

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Ruben Flores v. Allstate Insurance Co.

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS FLORES VERSUS ALLSTATE. MR. STAHL.

MAY IT PLEASE THE COURT. GOOD MORNING. YOUR HONORS. I WANT TO SPEND ABOUT ONE MINUTE GOING OVER WHAT I THINK TO BE THE IMPORTANT UNDISPUTED FACTS, SO THAT WE CAN ALL BE SURE THAT WE ARE ON THE SAME PAGE. THIS IS AN APPEAL FROM A CLAIM FOR UM BENEFITS BROUGHT BY MR. FLORES, WHO IS THE APPELLANT. HE IS THE SPOUSE OF AN ALL STATE STATE-INSURED. -- OF AN ALL ---OF AN ALL STATE-INSURED. AL STATE COVERAGE BY VIRTUE OF THE UM COVERAGE OF HIS SPOUSE. HE FAILED TO WEAR A SEAT BELT. ALLSTATE PAID HIM PIP COVERAGE. PAID HIM LESS THAN \$2,000, WHEN THEY RECEIVED ALTERED CLAIMS, FRAUDULENT CLAIMS, ACCORDING TO THEM, FOR LESS THAN \$200. ALL RIGHT. ALLSTATE NEVER CANCELLED THE POLICY OF INSURANCE, THE UNDERLYING POLICY OF INSURANCE. IN FACT, WHEN I RPRESENTED THE WIFE AND CHILD AND FLORES IN THE UM CLAIM, THEY AFFORDED COVERAGE TO THE WIFE AND CHILD, AND IT RESULTED IN A VERDICT WHICH HAS BEEN PAID.

WHAT IS THE ISSUE THAT WE HAVE BEFORE US TODAY?

OKAY. THE ISSUE IS WHETHER ALLSTATE HAD A RIGHT TO RAISE THE AFFIRMATIVE DEFENSE OF FRAUD, IN SUBMITTING THE PIP CLAIMS FOR \$200, AND WHETHER THAT VOIDED THE POLICY AND WHETHER THAT PREVENTED FLORES FROM MAKING AN UM CLAIM.

NOW, THERE WAS A SPECIAL INTERROGATORY VERDICT THAT WAS SUBMITTED TO A JURY IN THIS CASE?

THAT'S CORRECT, YOUR HONOR.

AND THE JURY MADE A DETERMINATION THAT THERE WAS A MATERIAL MISREPRESENTATION?

YES, YOUR HONOR.

SO, THEN, THAT INVOLVED THE ALTERATION OF THE BILLS.

YES. YES, YOUR HONOR.

SO THAT MATTER WAS TRIED FACTUALLY?

YES, IT WAS. IN FACT, THE DEFENDANT PUT ON NO EVIDENCE OF MR. FLORES'S INJURIES, AS IT WOULD TYPICALLY DO IN A CASE LIKE THIS. IT RELIED ON EVIDENCE CONCERNING WHETHER OR NOT HE WORE A SEAT BELT AND COPIOUS EVIDENCE ABOUT THESE \$200 IN BILLS. OKAY. AND ARGUED THAT HE WAS DISHONEST AND THAT --

WELL, DID YOU ARGUE ON THE MATERIALITY ISSUE? I MEAN, WOULD YOU SAY, DOES IT MAKE, FIRST OF ALL, DOES THE WORDING OF THIS POLICY MAKE A DIFFERENCE IN THIS CASE, AS TO OUR DECISION THAT IS AS TO WHETHER THE ENTIRE POLICY IS VOIDABLE, BECAUSE OF A FRAUDULENT CLAIM AS TO ONE ASPECT, OR AS TO WHETHER ONLY THE PORTION OF THE POLICY THAT AFFECTS THAT MISREPRESENTATION IS VOID?

I --

IS THAT AN ISSUE IN THIS CASE? WAS THAT PRESENTED TO THE JURY, TO THE JUDGE, THE ACTUAL WORDING OF THIS POLICY?

NO. THE JUDGE GAVE AN INSTRUCTION, ASKING THE JURY IF A MATERIAL MISREPRESENTATION HAD BEEN MADE, BUT IN ANSWER TO YOUR QUESTION, WHICH I THINK IS, MAYBE, TWO OR THREE QUESTIONS, I DON'T THINK THAT THAT IS ULTIMATELY GOING TO BE AN ISSUE IN THE CASE. I DON'T THINK THAT IS WHAT THE SECOND DCA BASED ITS DECISION ON ON. OKAY. BUT I THINK I SEE THE POINT THAT YOUR HONOR IS TRYING TO MAKE. THE POLICY LANGUAGE SIMPLY SAYS ALLSTATE WILL NOT PAY FRAUDULENT CLAIMS. IT DOES THAT IN A VERY FANCY WAY BUT THAT IS WHAT IT SAYS. ALL RIGHT. NOW, THERE IS NO ISSUE, I DON'T THINK, AS TO WHETHER THE UM CLAIM IS A FRAUDULENT CLAIM. THERE WAS NO EVIDENCE THAT THE UM CLAIM WAS A FRAUDULENT CLAIM. HOWEVER, YOU ARE GOING TO HEAR ARGUMENT THAT THE UM CLAIM WAS BASED ON, IN SOME SENSE, THIS SUBMISSION OF \$200 IN BILLS. WE DID NOT ASK FOR THE \$200 IN BILLS. THE SAME WE DIDN'T ASK FOR THESE BILLS IN THE UM CASE.

BUT DOESN'T THIS POLICY ACTUALLY SAY MORE THAN WE WILL NOT PAY A FRAUDULENT CLAIM? IT SEEMS TO ME THAT THEY ARE SAYING THAT WE WON'T PAY ANYTHING THAT IS INVOLVED IN THIS ACCIDENT, WHERE THERE IS ANY FRAUDULENT CLAIM. I MEAN, ISN'T THAT A DIFFERENT STATEMENT THAN WHAT YOU JUST MADE?

LET'S READ IT. IT IS RIGHT HERE. ALLSTATE DOES NOT PROVIDE COVERAGE FOR ANY LOSS WHICH OCCURS IN CONNECTION WITH ANY MATERIAL MISREPRESENTATION, FRAUD, OR CONCEALMENT OF MATERIAL FACTS. IT HAS TO BE INTERPRETED AGAINST THEM.

HOW DO YOU HAVE TO INTERPRET THAT? ISN'T THAT PRETTY CLEAR, THAT IF YOU LIE ON THE POLICY, AND ANY MATERIAL FACT, YOU CANNOT RECOVER UNDER IT. ISN'T THAT WHAT THAT SAYS?

IT SAYS ANY LOSS, COVERAGE FOR ANY LOSS, AND THE LOSS THAT WAS SIB MIGHTED HERE FRAUD -- WAS SUBMITTED HERE FRAUDULENTLY, WAS THE MEDICAL BILLS. ANY LOSS THAT OCCURS IN CONNECTION WITH ANY FRAUD, MISREPRESENTATION OR CONCEALMENT OF MATERIAL FACTS, SO I WOULD SUBMIT THAT THE ONLY LOSS THERE THAT OCCURRED IN CONNECTION WITH FRAUD WAS THE \$200, BUT I DON'T THINK THAT THIS IS GOING TO HAVE REALLY, MUCH RELEVANCE TO THE FINAL OUTCOME OR HAD ANY RELEVANCE TO THE OUTCOME OF THE SECOND DCA DECISION. I DON'T THINK IT --

LET ME SEE IF I UNDERSTAND BECAUSE ARE SAYING, THEN. YOU ARE SAYING THAT THIS LOSS IS RELATED SIMPLY TO THE PIP PAYMENTS?

