>> NO, SIR.

>> AM I CORRECT?

AM I INCORRECT THERE?

>> THAT LAWYER WOULD GET UP TO, IF YOU WANT TO USE 40%, UP TO 40% OF THE SAVINGS FROM THE \$400,000 LIEN.

>> THE SAVINGS FROM THE \$400,000--

>> YES.

SO WITH THAT LAWYER'S SKILL SET

AND HAS THE ABILITY TO COMPETE AGAINST THE SUBSTANTIALLY TRAINED LAWYER FOR THE LIEN HOLDER IS ABLE TO NEGOTIATE A RESOLUTION OR TRY THE CASE IN THE VARIOUS FORMS THAT WE NOW FACE WITH LIENS SUCH AS STATE COURT, FEDERAL COURT, DEPARTMENT OF ADMINISTRATIVE HEARINGS, THAT'S HOW COMPLEX THIS HAS BECOME.

IF THAT LAWYER IS ABLE TO REDUCE THAT LIEN FROM \$400,000 TO \$100,000, HE ONLY GETS A PERCENTAGE ON THAT SAVINGS--

>> ON THE \$100,000--

>> ON THE 300.

>> ON THE \$300,000.

>> RIGHT.

>> WHY CAN'T THE PAYMENT COME FROM THE ATTORNEY WHO HAS THE UNDERLYING CASE?

SEE, I THINK HE WOULD HAVE AN INCENTIVE TO DO A BETTER JOB OF NEGOTIATING, OR IF IT HAS TO COME OUT OF HIS POCKET, I MEAN, HE WOULD BE MORE-- HE WOULD HAVE A BETTER CHANCE OF DEALING WITH THIS EXTRAORDINARY ATTORNEY WHO HAS TO WAIVE ALL THESE THINGS IF THEY KNOW WHAT THEY'RE DOING IN THE FIRST PLACE.

THEY WOULDN'T HAVE HIRED THIS ATTORNEY.

>> JUSTICE PERRY, I THOUGHT ABOUT THAT LONG AND HARD, AND THERE ARE THOSE LAWYERS WHO CANDIDLY WILL HAVE THAT SKILL SET AND MAKE THAT DECISION, BUT I THINK IT'S UNFAIR FOR PROBABLY THE VAST MAJORITY OF LAWYERS IN OUR STATE WHO HANDLE THESE CASES AND DON'T HAVE THE KNOWLEDGE CONCERNING THE COMPLEXITIES OF WHAT WE'RE FACING EVERY DAY. AND YOU ALL KNOW BECAUSE YOU'VE HEARD ARGUMENTS BEFORE THE SUPREME COURT ON--

>> I'M SAYING THAT.

BUT WHY CAN'T THEY PAY FOR IT

THEN INSTEAD OF THE CLIENT?

>> IF THAT'S THE CONSIDERATION,  
THEN WE OUGHT TO HAVE A  
LEGITIMATE AND HONEST DISCUSSION  
ABOUT WHAT GOES INTO RUNNING AN  
UNDERLYING PERSONAL INJURY AND  
WRONGFUL DEATH PRACTICE.

BECAUSE IT'S NOT THAT ONE CASE  
THAT THE LAWYER FACES EVERY DAY  
AND MAY HAVE HAD A SUBSTANTIAL  
RECOVERY.

IT'S THE OVERHEAD, IT'S THE  
COSTS, IT'S THE INVESTIGATION ON  
CASES THAT ARE NEVER TAKEN AND  
NEVER RECOMPENSED AND NEVER  
RECOVERED.

AND SO I THINK TO PLACE THAT  
BURDEN AND EVENTUALLY PLACE THE  
TORT LAWYER, THE PRIMARY LAWYER  
IN THE CONFLICT POSITION OF  
HAVING TO MAKE THAT CHOICE, I  
JUST THINK IT'S UNFAIR WHEN THE  
OTHER SIDE, THE LIEN HOLDER'S  
ATTORNEYS ARE WELL COMPENSATED,  
ARE WELL VERSED, AND IT'S A  
BENEFIT--

>> BUT I THOUGHT WE WERE--

>> IT'S A BENEFIT TO THE CLIENT  
AT THE END OF THE DAY.

>> I THOUGHT WE WERE TALKING  
ABOUT THE BEST INTERESTS OF THE  
CLIENT, NOT THE LAWYER.

>> ME TOO.

AND TO CREATE THE CONFLICT IS  
UNFAIR AND NOT IN THE BEST  
INTERESTS OF THE CLIENT.

