>> NEXT CASE IS HERNANDEZ
VERSUS CRESPO.
>> MAY IT PLEASE THE COURT,
I'M DINAH STEIN ON BEHALF
OF PLAINTIFF.
WE'RE HERE ON A CONFLICT IN THE
SANTIAGO VERSUS BAKER CASE WITH
THE FIFTH DISTRICT BELOW
ESSENTIALLY HOLDING THAT UNDER
THIS COURT'S DECISION IN FRANKS
VERSUS BOWERS, PARTIES TO A
MEDICAL MALPRACTICE ACTION ARE
NO LONGER ENTITLED TO PRIVATELY
AGREE TO ARBITRATE.
AND IT IS OUR POSITION THAT THIS
IS A MISREADING OF BOWERS, THAT
BOWERS -- FRANKS VERSUS BOWERS
STILL ALLOWS PARTIES TO
PRIVATELY ARBITRATE UNDER THE
MMA, THE MEDICAL MALPRACTICE
ACT, SO LONG AS THE ARBITRATION
AGREEMENT INCORPORATES ALL OF
THE INCENTIVES, SUBSTANTIVE
REMEDIES, PERSONALITIES OF
THE MMA.
AND THAT IS THE AGREEMENT THAT
WE HAVE IN THIS CASE, WHICH
PRECISELY COMPLIES WITH THIS
COURT'S DECISION IN FRANKS
VERSUS BOWERS.
>> DO THEY HAVE TO -- WHEN THEY
AGREE TO ARBITRATION, THEY'VE
GOT TO ADMIT LIABILITY?
>> NO.
NO.
>> SO THEN -- THAT'S WHAT I'M --
I'M HAVING TROUBLE, THAT IF YOU
DON'T ADHERE TO THE BENEFITS OF
THE MEDICAL MALPRACTICE ACT;
THAT IS, BY SAYING I ADMIT
LIABILITY, ALL OF THE VARIOUS
ASPECTS THAT WERE OUTLINED, HOW
THIS IS DIFFERENT FROM FRANKS V.
BOWERS.
I MEAN, OBVIOUSLY, I MEAN, I
WOULD THINK YOU COULD COME INTO
A VALID ARBITRATION AGREEMENT
WHERE YOU SAY WE'RE GOING TO
ARBITRATE, BUT THEN EVERYBODY
RETAINS THEIR RIGHTS AND YOU'RE

NOT ARBITRATING UNDER THE ACT.
BUT I DON'T KNOW HOW -- SO HOW
IS THIS DISTINGUISHABLE FROM
FRANKS V. BOWERS?
>> THERE'S A FUNDAMENTAL
DIFFERENCE.
FRANKS VERSUS BOWERS DIDN'T HAVE
STATUTORY ARBITRATION.
IT DID AWAY WITH IT.
THERE WAS NO STATUTORY
ARBITRATION.
IN OTHER WORDS, YOU WENT
STRAIGHT TO THE CONTRACTUAL
ARBITRATION AND THAT WAS IT.
AND THAT'S WHERE THERE WAS NO
ADMISSION OF LIABILITY.
THERE WAS JUST A LIMIT ON
DAMAGES.
THIS IS -- THIS HAS A HUGE
DIFFERENCE AND THAT IS THIS
ARBITRATION AGREEMENT DOESN'T
EVEN GET TRIGGERED UNTIL THE
PARTIES HAVE THE OPPORTUNITY TO
AGREE -- MUTUALLY AGREE TO
STATUTORY ARBITRATION.
SO THE PARTIES ARE FREE IN THIS
CASE -- IN FACT, THEY'RE TO GO
THROUGH PRESUIT BEFORE THE
CONTRACTUAL ARBITRATION COMES
INTO PLAY.
THEY ARE THEN REQUIRED TO
DETERMINE WHETHER THEY MUTUALLY
AGREE TO STATUTORY ARBITRATION.
AND IF THEY DO, THIS CONTRACT
NEVER COMES INTO PLAY.
IT'S NOT NEEDED BECAUSE THAT'S
WHAT THE LEGISLATURE WANTS.
>> WHAT PIECE OF THE LITIGATION
MACHINERY, IF YOU WILL, IS
REPLACED BY THE REQUIREMENT IN
THE CONTRACT TO GO THROUGH THE
FLORIDA ARBITRATION CODE?
>> I THINK I'M UNDERSTANDING
YOUR HONOR'S QUESTION, JUST
WHERE IN THE STATUTES THIS COMES
INTO PLAY OR WHERE THE --
>> OKAY.
THIS CONTRACT PROVIDES FOR
AMPLIFICATION AFTER IT GOES
THROUGH THE PRELIMINARY THINGS.

>> CORRECT.
>> WHAT DOES THAT SUPPLANT?
>> OKAY.
SO THIS IS WHAT IT SUPPLANTS.
UNDER THIS CONTRACT, THE PARTIES
PRESUIT TO AGREE TO ARBITRATION.
IF THEY DON'T, YOU GET TO THE
STATUTE, AND I THINK THAT'S A
VERY IMPORTANT PROVISION
ANSWERING YOUR QUESTION BECAUSE
THE LEGISLATURE DOES ALLOW FOR
THIS, FOR PARTIES -- AND THIS IS
WHERE YOU GO OFF IN TWO
DIRECTIONS, BECAUSE THAT'S WHERE
IT SAYS IF THE PARTIES DON'T
AGREE, MUTUALLY AGREE UNDER THE
STATUTE TO ARBITRATE, THEN THEY
GO TO TRIAL OR TO ANY AVAILABLE
LEGAL ALTERNATIVE.
AND SO THAT IS WHERE THE PARTIES
PART WAYS WITH THE
NONCONTRACTUAL PARTY.
>> SO ONCE THEY GO TO REGULAR
ARBITRATION, THEY RETAIN ALL--
OTHER THAN IT'S NOT A TRIAL BY
JURY, THEY RETAIN ALL THEIR
RIGHTS TO FULL DAMAGES?
>> CORRECT.
>> SO IT STARTS -- SO THERE'S NO
LIMITATION ON NON-ECONOMIC
DAMAGES?
>> THE ONLY DIFFERENCE IS THE
FORUM.
>> WHAT I'M ASKING, BECAUSE I
THOUGHT YOU SAID THEY DON'T HAVE
TO ADMIT LIABILITY, BUT THEY
HAVE -- THE PLAINTIFF HAS THE
RIGHT TO -- AS IF THE MEDICAL
MALPRACTICE ACT DIDN'T EXIST.
IS THAT CORRECT?
IN OTHER WORDS, IT WOULD BE AS
IF -- THAT THEY HAVE -- THE
PLAINTIFFS HAVE THE RIGHT TO
FULL RECOVERY OF DAMAGES, BUT
IT'S IN AN ARBITRATION FORUM.
>> WELL, LET ME JUST CLARIFY,
YES OR NO.
LET'S SAY THE PLAINTIFF REJECTED
THE DEFENDANT'S OFFER TO DO
STATUTORY ARBITRATION.