ABSOLUTELY.

AND IT HAS NOTHING TO DO WITH THE UNINSURED MOTORIST CLAIM.

COVERAGE FOR ANY LOSS WHICH OCCURS IN CONNECTION WITH ANY MATERIAL MISREPRESENTATION, FRAUD OR CONCEALMENT OR MATERIAL FACTS. THE ONLY LOSS WHICH OCCURRED IN CONNECTION WITH FRAUD WAS THE \$200 IN PIP BILLS. THERE WAS NO ARGUMENT THAT HE WAS NOT INJURED IN THIS CASE. HE WASN'T SEVERELY INJURED, THAT THE OTHER, THE TORTFEASOR WASN'T AT FAULT, THAT ANY OF THE OTHER BILLS WERE FRAUDULENT. SIMPLY THESE BILLS. BUT I DON'T THINK THAT THE SECOND DCA BASED ITS DECISION ON THIS POLICY LANGUAGE. I THINK THAT IT BASED ITS DECISION ON WELL-ESTABLISHED PRINCIPLES OF CONTRACT LAW THAT EMERGED FROM THIS GREAT BODY OF COMMERCIAL LOSS CASES THAT SAY THAT YOUR HOUSE BURNS DOWN, AND YOU MAKE A CLAIM, AND THERE IS SOMETHING FRAUDULENT IN THAT CLAIM. THEY DON'T HAVE TO PAY A PENNY.

BUT EXCUSE ME --

I AM SORRY.

BUT IT IS A LITTLE BROADER THAN THE EXCERPT THAT YOU JUST READ. YOUR POLICY WAS ISSUED IN RELIANCE ON THIS INFORMATION THAT YOU PROVIDED ON YOUR AUTO INSURANCE APPLICATION, CONCERNING AUTOS, AND PERSONS INSURED BY THE POLICY. ALLSTATE WILL NOT PROVIDE COVERAGE FOR ANY LOSS WHICH OCCURS IN CONNECTION WITH ANY MATERIAL MISREPRESENTATION, FRAUD OR CONCEALMENT OF MATERIAL FACTS, OR OF ANY MATERIAL MISREPRESENTATION OR OMISSION WAS MADE ON YOUR AUTO INSURANCE APPLICATION. IF YOU LIE, ALLSTATE WILL NOT PAY! ISN'T THAT WHAT THAT SAYS, IN EFFECT?

WELL, IN CONNECTION WITH ANY LOSS WHICH OCCURS IN CONNECTION WITH MATERIAL MISREPRESENTATION OR FRAUD. BUT, AGAIN, THAT IS NOT -- THAT IS REALLY IRRELEVANT, THE FACT THAT -- I DON'T THINK -- I THINK THE SECOND DCA WOULD HAVE RULED THE SAME WAY, HAD THIS POLICY LANGUAGE BEEN ABSENT. I THINK THAT THE SECOND DCA'S DECISION IS CLEARLY BASED ON THE BODY OF COMMERCIAL LOSS CASES AND SOUND BREACH OF CONTRACT PRINCIPLES, SO THE ISSUE IS SHOULD THESE BREACH OF CONTRACT PRINCIPLES APPLY IN THIS TORT CLAIM? THIS BEGAN AS A TORT CLAIM. I BEGAN. AND IT ENDED UP AS A BREACH OF CONTRACT CLAIM. ALL RIGHT.

BUT, AGAIN, WHEN WE LOOK AT WHETHER ONE CAN RECOVER THE TERMS OF THE CONTRACT, UNDER WHICH YOU ARE SEEKING BENEFITS, MUST HAVE SOME OR PLAY SOME ROLE IN WHAT IS HAPPENING IN WHAT THE LAW IS. IT IS JUST NOT THERE FOR NO REASON, SO WE HAVE TO LOOK AT THE CONTRACT, AND IS THIS THE SAME CONSIDERATE THAT WE FIND -- THE SAME CONTRACT THAT WE FIND IN OTHER CASES THROUGHOUT THE COUNTRY THAT, DEAL WITH ISSUES OF, WELL, WHEN SOMETHING HAPPENS WLRTION IT IS A PROPERTY CASE THIS. IS A -- HAPPENS, WHETHER IT IS A PROPERTY CASE, THIS IS A MOTOR VEHICLE CASE, BUT IN IDENTICAL LANGUAGE THAT WE FIND IN ALL AREAS OF THE COUNTRY, IS THERE SOMETHING UNIQUE ABOUT THIS LANGUAGE OR IS THERE SOMETHING UNIQUE IN OTHER CASES THAT WE MUST LOOK TO, FLORIDA LAW, WITH REGARD TO WHAT THIS CONTRACT SAYS, BECAUSE WE KNOW THERE IS NO STATUTORY BASIS, UNDER EITHER THE PIP STATUTE OR THE UM STATUTE THAT DEALS WITH THIS PARTICULAR ISSUE, SO IT HAS TO BE SOMETHING ABOUT THE CONTRACT, DOES IT NOT?

NO. I RESPECTFULLY DISAGREE ENTIRELY. THEY CAN SAY ANYTHING IN THEIR CONTRACTS THEY WANT TO. IT IS TOTALLY IRRELEVANT. FLORIDA CASE LAW SAYS THAT YOU MAY RAISE ANY POLICY DEFENSE NOT IN CONFLICT WITH FLORIDA STATUTES. OKAY. SO, THEN, THE ISSUE BECOMES WHAT DO THE FLORIDA STATUTES SAY. IT IS CLEAR THAT IF MR. FLORES HAD 10,000 MEADOW PAY COVERAGE AND 20 -- IN MED-PAY COVERAGE AND 20,000 IN PIP BENEFITS AND HE ASSIGNED IT TO THE PROVIDER, AND THEY GO TO THE MED-PAY CARRIER AND SAY WE WANT THIS PIP COVERAGE AND MED-PAY COVERAGE, NOW, CAN ALLSTATE TELL THESE HEALTH CARE PROVIDERS, BUT WE ARE SORRY THAT MR. FLORES ATTEMPTED TO DEFRAUD US, SO WE CANS ED HIS COVERAGE. SO WE DON'T HAVE TO PAY ANYTHING. YOU HAVE TO LOOK TO HIM. ALL RIGHT. WELL, WHAT DOES THE FLORIDA STATUTE SAY? IT SAYS THE PIP STATUTE SAYS THAT THE CARRIER MUST PAY ALL NECESSARY AND REASONABLE MEDICAL EXPENSES. ALL LEGAL CIRCUMSTANCES. IT DOESN'T GIVE THE CARRIER THE RIGHT TO DO THIS. WHAT HAPPENED IN THIS CASE --

WOULD YOU INDULGE US AND ASSUME, FOR PURPOSES OF OUR DISCUSSION, THAT MAYBE THE CONTRACT HAS SOMETHING TO DO WITH THE CASE. ARE THERE CASES A COUNTERS THE COUNTRY COUNTRY, DOES THE RESULT OF OTHER CASES DEPEND ON WHAT IS INCLUDED IN THE CONTRACT, OR IS THAT TOTALLY IRRELEVANT, WHEN WE LOOK AT CASES ACROSS THE COUNTRY WANE ARE TRYING TO DECIDE WHAT HAPPENS UNDER THESE CIRCUMSTANCES?