WHEN THE CLIENT RECOGNIZES AND  
APPRECIATES THAT AT THE END OF  
THE DAY THE CLIENT'S NET  
RECOVERY IS INCREASED BY THE  
SEPARATE FEE, THE SEPARATE  
STRUCTURE, THE SEPARATE  
AGREEMENT WITH THAT LAWYER  
WORKING TO--

>> HOW IS THERE, UNDER THIS  
RULE, HOW IS THERE ANY INCENTIVE  
FOR THE LAWYER WHO TAKES THE  
PRIMARY CASE TO HANDLE THE  
EXTRAORDINARY LIEN'S RESOLUTION?

>> BECAUSE THE CLIENT, ONE, MAY

NOT AGREE --  
>> MAY NOT AGREE WITH WHAT?  
>>-- AT THE INCEPTION.  
MAY NOT AGREE TO HIRING A  
SEPARATE LAWYER--  
>> I GUESS--  
>> AND OUR RULE PROVIDES  
ORDINARY LIEN SERVICES--  
>> I JUST ASK BECAUSE I'M  
LOOKING AT THE RULE.  
MAYBE-- OKAY.  
SO WHERE ARE, WHERE IS THE  
DISCUSSION THAT THE DISCLOSURE  
HAS TO BE UP FRONT AND IN THE  
CONTRACT?  
>> WELL, WHAT IT TALKS ABOUT IS  
THAT--  
>> BECAUSE I DON'T SEE IT,  
THAT'S THE PROBLEM.  
I DON'T SEE THIS SET OUT IN THE  
RULE.  
>> WE TALK ABOUT THAT, THE  
SERVICES THAT ARE PROVIDED AND  
WHAT ARE NOT PROVIDED ARE SET  
FORTH IN THE CONTRACT.  
AND ONLY AFTER OBTAINING THE  
CLIENT'S WRITTEN INFORMED  
CONSENT TO THE FEES.  
>> THE FEES--  
>> I SEE WHAT YOU'RE SAYING.  
>> THAT'S AFTER THE FACT.  
>> RIGHT.  
I WILL TELL YOU UNDER MY  
CONTRACTS ALL THOSE EXCEPTIONS  
ARE COVERED.  
>> IT'S VERY GOOD WE'VE GOT YOU,  
MR. COHEN, AND PEOPLE ON THE  
BOARD OF GOVERNORS, BUT WE HAVE  
100,000 LAWYERS IN THIS STATE.  
AND IF WE'RE GOING TO DO  
SOMETHING THAT, TO ME, IS NOT  
NECESSARILY GOING TO IMPACT  
CLIENTS IN A VERY ADVERSE WAY IN  
THE CASES WITH BIG RECOVERIES  
BUT STILL BIG LIENS WHERE THE  
LAWYER, THE UNDERLYING LAWYER  
CAN ESSENTIALLY UNDER THIS WALK  
AWAY WITHOUT TELLING THE CLIENT  
UP FRONT THAT I DON'T HAVE THE  
CAPACITY, ABILITY TO RESOLVE THE

KIND OF EXTRAORDINARY LIEN  
RESOLUTION THAT YOU ARE GOING TO  
NEED IN THIS CASE--

>> I AGREE WITH YOU.

>>-- AND IT SEEMS TO ME THAT  
THAT DISCLOSURE OUGHT TO BE UP  
FRONT.

AND IF THERE'S GOING TO BE AN  
ADDITIONAL FEE THAT MAY BE  
CHARGED, THAT THE CLIENT OUGHT  
TO KNOW IT BECAUSE THEN MAYBE  
THEY DON'T WANT THAT LAWYER TO  
REPRESENT THEM.

>> AND YOU'VE HIT THE NAIL ON  
THE POINT, TO BE HONEST WITH  
YOU.

AND THAT IS THAT I AGREE WITH  
YOU.

I THINK IT SHOULD BE DISCLOSED,  
I THINK IT SHOULD BE A  
REQUIREMENT OF DISCLOSE ENOUGH  
IN ADVANCE, AND THAT CLIENT THEN  
HAS THAT OPPORTUNITY TO  
INTERVIEW.

>> BUT YOU AGREE IT'S NOT IN  
THE--

>> I AGREE THE SPECIFIC  
REQUIREMENT IS NOT CONTAINED IN  
HERE.

>> I THINK THIS SHOULD BE  
VERBALLY, THE CLIENT WHEN  
MEETING WITH NOT JUST IN THE  
CONTRACT, BUT I THINK THE LAWYER  
SHOULD EXPLAIN THAT TO THE  
CLIENT DURING THE FIRST VISIT, I  
WOULD THINK, TO TELL THEM THIS  
IS MY FEE STRUCTURE RIGHT HERE.  
NOW, IF THERE'S A LITTLE LIEN  
HERE AND THERE, I CAN WORK--

[INAUDIBLE]

SOMETHING LIKE THAT, I CAN  
HANDLE THAT.