THE SAME PENALTIES WOULD APPLY
IN THE CONTRACTUAL ARBITRATION.
AND THAT WOULD ALSO APPLY THE
OTHER WAY.
IF A DEFENDANT REJECTED
STATUTORY ARBITRATION, THEY
WOULD BE STUCK IN THE
CONTRACTUAL ARBITRATION WITH
THOSE PENALTIES.
AND I THINK THAT'S CONSISTENT
NOT ONLY IN THE CONTRACT WE HAVE
HERE, BUT CONSISTENT WITH --
>> I'M NOT SURE I'M FOLLOWING
YOU ON THAT, BECAUSE WHEN I READ
THIS CONTRACT, THE PART OF IT
THAT TALKS ABOUT THE APPLICABLE
LAW, THAT TALKS ABOUT THE
ARBITRATION SECTION, ALSO GOES
ON TO SAY THAT ALSO THAT'S
APPLICABLE ARE THE LAW GOVERNING
MEDICAL MALPRACTICE, WRONGFUL
DEATH, THE STANDARD OF CARE AND
CAPS ON DAMAGES UNDER 766.118.
AND SO IT SEEMS TO ME THAT WE
ARE RIGHT BACK TO WE'RE USING
THE PROVISIONS OF THE MMA, BUT
--
>> NO.
I DISAGREE WITH THAT.
AND I'LL EXPLAIN WHY.
THIS IS JUST TO INCORPORATE
CHAPTER 766 AS IF A PARTY WAS IN
TRIAL.
AND SO WHEN IT SAYS CAPS ON
DAMAGES, I MEAN, OBVIOUSLY IF
THIS COURT'S PRECEDENT CHANGES
THE LAW AS THESE CONTRACTS GO
ALONG, NO ONE IS STUCK WITH A
STATUTE TO THE EXTENT IT'S --
AND I WOULD CONCEDE THERE'S SOME
QUESTIONABLE AS TO THE VIABILITY
OF SOME OF LIKE THE CAP STATUTE.
THIS CONTRACT ISN'T GETTING
AROUND THAT.
AND IT'S NOT INTENDED TO.
WHATEVER THIS COURT'S PRECEDENT
IS ON CAPS, ON THE SUBSTANTIVE
LAW OF CHAPTER 766, AGAIN,
NOTHING CHANGES EXCEPT THE
FORUM.

THAT'S THE ONLY DIFFERENCE, IS
IF ONE PARTY GOES --
>> HOW CAN YOU SAY THAT WHEN IT
SPECIFICALLY STATES THAT IT'S
SUBJECT TO THE CAPS?
>> JUSTICE LEWIS, THIS WAS
DRAFTED -- FIRST OF ALL, THIS
WAS DRAFTED BEFORE -- AND I
THINK AGREED TO BEFORE ANY
PRECEDENTIAL DECISIONS ON THIS.
>> IT DOESN'T SAY.
IT SAYS THE CAPS.
>> WELL, I LEFT IT OVER HERE.
IT SAYS ALL SUBSTANTIVE
PROVISIONS OF FLORIDA LAW.
ALL SUBSTANTIVE PROVISIONS OF
FLORIDA LAW I THINK BY
DEFINITION MEANS THAT IF THERE'S
A CHANGE IN THE SUBSTANTIVE LAW,
IT HAS TO BE INCORPORATED INTO
THIS AND THAT'S THE INTENT OF
IT.
IF THE LAW CHANGES, THIS CAN'T
PREDICT THAT.
>> AND IN ONE OTHER SECTION IT
SAYS STATUTORY CAPS, DOES IT
NOT?
>> IT SAYS --
>> INCLUDING STATUTORY CAPS,
DOES IT NOT?
>> CAPS ON DAMAGES UNDER FLORIDA
STATUTE 766.118.
WELL, NOW IF THIS COURT
SUBSEQUENTLY DECIDES THAT THAT
CAP IS NO LONGER VIABLE,
CERTAINLY THIS COURT'S
SUBSTANTIVE LAW IS GOING TO
APPLY TO THIS CONTRACT.
THAT IS ABSOLUTELY THE INTENT OF
IT.
>> HERE IS WHAT I'M STILL HAVING
TROUBLE WITH.
IF THE MEDICAL MALPRACTICE ACT
WAS PROVIDING AN INCENTIVE TO
BOTH PARTIES TO ARBITRATE AND TO
MAKE IT LESS COSTLY AND, AGAIN,
THE FACTS HERE I GUESS WE'LL GET
CLARIFICATION, BUT I THOUGHT
THERE WAS SOMETHING ABOUT WHO
ASKED FOR ARBITRATION WHEN UNDER

THE ACT.
THE THOUGHT THAT YOU THEN GET --
AND I'LL SAY IT THIS WAY --
ANOTHER BITE AT THE ARBITRATION
APPLE BY, WELL, YOU DIDN'T WANT
THIS, NOW WE'RE GOING TO GIVE
YOU SOMETHING REALLY BAD.
WE'RE GOING TO MAKE YOU
ARBITRATE IT.
AND YOU'RE GOING TO STILL BE
SUBJECT TO WHATEVER, YOU KNOW,
THE MALPRACTICE ACT SETS FORTH
AS LIMITATIONS.
AND SOMEHOW, YOU KNOW, AGAIN, I
APPRECIATE THAT THERE MAY BE A
DISTINCTION.
I JUST DON'T KNOW IF IT'S A
DISTINCTION WITH A REAL
DIFFERENCE FROM FRANKS V.
BOWERS.
>> AND LET ME GO BACK TO FRANKS
VERSUS BOWERS, BECAUSE I THINK
THIS COURT WAS CLEAR THAT IT'S
NOT DOING AWAY WITH PRIVATE
ARBITRATION AGREEMENTS UNDER THE
MMA.
IT'S JUST DOING IT UNDER THOSE
FACTS.
>> WELL, I DON'T KNOW THAT THE
COURT WAS -- I DON'T KNOW THAT
WE WERE CLEAR WITH THAT.
I THINK THE IDEA THAT SOMEBODY,
HERE IT WAS A PREGNANT WOMAN,
GOES INTO A DOCTOR'S OFFICE AND
BASICALLY SIGNS AWAY HER LIFE,
HER RIGHTS, AND THEN THE
QUESTION IS BUT SHE STILL HAS TO
GO THROUGH THE MEDICAL
MALPRACTICE ACT, AND THEN IF SHE
DOESN'T -- IF THE DOCTOR DOESN'T
AGREE TO THAT, SHE GIVES UP HER
RIGHT TO TRIAL BY JURY, I DON'T
KNOW THAT FRANKS V. BOWERS WAS
SAYING, WELL, THAT SECOND LAYER
WOULD BE OKAY.
I MEAN, AS OPPOSED TO SOMEONE
JUST SAYING, LISTEN, WE'RE NOT
GOING TO GO -- WE'RE GOING TO
FOREGO THE BENEFITS OF THE ACT,
BUT WHAT WE WANT TO DO IS WE