WELL, IF YOU ARE LOOKING AT FIRE LOSS COMMERCIAL CASES, OF COURSE IT IS IRRELEVANT. HAS NOTHING TO DO WITH AN UM CASE WHICH IS A STATUTORY CASE, WHICH IS A TORT CLAIM, CREATED BY STATUTE, SO WHETHER, SO WHETHER CASES IN OREGON AND CALIFORNIA, FIRE LOSS CASES OR WHAT THEY SAY IN THEIR CONTRACTS AND WHAT THE COMMON LAW IS THERE IS TOTALLY IRRELEVANT.

SO THEN YOU ARE SUGGESTING THAT THERE SHOULD BE A DIFFERENT RULE OF LAW APPLICABLE FOR PROPERTY INSURANCE THAN FOR MOTOR VEHICLE AND OTHER TYPES OF INSURANCE? MAYBE FOR HEALTH OR OTHER KINDS OF INSURANCE? YOU ARE SUGGESTING THAT. WHAT ABOUT THE LANGUAGE IN THOSE POLICIES. DOES THAT, IF YOU ASSUME, IF YOU WILL INDULGE US JUST FOR AN ASSUMPTION. IT HAS SOMETHING TO DO WITH THE CASE. IS THERE ANYTHING ABOUT THE LANGUAGE THAT WE NEED ADDRESS OR TO LOOK TO, THAT MAKES A DIFFERENCE ACROSS THE COUNTRY?

ABSOLUTELY NOT. ABSOLUTELY NOT. THOSE ARE BREACH OF CONTRACT CASES. THIS IS A TORT CLAIM. THAT IS CREATED BY FLORIDA STATUTES. IT SAYS UM CARRIER STANDS IN THE SHOES OF A TORTFEASOR. IT CAN RAISE THE DEFENSES OF THE TORTFEASOR CAN RAISE. IT CAN RAISE THE THRESHOLD DEFENSE. IT CAN RAISE POLICY DEFENSES THAT ARE NOT IN CONFLICT WITH FLORIDA STATUTES. AND THAT DON'T LIMIT COVERAGE UNFAIRLY. THAT IS WHAT THE CASES SAY. AND --

WELL, THEN, DON'T WE, THEN, IF THEY CAN RAISE A POLICY DEFENSE THAT IS NOT IN CONFLICT WITH FLORIDA STATUTE, THEN BACK TO JUSTICE LEWIS'S QUESTION, DON'T WE HAVE TO LOOK AT THE EXACT LANGUAGE OF THIS POLICY, TO SEE WHETHER, WHAT THIS POLICY DEFENSE WAS, AND SO WE DO HAVE TO GO BACK TO THE ACTUAL POLICY OF INSURANCE, DON'T WE?

WELL, SURE. WE DO THAT, BUT WHEN WE DO THAT, WE SEE THAT WE HAVE A CONFLICT WITH THE PIP STATUTE. AND WE, ALSO, HAVE A CONFLICT, HERE, IF I CAN JUST HAVE ONE MINUTE TO FINISH YI LITTLE SCENARIO HERE, ALLSTATE NEVER CANCELLED THE POLICY OF INSURANCE. SEE, THE ANALYSIS TYPE OF CASE, THEY ARE RELYING ON BRIEFS IN THOSE CASES, BUT IN THOSE CASES IT WAS A FIRE LOSS CLAIM AND THE CARRIER CANCELLED THE INSURANCE. THAT WAS NOT DONE HERE. THE INSURANCE COVERAGE WAS DENIED TO A CLAIMANT.

WOULD YOU BE HAPPIER IF THEY HAD DENIED COVERAGE FOR THE SPOUSE AND THE SON AS WELL?

OH, THEY DON'T HAVE A RIGHT TO DO THAT. BUT I AM SIMPLY SAYING THAT THESE OTHER CASES ARE NOT, THESE OTHER CASES HAVE NO RELATIONSHIP.

SO YOU ARE NOT EVEN SAYING THAT ALLSTATE WOULD HAVE BEEN WITHIN ITS RIGHTS, UNDER STATUTE AND THE POLICY, TO HAVE AT LEAST CANCELLED THE OR HAVE DENIED ANY FURTHER PIP BENEFITS. IS THAT --

OH, NO. NO. NO. NO.

SO ONLY IF SOMEONE IS FRAUDULENT IN A PIP CLAIM, THE MOST THAT A CARRIER CAN DO, UNDER FLORIDA LAW, IS JUST NOT PAY THAT PARTICULAR CLAIM. THERE IS NO GREATER-THROW IS NO GREATER SANCTION FOR FRAUD, OTHER THAN, I GUESS, CRIMINAL SANCTIONS.

I AGREE ENTIRELY WITH THAT STATEMENT.

I DIDN'T AGREE WITH IT. THAT IS NOT A STATEMENT. THAT IS A QUESTION.

YES. I THINK THE ANSWER TO THAT IS YES, BECAUSE THE PIP STATUTE SAYS THAT THOSE HOSPITALS AND HEALTH CARE PROVIDERS, THEY HAVE TO BE PAID THEIR ASSIGNED BENEFITS.

ALL NECESSARY AND REASONABLE MEDICAL EXPENSES MUST BE PAID.

SO WE WOULD HAVE TO REPHRASE WHAT -- SO THE QUESTION THAT WAS CERTIFIED TO US FROM THE SECOND DISTRICT IS NOT THE QUESTION THAT YOU SAY WE SHOULD BE ANSWERING, BECAUSE THE QUESTION SAYS --

THAT'S RIGHT. YES.

IT TALKS ABOUT IT -- DID YOU ASK US TO REPHRASE THE QUESTION?

WELL, THE QUESTION DOES AN INSURED LOSS LOSE ALL BENEFITS, UNDER A DIVIDESABLE INSURANCE POLICY, WHERE THE INSURANCE FRAUD IS COMMITTED WITH RESPECT TO ONE PART OF THE POLICY BUT THE APPLICABLE FRAUD PROVISION OF THE POLICY PROVIDES THAT IT VOIDS THE ENTIRE POLICY. THAT ASSUMES THAT THE ENTIRE POLICY -- SEE, THIS COURT DECISION SAYS THE ENTIRE POLICY WAS VOIDED. THAT IS WHAT IT SAYS. AND YOU WILL FIND LANGUAGE THROUGHOUT, SAYING. THAT THAT IS NOT TRUE. ENTIRE POLICY WAS NOT VOIDED. OKAY. COVERAGE FOR UM BENEFITS WERE DENIED. THAT IS ALL THAT HAPPENED HERE. THE POLICY WAS NOT VOIDED. OKAY. BUT I HAVE GOT TO MAKE. THE REALLY IMPORTANT POINT HERE.

YOU ARE IN YOUR REBUTTAL TIME.

OKAY. WELL --

IT IS UP TO YOU, BUT YOU ARE GOING TO LOSE YOUR REBUTTAL.