BUT IF WE'RE TALKING ABOUT THE  
FEDERAL GOVERNMENT AND ALL THOSE  
THINGS, I DON'T DO THAT, AND I  
WILL HAVE TO HIRE ANOTHER LAWYER  
FOR YOU THAT WILL COST YOU  
WHATEVER IT IS.

I THINK THEY NEED TO BE TOLD  
THAT BY THE LAWYER.



PERHAPS NOT EVEN A PARALEGAL.  
>> I AGREE WITH YOU, JUSTICE,  
AND I AGREE WITH JUSTICE  
PARIENTE, THAT IT BE IN WRITING  
AND THAT IT BE DISCLOSED TO THE  
CLIENT AT THE INCEPTION OF THE  
RELATIONSHIP.

>> WHY ISN'T THE LAWYER WHO'S  
GOING TO HANDLE THE LIEN  
RESOLUTION TAKE A FEE, A  
CONTINGENT FEE, ON THE AMOUNT  
FOR WHICH A LIEN IS CLAIMED?  
WHY SHOULDN'T THAT GO THEN?  
BECAUSE YOU'RE SAYING THAT WOULD  
BE SAVINGS.

AGAIN, WE'RE TALKING ABOUT  
SOMEBODY WHO'S SERIOUSLY  
INJURED.

AGAIN, WE'RE TALKING ABOUT BIG  
LIEN CASES, I'M ASSUMING.  
WE'RE NOT WORRIED ABOUT-- WE  
MAY BE WORRIED ABOUT THE \$10,000  
CASE BUT NOBODY ELSE IS GOING TO  
TAKE THAT CASE BECAUSE THEIR  
CLIENT DIDN'T GET ANY RECOVERY.

>> RIGHT.

>> SO HOW DOES-- WHY WOULDN'T  
THAT BE APPROPRIATE?  
AND WOULDN'T THAT BE AN  
INCENTIVE FOR THE LAWYER TO  
ACTUALLY KEEP THE CASE LIKE IN  
THE MR. CITRIN SITUATION WHERE  
HE OR YOU MAY HAVE THE ABILITY  
TO DO THAT WORK?

>> WE PROVIDE FOR THAT ANYWAY,  
JUSTICE.

IF THE LAWYER HAS THE ABILITY  
AND EVEN IF THE LAWYER DOESN'T  
HAVE THE ABILITY TO TAKE ON THE  
MORE COMPLEX CASE BUT HAS  
ORDINARY LIEN SERVICES AS WE  
HAVE TALKED ABOUT IT EXTENSIVELY  
IN OUR SPECIAL LIEN COMMITTEE,  
THE LAWYER, THE UNDERLYING  
LAWYER HAS THE OBLIGATION WITH  
NO ADDITIONAL FEE TO HIS  
CONTINGENCY FEE--

>> WELL, THAT'S BECAUSE WE  
REJECTED--

>> RIGHT.

>>-- REJECTED THE FIRST RULE.  
BUT I'M ASKING YOU WHY WOULDN'T  
YOU, IF YOU'RE GOING TO BE  
REFERRING THIS BECAUSE YOU KNOW  
YOU CAN'T HANDLE IT, BE ALLOWED  
TO TAKE A PERCENTAGE ON THE  
AMOUNT OF THE LIEN?

IN OTHER WORDS, YOU BENEFITED  
FROM THE FACT-- AND THIS IS--  
THAT THESE DAMAGES ARE HUGE,  
BECAUSE THE MEDICALS ARE HUGE.  
BUT THE MEDICALS ARE HUGE  
BECAUSE MEDICARE HAS A LIEN OR  
ERISA, YOU KNOW, ALL THESE OTHER  
COMPLEXITIES.

WHY SHOULD YOU TAKE A PERCENTAGE  
OF THAT?

>> I UNDERSTAND WHAT YOU'RE  
SAYING, AND THE ONLY THING I CAN  
EXPLAIN IN THAT CONTEXT IS I  
WISH IT WAS AS DISCERNING AS THE  
RECOVERY IN A SETTLEMENT OF AN  
UNDERLYING PERSONAL INJURY OR  
WRONGFUL DEATH CASE AS TO WHAT  
WAS DESIGNATED FOR PURPOSES OF  
LIEN RECOVERY OR MEDICAL BILLS  
AND EXPENSES VERSUS PAIN,  
SUFFERING, LOST WAGES AND THE  
OTHER ELEMENTS OF DAMAGES.