WANT TO PROVIDE AN ARBITRATION
FORUM RATHER THAN A COURT OF
LAW.
AND WE'RE NOT GOING TO HAVE --
YOU DON'T HAVE TO GO THROUGH
PRESUIT.
YOU WON'T HAVE TO -- YOU KNOW,
WE'RE JUST GOING TO DO AWAY WITH
THE ACT.
AND I DON'T THINK ANY DOCTORS
WILL WANT TO DO IT.
BUT THAT'S NOT THE SITUATION.
SEEMS LIKE THIS IS A DOUBLE
WHAMMY FOR THE PATIENT.
AND EXPLAIN WHY IT'S NOT.
>> OKAY.
IT'S NOT.
AND, AGAIN, FIRST OF ALL, BACK
TO FRANKS VERSUS BOWERS.
MY UNDERSTANDING IS THAT THE
COURT WAS A LITTLE BIT COMPELLED
TO FIND THAT THERE'S STILL
PRIVATE ARBITRATION AGREEMENTS
UNDER THE FEDERAL ARBITRATION
ACT BECAUSE THERE'S STILL A
FEDERAL INCENTIVE TO ALLOW THEM,
BUT THE COURT WAS HOLDING THAT
IT'S GOT TO INCORPORATE ALL THE
PROVISIONS OF CHAPTER 766.
THIS AGREEMENT INCORPORATES ALL
OF THE PROVISIONS OF 766, AND
THIS IS NOT A DOUBLE WHAMMY.
ALL THIS REALLY DOES, IT'S NOT
-- THERE'S NO CAP THAT YOU SEE
IN SOME OF THE OTHER CASES.
THERE'S NO CHANGE IN THE
STANDARD OF PROOF THAT WE'VE
SEEN IN SOME OF THE OTHER CASES.
THERE'S NO SHIFTING OF MAJOR
REMEDIES.
THE ONLY DIFFERENCE, JUSTICE
PARIENTE, IS THAT WHEN YOU GET
TO SUBSECTION 766.209(2) WHERE
IT SAYS NOW YOU GO TO TRIAL OR
ANY OTHER LEGAL AVAILABLE
ALTERNATIVE, ONE GROUP OF
PLAINTIFFS WHO DIDN'T ARBITRATE
GOES TO COURT, THE OTHER GOES TO
ARBITRATION UNDER THE AGREEMENT
THAT THEY AGREED TO, THE

DAMAGES, THE PENALTIES, ARE
IDENTICAL.
THERE'S NOTHING -- AT LEAST THE
DAMAGES PROVIDED UNDER THE
CHAPTER 766, PLAINTIFF, AND I
SAY THAT BECAUSE PLAINTIFF HAS
POINTED OUT COSTS WHICH IS NOT
UNDER CHAPTER 766.
THAT'S A CIVIL PROCEDURE
STATUTE.
THAT'S IT.
AND ALL THAT DOES--
>> [INAUDIBLE] RIGHT TO APPEAL.
>> WELL, THAT'S TRUE, BECAUSE
THEN YOU GO TO -- AND, AGAIN,
THE RIGHT TO APPEAL IS NOT PART
OF CHAPTER 766.
THAT'S JUST PART OF
JURISPRUDENCE, WHICH THE COURTS
HAVE RECOGNIZED IT'S OKAY TO
HAVE ARBITRATION AND RESTRICT
THAT BECAUSE THAT'S THE POINT OF
BINDING ARBITRATION.
BUT THAT'S -- AND THE ONLY --
WHAT THIS IS TRYING TO DO IS
ALLOW THE PARTIES TO ARBITRATE
WITHOUT REQUIRING THEM TO AGREE
TO THE STATUTORY ARBITRATION,
WHICH HAS VERY EXTREME REMEDIES,
BECAUSE A PLAINTIFF -- THIS
PLAINTIFF SAYS WE SHOULD JUST
INCORPORATE THE STATUTORY
ARBITRATION.
>> UNDER THIS AGREEMENT, IS
THERE A LIMITATION ON WHAT YOU
CAN PAY THE ARBITRATORS?
>> THERE IS NOT.
THERE IS NOT.
>> AND UNDER THIS AGREEMENT, THE
DOA ADMINISTRATIVE LAW JUDGES
ARE NOT INVOLVED, EITHER, ARE
THEY?
>> THE TWO CHOSEN ARBITRATORS I
BELIEVE PICK A NEUTRAL
ARBITRATOR.
BUT NOW WE'RE GOING BACK TO JUST
ARBITRATION PRINCIPLES.
ARE PRIVATE PARTIES ALLOWED TO
PRIVATELY AGREE TO ARBITRATE.
THAT'S SETTLED LAW.

>> I DON'T UNDERSTAND HOW THIS -- HOW THIS AGREEMENT REALLY DIFFERS FROM THE BOWERS AGREEMENT AND WHY -- WHEN WE SAY IN BOWERS -- LET ME SEE IF I CAN FIND THAT LANGUAGE -- THAT, YOU KNOW, IF YOU ARE -- ANY CONTRACT THAT SEEKS TO ENJOY THE BENEFITS OF THE ARBITRATION PROVISIONS UNDER THE STATUTORY SCHEME MUST NECESSARILY ADOPT ALL OF ITS PROVISIONS.
AND SO WHY IS THIS NOT A VIOLATION OF THAT PRINCIPLE?
>> I'LL EXPLAIN.
IN BOWERS, THE ARBITRATION AGREEMENT, WHAT IT DID WAS IT ADOPTED THE BENEFICIAL PENALTIES IN THE STATUTORY ARBITRATION.
IN OTHER WORDS, IT BROUGHT IN THE CAPS FROM THE ARBITRATION STATUTE WITHOUT THE ADMISSION OF LIABILITY.
AND SO I THINK THIS COURT REASONABLY SAID YOU CAN'T DO THAT.
IF YOU'RE GOING TO HAVE AN ARBITRATION AGREEMENT THAT BINDS THE PARTIES TO BEGIN WITH, YOU HAVE TO ADOPT EVERYTHING.
THE DIFFERENCE IS THAT HERE, AGAIN, WHEREAS BOWERS REQUIRED THAT FROM THE BEGINNING, THEY HAD TO ENGAGE WITH THAT ARBITRATION WHERE THERE WAS A CAP BUT NO ADMISSION OF LIABILITY, WE DON'T HAVE THAT HERE.
THE PARTIES CAN AGREE MUTUALLY TO DO THE STATUTE, IN WHICH CASE THE DEFENSE ADMITS LIABILITY.
WE DIDN'T HAVE THAT IN BOWERS.
AND THAT'S A HUGE DIFFERENCE.
THAT KEEPS THE INCENTIVE OF CHAPTER 766.
>> BUT WHEN YOU DON'T HAVE THE PARTIES AGREEING TO THE VOLUNTARY BINDING ARBITRATION UNDER 766, YOU GET TO THIS AGREEMENT AND THIS AGREEMENT

