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State Farm Mutual Automobile Insurance Co. V. Margaret Roach

THE MARSHAL: PLEASE RISE. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: THE NEXT CASE ON THIS MORNING'S DOCKET IS STATE FARM VERSUS MARGARET ROACH.

MAY IT PLEASE THE COURT, ELIZABETH RUSSO ON BEHALF OF OF THE PETITIONER, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY. THIS IS A CHOICE OF LAW CASE, AND THE SPECIFIC ISSUE PRESENTED IS WHAT CHOICE OF LAW RULES, APPLIES TO DETERMINE WHETHER FLORIDA LAW OR INDIANA LAW SHOULD APPLY TO THIS AUTOMOBILE INSURANCE CONTRACT DISPUTE. I CAN STATE THE CORE FACTS IN A SENTENCE. THE RESPONDENT SUSTAINED INJURIES IN AN AUTOMOBILE ACCIDENT IN FLORIDA FOR WHICH THEY ARE SEEKING UNINSURED MOTORIST BENEFITS UNDER AN AUTOMOBILE POLICY THAT WAS ISSUED IN INDIANA FOR DELIVERY IN INDIANA AND DELIVERED IN INDIANA, TO AN INDIANA RESIDENT ON AN AUTOMOBILE THAT IS PRINCIPALLY GARAGED IN INDIANA. THE TRIAL COURT CORRECTLY WE THINK HELD THAT THE RULE THAT SHOULD BE APPLIED IS THE LEX LOCI CONTRACTUS RULE AND HELD THAT THE LAW OF INDIANA WOULD APPLY SINCE THAT'S WHERE THE CONTRACT WAS ENTERED MUCH THE SECOND DISTRICT ON THE OTHER HAND DECIDED TO CREATE A PUBLIC POLICY EXCEPTION TO THE LEX LOCI CONTRACTUS RULE AND ON THAT BASIS HELD THAT FLORIDA LAW WOULD APPLY.

THERE IS A PUBLIC POLICY EXCEPTION, CORRECT? OUR CASES SAY THAT THERE IS AN EXCEPTION FOR OVERRIDING PUBLIC POLICY?

I THINK THAT THAT'S SOMETHING THAT THE COURT WILL HAVE TO DECIDE, POST THE COURT'S DECISION IN STURIANO, ADOPTING THE LEX LOCI CONTRACTUS RULE WHICH IS DESCRIBED IN THE OPINION AS INFLEXIBLE AS IT APPLIES TO AUTOMOBILE INSURANCE POLICIES. THERE IS ANOTHER DECISION DECIDING WHETHER THERE SHOULD BE PUBLIC POLICY EXCEPTIONS TO THAT.

WE DIDN'T SAY IN STURIANO THAT THERE WAS A PUBLIC POLICY EXCEPTION?

NO.

OKAY.

CAN I UNDERSTAND YOUR ARGUMENT, PLEASE, THAT ARE YOU ASSERTING A PROPOSITION OF LAW THAT WOULD OVERRULE SOME OF THE CASES SUCH AS THE NEW HAMPSHIRE CASE WHERE YOU HAVE DIFFERENT FACTUAL SCENARIOS SUCH AS NOTIFICATION TO THE CARRIER THAT WERE MOVING TO FLORIDA AND THAT THAT LINE OF CASES, HOW STRICT OF A RULE ARE YOU URGING US TO ADOPT TODAY?

WELL, OF COURSE THAT'S A POLICY DECISION FOR THE COURT. IF I WERE URGING, I WOULD SAY TO STICK WITH STURIANO AND HAVE IT BE AN INFLEXIBLE RULE THAT WHEREVER THE PLACE OF CONTRACT IS --

WHICH OVERRULES A SUBSTANTIAL BODY OF OUR LAW THEN, SUBSTANTIAL NUMBER OF CASES WOULD HAVE TO BE OVERRULED TO ADOPT THAT.

NOT IN THE AUTOMOBILE INSURANCE CONTEXT.

I THINK THERE WOULD BE. THERE ARE PROBABLY EIGHT OR NINE THAT DEAL WITH DIFFERENT VARIATIONS WHERE A CARRIER KNOWS WHERE THE VEHICLE IS LOCATED, THE PEOPLE WORK HERE, THEY LIVE HERE, THEY NOTIFY THEM BUT IF THE POLICY IS ISSUED IN ALABAMA, FOR EXAMPLE, IN A CASE LIKE THAT.

IN EVERY ONE OF THESE CASES -- AGAIN THIS HAS NOT COME UP POST STURIANO SO THE COURT CAN DECIDE WHETHER IT IS GOING TO BE INFLEXIBLE OR WHETHER THERE SHOULD BE A PUBLIC POLICY EXCEPTION. IF THERE IS GOING TO BE A PUBLIC POLICY EXCEPTION IT SHOULDN'T BE IN THIS CASE. SOMETHING IN THE FUTURE FOR YOU TO DECIDE BUT I WOULD ALSO POINT OUT IN ALL OF THE CASES THAT PREDATED STURIANO THAT THE POLICY WAS ISSUED IN ANOTHER STATE AND YET THERE WAS A DECISION MADE TO APPLY FALSE FLORIDA LAW. THERE WAS A PRIMARY TIE TO FLORIDA. THAT IS THE INSURED EITHER WAS A RESIDENT OF FLORIDA, HAD MOVED TO FLORIDA AND WAS BECOMING A RESIDENT OR YOU HAD A CAR THAT WAS PRINCIPALLY GARAGED IN FLORIDA SO IN EACH INSTANCE FLORIDA WAS THE PRIMARY TIE TO THE INSURED.