YES. YOU KNOW, SEE, IF THE POLICY WERE VOIDED, LET'S ASSUME THAT WE HAVE GOT A FICTITIOUS PLAINTIFF. LET'S SAY JOHN VALUE JOHN, LET'S CALL HIM, AND -- JOHN VAL JOHN, LET'S CALL HIM, AND HE HAS TRIED TO STEAL \$200. IN PIP HE FAILED. HE RAN A RED LIGHT. HE HIT AND KILLED SOMEONE. HE HAS GOT \$20,000 IN MEDICAL BILLS, AND NOW ALLSTATE SAYS, BECAUSE OF THESE \$200 IN FRAUDULENT CLAIMS, MR. VAL JOHN, WE ARE VOIDING YOUR POLICY. NOW THE PEOPLE THAT WERE HORRIBLY HIT MAKE A CLAIM AGAINST LIABILITY COVERAGE. THEY SAY, NO, YOU HAVE GOT TO LOOK TO MR. VAL JOHN FOR COVERAGE. WE VOIDED THAT COVERAGE. IS THERE A QUESTION OF MED-PAY COVERAGE? NO. WE DON'T HAVE TO PAY ANY BENEFITS. THE POLICY WAS VOIDED, BY HIS ACT OF FRAUD.

YOU ARE REALLY MAKING A CAUSATION, SORT OF LIKE A SOUTH CAROLINA LINE OF CASES, THAT SAYS THAT THERE HAS TO BE A CAUSATIVE RELATIONSHIP BETWEEN THE ACTION OF THE INSURED AND THE ACTION THAT THE INSUROR TAKES? IS THAT WHAT YOU ARE SAYING?

NO. I AM SAYING THAT THIS POLICY LANGUAGE, HERE, IS IN VOILINGS. IT CONFLICTS WITH THE PIP STATUTE. IT, ALSO -- IT IS IN VIOLATION. IT CONFLICTS WITH THE PIP VIOLATION. ALSO THE ACTION OF ALLSTATE HERE THE SECOND DCA REPEALS THE NOTICE STATUTE. THERE IS A FLORIDA STATUTE. CHAPTER 627, 728, THAT SAYS THAT 45 DAYS' NOTICE MUST BE GIVEN FOR CANCELLATION OF A POLICY FOR FRAUD. THIS IS THE ONLY, THIS IS THE ONLY METHOD OF CANCELING A POLICY FOR FRAUD. OKAY.

DO YOU AGREE WITH THE STATEMENT OF THE DCA THAT, OF THE FOREIGN JURISDICTIONS THAT HAVE DECIDED CASES INVOLVING SOME OF THE POLICY LANGUAGE, THE MAJORITY HAVE FOUND THAT THE MATERIAL MISREPRESENTATION OF THE CLAIM WOULD VOID COVERAGE FOR THE ENTIRE LOSS?

I AGREE WITH. THAT I HAVE NO PROPERTY WITH -- I HAVE NO PROBLEM WITH. THAT I SAY IT HAS NO RELEVANCE HERE. SEE, THE QUESTION IS YOU LOOK AT THE CONTRACT, WHAT ALLSTATE IS TRYING TO DO, AND THEN YOU ASK WHETHER OR NOT IT CONFLICTS WITH FLORIDA STATUTES. LOOK AT THE DECISION THAT THE SECOND DCA RELIED ON.

I AM HAVING PROBLEMS OF HOW YOU CONTRACT, INSURANCE INSURANCE IS A CONTRACT, AND HOW DO YOU JUST READ OUT A PROVISION OF THE CONTRACT? I AM HAVING PROBLEMS WITH THAT.

IT IS NOT A BREACH OF CONTRACT CASE. THIS IS A TORT CLAIM. IT IS A TORT CLAIM. IT IS JUST ALLSTATE STANDS IN THE SHOES OF THE TORTFEASOR, AND YOU KNOW, THE CASE LAW IS CLEAR ABOUT WHAT RIGHTS ALLSTATE HAS. IT HAS THE SAME RIGHTS THAT THE TORTFEASOR HAS. IT CAN'T TREAT IT AS A CONTRACT CASE. NOW, BUT, LET ME --

MR. STAHL, YOU ARE NOT GOING TO HAVE ANY REBUTTAL.

THAT IS FINE, YOUR HONOR. THAT IS FINE. I HAVE GOT TO MAKE AN IMPORTANT POINT HERE, AND THAT IS THAT ALLSTATE, WHAT IT DID HERE IS IT DIDN'T CANCEL THE POLICY. IT CONTINUED TO ACCEPT PREMIUMS, TO ACCEPT PREMIUMS ON THE POLICY AND IT SAID WE ARE GOING TO GIVE COVERAGE TO THOSE PEOPLE WE THINK ARE DESERVING OF COVERAGE, THEN IT RAISED THIS POLICY DEFENSE AS AN AFFIRMATIVE DEFENSE, AND I ARGUED, WAIT A MINUTE, YOU CAN'T CANCEL A POLICY FOR FRAUD, EXCEPT BY FOLLOWING THAT FLORIDA STATUTE THAT REQUIRES -

THEY CONTINUE TO PAY THE PIP CLAIM?

NO. NO. NO. NO, THEY DIDN'T. THEY STOPPED AFTER THE FRAUD. THEY PAID THE \$2,000, THEN THEY STOPPED AFTER THEY GOT THE FRAUDULENT BILLS. ALL RIGHT. BUT, ALL RIGHT.

UNDER THIS POLICY, YOU CAN ONLY VOID IT, IF --

MR. -- EXCUSE ME.

YOU CAN ONLY VOID IT, IF THE FRAUD OR MISREPRESENTATION IT WILLY WENT TO THE APPLICATION FOR THE -- IF THE FRAUD OR MISREPRESENTATION OF IT ACTUALLY WENT TO THE APPLICATION OF THE POLICY, BUT YOU CAN VOID A PARTICULAR COVERAGE, IF THERE IS FRAUD OR MISREPRESENTATION INVOLVED IN THIS INCIDENT. IS THAT NOT THE WAY THE POLICY READS?

PLEASE. I HAVE GOT TO MAKE THIS POINT, BECAUSE I THINK IT IS ABSOLUTELY CRUCIAL.

YOU MAY ANSWER HER QUESTION. YOUR TIME IS UP.

I DIDN'T UNDERSTAND THE QUESTION. I AM SORRY, YOUR HONOR. YOU WILL HAVE TO REPEAT IT.

THANK YOU, MR. STAHL. MR. NICHOLAS. MR. NICHOLAS, LET ME BEGIN BY, I WOULD ASSUME THAT YOU WOULD CONTEND THAT THIS IS A CONTRACT, A BREACH OF CONTRACT ACTION.

YES, YOUR HONOR.

OKAY. NOW, IF WE ASSUME THAT THIS IS BREACH OF CONTRACT ACTION, THIS GENERAL CONDITION OF THE POLICY, IT REALLY GOES TO UNDERWRITING, DOESN'T IT? IT GOES TO THE APPLICATION AND WHETHER THERE IS A MATERIAL MISREPRESENTATION IN THE APPLICATION THAT GIVES RISE TO COVERAGE. THAT IS WHAT THIS CONDITION IS ALL ABOUT, ISN'T IT?