INCORPORATES SOME OF THE
BENEFITS FROM 766.
WOULD YOU AGREE TO THAT?
>> LET ME TELL YOU WHAT I'M
AGREEING TO.
I AGREE THAT IT INCORPORATES
SOME OF -- IT INCORPORATES ALL
OF THE SUBSTANTIVE PROVISIONS OF
766.
BUT WHEN YOUR HONOR SAYS
BENEFITS --
>> WELL, ISN'T THE CAP ON
DAMAGES A BENEFIT?
>> I'M GOING TO HAVE TO DISAGREE
WITH THIS BECAUSE WHAT IT SAYS
IS ALL SUBSTANTIVE PROVISIONS OF
CHAPTER 766.
AND THEN IT GOES INTO A LIST OF
THINGS.
AND IF YOUR HONORS ARE SAYING,
WELL, NOW MAYBE THE SUBSTANTIVE
LAW IS A LITTLE DIFFERENT AND
YOU'RE KEEPING A STATUTE THAT WE
MAY DISAGREE WITH IN THERE,
THAT'S -- THAT'S NOT WHAT THIS
CONTRACT SAYS.
OBVIOUSLY, WHATEVER CASE LAW
SUBSEQUENT TO A CONTRACT THIS
COURT OR ANY COURT COMES OUT
WITH IS GOING TO BE BINDING ON
THE PARTIES UNDER THE PROVISION
WHERE IT SAYS ALL SUBSTANTIVE
PROVISIONS OF CHAPTER 766.
AND I'LL -- THERE'S NOT AN
INTENTION TO GET AROUND ANY
COURT'S LAW WITH THIS.
THIS WAS JUST A SET OF EXAMPLES
IN THE STATUTES OF WHAT APPLIES.
AND THIS WAS DRAFTED SEVERAL
YEARS AGO.
SO, AGAIN, I THINK, JUSTICE
QUINCE, THAT'S A FUNDAMENTAL
DIFFERENCE.
THIS COURT WAS VERY CLEAR THAT
BY FORCING THE PARTIES INTO
ARBITRATION, CONTRACTUAL
ARBITRATION, WITH ONLY THE
BENEFITS FOR THE DEFENSE AND
NONE OF THE BENEFITS FOR THE
PLAINTIFF ISN'T GOING TO HOLD,

WHEREAS HERE, AGAIN, WE'VE NOW GOTTEN RID OF THAT PROBLEM PERFECTLY BY SAYING, YOU KNOW WHAT, WE'RE KEEPING STATUTORY ARBITRATION AVAILABLE TO THE PARTIES AND WE'RE JUST CHANGING THE FORUM.
SO, AGAIN, I THINK IF --
>> YOU'RE INTO YOUR REBUTTAL TIME.
YOU'RE FREE TO CONTINUE IF YOU WANT TO.
>> NO.
TIME GOES BY WHEN YOU'RE HAVING FUN.
I APPRECIATE YOUR HONORS ACTUALLY GRANTING ORAL ARGUMENT IN THIS CASE.
IT'S IMPORTANT TO HAVE YOU HEAR US OUT.
I'LL SAVE THE REST FOR REBUTTAL.
THANK YOU.
>> GOOD MORNING.
MAY IT PLEASE THE COURT, BRYAN GOWDY FROM JACKSONVILLE ON BEHALF OF MR. AND MRS. CRESPO.
AND I THINK WHAT THE MMA SETS OUT IS A VERY INEXPENSIVE ARBITRATION OR TRIAL, AND WHAT WE HAVE UNDER THIS ARBITRATION AGREEMENT IS INEXPENSIVE ARBITRATION OR VERY COSTLY ARBITRATION.
SO IT'S JUST CHANGED COMPLETELY THE MMA.
>> LET ME ASK YOU A FACTUAL QUESTION FIRST.
YOUR CLIENTS HAD AN OPPORTUNITY TO ASK FOR STATUTORY ARBITRATION.
AND THEY MISSED THE TIME PERIOD FOR THE STATUTORY ARBITRATION?
>> YES.
THEY MISSED THE TIME PERIOD.
>> OKAY.
AND SO NOW WE'RE LEFT WITH HAVING TO ARBITRATE AND THERE'S NO QUESTION THAT THEY SIGNED THIS AGREEMENT?
>> WELL, ACTUALLY MR. CRESPO

NEVER SIGNED IT, BUT MRS. CRESPO
-- THERE'S NO QUESTION
MRS. CRESPO DID.
I DON'T WANT TO SPEND A LOT OF
TIME ON IT, BUT THE FIRST
ARGUMENT I HEARD A LOT THIS
MORNING SOUNDS LIKE THE SECOND
ISSUE IN OUR CASE.
IT'S A NONCONFLICT BECAUSE
MR. CRESPO NEVER SIGNED IT.
MRS. CRESPO DID.
YOU HAD ANOTHER QUESTION?
I FELT IT COMING.
>> WELL, MY QUESTION THEN IS SO
NOW AT LEAST AS TO MRS. CRESPO,
SHE HAS AGREED TO ARBITRATE
UNDER THIS AGREEMENT THAT SHE
SIGNED, CORRECT?
>> CORRECT, BUT, LIKE ALL
AGREEMENTS THAT ARE VOID FOR
PUBLIC POLICY, IF THEY'RE VOID
FOR PUBLIC POLICY, THEY'RE
UNENFORCEABLE.
THAT'S NO DIFFERENT THAN FRANK
V. BOWERS.
>> NOW, AGAIN, MAYBE WE'RE
GETTING SOLD A BILL OF GOODS
HERE, BUT WHAT HAS BEEN ARGUED
HERE IS IT'S DIFFERENT BECAUSE
IT IS -- YOU CAN EITHER GO UNDER
STATUTORY ARBITRATION, BUT IF
YOU DON'T GO UNDER STATUTORY
ARBITRATION, THEY'RE SAYING,
QUOTE, ALL WE'RE DOING IS
CHANGING THE FORUM.
THE PLAINTIFF STILL GETS TO --
AGAIN, SUBJECT TO THE
MALPRACTICE CAPS, BUT NOT THE
CAPS OF THE STATUTORY
ARBITRATION, GETS TO RECOVER HER
DAMAGES.
AND SO, FIRST, IS THAT -- IT
SEEMS THAT IT IS DIFFERENT FROM
THE FRANKS V. BOWERS.
IT MAY NOT -- IS IT DIFFERENT?
AND IF IT'S DIFFERENT, IS IT
STILL VOID AGAINST PUBLIC
POLICY?
>> IT'S DIFFERENT IN THAT
THERE'S NO -- THERE'S NO EXPRESS

250 CAPS AS THERE WAS IN BOWERS,
WHERE THEY CHERRYPICKED THE 250
CAPS.
WE DON'T HAVE THAT FACT.
>> SO THAT'S A -- BUT IS THAT A
BIG DIFFERENCE?
>> NO, BECAUSE IN THE COURT'S
OPINION -- AND IT WAS SAID
SEVERAL TIMES, INCLUDING ON PAGE
1247-- IT REPEATEDLY NOTED ALL
THE BENEFITS OF MMA STATUTORY
ARBITRATION.
AND THE PRIMARY ONES THAT THE
COURT NOTED MORE THAN ONCE WAS
THIS ADMISSION OF LIABILITY.
AND THERE'S THIS BETRAYAL THAT
IT WAS JUST A DIFFERENT FORUM.
BUT THE THING THAT IS APPEALING
IN GENERAL TO PLAINTIFFS ABOUT
MMA ARBITRATION IS IT IS
SIGNIFICANTLY LESS EXPENSIVE.
AND JUST TO OUTLINE THE NOT JUST
TRIAL, BUT CONTRACTUAL
ARBITRATION.
AND THERE'S A LOT OF BENEFITS
BESIDES JUST THE ADMISSION OF
LIABILITY THAT WE DON'T HAVE IN
THIS AGREEMENT.
UNDER THE MMA, THE DEFENSE PAYS
ALL THE COSTS EXCEPT FOR THE
FEES FOR THE ALJ.
UNDER THE MMA, THAT'S NOT TRUE
UNDER OUR CONTRACTUAL AGREEMENT.
UNDER THE MMA, THE FEES ARE
CAPPED AT $750 A DAY.
WE HAD TESTIMONY HERE THAT THE
COURT OF THREE ARBITRATORS, YOU
KNOW, AT $300 TO $400 AN HOUR IS
GOING TO BE FAR MORE.
>> AGAIN, WE'VE GONE THROUGH
MANY YEARS OF THINKING
ARBITRATION WAS JUST THE BEST
THING FOR PEOPLE BECAUSE IT WAS
GOING TO BE A LESS COSTLY
ALTERNATIVE, ET CETERA.
THERE'S BEEN A SHIFT ABOUT WHAT
THIS IS DOING TO RIGHTS TO TRIAL
BY JURY.
BUT WE HAVE NOT COME TO THE
POINT WHERE WE ARE SAYING, WELL,