MISS RUSSO, IS THERE ANY ARGUMENT MADE AS TO WHETHER WE SHOULD REcede FROM STURIANO? IN OTHER WORDS, I JUST READING JUSTICE GRIMES' SEPARATE OPINION IN THAT CASE WHERE HE FOUND THAT, YOU KNOW, HE WOULD HAVE ADOPTED THE AMERICAN LAW INSTITUTE'S VIEW OF THIS. WAS THAT ARGUED BELOW AS AN ISSUE AS TO WHETHER, AND THEN EVEN, OF COURSE, IF IT WAS ADOPTED WOULD IT BE ANY DIFFERENT? WOULD THE RESULT IN THIS CASE BE ANY DIFFERENT?

I DON'T BELIEVE THAT THAT WAS ARGUED BELOW. I BELIEVE THAT THE RESPONDENT'S POSITION HAS ALWAYS BEEN SORT OF BEYOND STURIANO OR THAT THERE SHOULD STILL BE EXCEPTIONS TO LEX LOCI CONTRACTUS, BUT I DON'T UNDERSTAND THAT TO BE URGING THE SIGNIFICANT RELATIONSHIPS TEST SHOULD BE ADOPTED UNDER 188 I THINK IT IS.

HAVE YOU LOOKED AT OTHER STATES? IS THERE A MAJORITY, MINORITY VIEW ON WHETHER OR NOT YOU SHOULD USE THE LEX LOCI CONTRACTUS RULE VERSUS THE RESTATEMENT RULE? WHAT DO THE OTHER JURISDICTIONS DO?

I HAVE LOOKED AT THAT AND I DON'T KNOW THAT IT HAS COME TO THE POINT OF THERE BEING A MAJORITY OR MINORITY. A LOT OF STATES HAVE STUCK WITH LEX LOCI CONTRACTUS UPON CONSIDERATION. SOME HAVE GONE TO THE MORE SIGNIFICANT RELATIONSHIPS THAT THE RESTATEMENT TEST HAS ADOPTED AND THEN SOME HAVE NOT ADDRESSED IT YET.

CHIEF JUSTICE: THE STATE OF THE RECORD OBVIOUSLY I WOULD ASSUME THERE IS A DIFFERENCE IN PREMIUMS BETWEEN FLORIDA VEHICLES THAT ARE GARAGED PRINCIPALLY IN FLORIDA THAN VEHICLES PRINCIPALLY GARAGED IN INDIANA.

THAT DOES NOT APPEAR OF RECORD, YOUR HONOR, BUT UNDER THE HOLDING THAT THE SECOND DISTRICT HAS MADE, THEY ARE BASICALLY HAVING OUR POLICY HAVE TO AFFORD MORE COVERAGE. I MEAN THE POLICY, THE COVERAGE THAT THEY ARE SAYING IS IN FROM FLORIDA PUBLIC POLICY GIVES ADDITIONAL UM, UNINSURED MOTORIST COVERAGE.

THIS IS THE STACKING ISSUE?

IT IS REALLY NOT A STACKING ISSUE. IT IS WHETHER YOU CAN HAVE THE REAL, WHAT THEY HAVE ALLOWED IS FOR UNINSURED MOTORISTS TO BE PLACED AS EXCESS OVER LIABILITY.

CHIEF JUSTICE: WELL, OUR DEFINITION OF UNDERINSURED MOTORIST IS DIFFERENT THAN INDIANA'S, CORRECT?

IT IS SORT OF THAT. IT IS SORT OF THAT -- IT IS THE WAY THE COVERING PROVISIONS ARE ALLOWED. INDIANA SAYS THAT YOU CAN ONLY SELL UNINSURED MOTORIST COVERAGE, UNDERINSURED I SHOULD SAY, UNDERINSURED WHERE THE -- THERE IS LESS LIABILITY INSURANCE THAN THERE IS UNDERINSURED MOTORIST INSURANCE. FLORIDA'S UNDERINSURED MOTORIST STATUTE SAYS THAT UNDER OR UNINSURED MOTORIST CAN BE PLACED AS EXCESS OVER ANY LIABILITY POLICIES. SO THE WAY IT WORKS IS AS A PRACTICAL MATTER IF YOU HAVE \$100,000 LIMITS LIKE WHAT WE HAVE HERE, \$100,000 LIMITS IN LIABILITY POLICY COVERAGE AND \$100,000 IN UNINSURED MOTORIST, UNDER INDIANA LAW YOU HAVE NO UNDERINSURED MOTORISTS.

THAT USED TO BE THE LAW IN THIS STATE BEFORE IT WAS CHANGED?

RIGHT. BUT FLORIDA CHANGED ITS STATUTE AT SOME POINT TO SAY THAT THE UNINSURED MOTORIST COVERAGE COULD BE USED OVER AND ABOVE THE LIABILITY.

CHIEF JUSTICE: IF YOUR DAMAGE EXCEEDED WHAT THE TORT-FEASOR COVERED.