YOUR HONOR, THE ENTIRE PROVISION HAS BEEN READ TO THE COURT THIS MORNING. THE FIRST PART OF IT RELATES TO THE APPLICATION, AND THE LATTER PART OF IT RELATES OR APPEARS TO RELATE TO THE APPLICATION. THE MIDDLE PART, HOWEVER, READS AS FOLLOWS. ALLSTATE WILL NOT PROVIDE COVERAGE FOR ANY LOSS WHICH OCCURS IN CONNECTION WITH ANY MATERIAL MISREPRESENTATION, FRAUD, OR CONCEALMENT OF MATERIAL FACTS, AND THEN THERE IS A COMMA, AND THAT IS WHERE YOU HAVE --

BUT THAT REALLY GOES TO THE FACT THAT THEY ARE NOT GOING TO HAVE COVERAGE IN AN INSTANCE IN WHICH THEIR POLICY WAS ISSUED ON THE BASIS OF A FRAUDULENT FACT. CONTAINED IN AN APPLICATION. I MEAN THAT IS THE GENERAL PROVISION THAT THEY ARE DEALING WITH HERE IS WHETHER THE POLICY IS GOING TO BE VOID, BECAUSE IT WAS ISSUED ON THE BASIS OF A MATERIAL MISREPRESENTATION.

YOUR HONORS, THE FIRST PART -- YOUR HONOR, THE FIRST PART, WOULD AND THE LATTER PART WOULD APPEAR --

TR THERE ANY CASES THAT SPLIT THAT GENERAL CONDITION OF THE ALLSTATE POLICY UP INTO THREE PARTS?

NOT THAT I HIM AWARE OF RESPECT YOUR HONOR, BUT IF I COULD SAY THIS, DURING THE TRIAL PROCEEDING THAT, SPECIFIC ARGUMENT WAS MADE TO THE COURT, BEFORE THIS ISSUE WAS ALLOWED TO BE PRESENTED TO THE JURY. THE COURT REJECTED THAT ARGUMENT AND LOOKED TO THE LANGUAGE THAT IS STATE THE HERE -- THAT IS STATED HERE AND SPECIFICALLY, I RECALL CORRECTLY ADDRESSED THE COMMA, THERE, AND ISOLATED OUT THAT MIDDLE LANGUAGE.

BUT DON'T WE HAVE TO COME TO GRIPS WITH THAT, THAT IS, IF THERE IS A STATUTORY SCHEME THAT ALLOWS INSURANCE CARRIERS TO CANCEL COVERAGE, WHEN THERE HAS BEEN FRAUD OR MISSTATEMENTS IN THE APPLICATIONS FOR INSURANCE, AND THOSE STATUTES READ VERY SIMILAR, DO THEY NOT, TO THE LANGUAGE IN THIS POLICY? THAT IS THAT THIS CLEARLY, AS YOU HAVE CONCEDED, ONE OF THE PURPOSES OF THIS CLAUSE, AT A MINIMUM, IS TO DEAL WITH THE MISSTATEMENTS OR FRAUD IN APPLICATIONS? BUT THAT IS A VERY DIFFERENT ISSUE THAN IF YOU ARE DEALING WITH TELL AGO POLICYHOLDER -- WITH TELLING A POLICYHOLDER, IF YOU SUBMIT A FALSE BILL OR SOMETHING LIKE THAT, WITH REFERENCE TO SOME PART OF THE COVERAGE HERE THE ENTIRE POLICY IS IN JEOPARDY. SO TELL ME, AS A FOLLOW-UP TO JUSTICE WELLS'S QUESTION, WHETHER THIS IS THE LANGUAGE THAT A CARRIER WOULD CHOOSE TO USE, IF THAT WAS WHAT WAS GOING ON. THAT IS IF THEY WERE TRYING TO TELL A POLICYHOLDER, IF YOU SUBMIT A FALSE BILL, WITH REFERENCE TO ONE PORTION OF THE CLAIM, IF YOU SUBMIT A BILL, FOR INSTANCE, THAT SAYS THAT YOU PAID \$350 TO HAVE THE FENDER REPAIRED, AND YOU REALLY ONLY PAID \$300, THEN WE ARE GOING TO CANCEL THIS POLICY, WITH REFERENCE TO COVERAGE, FOR UM, LIABILITY, THE WHOLE WORKS. SO HELP ME, BECAUSE I HAVE THE SAME DIFFICULTY THAT JUSTICE WELLS HAS, INSOFAR AS RECOGNIZING, AND AS YOU DO, THAT AT LEAST THIS DOES DEAL WITH THE STATUTORY PREREQUISITES, BUT YOU SAY IT, ALSO, DEALS WITH THESE SPECIFIC INCIDENTS, SO HELP US WITH INTERPRETING THAT.

SURE, YOUR HONOR. BEFORE I DO THAT, IF I MAY JUST BRING OUT ONE EXTRA POINT DEALING WITH THIS PROVISION. ALLSTATE IS REPRESENTED AT THE SIU REPRESENTATIVE WHO FOUND THE FRAUDULENT BILLS COMING IN AND ACTUALLY PUT A STOP TO THE FRAUDULENT BILLS COMING IN, TESTIFIED AT THE TIME OF TRIAL, AND SHE WAS SUBJECTED TO CROSS-EXAMINE BY COUNSEL FOR MR. FLORES, DEALING WITH THAT PARTICULAR ISSUE. ABOUT WHETHER OR NOT THIS ALL RECEIPTS TO THE APPLICATION OR WHETHER IT RELATES TO FRAUD OCCURRING AFTER THE FACT. MAYBE FRAUD AFTER THE LOSS. AND THE JURY CLEARLY REJECTED THAT ARGUMENT.

BUT WE ARE TALKING, NOW, ABOUT WHETHER OR NOT THIS IS A FACTUAL ISSUE OR WHETHER OR NOT THIS IS A LEGAL INTERPRETTATION OF THAT LANGUAGE AND WHAT WE ARE FOCUSING ON NOW IS THE LEGAL CONSTRUCTION OF THAT LANGUAGE, ESPECIALLY IF YOU HAVE TO CONSTRUE POLICY LANGUAGE, MOST FAVORABLY TO THE INSURED.

THERE ARE BASICALLY THREE DIFFERENT TYPES OF POLICY LANGUAGE DEALING WITH THE VOIDING COVERAGE. SOME VOID THE ENTIRE POLICY. SOME WILL VOID ONLY WITH RESPECT TO A CERTAIN LOSS, AND SOME PROVISIONS THAT DEAL WITH VOIDING DON'T STATE EITHER, AND IN

THOSE CASES, WE HAVE CITED CASES FROM OTHER JURISDICTIONS THAT DEAL WITH THAT TYPE OF LANGUAGE.

WHY WOULD, THOUGH, FOR INSTANCE, IF WE OBVIOUSLY HAVE STRONG PUBLIC POLICY IN THE STATE OF FLORIDA, WITH REFERENCE TO UNINSURED MOTORISTS COVERAGE, WHY WOULD MAKING A FALSE CLAIM ON THE FENDER BENDER, OKAY, VOID THE UNINSURED MOTORIST COVERAGE, WHICH SEEMED TO BE TOTALLY UNRELATED, INSOFAR AS IF SOMEBODY SUSTAINS ENORMOUS INJURIES AND IS ENTITLED TO THE UNINSURED OR UNDERINSURED MOTORIST BENEFITS, WHY WOULD THIS FALSE REPRESENTATION, WITH REFERENCE TO THE BILL FOR THE CAR REPAIR, VOID THAT OTHER, MORE SERIOUS COVERAGE?