AN ARBITRATION AGREEMENT,
BECAUSE IT'S NOT AS FAIR FOR THE
PLAINTIFF, IS VOID AGAINST
PUBLIC POLICY.
SO YOU HAVE TO BE ABLE TO FIT
THIS IN SAYING BECAUSE THERE'S A
MEDICAL MALPRACTICE ACT,
CONTRACTUAL ARBITRATION IS VOID
AGAINST PUBLIC POLICY OF THE
MEDICAL MALPRACTICE ACT,
CORRECT?
>> RIGHT.
>> I DON'T KNOW THAT -- AND I'M
SORT OF -- I'M WITH YOU IN
THINKING THIS DOESN'T SEEM FAIR,
BUT I'M NOT SURE THAT YOU CAN
MAKE THE LEAP TO SAY THAT THE
SECOND ROUND AFTER THE -- YOU
KNOW --
>> RIGHT.
>> IF EVERYTHING IS THE SAME --
AND I UNDERSTAND IT'S DIFFERENT,
BUT -- THAN BEING ABLE TO SUE IN
A COURT OF LAW.
SOME PEOPLE THINK THAT IS MORE
EXPENSIVE.
WHY IS THAT VOID AGAINST PUBLIC
POLICY OF THE MEDICAL
MALPRACTICE ACT?
>> BECAUSE YOU'VE HIT THE NAIL
ON THE HEAD IN THAT WE HAVE A
VERY SPECIFIC, SPECIAL STATUTE
REGULATING ARBITRATION FOR
MEDICAL MALPRACTICE ONLY.
SO IF I WAS HERE BEFORE YOU ON
AN AUTO CASE OR ANY OTHER TYPE
OF NEGLIGENCE CASE, I COULD NOT
MAKE THESE ARGUMENTS.
BUT THE RATIONALE OF FRANK V.
BOWERS IS THAT WHEN WE'RE
TALKING ABOUT MEDICAL
MALPRACTICE, WE'RE GOING TO LOOK
AT CHAPTER 766, NOT CHAPTER 682.
>> SO YOU WOULD HAVE TO SAY THAT
THE INTENT -- IT'S A DIFFERENT
ANALYSIS, THOUGH.
YOU HAVE TO SAY THE INTENT OF
THE LEGISLATURE WAS TO SUPERSEDE
--
>> CORRECT.

>> -- THE ARBITRATION CODE.
>> AND I CITE THIS COURT'S MACEO OPINION FROM 2005, WHERE YOU GRAPPLED WITH WHEN SUING A STATE ENTITY, YOU GENERALLY HAVE TO FOLLOW THE PRESUIT REQUIREMENTS UNDER CHAPTER 768 TO GIVE NOTICE, BUT WHEN YOU'RE SUING FOR A DISCRIMINATION CLAIM, YOU HAVE PRESUIT REQUIREMENTS UNDER CHAPTER 760.
AND WHAT THIS COURT SAID IN MACEO IS YOU DON'T HAVE TO DO BOTH.
YOU HAVE TO FOLLOW THE PRESUIT REQUIREMENTS OF THE SPECIFIC DISCRIMINATION ACT.
IT'S THE SAME CONCEPT HERE.
WE HAVE A GENERAL ARBITRATION CODE THAT WILL GENERALLY GOVERN EVERY PIECE OF LITIGATION EXCEPT WHEN WE'RE DEALING WITH MEDICAL MALPRACTICE.
AND THE LEGISLATURE WROTE CHAPTER 766 TO SPECIFICALLY REGULATE IT.
>> SO IF -- LET'S SAY THE LEGISLATURE HAD A SPECIFIC PROVISION IN THEIR MEDICAL MALPRACTICE STATUTE THAT SAID THERE WILL BE NO ARBITRATION PROCEEDINGS THAT BRING AN ACTION FOR MEDICAL MALPRACTICE.
AND THEY SAID THAT.
IS THAT -- CAN THAT STAND SCRUTINY UNDER ARBITRATION LAW GENERALLY?
>> IT WOULD STAND SCRUTINY UNDER FLORIDA ARBITRATION LAW BECAUSE IF THE LEGISLATURE SAYS ONE THING IN 682 AND ANOTHER THING IN 766, THEN WE WOULD GO WITH THE SPECIFIC PROVISION IN 766.
>> IT WOULD BE OKAY UNDER THE FLORIDA CODE BUT NOT THE FEDERAL ACT.
>> BUT I WANT TO BE VERY CLEAR --
>> IS THAT RIGHT?
IS THAT YOUR POSITION?

>> THE ANALYSIS IS ALSO GOING TO BE DIFFERENT WHEN IT'S CONGRESS VERSUS THE STATE LEGISLATURE.
>> SO THE ANSWER TO MY QUESTION IS?
>> I DON'T -- I THINK IF IT'S THE WAY YOU'VE FRAMED THE HYPOTHETICAL, YES.
>> THAT'S NO HYPOTHETICAL. THAT'S BASICALLY WHAT YOU'RE ARGUING HERE.
>> NO, IT'S NOT, BECAUSE THIS ISSUE DID COME UP -- THE FEDERAL ISSUE CAME UP IN FRANK V. BOWERS, AND THIS COURT IN THE OPINION WRITTEN BY JUSTICE PERRY, EXPLAINED THE VOLT DECISION FROM THE U.S. SUPREME COURT.
AND THAT DECISION ON THE FEDERAL ARBITRATION ACT TALKS ABOUT THAT IF A CONTRACT SPECIFICALLY ADOPTS STATE ARBITRATION PROCEDURES --
>> I UNDERSTAND.
SO YOU'RE SAYING THIS CASE IS DIFFERENT BECAUSE THEY SPECIFICALLY ADOPT THE FLORIDA ARBITRATION CODE.
>> AND THE CONTRACT.
>> AND HAD THEY NOT DONE THAT, WE WOULD BE TALKING ABOUT THE FEDERAL ARBITRATION ACT.
THAT'S NOT THIS CASE.
>> THAT'S RIGHT.
AND IF I COULD JUST ADD, THEY NEVER RAISED THE FEDERAL ARBITRATION ACT AT ANY POINT IN THIS LITIGATION.
>> OKAY.
HYPOTHETICALLY, THEN --
>> THEY HAVE NOT RAISED IT AT ALL.
>> HYPOTHETICALLY, IF WE WERE TALKING ABOUT THE FEDERAL ARBITRATION ACT, THEN THE SCENARIO, IF THE LEGISLATURE SAYS NO ARBITRATION PROCEEDING IN MEDICAL MALPRACTICE, THAT'S PREEMPTIVE AND THAT WOULD BE --