SO TO GET TO THE ANSWER OF YOUR PREMIUM QUESTION SINCE UNDER THE FLORIDA SCHEME YOU ARE GETTING INSURANCE IN EVERY INSTANCE, THE UNINSURED MOTORIST IN EVERY INSTANCE WHERE THE DAMAGES EXCEED THE LIABILITY INSURANCE IT IS MORE EXPENSIVE. YOU WOULD HAVE PAY A GREATER PREMIUM FOR THAT THAN FOR THE COVERAGE YOU ARE GETTING IN INDIANA.

AND IN DETERMINING WHETHER, ASSUMING THERE IS A PUBLIC POLICY EXCEPTION, WHETHER IT SHOULD APPLY, DON'T WE NEED TO LOOK AT WHETHER THAT DIFFERENCE BETWEEN THE FLORIDA STATUTE AND THE INDIANA STATUTE REPRESENTS SOME PARAMOUNT PUBLIC POLICY IN FLORIDA THAT WOULD OVERRIDE THE LEX LOCI CONTRACTUS PRESUMPTION?

YES. THAT'S THE TEX THAT WOULD BE USED.

BUT IT SEEMS LIKE THE DISTRICT COURT BELOW WAS MORE ANALYZING, WELL, ARE THERE CONTACTS IN FLORIDA? WHERE DID THEY LIVE? WHERE DID THEY COME FROM? I'M TALKING ABOUT DON'T WE HAVE TO LOOK AT THE STATUTE AND SAY IS THIS DIFFERENCE IN UM COVERAGE SOME KIND OF PARAMOUNT PUBLIC POLICY THAT WOULD OVERRIDE THE PRESUMPTION THAT THE CONTRACT IS GOVERNED BY THE LAW WHERE IT WAS SIGNED, WHERE IT WAS FORMED?

YES, THAT'S THE -- THE WAY THE ANALYSIS WOULD FOCUS IS WHAT IS FLORIDA'S PURPOSE IN SETTING UP UNDERINSURED, UNINSURED MOTORIST COVERAGE THE WAY IT HAS IT SET UP VERSUS WHAT INDIANA'S INTEREST IN SETTING IT UP THE WAY INDIANA HAS SET IT UP.

BUT WE'RE CONSTRAINED TO THAT PARAMETER STRICTLY BECAUSE OF THE LEX LOCI AND THE ONE EXCEPTION FOR PUBLIC POLICY AS OPPOSED TO IF WE APPLY THE STATEMENT IT GIVES MORE FLEXIBILITY TO CONSIDER ALL THE FACTORS.

IF YOU ADOPTED THE RESTATEMENT THEN, YES, THAT'S TRUE.

BUT THE STRICTURE YOU ARE TALKING ABOUT IS BECAUSE OF LEX LOCI AND PUBLIC POLICY?

YES, IF I UNDERSTOOD THE QUESTION CORRECTLY THAT WOULD BE THE ANALYSIS AND SO THEN WE WOULD SUBMIT EVEN IF YOU WERE GOING TO GET INTO A PUBLIC POLICY ANALYSIS, THAT YOU WOULD HAVE TO HAVE -- THIS WOULD NOT BE THE CASE TO DO IT NOR IS THIS THE ISSUE TO DO IT FOR, BECAUSE IT IS NOT -- THERE IS NOTHING ABOUT FLORIDA MAKING UNINSURED MOTORIST COVERAGE AVAILABLE IN THE MANNER THAT IT DOES THAT IS OF SUCH PARAMOUNT IMPORTANCE OR SO OVERRIDING AND THE REASON I SAY THAT IS THERE IS NO POLICY OUT

THERE IN FLORIDA THAT, LISTEN, THIS IS SO IMPORTANT TO US THAT ANYBODY WHO COMES TO FLORIDA BE AWARE THAT IF YOU GET IN AN AUTOMOBILE ACCIDENT WE ARE GOING TO MAKE SURE THAT YOU HAVE --

CHIEF JUSTICE: THE IMPORTANCE WOULD BE IF WE ARE DEALING WITH OUR OWN RESIDENTS THAT, YOU KNOW, THERE IS AN INTEREST JUST LIKE THERE IS IN MAKING SURE PEOPLE HAVE UNINSURED MOTORIST OR LIABILITY INSURANCE IS THE EXTENT THAT THEIR INJURIES EXCEED THE AMOUNT OF AVAILABLE INSURANCE THEY POTENTIALLY ARE A DRAIN ON THE STATE IN TERMS OF HAVING TO PROVIDE FOR MEDICAL CARE SO THAT COULD BE THE PURPOSE BUT I'M LOOKING AT THE RESTATEMENT, I DON'T EVEN SEE A PUBLIC POLICY FACTOR WRITTEN INTO THE RESTATEMENT. ARE YOU FAMILIAR WITH WHETHER THAT IS SOMETHING THAT IS TAKEN INTO CONSIDERATION IN THE 188?

I DON'T THINK THEY HAVE LISTED IT AS ONE OF THE FACTORS. AGAIN I THINK THAT IS SOMETHING THAT THE COURTS JUST DO WHEN THEY FEEL THAT THERE IS A PUBLIC POLICY REASON FOR DISREGARDING.