FOR, REALLY, TWO MAIN REASONS ONE OF THE REASONS BEING THAT, AS ARTICULATED BY THIS COURT IN THE RULE OF HOLLIS, GOING BACK TO THE EARLY PART OF THE CENTURY OF 19, I THINK IT WAS 1914, THE RULE OF LAW THAT WAS HANDED OUT BACK THEN SAID THAT, IN THE ABSENCE OF FRAUD OR MISREPRESENTATION, IF YOU HAVE A RECEIVERABLE POLICY, AND IT IS THE INTENTION OF THE PARTIES THAT IT CAN BE SEVERED, THEN IT IS TO BE SEVERED. HOWEVER, WHERE YOU DO HAVE FRAUD AND MISREPRESENTATION, YOU CAN'T SEVER OUT DIFFERENT PROVISIONS OF THE POLICY. THE SECOND POINT I WANT TO MAKE, THOUGH, IS WHAT WE HAVE HERE IS --

LET ME JUST GO ON YOUR FIRST POINT, WHICH IS THAT YOU CAN'T SEVER OUT A POLICY, IF THERE IS FRAUD IN ONE PART, BUT, REALLY, YOU HAVE, BECAUSE YOU GAVE UM COVERAGE TO THE INSURED, AND YOU GAVE IT, UM COVERAGE TO THE INSURED'S SON, AND SURELY, IF THIS WAS A CASE WHERE THERE WAS A PIP CLAIM AND THERE WAS A THIRD PARTY TORTFEASOR, YOU WOULD HAVE, I ASSUME, YOUR POSITION WOULDN'T BE THAT THE LIABILITY COVERAGE WOULD BE VOIDED, SO ISN'T ALLSTATE, REALLY, DECIDING, ON ITS OWN, WHICH PORTIONS OF THE COVERAGE IS GETTING SEVERED?

NO, YOUR HONOR. THE TRIAL COURT CRAFTED A VERY WELL-REASONED RULING, DEALING WITH THE MOTION TO SEVER, AND SPECIFICALLY STATED THAT ANY INSURED WHO COMMITS THE FRAUD WILL BE SUBJECT TO THE FORFEITURE, UNDER THIS PARTICULAR PROVISION. BUT DEALING WITH THE CLAIMS THAT WE HAVE HERE, IT IS VERY, VERY INTRING. A LOT OF THE CASES DEAL -- INTERESTING. A LOT OF THE CASES DEALING WITH THE RECEIVERABILITY OF COVERAGES AND REJECTING THAT WHERE -- AND THE RECEIVERABILITY OF -- THE SEVERABILITY OF COVERAGE AND REPRESENTED THAT, WHERE YOU DON'T HAVE FRAUD, WHERE YOU HAVE PIP BILLS FOR MEDICAL TREATMENT AND THINGS OF THAT NATURE, AND THE COVERAGES THAT ARE PROVIDED BY THE PIP STATUTE, WHERE YOU CAN GET MEDICAL COVERAGE AND YOU CAN, ALSO, RECOVER LOST WAGES, WELL, HERE, THERE IS A VERY, VERY CLOSE AND INTERWOVEN RELATIONSHIP WITH UM, BECAUSE BASICALLY WHAT WE HAVE HERE IS AN END-AROUND WAY, TRYING TO GET COVERAGE, WHERE THE INSURED COMMITTED FRAUD WITH RESPECT TO THE PIP. BECAUSE WITH UM, YOU CAN RECOVER LOST WAGES. YOU CAN, ALSO, RECOVER MEDICAL BILLS AS WELL.

BUT GOING BACK --

LET ME ASK, LET ME, THIS HAS TO BE LOOKED AT AS DIVIDESABLE COVERAGE. CORRECT? I MEAN, THERE ARE SEPARATE PREMIUMS PAID FOR EACH OF THESE VARIOUS COVERAGES, UNDER THIS

I WOULD RESPECTFULLY DISAGREE.

THERE ISN'T SEPARATE --

THERE IS A SEPARATION, BUT I DON'T THINK LOOKING HERE, DEALING WITH FRAUD, WE HAVE TO PUT ON THE BLINDERS AND SAY THAT WHEN YOU HAVE FRAUD, WHEN YOU HAVE MISREPRESENTATION, YOU DON'T LOOK TO THE POLICY AS BEING SEVERABLE.

THAT IS, AGAIN, WHY YOU HAVE TO LOOK AT THIS PROVISION, I KEEP COMING BACK TO, IF YOU ARE TALKING ABOUT SOMETHING THAT VOIDS THE POLICY FOR COVERAGE IT VOIDS THE APPLICATION. FOR INSTANCE, IF SOMETHING IS FILLED OUT SAYING THAT YOU HAVE NOT HAD ANY ACCIDENTS OR SAYING THAT YOU DON'T HAVE ANY TEENAGED DRIVERS IN YOUR FAMILY, THEN THE COVERAGE WOULD NOT COVER THE LOSS, UNDER THE POLICY. HOWEVER, WHERE YOU HAVE DIVISIBLE TYPES OF COVERAGE, IT SEEMS TO ME THAT, UNLESS THE INSURANCE COMPANY IS GOING TO PUT SOME KIND OF WARNING IN HERE THAT IS IN COMPLIANCE WITH THE UM POLICY, THAT IT IS HARD TO GET AROUND THE FACT THAT THE UM POLICY HAS GOT TO BE ISSUED, BECAUSE THEY ISSUE LIABILITY POLICIES. HOW DO YOU DO THAT?

WELL, YOUR HONOR, AGAIN, I WOULD GO BACK TO THE TRIAL COURT'S ORDER THAT WAS RESPECTED BY THE SECOND DISTRICT COURT OF APPEAL, AND SPECIFICALLY LOOKED AT THIS POLICY PROVISION AND SAID ONLY THOSE PEOPLE THAT ARE GUILTY OF THE FRAUD ARE GOING TO BE SUFFERING THE FORFEITURE, IF THEY DO, IN FACT, COMMIT FRAUD.

BUT I AM UNDERSTANDING THAT YOU ARE SAYING THAT YOU INTERPRET OUR PRIOR CASE LAW OF SAYING THAT, EVEN IF SOMETHING IS A DIVISIBLE POLICY, THAT IF THERE IS FRAUD AND MISREPRESENTATION IN ANY PORTION OF THE POLICY, WITH RESPECT TO ANY PART OF THE CLAIM, THE WHOLE POLICY IS VOID, SO THAT IT WOULDN'T MATTER WHAT IS WRITTEN INTO THE POLICY. THAT IS A MATTER OF LAW? IS THAT BECAUSE ARE SAYING?

YES, YOUR HONOR.