THAT COULD NOT STAND.
YOU AGREE WITH THAT?
>> I THINK THAT WOULD BE -- IF IT WAS THAT -- IF IT WAS THAT BLATANT, YES.
IF IT WAS THAT EXPRESS, YOU CAN NEVER HAVE ARBITRATION FOR MEDICAL MALPRACTICE, AND I'M JUST GOING TO ASSUME FOR PURPOSES OF YOUR HYPOTHETICAL THAT IT'S INTERSTATE COMMERCE.
>> SURE.
>> THEN THAT WOULD BE VERY PROBLEMATIC.
>> WELL, IF YOU CAN'T DO THAT EXPRESSLY, YOU SURE CANNOT DO THAT IN SOME IMPLICATION WAY, RIGHT?
>> WELL, BUT AGAIN, YES, YOU CAN, IF THE PARTIES DECIDE IN THEIR AGREEMENT UNDER VOLT TO GO AHEAD AND ADOPT THE FLORIDA PROCEDURE.
>> OKAY.
>> SO YOU MIGHT HAVE ANOTHER CASE WHEN SOMEONE BRINGS IT UP. WE'RE FOLLOWING FLORIDA LAW --
>> SO WHAT YOU'RE URGING THE COURT TO DO THEN UNDER THE FLORIDA ARBITRATION CODE, THAT IT'S OKAY FOR THE LEGISLATURE TO ADOPT ANY STATUTE THAT SAYS IN PARTICULAR INSTANCES THAT ARBITRATION CANNOT LIE IN THOSE CASES.
>> ABSOLUTELY.
THE LEGISLATURE COULD REPEAL 682 TOMORROW.
>> OKAY.
>> PARTIALLY, WHOLLY, WHATEVER, WHEN WE'RE ONLY TALKING ABOUT FLORIDA LAW.
>> OKAY.
I UNDERSTAND.
THANK YOU.
>> I WANTED TO ANSWER YOUR QUESTION, JUSTICE QUINCE.
AS FAR AS THE FAILURE TO TIMELY SEEK, THAT DOESN'T CHANGE ANY OF THE PUBLIC POLICY ARGUMENTS.

ALL THAT MEANS IS THAT IF WE HAD TIMELY SOUGHT THAT WHEN WE GO TO TRIAL, WE WOULD GET CERTAIN SANCTIONS UNDER 766.209 BECAUSE THE DEFENSE REJECTED THAT, BUT BECAUSE WE DIDN'T TIMELY SEEK IT, WE DON'T GET THOSE SANCTIONS, BUT THAT DOESN'T CHANGE THE PUBLIC POLICY ARGUMENT THAT IS FROM FRANK V. BOWERS.
>> BUT AS I UNDERSTAND THE ARGUMENT THAT WAS MADE BY YOUR OPPONENT, NOTHING REALLY HAS CHANGED FROM THAT PROCEDURE. YOU'RE JUST IN A DIFFERENT FORUM.
SO WHAT HAS CHANGED?
WHAT IS DIFFERENT ABOUT THE ARBITRATION UNDER THIS CONTRACT THAT IS DIFFERENT FROM ARBITRATION THAT WOULD HAVE TAKEN PLACE UNDER SECTION 766?
>> I THINK HER ARGUMENT, TO BE FAIR TO HER, IS THAT SHE'S SAYING THAT THERE'S NO DIFFERENCE BETWEEN CONTRACTUAL ARBITRATION AND TRIAL.
>> OKAY.
>> AND THAT -- AND THAT --
>> AND TRIAL, EXCEPT YOU DON'T HAVE A JURY.
>> RIGHT.
>> AND YOU DON'T HAVE AN APPEAL.
>> AND WHY I DON'T THINK THAT ARGUMENT'S RIGHT IN FLORIDA IS THAT THE LEGISLATURE DECIDED TO MAKE AN ARBITRATION SCHEME THAT IS AFFORDABLE.
AND THIS CONTRACTUAL ARBITRATION IS NOT.
AND IT'S NOT -- SHE'S SAYING IT'S JUST -- AND TRIAL SOMETIMES IS UNAFFORDABLE.
BUT THIS MMA ARBITRATION, IF THEY HAD ADOPTED THIS, IS VERY AFFORDABLE.
AND IT'S MORE THAN JUST THE ADMISSION OF LIABILITY, THOUGH. THAT'S A HUGE PART OF IT,

BECAUSE IF YOU HAVE AN ADMISSION
OF LIABILITY, THERE'S A LOT OF
EXPERTS YOU DON'T HAVE TO HIRE
AS A PLAINTIFF.
AND THEN THE DEFENSE AGAIN HAS
TO PAY THE COST.
THE FEES ARE CAPPED.
THE DEFENSE HAS TO PAY
PRE-JUDGMENT INTEREST.
THE DEFENSE HAS TO PAY
ATTORNEY'S FEES UP TO 15% OF
AWARD.
THERE'S JOINT AND SEVERAL
LIABILITY WHEN WE HAVE MORE THAN
ONE DEFENDANT.
AND AS YOUR HONOR POINTED OUT,
WE GET TO DO AN APPEAL TO THE
DCA VIA THE ADMINISTRATIVE ACT.
THAT'S ALL UNDER THE MMA.
THAT'S NONE OF THAT UNDER THE
CONTRACTUAL ARBITRATION
AGREEMENT.
SO I HOPE -- I MEAN, SHE WANTS
TO SEND -- SHE WANTS TO MAKE THE
COMPARISON BETWEEN CONTRACTUAL
ARBITRATION AND TRIAL.
>> NO.
I THINK ISN'T THE ISSUE, THOUGH,
WHETHER BECAUSE THE LEGISLATURE
DECIDED TO LEGISLATE FULLY IN
THE MEDICAL MALPRACTICE CONTEXT,
THAT -- AND, AGAIN, I JUST WANT
TO -- THAT THEY INTENDED TO
SUPERSEDE THE FLORIDA
ARBITRATION ACT FOR MEDICAL
MALPRACTICE.
THAT'S GOT TO BE YOUR ARGUMENT.
>> PRECISELY, THAT THEY INTENDED
TO SUPERSEDE 682 BY PROVIDING
THAT THERE BE SPECIFIC
PROVISIONS UNDER 766 ON HOW YOU
DO MEDICAL MALPRACTICE
ARBITRATION.
IF YOU WANT TO CALL EVERYTHING I
JUST READ PROCEDURAL ON THE
FORUM, FINE, I GUESS, BUT IT
REALLY MATTERS A LOT TO
PLAINTIFFS.
>> I MEAN, ON THE OTHER SIDE,
THINKING ABOUT THIS, IF IT HAD