>> YOU WANT TO DO THAT, BUT YOU  
WANT TO ALLOCATE THE SMALLEST  
AMOUNT TO WHAT WAS THE AMOUNT OF  
BILLS SO YOU HOPEFULLY THEN ARE  
ABLE TO END UP NEGOTIATING A  
BETTER RESULT.

>> AND THAT'S WHY, PROBABLY, THE  
NET RESULT OF WHAT YOU'RE  
SUGGESTING MAY NOT HAVE SUCH AN  
IMPACT, BECAUSE IF LAWYERS  
STARTED DOING IT LIKE THAT LIKE  
I HAVE SEEN FOR PURPOSES OF  
NEGOTIATING THE LIENS DOWN THE  
ROAD, THEY END UP ALLOCATING A  
SMALL PERCENTAGE, YOU'RE EXACTLY  
RIGHT, TO THE MEDICAL BILLS AND  
EXPENSES.

>> OKAY.

THANK YOU-- OH, SURE,  
ABSOLUTELY.

>> I'M STILL NOT CONVINCED THAT

WE'RE CLEAR WITH THE PUBLIC OR THE BAR OF WHEN YOU CROSS OVER FROM ORDINARY INTO EXTRAORDINARY.

WE'VE HEARD ALL THESE, YOU KNOW, 300,000, THESE BIG NUMBERS, BUT THESE ARE ISSUES THAT ARISE IF CASES-- YOU HAVE 10,000 IN MEDICALS.

THE ERISA LIEN MAY NOT FIGHT IT AS MUCH AS THEY WOULD FOR A LARGE ONE.

BUT THAT'S WHAT I'M STILL NOT UNDERSTANDING.

ARE WE SAYING ONCE THERE IS AN ERISA LIEN, THAT IS BY DEFINITION AN EXTRAORDINARY LIEN?

>> I WOULD CERTAINLY TELL YOU THAT MY EXPERIENCE IS ERISA, MEDICAID, MEDICARE SET ASIDES, TRICARE, HOSPITAL LIENS ARE ALL COMPLEX IN TODAY'S--

>> WELL, THEN OKAY.

SO TO ME, IT WOULD SEEM AS THAT WOULD BE A BETTER WAY TO APPROACH THIS THAN JUST USING THE WORD "EXTRAORDINARY."

BECAUSE AS YOU READ IT, I WOULD NOT KNOW THAT FROM JUST READING THE RULE.

AND CERTAINLY, A LAYPERSON IS NOT.

AND WAS IT DISCUSSED THAT, YOU KNOW, MAYBE WE HAVE COME TO THE ERA THAT GOOD TORT LAWYERS NEED TO HAVE IN THEIR FIRMS GOOD LIEN LAWYERS AS THE SERVICE TO THE CLIENT?

HAVE WE HAD THAT DISCUSSION YET?

>> THE DISCUSSION WE HAD WAS THE RECOGNITION OF NOT SO MUCH IN ADDING THE EXPENSE AND THE COSTS ASSOCIATED WITH THAT AS OPPOSED TO WHAT HAD BEEN THE HURDLES AND OBSTACLES FACING LAWYERS ON BOTH SIDES OF THIS ISSUE.

YOU KNOW--

>> LOOK, WE GET DOWN TO A POINT, AND THE QUESTION IS WHAT KIND OF

SERVICES SHOULD A LAWYER PROVIDE FOR WHATEVER FEE YOU CONSIDER REASONABLE.

IT SEEMS AS THOUGH WE'RE REALLY GETTING INTO A VERY COMPLEX PROCESS OF DECIDING WHAT "FEE" IS.

>> BUT YOU'VE RECOGNIZED THIS IN THE PAST.

YOU RECOGNIZED THE APPELLATE LAWYER WHO'S ENTITLED--

>> WELL, THAT'S NOT COMPLEX COMPARED TO THIS.

>> NO.

BUT YOU RECOGNIZED THAT'S NOT PART OF THE UNDERLYING TORT LAWYER'S NEEDS.

WE'VE GOT ESTATE LAWYERS, PROBATE LAWYERS.

I'M SURE--

>> WELL, WAIT, WAIT, WAIT. THAT'S NOT THE LIEN.

WE'RE TALKING ABOUT LIEN.

>> YES, SIR.

>> I'M TALKING ABOUT--

>> MY CONCERN IS THAT WE ARE GOING TO BIFURCATE THIS TO SUCH AN EXTENT THAT WE'RE NOT REALLY LOOKING AT THE PICTURE OF WHAT IT'S GOING TO COST A CLIENT TO DO THIS CASE IN A WAY IN WHICH IT SHOULD BE DONE.