BUT WE HAVE NEVER -- BUT THE PROBLEM WITH THAT, FIRST OF ALL, IS THAT THAT -- FIRST OF ALL, IS THAT THAT IS, IF ANYTHING IS ADDICTED IN THE CASES -- IS DICKTED IN THE CASES WHERE THE STATEMENT IS MADE, BECAUSE THE ISSUE WASN'T BEFORE US, FOR INSTANCE IN A MICHIGAN CASE, COHEN VERSUS AUTO CLUB, AND THAT SAID IF THE ENTIRE POLICY IS VOID, IF A PERSON IS INSURED AND MATERIALLY MISS REPRESENTED ANY FACTUAL CIRCUMSTANCES RELATED TO A, THIS INSURANCE, B, THE APPLICATION FOR IT, C, OR ANY CLAIM MADE UNDER IT, AND ARE YOU -- DOES -- DOESN'T MATTER IF THAT IS THE STATEMENT THAT IS MADE OR THE MORE GENERAL LANGUAGE THAT IS IN THE ALLSTATE POLICY? THE EFFECT IS THE SAME, BECAUSE FRAUD IN ANY PART VOIDS THE WHOLE THING OUT, NO MATTER WHAT THE PARTIES CONTRACTING TO IT SAY.

YES, YOUR HONOR. THERE HAVE BEEN MANY CASES INTERPRETING THE FRAUD PROVISIONS IN MANY DIFFERENT TYPES OF POLICIES. THIS COURT, IN THE PAST, HAS DEALT WITH PROPERTY COVERAGE CASES AND THERE IS A --

HAS THIS COURT REALLY DECIDED THIS ISSUE?

JUSTICE LEWIS HAD --

HAVE WE DECIDED THIS ISSUE?

THIS COURT HAS ACKNOWLEDGED A RULE IN HOLLIS, WHICH DEALS WITH THE SEVERABILITY WHEN YOU DO HAVE FRAUD, MISREPRESENTATION. I WILL ACKNOWLEDGE THAT THERE IS A PART OF THE HOLLIS DECISION WHERE IT SAYS THAT THERE WAS NONE PRESENT IN THAT PARTICULAR CASE. HOWEVER, THERE HAS BEEN A RECENT CASE THAT HAS REFERRED TO THIS COURT'S DECISION IN HOLLIS, THAN IS THE THIRD DISTRICT COURT OF APPEALS' DECISION IN SCHNERE, WHERE YOU HAD A CONTENTS CLAIM AND, ALSO, A STRUCTURE CLAIM, AND THE COURT DETERMINED, AFTER ALLOWING THE ISSUE TO GO TO THE JURY, THAT, BECAUSE THERE WAS FRAUD IN CONNECTION WITH THE CONTENTS CLAIM, THAT THERE WOULD BE NO OTHER COVERAGE AFFORDED UNDER THAT POLICY. AGAIN, CITING TO THE RULE IN HOLLIS BY THIS COURT.

JUSTICE LEWIS HAD A QUESTION.

JUSTICE SHAW?

WOULD YOUR POSITION BE ANY DIFFERENT, IF STATUTORILY STATUTORILY-PROTECTED THIRD PARTIES WERE AFFECTED BY YOUR CANCELLATION PROVISION? IF, BY STATUTE, THERE ARE OBVIOUSLY THIRD PARTIES THAT ARE MEANT TO BE PROTECTED, OTHER THAN THE CONTRACTING PARTIES, SOMEBODY THAT YOU RUN INTO AND KILL, THEY ARE TO BE PROTECTED. WOULD YOU BE ARGUING SOMETHING DIFFERENT FROM WHAT YOU ARE ARGUING NOW?

NO, BECAUSE WHAT THE TRIAL COURT DID, AND WE FEEL DID CORRECTLY, WAS CRAFTED IT OUT ONLY TO THE PERSON WHO WAS COMMITTING THE FRAUD. THERE HAVE BEEN SOME DECISIONS THAT THE DISTRICT COURT LEVEL THAT DEAL WITH A FORFEITURE OF A LIABILITY POLICY, BY ACTS TAKEN BY AN INSURED, AND THOSE INSTANCES DEAL WITH FAILURE TO COOPERATE AND THE LIKE.

BUT OF NECESSITY, WOULDN'T YOU HAVE TO, THEN, START CONSIDERING OR TAKING INTO CONSIDERATION, PUBLIC POLICY CONCERNS OF THE STATE?

THERE COULD BE, BUT THERE IS A LOT MORE ISSUES THERE WITH THAT AS WELL. IS THERE ANY TYPE OF EXPECTATION OF A PERSON WHO IS INVOLVED IN AN AUTO ACCIDENT WITH ANOTHER, THAT THE PERSON THAT THEY ARE GOING TO BE INVOLVED IN AN ACCIDENT WITH IS GOING TO HAVE LIABILITY COVERAGE?

WELL, WHAT ABOUT THE HOSPITAL LYNN SITUATION? IN OTHER WORDS THE HOSPITAL GETS A LIEN OR ARE ENTITLED TO GO AGAINST THE INSURANCE THAT THE INJURED PARTY HAD. NOW, ARE YOU SAYING THAT LIEN WOULD BE NO GOOD, IN THE FACE OF THIS SITUATION?

YOUR HONOR, I BELIEVE THAT THOSE LIENS AND THE ASSIGNMENTS THAT MR. STAHL WAS REFERRING TO PLACE THE HOSPITAL IN THE SAME TYPE OF POSITION AS THE INSURED WOULD BE.

SO EVEN THOUGH THE HOSPITAL HAD A COMPLETELY LEGITIMATE BILL AND THE ASSIGNMENT WAS GIVEN BEFORE ANY FRAUD WAS COMMITTED, AND EVERYBODY AGREES THAT TREATMENT WAS RENDERED. IT WAS REASONABLE AND NECESSARY, YOU KNOW, WHATEVER THE OTHER QUALIFYING THINGS ARE. IF, WHEN HE WENT TO HIS INSURANCE COMPANY AND MISREPRESENTED WHATEVER TRBLINGSD PRECLUDE ANY CLAIMS BY -- OR WHATEVER, IT WOULD PRECLUDE ANY CLAIMS UNDER THOSE ASSIGNMENTS OR UNDER ANY STATUTORY LIENS?

THAT I HAVE NEVER SEEN A CASE DEALING WITH, AND RESPECTFULLY IT HAS A LOT MORE ISSUES THAN WHAT WE ARE DEALING WITH HERE, BUT I THINK THAT, IF THERE IS FRAUD COMMITTED BY AN INSURED IN CONNECTION WITH THE CLAIM, THEY WOULD BE VOIDING ANY COVERAGES CONNECTED WITH THE SAME POLICY, AND I CAN SEE SOME SCENARIOS WHERE YOU WOULD BE HEARTFELT TOWARD A THIRD PARTY, PERHAPS, TO PROVIDE THEM WITH COVERAGE, BUT IF THERE IS NO COVERAGE THINK, IF THERE IS NO ORIGIN OR GENESIS OF COVERAGE STEMING FROM THAT INSURED, THEN THERE WOULD BE NO RIGHT TO --

FROM THAT LOGICAL CONCLUSION, IF THERE WAS A LIABILITY CLAIM AGAINST THE DRIVER OF THE AUTOMOBILE, WHO, ALSO, HAD HAD THESE MEDICAL BILLS TO SUBMIT UNDER PIP, THE COMPANY WOULD BE ENTITLED TO DENY THE LIABILITY COVERAGE, DESPITE THE INJURIES TO THE THIRD PARTIES.