BEEN THE DEFENDANT WHO HAD
WANTED ARBITRATION UNDER THE ACT
AND THE PLAINTIFF DIDN'T AGREE,
THEN, AS YOU SAY, THERE ARE
CERTAIN DETRIMENTS.
>> RIGHT.
>> BUT NOW WHAT WOULD HAPPEN IS
IT'S LIKE THE DOUBLE WHAMMY,
RIGHT?
>> I AGREE.
>> YOU DON'T WANT THIS, BUT
WE'RE GOING TO THROW YOU INTO
SOMEPLACE WHERE YOU HAVE, YOU
KNOW, THE HOTEL CALIFORNIA OF
THE -- WHERE YOU GET NOTHING.
YOU GET NO APPEAL.
YOU GET THREE -- I MEAN, AGAIN,
SOME PEOPLE MIGHT SAY IT'S
BETTER.
YOU GET TO PICK ONE OF YOUR OWN
ARBITRATORS.
THAT'S THE POINT.
IT'S LIKE YOU BETTER DO THIS
FIRST.
BUT ARBITRATION-- BECAUSE IF
YOU DON'T, YOU'RE GOING TO DO A
SECOND ONE THAT'S GOING TO BE
FIRST ONE.
>> YOU HAVE ARBITRATION OR
ARBITRATION.
THOSE ARE YOUR TWO CHOICES.
AND YOU ONLY GET -- I'M SORRY.
>> LET ME SEE IF -- UNDER THE
ACT, BOTH PARTIES HAVE TO AGREE
IN ORDER FOR IT TO BE VOLUNTARY
BINDING ARBITRATION, CORRECT?
>> YES.
YES, YOUR HONOR.
>> SO IF ONE PARTY DOES NOT
AGREE AND THERE'S NO AGREEMENT
LIKE THIS, WE'RE JUST IN A TRIAL
SITUATION.
>> RIGHT.
AND IF ONE PARTY OFFERS AND THE
OTHER PARTY REJECTS, THEN
THERE'S CERTAIN SANCTIONS.
>> WELL, THAT'S THE POINT.
THE SANCTIONS KICK IN.
THAT'S THE HYPOTHETICAL,
IMPORTANT ONE, THAT IT COULD

HAVE HAPPENED.
BECAUSE FROM THEIR POINT OF VIEW, IT COULD BE THAT THEY'RE THINKING, OKAY, SAY IT WAS TIMELY AND THEY REJECT IT, WHAT ARE THE SANCTIONS AGAINST THE DOCTOR FOR REJECTING IT IF THEY GO TO -- IF IT GOES TO TRIAL? WHAT HAPPENS TO THE DOCTOR?
>> THE SANCTIONS THEN ARE PRE-JUDGMENT INTEREST AND REASONABLE ATTORNEY'S FEES UP TO 25% OF THE AWARD.
IF WE HAD TIMELY OFFERED ARBITRATION AND THEY CLEARLY REJECTED IT, BUT THEN WE WOULD HAVE GOTTEN THOSE SANCTIONS AT TRIAL.
>> BUT THEY WOULD SAY, WELL, YOU'D STILL GET THE -- I THINK WHAT'S HERE IS --
>> YES.
>> SANCTIONS THE SECOND -- THERE IS SOME INCENTIVE FOR US TO AGREE TO THE MMA ARBITRATION.
>> RIGHT, BUT THEY'RE NOT THE SAME INCENTIVES THAT THE LEGISLATURE PROSCRIBED.
AND I JUST WENT THROUGH.
SO, I MEAN, AND YOU TALKED ABOUT IN BOWERS THE BALANCE THAT WAS STRUCK.
SO, I MEAN, THEY'VE STILL -- THEY'VE CHANGED THAT BALANCE THROUGH THEIR AGREEMENT.
NOW.
I WANTED TO BE CLEAR, YOU KNOW.
I THINK THERE STILL CAN BE SOME PRIVATE ARBITRATION AGREEMENTS.
YOU COULD HAVE WHAT I CALL GAP FILLERS THAT AREN'T COVERED BY THE STATUTE.
FOR EXAMPLE, YOU COULD SAY THAT THE MMA ARBITRATION HAS TO TAKE PLACE IN ORLANDO.
I DON'T THINK THAT WOULD VIOLATE THE ACT.
YOU COULD MAYBE ALSO, FOR EXAMPLE, THERE'S A RANGE ON THE FEES FOR THE ARBITRATORS.

PERHAPS THE AGREEMENT COULD DO
THAT.
THERE COULD STILL BE AGREEMENTS,
BUT THEY HAVE TO BE CONSISTENT
WITH THE MMA.
>> BUT THE STATUTE UNDER YOUR
INTERPRETATION AND THE COURT'S
INTERPRETATION PRECLUDES ANY
ARBITRATION ABSENT A CONTENTION
OF LIABILITY BY THE HEALTH CARE
PROVIDER.
>> CORRECT.
THAT'S CORRECT.
I THINK THAT'S THE
INTERPRETATION IN FRANKS V.
BOWERS.
AND THEN, YOU KNOW, WE'VE
DISCUSSED THERE'S THE VOLT ISSUE
IN FEDERAL, WHICH COULD COME UP,
BUT IN THESE CASES, BOTH IN
FRANKS AND IN THIS CASE, IT'S
NOT GOING TO COME UP BECAUSE
THIS AGREEMENT COMPLIES WITH
VOLT.
>> SO THAT ISSUE --
>> AND IT HASN'T BEEN RAISED
EITHER.
>> I UNDERSTAND YOUR ARGUMENT,
BUT IS THERE AN OPINION OUT OF
THIS COURT THAT SAYS EVEN WHERE
A CONTRACT HAS CHOSEN FLORIDA
LAW, AS HERE, THAT FLORIDA --
THE FLORIDA ARBITRATION CODE
WOULD APPLY UNLESS IT'S IN
CONFLICT WITH THE FEDERAL
ARBITRATION ACT?
YOU REMEMBER ANY PRECEDENT ALONG
THOSE LINES?
>> NO.
GENERALLY UNDER 682 THIS COURT
AND THE DISTRICT COURTS OF
APPEAL HAVE TRIED TO CONSTRUE
CHAPTER 682 CONSISTENT WITH THE
FEDERAL ARBITRATION ACT.
WE'RE NOT UNDER CHAPTER 682.
WE'RE UNDER CHAPTER 766.
>> WHAT I'M ASKING IS WHERE THE
CONTRACT SPECIFIES THE FLORIDA
ARBITRATION CODE AS APPLICABLE,
DOES THE FEDERAL ARBITRATION ACT