THAT'S WHAT MY CONCERN IS.

AND IF YOU'RE SAYING THAT EVERY ERISA MATTER IS CONSIDERED TO BE COMPLEX, THAT MEANS THERE'LL BE ANOTHER LAWYER COMING IN, AND IS THAT THE REMEDY?

I MEAN, IT CAN BE IS WHAT'S BEEN SUGGESTED, BUT IT COULD ALSO BE THAT WE'RE GOING TO REQUIRE THAT TO BE TAKEN CARE OF FROM THE ORIGINAL FEE.

I MEAN, IT'S ALWAYS IN THE PAST BEEN THAT WAY.

>> I UNDERSTAND YOUR POINT.

IT'S JUST THAT WITH RESPECT TO THOSE CASES, TALKING PRACTICALLY YOU'RE ONLY GOING TO DEAL WITH THOSE CASES WHEN THERE'S A

MONETARY EFFECT ON THE CLIMATE.  
IF YOU HAVE A \$10,000 LIABILITY  
INSURANCE POLICY AND YOU HAVE  
\$25,000 IN MEDICAL BILLS, IN ALL  
LIKELIHOOD NO SEPARATE AGREEMENT  
IS GOING TO BE ENTERED INTO.  
AS A MATTER OF FACT, THE CHANCES  
OF A LAWYER TAKING THAT INTO THE  
UNDERLYING CASE IS NOT GOING TO  
OCCUR.

AND TO DISTINGUISH THE  
DIFFERENCE, THERE ARE MANY  
RELATIONSHIPS LAWYERS HAVE IN  
THE VARIOUS COMMUNITIES WITH  
HEALTH CARE PROVIDERS.  
LAWFUL, ETHICAL RELATIONSHIPS IN  
WHICH THEY CAN PLACE THAT--  
THEY CAN PICK UP THAT PHONE, AND  
THEY CAN NEGOTIATE THAT LETTER  
OF PROTECTION.  
THAT'S ORDINARY LIEN SERVICES.  
THAT'S SOMETHING LAWYERS DO  
EVERY DAY.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> MAY IT PLEASE THE COURT,  
FLOYD FAGLIE WITH STAUNTON &  
FAGLIE.

LIKE THE SECTION IN THE ACADEMY  
OF FLORIDA LAW ATTORNEYS AND A  
NUMBER OF OTHER ATTORNEYS,  
STAUNTON & FAGLIE FILED A  
COMMENT IN SUPPORT OF THIS RULE.  
I WANT TO ADDRESS A FEW  
QUESTIONS THAT HAVE BEEN ASKED.  
WHAT'S THE DISTINCTION BETWEEN  
"EXTRAORDINARY" AND "ORDINARY"?  
IN OUR COMMENT WE OUTLINED THAT  
THERE ARE CERTAIN LIENS --  
MEDICARE, ERISA, MEDICAID,  
TRICARE, V.A.-- THAT INVOLVE A  
SEPARATE SET OF LAW, FEDERAL LAW  
THAT MAY BE CONTROLLED BY  
PRECEDENT FROM OUTSIDE OF  
FLORIDA.

>> SO DOES THAT MEAN THAT EVERY  
PERSON OVER AGE OF 65 IS GOING  
TO-- THE ORIGINAL PERSONAL  
INJURY LAWYER DOESN'T HAVE TO  
HANDLE THAT SUBROGATION INTEREST

OF MEDICARE?

>> NO.

>> I MEAN, DON'T WE EVEN--  
IT'S-- DO YOU AGREE WITH WHAT  
MR. COHEN SAID, THAT IN ANSWER  
TO JUSTICE LEWIS' QUESTION THAT  
EXTRAORDINARY LIEN RESOLUTION  
MEANS ERISA, MEDICAID, MEDICARE,  
HOSPITAL LIENS AND WHAT'S  
THIS--

>> TRICARE?

>> TRICARE?

YOU DON'T?

>> MOST OFTEN YOU'RE GOING TO --

>> DO YOU AGREE WITH THAT?

I'M ASKING YOU, DO-- SO HOW  
THEN, IN ANSWER TO JUSTICE  
LEWIS' QUESTION, HOW WOULD YOU  
DEFINE IT?

>> THE PERSONAL INJURY ATTORNEY  
SHOULD MAKE BEST EFFORTS TO  
NEGOTIATE AND RESOLVE ALL LIENS,  
MAKE BEST EFFORTS, DO WHAT HE  
CAN TO RESOLVE THEM.