THEY START WITH THE ISSUE THEN IS WHAT STATE HAS THE MOST SIGNIFICANT RELATIONSHIP TO THE TRANSACTION, AND THEY REALLY JUST, THAT'S WHAT THEY BASE IT ON AND ONCE THEY FIGURED THAT OUT THEN THAT LAW APPLIES. I MEAN I GUESS THERE IS A SEPARATE ISSUE AS TO WHETHER SOMETHING WOULD BE REPUGNANT TO THE POLICY OF THE STATE BUT THAT'S A GENERAL PRINCIPLE NOT TO DO WITH ANY PARTICULAR --

CORRECT. BUT WITH RESPECT TO THE UNINSURED MOTORIST ISSUE HERE, NOT EVEN FLORIDA, THE REASON I SAY THIS NOT ONE OF SUCH OVERRIDING PUBLIC IMPORTANCE THAT YOU SHOULD IN THIS CASE DEPART FROM LEX LOCI CONTRACTUS IS NOT EVEN THE LEGISLATURE IS REQUIRING THERE TO BE UNINSURED MOTORIST COVERAGE. IT IS OPTIONAL. IT HAS TO BE OFFERED TO ALL INSURED, AND THEY CAN REJECT IT IF THEY DON'T WANT TO PAY FOR IT.

CHIEF JUSTICE: ASSUMING THAT THE SIGNIFICANT RELATIONSHIP IS AN ISSUE AND THIS IS REALLY SOMETHING MR. EATON CAN HELP ME WITH, IT SEEMS TO ME THAT THIS WOULD STILL BE GOVERNED BY INDIANA POLICY BECAUSE THE PLACE OF THE CONTRACTING, THE NEGOTIATION, THE LOCATION, THE SUBJECT MATTER THAT IT WAS PRINCIPALLY GARAGED IN INDIANA AND NOT IN FLORIDA. THEY ARE NEVER TOLD AT LEAST THE FACTS AS I UNDERSTAND IT THAT HE HAD, YOU KNOW, WAS PRETTY SAVVY AND NEVER SAID I AM NOW GOING TO BE SPENDING HALF OF MY TIME IN FLORIDA. THERE IS NO EVIDENCE OF THAT IN THE RECORD, IS THERE?

I THINK THERE IS THE DEBATED EVIDENCE.

CHIEF JUSTICE: BUT THAT WOULD BE IMPORTANT TO ME.

OKAY. THERE IS TESTIMONY FROM MR. ROACH, I'M SORRY, FROM MR. HODGES WHO WAS THE INSURED THAT HE TALKED WITH HIS INSURANCE AGENT OR THE AGENT'S WIFE. HE CAN'T REMEMBER WHICH ONE, AND THEY KNEW THAT HE WAS GOING DOWN TO FLORIDA FOR PARTS OF THE YEAR EVERY YEAR. THERE IS THAT TESTIMONY.

HOW ABOUT THE AGENT -- I THOUGHT THE AGENT DISPUTED ANY NOTIFICATION OF THAT. THE AGENT DID NOT DISPUTE THAT AT ALL?

THE AGENT DISPUTES IT. I'M SAYING IN THE LIGHT MOST FAVORABLE TO THE RESPONDENT, BUT TO ME IT DOESN'T MAKE ANY DIFFERENCE BECAUSE THEY STILL, IT IS ALSO STILL UNDISPUTED THAT THEIR PRIMARY RESIDENCE IS INDIANA. THE ONLY CASE I THINK THAT EVER WENT BEYOND STURIANO TO LOOK AT THE ISSUE OF, OKAY, WHAT IF THE POLICY WAS ISSUED IN ANOTHER STATE, WAS THE WOODARD CASE WHICH WE HAVE CITED IN OUR BRIEF AND IN THAT CASE WE HAD ANOTHER I THINK SORT OF -- WELL, I DON'T WANT TO SAY SNOWBIRDS BECAUSE THAT'S A

VAGUE TERM BUT WE HAD ANOTHER SITUATION WHERE THERE IS THE OUT OF STATE RESIDENT AND I THINK THEY WERE FROM NEW JERSEY OR SOMETHING AND THEY ALSO HAD A FLORIDA RESIDENCE AND THEY PROVIDED THEIR AGENT WITH NOTICE THAT THEIR MAILING ADDRESS HAD BEEN CHANGED TO WHEN THEY GAVE THE FLORIDA ADDRESS AND THE COURT IN WOODARD SAID THAT'S NOT ENOUGH. YOU HAVE TO MAKE YOUR PERMANENT RESIDENCE DOWN HERE.

CHIEF JUSTICE: I GUESS WHAT I'M TRYING TO STILL THINK OUT, OUT LOUD, IS AGAIN HOW RISKS ARE ASSESSED IN SITUATIONS. IF THERE IS NO REQUIREMENT THAT YOU TELL YOUR INSURANCE COMPANY WHERE YOU ARE GOING TO BE DRIVING AND, YOU KNOW, YOU ARE IN A PLACE IN INDIANA WHERE THE RISK IS RELATIVELY LOW OF HAVING AN ACCIDENT, AND THEN YOU GET TO FLORIDA AND YOU ARE WITH PEOPLE THAT ARE MAYBE, YOU KNOW, THEN HAVE A HIGHER RATE OF ACCIDENTS, I DON'T, YOU KNOW, BUT OF COURSE UNDER, YOU KNOW, YOU ARE IN AN ACCIDENT AND THEY'VE GOT TO DEFEND THEY ARE GOING TO HAVE TO -- YOU KNOW, THERE IS A GREATER RISK SO THERE IS -- DOES THE INSURANCE COMPANY NOT REQUIRE ANY KIND OF NOTIFICATION OF WHERE, WHEN THERE IS GOING TO BE A SUBSTANTIAL PERIOD OF TIME SPENT IN ANOTHER STATE FOR -- EVEN FOR THEIR OWN PURPOSES TO EVALUATE THE, YOU KNOW, THE RISK OR IS THAT ANY PART OF ANY INSURANCE?