HAVE ANY APPLICATION AT ALL,
EVEN IF IT'S IN CONFLICT?
>> I THINK THERE'S A WHOLE BODY
OF -- IT'S REALLY HARD FOR ME TO
ANSWER THAT REALLY RIGHT NOW,
BECAUSE I'VE READ A LOT OF
CASES, BUT THERE'S A WHOLE BODY
OF U.S. SUPREME COURT CASES
ABOUT INTERSTATE COMMERCE.
>> THERE IS.
>> BUT I THINK THE VOLT CASE IS
STILL THE CASE AND IT'S STILL
GOOD PRECEDENT.
>> SO UNDER VOLT YOU WOULD ARGUE
THAT IT HAS NO APPLICATION.
>> RIGHT, IF THE ISSUE HAD BEEN
RAISED.
>> OKAY.
>> ARE YOU -- WAS SANTIAGO
WRONGLY DECIDED OR IS IT
DISTINGUISHABLE?
THAT'S THE SECOND DISTRICT CASE.
>> IT WAS WRONGLY DECIDED.
>> DID IT COME OUT BEFORE FRANKS
V. BOWERS?
>> AFTER.
THEY DISCUSS FRANKS V. BOWERS.
BUT IT WAS WRONGLY DECIDED.
I THINK THEY GOT HUNG UP ON WHAT
JUSTICE QUINCE WAS ASKING ME
ABOUT.
IN THERE THERE WAS APPARENTLY NO
-- WE MADE -- WE DID MAKE A
REQUEST FOR MMA STATUTORY
ARBITRATION, ALBEIT UNTIMELY.
THERE WAS NO REQUEST AT
ALL.
AND THE JUDGE WHO WROTE THE
OPINION FOR THE COURT I THINK
KIND OF LET THAT TAKE HIM ADRIFT
AND NOT FOCUS ON WHETHER THE
AGREEMENT IS VOID.
IF AN AGREEMENT'S VOID, IT'S
VOID ON ITS FACE.
WE DON'T GET INTO WHAT THE
INDIVIDUAL PARTIES DID.
AND AS I SAID BEFORE, I THINK MY
TIME IS UP, BUT THAT ONLY
AFFECTS THE SANCTIONS.
>> I DON'T RECALL -- AND IT'S

THE SANTIAGO CASE.
DO WE HAVE THE PROVISIONS OF
THAT AGREEMENT?
I COULDN'T QUITE SEE WHAT THE --
THAT AGREEMENT ACTUALLY INVOKED,
THE SUBSTANTIVE PROVISIONS OF
766 OR NOT.
>> MAY I HAVE LEAVE, YOUR HONOR,
TO ANSWER?
>> YES.
>> SO THE DEFENDANT IN SANTIAGO
AND IN THIS CASE IS WOMEN'S
IT IS THE SAME CLINIC.
THEY'RE NOT FULL OUT IN ANY
OPINION.
MISS SIGN DID FILE IN HER
OPINIONS SOMEWHERE THE AGREEMENT
AT SANTIAGO, THE SUNDAY AGO
EVERYTHING, YOU THEN LOOK AT OUR
AGREEMENT, IT IS THE SAME
DEFENDANT AND YOU WOULD SEE THE
FORM OF AGREEMENTS ARE VERY
SIMILAR.
I DON'T SEE ANY MATERIAL
DISTINCTIONS.
THEY ARE NOT LAID OUT IN THE
OPINIONS.
IF YOU DIG INTO THE RECORDS IT
IS THE SAME.
THANK YOU.
>> THANK YOU, YOUR HONORS.
THE REQUEST FOR STATUTORY
ARBITRATION JUST TO CLARIFY CAME
SIX MONTHS AFTER THE SUIT HAD
ENDED AFTER THIS HOLE ISSUE CAME
UP SO I THINK THE PLAINTIFFS
WERE JUST TRYING TO MAKE AN
ARGUMENT FOR THE PURPOSES OF
THIS BUT THERE'S A WIDE BODY OF
LAW TALKING ABOUT TIME
PROVISIONS IN ARBITRATION.
THEY WERE CLEARLY AN UNTIMELY.
AS FAR AS JUST GENERALLY, YOU
ARE NOT BEING SOLD A BILL OF
GOODS AT ALL.
THIS IS A VERY IMPORTANT
DISTINCTION.
WE GONE THROUGH THE DISTINCTIONS
AS FAR AS ALLOWING STATUTORY
ARBITRATION.

AS FAR AS LEGISLATIVE INTENT, THE LEGISLATURE IS VERY GOOD AT STATING WHAT IT WANTS OR DOESN'T WANT ARBITRATED THE JURY SIDED SECTION 44104 WHICH IS THE ARBITRATION STATUTE WHERE THE LEGISLATURE ACTUALLY SAYS EVERYTHING CAN BE ARBITRATED IN THESE TYPES OF CASES.
THE QUESTION IS DID IT INTEND TO SUPPLANT ARBITRATION IN CHAPTER 766 AND I SUBMIT THE ANSWER IS NO BECAUSE IT DOESN'T SAY THAT SPECIFICALLY, SECOND, THE STEAM THAT IT DOES OFFER IS IN LITTLE BIT, I AM GOING TO SAY EXTREME IN THE SENSE THAT IT WOULD IN PROVISIONS THAT ARE NOT NORMALLY REQUIRED IN THE ARBITRATION PRODUCT LIKE AN ADMISSION OF LIABILITY AND A VERY LOW CAP ON DAMAGES COMPARED TO WHAT THEY MAY BE.
THAT WAS INTENDED AS AN INCENTIVE TO ARBITRATE.
THAT IS WHAT THE LEGISLATURE WAS TRYING TO DO, TO GET MALPRACTICE CASES MOVING ALONG TO TAKE PRESSURE OFF THE COURTS, TO MAKE A MORE PALATABLE FOR PARTIES SO THAT IS ALL THE LEGISLATURE WAS TRYING TO DO WHEN IT PROVIDED THE INCENTIVE PROGRAM TO ENCOURAGE ARBITRATION BUT THERE IS NOTHING IN CHAPTERS 766 THAT INDICATES THE LEGISLATURE WAS SAYING YOU CAN'T OTHERWISE PRIVATELY ARBITRATE.
AS TO THE SANTIAGO DECISION WHAT THE COURT WAS LOOKING AT WAS THIS COURT'S LANGUAGE IN FRANKS VERSUS BOWERS WHERE IT IS FACT PACIFIC AND YOU DON'T SAY THERE ARE NO ARBITRATION AGREEMENTS.
SO IT WAS A END, I AGREE THAT THAT WAS A LEGAL DECISION.
THEY ARE SAYING THE FRANKS VERSUS BATTLERS CASE WAS LEFT OPEN, THEY WERE REJECTING THE ARGUMENT THAT WE CAN NO LONGER

HAVE PRIVATE ARBITRATION
AGREEMENTS.
FINALLY, TO SOME EXTENT, YOU DID
HIT THE NAIL ON THE HEAD AS FAR
AS IF THE PROBLEMS THEY ARE
COMPLAINING ABOUT OUR GENERAL
PROBLEMS PLAINTIFFS OR EITHER
PARTY DOESN'T LIKE ABOUT
ARBITRATION, THAT HAS ALREADY
BEEN LITIGATED IN MANY CASES AND
THERE'S A DIFFERENT BODY OF LAW
ON THAT THAT THESE AGREEMENTS
ARE ALLOWED SO I THINK IN ORDER
FOR THIS REPORT TO FIND IT IS
NOT ALLOWED. AS TO BE BECAUSE
SOMETHING CONTRADICTORY IN
CHAPTER 766 WHICH IS CONTRARY TO
LEGISLATIVE INTENT.
DON'T HAVE ANYMORE QUESTIONS,
APPRECIATE YOUR HONOUR'S TIME.
>> COURT IS IN RECESS FOR TEN
MINUTES.
>> ALL RISE.