HOWEVER, AT A CERTAIN POINT HIS  
BEST EFFORTS MAY NOT BE GOOD  
ENOUGH.

A 10% REDUCTION IN THE LIEN MAY  
NOT BE SATISFACTORY TO THE  
CLIENT, AND THE CLIENT SHOULD  
HAVE THE ABILITY TO HIRE  
SEPARATE COUNSEL WITH EXTENSIVE  
EXPERIENCE IN RESOLVING LIENS,  
THE EXTENSIVE EXPERIENCE IN THE  
SEPARATE LAW AND THE SEPARATE  
PROCEEDINGS NECESSARY TO RESOLVE  
THE LIEN--

>> YOU'RE SAYING THAT THE  
ORIGINAL LAWYER HAS AN  
OBLIGATION TO, FIRST, MAKE AN  
EFFORT, AND ONLY AFTER HIS  
EFFORT FAILS OR THE CLIENT IS  
NOT SATISFIED WITH THE EFFORT,  
ONLY THEN CAN THE CLIENT BE--  
GO OUT AND HIRE ANOTHER LAWYER?  
>> YES.

>> AN EFFORT HAS TO BE MADE.

>> YOUR HONOR, WHAT WAS THAT?

>> AN EFFORT NEEDS TO BE MADE BY  
THE ORIGINAL--

>> YES.

AND THAT'S OUTLINED IN THE RULE TEXT AS WELL AS THE RULE COMMENT, THAT THE UNDERLYING ATTORNEY MUST RESOLVE LIENS THAT ARE EASILY NEGOTIABLE, MAKE BEST EFFORTS.

IT'S ONLY AT THE POINT IN TIME WHERE IMPASSE IS REACHED WHERE THE EXTRAORDINARY SERVICES ARE NEEDED SHOULD THE CLIENT BE ABLE AND FREE TO HIRE AN ATTORNEY WITH EXTENSIVE EXPERIENCE--

>> LET ME ASK YOU THIS.

IT WAS SAID THAT THE LIEN AND THE SUBROGATION EXPERT LAWYER FEES WOULD BE LIMITED TO A PERCENTAGE OF WHAT YOU HAVE SAVED THE CLIENT?

IS THAT YOUR UNDERSTANDING OF IT ALSO?

>> THAT'S HOW IT'S TYPICALLY DONE, YES.

>> AND SO WHERE IS IT IN THE RULE, WHAT LANGUAGE-- I CAN'T-- I NEED THE LANGUAGE THAT'S IN THE RULE THAT SAYS THAT.

>> IT SAYS THAT THE ATTORNEY IN THE SEPARATE, EXTRAORDINARY LIEN RESOLUTION SERVICES, FEES MUST COMPLY WITH THE OTHER PROVISIONS OF THAT SAME SECTION.

>> AND WHERE ARE THEY?

WHERE ARE THE--

>> I STILL DON'T READ--

>> THE OTHER PROVISIONS OF RULE 4-5 OUTLINE WHAT IS A REASONABLE FEE FOR AN ATTORNEY TO CHARGE.

>> BUT YOU'RE, BUT THIS CLIENT AFTER HAVING TO PAY A LAWYER A CONTINGENT FEE ON THE TOTAL AMOUNT RECOVERED WHICH INCLUDED THE AMOUNT OF THE MEDICAL AS PART OF THE RECOVERY, SO THEY ALREADY TOOK A PERCENTAGE OFF, NOW IS GOING TO BE PAYING A SEPARATE LAWYER A PERCENTAGE OF THE FEE FOR SOME OF THE SAME AMOUNTS THAT THEY ALREADY PAID

THE FIRST LAWYER.  
IT'S LIKE DOUBLE-- IT'S NOT--  
I DON'T SEE THIS BEING IN THE  
BEST INTERESTS OF THE CLIENT  
UNLESS, UNLESS THE DISCLOSURE IS  
UP FRONT.

THE LAWYER SAYS THAT HE OR SHE  
DOESN'T HAVE THIS ABILITY.  
AND THEN THEY GO TO A LAW FIRM  
WHERE THEY HAVE THIS ABILITY.  
BECAUSE THE LARGER LAW FIRMS OR  
THE MOST EXPERIENCED PERSONAL  
INJURY LAWYERS WILL KNOW THAT  
THIS IS SOMETHING THAT'S PART  
AND PARCEL OF SERVICES THAT THEY  
HAVE TO PROVIDE.

>> WHAT'S PART AND PARCEL IS  
THAT ALL ATTORNEYS MUST MAKE  
THEIR BEST EFFORTS TO RESOLVE  
THE LIEN.