THIS DOES NOT APPEAR IN THE RECORD ANYWHERE SO I REALLY CAN'T POINT TO THE RECORD FOR THAT. I CAN ANSWER THE QUESTION THAT, NO, THEY DON'T, BECAUSE IT IS KNOWN THAT AUTOMOBILES GET TAKEN ALL OVER THE PLACE. PEOPLE GO ON FAMILY VACATIONS, THEY GO TO VACATION HOMES, HERE, THERE, EVERYWHERE BUT WHAT THEY BASE THEIR RATES ON IN EACH INSTANCE AND THAT'S ONE OF THE REASONS WHY WE THINK HERE IN INDIANA THEY HAD TO ISSUE THE POLICY IN THE FORM THAT THEY DID. IT WAS REQUIRED BY STATUTE. THE UNDERINSURED MOTORIST COVERAGE HAD TO BE JUST WHAT IT WAS AND THE PREMIUM THAT THEY WERE ABLE TO CHARGE FOR THAT HAD TO BE APPROVED BY THE INDIANA COMMISSIONER AND DETERMINE BASED ON THOSE LAWS AND THAT APPLICATION. SO IF YOU ARE GOING TO HAVE SOMEONE WHO IS GOING TO GO SEND A SUBSTANTIAL PERIOD OF TIME TO CUT TO THE WHAT DO WE DO ABOUT THIS PROBLEM IF YOU SEE IT AS A PROBLEM, WHERE IT HAS COME UP BEFORE I THINK I MENTIONED IN MY BRIEF I KNOW I MENTIONED THE CASE IT WAS IN A HOMESTEAD CASE. THERE WAS A FAMILY THERE WHO HAD THEIR MAIN RESIDENCE UP IN CHICAGO AND THEN THEY BOUGHT A PLACE IN PALM BEACH AND WERE COMING DOWN FIVE OR SIX MONTHS A YEAR TO THE PALM BEACH PLACE AND THEY WANTED TO GET A HOMESTEAD EXEMPTION FOR THAT HOUSE, AND THE COURT SAID THEY MOUNTED EVERY CHALLENGE THEY COULD ON THE TAX THAT WAS BEING ASSESSED AGAINST THEM AND THE COURT SAID WE JUST DON'T HAVE THE SAME, WELL, SECONDARY RESIDENCES DO NOT TRIGGER THE SAME PUBLIC POLICY CONCERNS AND ARE NOT ENTITLED TO THE SAME PROTECTION AS PERMANENT FLORIDA RESIDENCES. BUT TO GET BACK TO WHAT CAN YOU DO, I THINK THE ONLY PEOPLE WHO ARE REALLY IN A POSITION TO DO ANYTHING ABOUT IF THEY WANT TO GET DIFFERENT INSURANCE BECAUSE THEY ARE GOING TO GO BE SOMEPLACE FOR FIVE OR SIX MONTHS IS THE INSURED THEMSELVES.

CHIEF JUSTICE: I WANT TO REMIND YOU, YOU ARE IN YOUR REBUTTAL.

THE INSURED THEMSELVES BECAUSE THEY KNOW, EVEN IF YOU HAVE A RESIDENCE IN FLORIDA YOU MIGHT GO BACK UP FOR A MONTH OR SOMETHING LIKE THAT BECAUSE THE DAUGHTER IS HAVING A BABY OR FOR WHATEVER OTHER REASON, BUT IF YOU WANT TO COME TO FLORIDA, YOU COULDN'T TELL THE INDIANA INSURANCE AGENT OR INSURANCE COMPANY, OKAY, I'M GOING TO FLORIDA FOR SIX MONTHS SO CAN YOU LIKE FIX UP MY POLICY? NO, ALL THEY CAN DO IS SELL YOU THE INDIANA POLICY BUT IF YOU WANT TO YOU COULD COME DOWN AND ASK A FLORIDA AGENT OR IF I WANT TO GET THE CAR INSURED FOR SIX MONTHS UNDER FLORIDA, HOW MUCH WILL IT COST, YOU WILL THEN BE OFFERED THE UNDERINSURED MOTORIST COVERAGE AND GET THE CHANCE OF DECIDING, YES, I WANT IT OR THAT IS TOO EXPENSIVE BECAUSE IT IS EXPENSIVE.

CHIEF JUSTICE: AND THEN YOU WOULD HAVE A BREAK ON YOUR INDIANA BECAUSE IT WOULD BE SUSPENDED FOR THAT PERIOD?

YES, SUSPENDED. TELL YOUR AGENT UP THERE. THANK YOU.

CHIEF JUSTICE: THANK YOU. MR. EATON?

MAY IT PLEASE THE COURT, MY NAME IS JOEL EATON. I REPRESENT MARGARET AND THOMAS ROACH AND IN A SENSE I ALSO REPRESENT ACCORDING TO THE UNIVERSITY OF FLORIDA APPROXIMATELY 920,000 PEOPLE WHO ARE SIMILARLY SITUATED TO THE HODGES AND THE ROACHES.