NO, BECAUSE OF THE LANGUAGE CRAFTED OUT BY THE TRIAL COURT. THAT THIRD PARTY WOULD NOT BE COMMITTING FRAUD. IT WOULD BE THE OCCUPANT OF THE VEHICLE IN WHICH HE WAS INVOLVED IN THE ACCIDENT WITH, AS I UNDERSTAND YOUR HYPOTHETICAL.

BUT I THOUGHT THE COVERAGE WAS WHAT WE WERE TALKING ABOUT, THE COVERAGE.

TALKING ABOUT THE INSURED. IN OTHER WORDS THE INSURED IS THE DRIVER THAT SUBMITTED THE MEDICAL BILLS AND, ALSO, WOULD OBVIOUSLY BE THE INSURED THAT ASKED THE COMPANY TO DEFEND HIM IN THE LIABILITY SUIT. AND SO YOU ARE SAYING, UNDER THE JUDGE'S ORDER, NO, THE LIABILITY COVERAGE WOULD STILL BE IN PLACE AND THEY WOULD EXTEND THAT TO HIM. THEY WOULDN'T CANCEL THAT PART OF OR DENY THAT PART OF THE COVERAGE. THEY WOULD ONLY DENY THE PART OF THE COVERAGE GOING TO THE PIP?

NOW I UNDERSTAND YOU BETTER, NOW, AND I BELIEVE UNDER THAT TYPE OF SCENARIO, YOU WOULD NOT BE PROVIDING COVERAGE. THERE WILL BE NO COVERAGE FOR THAT PARTICULAR INSURED, BECAUSE OF THE FRAUD THAT THEY COMMITTED.

WOULDN'T THAT GO AGAINST THE WHOLE LIABILITY SCHEME OF PROTECTING THIRD PARTIES OUT THERE, BY REASON OF HAVING LIABILITY INSURANCE COVERAGE ON A DRIVER OUT THERE ON THE STREETS?

PERHAPS. PERHAPS NOT. MAYBE THE COURT THAT WOULD BE ADDRESSING THAT ISSUE, WOULD LOOK AT THE CASES DEALING WITH, FOR INSTANCE, COME INSURED, INNOCENT SPOUSES, MAYBE THEY WOULD CARVE OUT AN EXCEPTION IN THAT PARTICULAR INSTANCE, WHERE YOU HAVE TWO POLICYHOLDERS TOGETHER, HUSBAND AND WIFE, ONE BURNS DOWN A HOUSE. THE OTHER ONE HAS NOTHING TO DO WITH IT. THE INNOCENT SPOUSE SEEKS THE RECOVERY OF THOSE BENEFITS, AND MAYBE IN THAT INSTANCE, THE COURTS WOULD ALLOW THAT, BUT, AGAIN, RESPECTFULLY THAT IS NOT WHAT WE ARE DEALING WITH HERE, IN THIS PARTICULAR INSTANCE. MR. FLORES WAS A PASSENGER IN A VEHICLE. THERE WOULD BE NO TYPE OF CLAIM, WITH RESPECT TO ANY TYPE OF LIABILITY.

ALLSTATE'S POSITION IS THAT THIS POLICY IS VOID. IT IS NOT CANCELLED. IS THAT CORRECT? YOU DON'T HAVE TO FOLLOW THE CONSOLATION STATUTES.

CORRECT. THE POLICY IS VOID, WITH RESPECT TO THE COVERAGES THAT COULD BE OFFERED TO MR. FLORES. AGAIN, WE CONTINUE TO MAKE PAYMENTS. WE HAVE PROVIDED COVERAGE TO MR. FLORES'S WIFE. WE HAVE, ALSO, PROVIDED COVERAGES TO MR. FLORES'S SON.

SO, THEN, THAT MEANS, THOUGH, THAT THE LIABILITY POLICY DOES NOT APPLY, IF, 30 DAYS AFTER THIS OCCURS, THERE HAS NOT BEEN A CANCELLATION, AND THEY ARE STILL OUT THERE DRIVING AROUND AND THEY HIT SOMEONE ELSE, THEN THAT IS VOID, BECAUSE IT IS VOID LIABILITY COVERAGE, CORRECT? IT IS A DIFFERENT ACCIDENT BUT IT IS VOID. YOU VOIDED THE POLICY, CORRECT?

NOT THE ENTIRE POLICY. IN YOUR SCENARIO, YOUR HONOR, IT WOULD DEPEND ON WHO WAS DRIVING THE VEHICLE.

THE SAME SCENARIO, THAT THE INSURED, JUST LIKE JUSTICE ANSTEAD. IT IS A DIFFERENT ACCIDENT, BUT IF YOU VOIDED THAT POLICY AND YOU HAVEN'T COMPLIED WITH THE STATUTES ON CANCELLATION. YOU DON'T HAVE TIME TO GO GET IT. YOU MAY HAVE JUST IN YOUR OWN MIND CANCELLED IT. THE INSURED DOESN'T KNOW. SO THERE IS NO LIABILITY COVERAGE, UNDER YOUR, AS YOU FOLLOW IT THROUGH.

AGAIN, I DON'T KNOW HOW THE COURT WOULD DEAL WITH IT. IT COULD CARVE OUT AN EXCEPTION LIKE THE INNOCENT COME INSURED SPOUSE, BUT I HAVE NEVER SEEN A CASE DEALING WITH THAT PARTICULAR ISSUE HERE, IN FLORIDA. I KNOW FOR INSTANCE, THOUGH, HOWEVER, WHEN YOU HAVE AN ARSON THAT IS COMMITTED AND A PROPERTY DAMAGE SCENARIO, THERE ARE CLAIMS BY THE MORTGAGE COMPANY, SAYING THAT IT DOESN'T MAKE A

DIFFERENCE TO US WHO BURNED IT DOWN. ALL WE KNOW IS WE HAVE A LOSS, AND THE INSURANCE COMPANIES HAVE TO PAY THE MORTGAGE HOLDER, AND THEY DO THAT. SO I WOULD IMAGINE FOLLOWING THAT LOGIC AND THAT CASE LAW, THAT IN YOUR TYPE OF SKRN AIR YO THAT THEY WOULD -- OF SCENARIO, THAT THEY WOULD CARVE OUT THAT EXCEPTION.

DOES THE ANALYSIS THAT WE DO HERE, WITH REFERENCE TO THE CERTIFIED QUESTION, DEPEND AT ALL ON THAT THIS IS UNINSURED MOTORIST COVERAGE, VERSUS IF IT WAS A FIRE LOSS OR SOMETHING ELSE, IT WAS PURELY CONTRACTUAL, AS OPPOSED TO SOMETHING GOVERNED BY STATUTE, OR SHOULD THE RULE OF LAW BE THE SAME?

WE WOULD SUBMIT THAT THERE BE A BROAD RULE THAT, IF YOU COMMIT FRAUD WITH RESPECT TO THE INSURANCE CLAIM, THAT YOU WOULD NOT BE ENTITLED TO COVERAGE. I THINK THAT ANSWER THE QUESTION.

THANK YOU, MR. NICHOLAS. YOUR TIME IS UP.

THANK YOU.

THANK YOU, MR. STAHL.