>> WHAT IF YOU HAVE  
EXTRAORDINARY, SOME  
EXTRAORDINARY EVENT, ERISA,  
THOSE TYPE THINGS?

AND I BELIEVE MR. COHEN  
DESCRIBED A SITUATION WHERE  
THERE COULD BE A CIRCUMSTANCE IN  
WHICH A LAWYER WOULD NOT TAKE  
THAT CASE BECAUSE THERE WOULD  
NOT BE A SUFFICIENT AMOUNT OF  
SAVINGS.

WHAT HAPPENS IN THOSE CASES?

>> IN THOSE-- WHICH LAWYER  
TAKING THE CASE HERE, THE LIEN  
ATTORNEY TAKING THE CASE?

>> YEAH.

IF IT TRULY IS A COMPLICATED  
THING THAT NEEDS ADDITIONAL  
COUNSEL BUT NOBODY WILL TAKE IT  
BECAUSE OF THE ECONOMICS OF IT,  
WHAT HAPPENS IN THAT  
CIRCUMSTANCE?

>> IN MOST CIRCUMSTANCES THOSE  
CASES ARE TAKEN BECAUSE OF THE  
RELATIONSHIP WITH THE LIEN  
ATTORNEY AND THE PERSONAL INJURY  
FIRM.

YOU CAN'T JUST CHERRY PICK THE  
BIG CASES.

YOU TAKE THE CASE, YOU CHARGE A



REASONABLE FEE OR NO FEE AT ALL TO RECOVER THE -- TO RESOLVE THE LIEN BECAUSE THAT'S WHAT'S IN THE BEST INTERESTS OF THE INJURED PARTY.

>> SO THAT LAWYER WILL TAKE IT EVEN THOUGH IT'S-- THAT PARTICULAR CASE IS NOT ECONOMICALLY VIABLE JUST BECAUSE THAT'S A REFERRAL SOURCE THEY DON'T WANT TO TURN DOWN, IS THAT IT?

>> WELL, NOT NECESSARILY THAT, BUT SOMETIMES IT'S DOING THE RIGHT THING.

>> AND SO IF THE LIEN SUBROGATION LAWYER, USING HIS BEST EFFORTS, DOESN'T GET THE LIEN REDUCED AND THAT EXTRAORDINARY CASE WHERE YOU DON'T GET THE LIEN REDUCED, THAT LAWYER GETS PAID NOTHING?

>> IN MY VIEW, THAT'S WHAT SHOULD HAPPEN.

YES.

>> OKAY.

BUT I--

>> THOSE ARE THE RESULTS, YOU SHOULDN'T BE PAID.

>> BUT I'VE SEEN THAT THIS RULE REALLY SPELLS THAT OUT, THAT THAT LIEN SUBROGATION LAWYER'S FEE WOULD BE BASED ONLY ON SAVINGS.

AND I DON'T-- I HONESTLY DON'T SEE THAT THAT RULE IS WRITTEN IN A MANNER THAT SAYS THAT.

>> UNDER THE RULE, LET ME ASK YOU, COULD A LAWYER PLACE THE AMOUNT OF THE TOTAL AMOUNT OF THE LIEN IN TRUST, IN A TRUST ACCOUNT OR THE CLIENT AND DISBURSE THE REMAINDER? COULD A LAWYER DO THAT?

>> YES.

THAT'S TYPICALLY WHAT IS DONE.