AS I UNDERSTAND YOUR BRIEF, YOU'RE NOT ASKING US TO ADOPT THE RESTATEMENT TEST. YOU'RE JUST SAYING THAT UNDER THE LEX LOCI CONTRACTUS, THAT THIS IS A PUBLIC POLICY EXCEPTION?

IF I CAN ARGUE A POSITION THAT IS CONSISTENT WITH 30 YEARS WORTH OF JURISPRUDENCE OF THIS COURT, RATHER THAN ASKING THIS COURT TO OVERRULE A RECENT DECISION, I WILL ARGUE IN FAVOR OF CONSISTENCY.

SO THAT'S A YES?

THE ANSWER IS YES, I HAVE NOT ASKED THIS COURT TO OVERRULE STURIANO VERSUS BROOKS.

LET ME GET TO THE POINT THEN. IN STURIANO WE SAY LEX LOCI CONTRACTUS AND WE WERE PRETTY ADAMANT ABOUT WHAT THAT MEANT AND WHY WE WERE ADOPTING THAT TEST RATHER THAN THE RESTATEMENT. YOUR OPPONENT SAYS WE DID NOT IN THAT CASE ADOPT A PUBLIC POLICY EXCEPTION TO THE RULE, BUT ASSUMING THAT ONE EXISTS, DOESN'T THE EXCEPTION NEED TO LOOK AT WHEN THE DIFFERENCE IN THE STATUTES AND DETERMINE WHETHER THE FLORIDA STATUTE PROVIDES SUCH A PARAMOUNT PUBLIC POLICY THAT IT IS WORTH OVERRIDING THE LEX LOCI CONTRACTUS PRESUMPTION BECAUSE OTHERWISE ANY TIME YOU HAVE A CONFLICT IF YOU ARE SAYING, WELL, THE VIRTUE OF THE CONFLICT MEANS THAT PUBLIC POLICY OVERRIDES LEX LOCI CONTRACTUS THEN THE EXCEPTION IS GOING TO SWALLOW THE RULE?

YOUR HONOR, THAT QUESTION WAS DECIDED BY THIS COURT 30 YEARS AGO IN A CASE CALLED GILLEN VERSUS UNITED SERVICES AUTOMOBILE.

BUT GILLEN WAS BEFORE STURIANO AND THE COURT SAID WE ARE NOT GOING TO REJECT OR ADOPT LEX LOCI CONTRACTUS, AND IN STURIANO WE SAID WE ARE ADOPTING LEX LOCI CONTRACTUS.

WHAT GIL -- GILLEN SAID WE DON'T NEED TO ANSWER WHETHER LEX LOCI CONTRACTUS SHOULD GOVERN THIS ISSUE BECAUSE WHICHEVER ONE WE ADOPT WE WOULD REACH THE SAME CONCLUSION.

BUT THEN IN STURIANO WE SPECIFICALLY DID ADOPT LEX LOCI CONTRACTUS?

YOU DID, BUT THE ANSWER TO YOUR QUESTION AND I'LL GET TO STURIANO IN JUST A SECOND BECAUSE THERE ARE TWO SENTENCES IN STURIANO THAT MAKE IT PERFECTLY CLEAR THAT THIS PUBLIC POLICY EXCEPTION THAT YOU ADOPTED IN GILLEN SURVIVED STURIANO AND THIS COURT SAID THAT IN STROCHAK. THE FACTS IN THE GILLEN CASE ARE ALMOST VIRTUALLY IDENTICAL TO THE FACTS IN THIS CASE WITH THE EXCEPTION THAT MY PEOPLE LIVE HERE SIX MONTHS OUT OF THE YEAR AND HAVE A HOME HERE AND IN THE NEW HAMPSHIRE CASE THE GILLEN CASE THERE WAS A MILITARY MAN WHO WAS GIVEN NEW ORDERS AND MOVED TO FLORIDA AND TWO

MONTHS LATER WAS KILLED IN AN ACCIDENT.

WASN'T THERE A NOTIFICATION TO THE INSURER?

THERE IS NOTIFICATION IN GILLEN, YES, YOUR HONOR, AND THERE IS NOTIFICATION IN OUR CASE ON OUR VERSION OF THE FACTS. AND THE PARAMOUNT PUBLIC POLICY EXCEPTION IS EXPLICITLY EXPRESSED IN GILLEN. NOW, WHAT GILLEN SAYS.

I ACCEPT FOR PURPOSES OF THIS ARGUMENT THERE IS A PUBLIC POLICY EXCEPTION. LET'S GET TO THE NEXT LEVEL. WHAT PARAMOUNT PUBLIC POLICY DOES THIS UM STATUTE EXPRESS THAT WOULD ALLOW US TO OVERRIDE THE PRESUMPTION OF LEX LOCI CONTRACTUS? WHY IS THE EXCEPTION INVOKED IN THIS CASE ACCORDING TO THE STATUTE?

HERE'S WHAT THE COURT SAID IN STURIANO VERSUS BROOKS. THE REASONS THAT THE PUBLIC -- THE PARAMOUNT PUBLIC POLICY STILL REMAINS IS THE SAME AS THE REASONS GIVEN IN GILLEN. THIS IS AN INEQUITABLE INSURANCE ARRANGEMENT. MR. HODGES PAID A PREMIUM FOR UNDERINSURED MOTORIST COVERAGE AND THEY ARE SAYING, SORRY, YOU PAID US BUT YOU'VE GOT NO COVERAGE AT ALL.