>> SO IF THE LIEN CANNOT BE RESOLVED BY THE UNDERLYING LAWYER OR NO ONE ELSE WILL TAKE IT, THAT MONEY WILL STAY IN A

TRUST ACCOUNT, LIKE, FOREVER.  
HOW LONG WOULD IT BE IN THERE?  
>> UNTIL THERE'S AGREEMENT  
BETWEEN THE LIEN HOLDER AND THE  
CLIENT IN THAT CIRCUMSTANCE OR  
UNTIL THE CASE IS TAKEN THROUGH  
TO A JUDICIAL DETERMINATION.  
AND THAT EXACT PROCEDURE--  
>> BUT IF NOBODY'S TAKING THE  
CASE, WHO'S TAKING IT TO THE  
INITIAL DETERMINATION?  
IF THE UNDERLYING ORDER'S NOT  
DOING IT AND NOBODY ELSE WILL  
TAKE THE CASE AND THE MONEY'S  
JUST SITTING THERE IN TRUST, YOU  
KNOW, AND THE FEDS ARE NOT  
PUSHING IT, WHO TAKES THE CASE  
THROUGH?  
>> TYPICALLY, THE LIEN HOLDER  
WILL COME AND DEMAND PAYMENT  
THROUGH JUDICIAL ACTION AGAINST  
THE LAWYER'S TRUST ACCOUNTS AND  
THE LAWYER'S LAW FIRM.  
THAT DOES HAPPEN.  
AND THAT EXACT PROCEDURE IS  
OUTLINED NOW IN THE NEW MEDICAID  
LIEN DISPUTE PROCEDURE ADOPTED  
BY THE 2013 LEGISLATURE WHERE  
THE LEGISLATURE HAS STRIPPED  
FROM THE TRIAL COURT THE ABILITY  
OF MEDICAID RECIPIENTS TO  
CHALLENGE LIENS ASSERTED AGAINST  
THE SETTLEMENTS AND HAVE PLACED  
THAT JURISDICTION SOLELY IN  
TALLAHASSEE.  
THE LIEN AMOUNT MUST BE PLACED  
IN TRUST IN THAT DISPUTE.  
SO THAT IS A WELL-DEFINED AREA  
WHERE THE MONEY IS HELD TO  
PROTECT THE LIEN.  
>> WOULD IT BE YOUR  
UNDERSTANDING THAT THE FIRST  
LAWYER RETAINED HAS AN  
OBLIGATION TO DEAL WITH THE LIEN  
UNLESS A LAWYER'S SEPARATELY  
HIRED?  
>> YES.  
>> SO IN MY CIRCUMSTANCE WHERE  
THERE'S NO OTHER LAWYER THAT  
WILL TAKE THE CASE, THE FIRST

LAWYER'S ON THE HOOK FOR TAKING THE CLIENT AND SHOULD REPRESENT THE CLIENT AS BEST HE CAN.

>> YES.

>> OKAY.

>> HE MUST MAKE BEST EFFORTS TO RESOLVE THAT LIEN.

BUT THE ISSUE OF IMPASSE ARISES IF THE CLIENT'S NOT AGREEABLE TO DISBURSEMENT OF THOSE FUNDS AND ISN'T SATISFIED, THEN THAT CLIENT SHOULD BE FREE TO HIRE AN ATTORNEY WITH EXTENSIVE EXPERIENCE RESOLVING THAT TYPE OF--

>> SO, AGAIN, WHY SHOULDN'T THE FIRST LAWYER SAY UNDER THESE CIRCUMSTANCES I AM NOT GOING TO TAKE A FEE ON THE AMOUNT OF THE LIEN?

>> I DON'T KNOW IF THAT'S PROVIDED FOR IN THIS--

>> NO, IT'S NOT.

BUT WHY ISN'T THAT THE THING THAT IS IN THE BEST INTEREST OF THE CLIENT?

>> WHAT'S IN THE BEST INTEREST OF THE CLIENT IS THAT THE CLIENT HIRE THE ATTORNEY THAT--

>> NO, IT'S REALLY IN THE-- I MEAN, THESE ARE-- WE'RE TALKING ABOUT THE MOST SEVERELY INJURED PEOPLE THAT ARE GOING AND THE MOST VULNERABLE THAT ARE-- AND THAT'S WHY I THINK AT LEAST I'M CONCERNED ABOUT WHAT DISCLOSURES ARE MADE UP FRONT, WHETHER THE COURT NEEDS TO GET INVOLVED IF THERE'S GOING TO BE THE POSSIBILITY OF MORE THAN A 40% CONTINGENT FEE.

AND I DON'T THINK THAT'S COVERED RIGHT NOW IN THIS RULE.

>> PLEASE DO KEEP IN MIND THAT IN CASES INVOLVING SERIOUSLY INJURED INDIVIDUALS THE PAST MEDICALS DO NOT DRIVE THE SETTLEMENT AND THE EVENTUAL AWARD.

FUTURE MEDICALS, INABILITY TO

WORK AND HUMAN DAMAGES--  
>> ARE YOU A PERSONAL INJURY  
ATTORNEY?  
>> NO, I'M NOT.  
>> OKAY.  
WELL, I WOULD REALLY DISPUTE  
THAT THAT'S THE CASE, OKAY?  
[LAUGHTER]  
BUT THAT'S ALL RIGHT.  
APPRECIATE IT.  
>> THANK YOU, SIR.  
THANK YOU FOR YOUR ARGUMENTS.  
THANK YOU.  
THANK YOU FOR YOUR ARGUMENTS.  
IS THERE REBUTTAL INVOLVED?  
>> EVERYONE'S ON THE SAME SIDE.  
>> EVERYBODY'S ON THE SAME SIDE.  
>> JUST WE'RE ON THE OTHER SIDE.  
[INAUDIBLE CONVERSATIONS]  
[LAUGHTER]  
>> WE'LL ASK YOU ABOUT IT.