YOU'RE ARGUING WHENEVER THE FLORIDA INSURANCE LAW DIFFERS FROM THE OUT OF STATE INSURANCE LAW THEN THE PUBLIC POLICY EXCEPTION APPLIES?

NO, YOUR HONOR, I AM NOT TAKING THAT POSITION. I DON'T HAVE TO GO THAT FAR.

CHIEF JUSTICE: BUT YOU SAID HE PAID FOR UNINSURED MOTORIST COVERAGE AND HE DIDN'T GET IT. HE GOT IT, HE PAID INDIANA PREMIUM FOR UNINSURED MOTORIST COVERAGE WHICH DOESN'T PROVIDE FOR UNINSURED MOTORIST COVERAGE UNDER THIS CIRCUMSTANCE?

BASED UPON THE FORTUITY OF WHO YOU HAPPEN TO RUN INTO. THIS COURT SAID THAT IS AN INEQUITABLE INSURANCE ARRANGEMENT IN THE GILLEN CASE.

LET'S SAY THAT THIS INSURANCE COMPANY IS NOT STATE FARM. IT IS AN INDIANA INSURANCE COMPANY THAT DOES NOT WRITE POLICIES IN FLORIDA. IF WE ACCEPT YOUR ARGUMENT AND THIS ACCIDENT OCCURS HERE THEN WE WOULD APPLY FLORIDA LAW TO THAT POLICY WHETHER OR NOT THEY WRITE IN THIS STATE OR NOT?

IF AN INSURED OBTAINS A POLICY FROM AN INDIANA INSURANCE COMPANY THAT IS NOT LICENSED TO WRITE BUSINESS IN FLORIDA AND THAT INSURED GOES TO THAT INDIANA INSURANCE COMPANY AND SAYS I WANT YOU TO KNOW THAT THIS POLICY THAT YOU HAVE WRITTEN FOR MY INDIANA STAY MAY BE A PROBLEM, BECAUSE I LIVE IN FLORIDA. I HAVE A HOME IN FLORIDA WHICH I SPEND SIX MONTHS OUT OF THE YEAR IN FLORIDA. THAT INSURANCE COMPANY HAS THEN GOT TO SAY I'M SORRY, BUT WE CAN'T PROVIDE THAT COVERAGE FOR YOU. YOU'VE GOT TO GO SOMEWHERE ELSE LIKE TO STATE FARM WHO OPERATES IN FLORIDA.

CHIEF JUSTICE: YOU SEEM TO BE HANGING YOUR HAT ON THE NOTICE.

THAT'S WHAT THE CASES SAY. THAT'S WHAT STURIANO SAYS.

CHIEF JUSTICE: BUT WHAT IS THE STATUS OF THE RECORD, AGAIN, IN THE STURIANO CASE THEY SAID THEY MOVED TO FLORIDA EACH YEAR FOR THE WINTER MONTHS, THEY DIDN'T NOTIFY THE INSURANCE COMPANY OF THIS MIGRATION AND THE INSURANCE COMPANY HAD NO WAY OF KNOWING SUCH A MOVE HAD TAKEN PLACE. NOW, WE ARE SUMMARY JUDGMENT, IS THIS STILL A QUESTION OF FACT OR ARE YOU SAYING IT IS ACTUALLY ESTABLISHED AS A MATTER OF, YOU KNOW, UNCONTROVERTED FACTS THAT STATE FARM HAD NOTICE?

NO, THIS WAS A SUMMARY JUDGMENT. MY CLIENT, MR. HODGES, THE INSURED, TESTIFIED THAT HE TOLD, YES, I QUOTED IT IN THE BRIEF. HE SAID SIX TIMES I TOLD THE INSURANCE COMPANY I SPENT SIX MONTHS OF THE YEAR AT A HOME IN FLORIDA. THE INSURANCE AGENT SAID I'M AWARE THEY SPENT TIME IN FLORIDA BUT I DIDN'T KNOW THAT THEY RESIDED THERE. THAT'S THE CONFLICT ON A SUMMARY JUDGMENT WE'RE ENTITLED TO OUR VERSION OF THE FACTS. THAT REMAINS TO BE LITIGATED.

DID THE POLICY ITSELF HAVE A CHOICE OF LAW PROVISION?

PARDON ME, SIR?

DID THE INSURANCE POLICY ITSELF HAVE A CHOICE OF LAW PROVISION, I. E., THIS WOULD BE GOVERNED BY THE INDIANA LAW?

NOT TO MY KNOWLEDGE, YOUR HONOR. IT HAS BEEN AWHILE SINCE I READ THE POLICY BUT NOBODY HAS ARGUED THAT OR QUOTED IT ANYWHERE.

BUT IT PLAYS A ROLE IN THE RESTATEMENT, APPLICATION OF THE RESTATEMENT. THAT'S WHY I ASKED.

I HAVE NOT ASKED THIS COURT TO OVERRULE STURIANO VERSUS BROOKS BECAUSE OF THE TWO SENTENCES THAT THE CHIEF JUSTICE JUST READ.

IS THERE A PLACE IN THIS ANALYSIS FOR THE PRIMARY RESIDENCE, YOU KNOW, WE THROW THAT TERM AROUND LOOSELY AT TIMES, BUT IS THERE A PLACE IN THIS DISCUSSION AS FAR AS PERMANENCY THAT YOUR HOME IS ONE PLACE, AGAIN, GOING BACK TO WHERE YOU DO ALL OF THOSE THINGS, IS THERE ROOM IN THIS DISCUSSION FOR THAT CONCEPT OR IS IT THAT IF I TELL MY AGENT, YOU KNOW, HEY, I TRAVEL ALL ACROSS THE COUNTRY?

I DON'T BELIEVE THAT DOMICILE IS THE PROPER APPROACH TO THIS PROBLEM. I BELIEVE THAT LOCATION OF THE INSURED RISK IS THE KEY FACTOR IN THIS WHOLE DISCUSSION.

BUT THAT COULD BE CONSTANTLY MOVING ON AUTOMOBILES, I MEAN THIS COULD BE CALIFORNIA, NEW YORK, WHERE IS IT?

IT IS WHERE YOU RESIDE. YOU CAN RESIDE IN KEY PLACES AND ONLY HAVE ONE DOMICILE. THE PROBLEM WITH DOMICILE SHE IS ARGUING PERMANENT RESIDENCE, PRIMARY, SECONDARY. THERE IS DOMICILE, THAT'S THE PLACE WHERE YOU WERE BORN AND RAISED AND YOU CALL YOUR PERMANENT HOME, AND THERE IS RESIDENCE. THAT'S WHERE THE COLLEGE STUDENT IS IN GAINESVILLE FOR NINE MONTHS OUT OF THE YEAR. HE IS A RESIDENT OF FLORIDA EVEN THOUGH HIS DOMICILE MAY BE IN CALIFORNIA. ACTUALLY ON THE FACTS IN OUR CASE, MR. HODGES' DOMICILE WAS PROBABLY INDIANA. MRS. HODGES WHO OWNED THE HOME IN FLORIDA AND HAD A FLORIDA DRIVER'S LICENSE WAS PROBABLY A DOMICILIARY OF FLORIDA BUT THEY RESIDED SIX MONTHS IN INDIANA, THEY RESIDED, THEY WERE RESIDENTS OF FLORIDA. THEY ARE NOT ENTITLED TO LESS TREATMENT THAN DOMICILIARIES OF FLORIDA. THEY ARE RESIDENTS OF FLORIDA BUT THE KEY CONCEPT EXPRESSED IN THE GILLEN CASE IS THAT THE CENTER OF THE POLICY IS CENTERED IN FLORIDA AND THAT'S WHY WE ARE GOING TO IGNORE THIS CASE IN NEW HAMPSHIRE.

THAT'S THE REASON I CAME BACK --

I'M SORRY, YOUR HONOR.

BACK TO THE FACT THAT IN GILLEN THIS COURT SPECIFICALLY NOTED THAT THERE WAS A DOMICILIARY CHANGE. I MEAN THAT WAS A KEY FACT AS I READ GILLEN. IT WAS ALSO A KEY

FACT IN NEW JERSEY, THE CASE WHERE THE PEOPLE GOT THE INSURANCE IN NEW JERSEY BUT IT WAS TO NOTIFY THE INSURANCE COMPANY THAT A CAR WAS GOING TO BE PRINCIPALLY GARAGED IN FLORIDA.

I'LL TELL YOU WHY DOMICILE CANNOT BE THE TEST, LOCATION OF THE INSURED RISK HAS TO BE THE TEST BECAUSE I RAISED THREE BOYS, PUT THEM THROUGH COLLEGE, GRAD SCHOOL, THEY WENT TO SCHOOLS ALL OVER THIS COUNTRY. THEY REMAIN DOMICILIARIES OF FLORIDA EVEN THOUGH THEY RESIDED IN OTHER STATES AND EVERY TIME YOU CAN'T WRITE A FLORIDA POLICY JUST BECAUSE HE IS A FLORIDA DOMICILIARY WHEN HE IS GOING TO SCHOOL IN NEW HAVEN, CONNECTICUT AND THE CAR IS UP THERE.

BUT THE THING THAT I'M STRUGGLING WITH IS THAT THE FACT OF THAT GILLEN WAS THAT THESE PEOPLE HAD DECIDED TO MOVE THEIR DOMICILE TO FLORIDA AND THEY HAD NOTIFIED THE INSURER OF THAT. HERE, THESE PEOPLE WERE MERELY GOING TO FLORIDA INsofar AS THEY HAD NOTIFIED THE INSURER AND THEY DIDN'T HAVE THE VEHICLE THAT WAS INVOLVED HERE WAS NOT PRINCIPALLY GARAGED IN FLORIDA. WASN'T MR. HODGES, HE WAS THE NAMED INSURED ON THIS POLICY?

HE AND HIS WIFE, WHO IS NOW DECEASED AND AS A RESULT OF THIS ACCIDENT WERE THE INSUREDS OF THIS POLICY. THE ROACHES WERE ALSO INSUREDS UNDER THE UM COVERAGE BECAUSE THEY WERE OCCUPYING THE AUTOMOBILE AT THE TIME.

CHIEF JUSTICE: CAN I GO BACK TO A QUESTION THAT JUSTICE CANTERO ASKED LOOKING BACK AT THE CASE UNDER REVIEW. IT SAYS THEY SAY, AN EXCEPTION TO THE GENERAL RULE OF LEX LOCI CONTRACTUS OCCURS WHEN A FLORIDA COURT RECOGNIZES A, QUOTE, PARAMOUNT INTEREST IN PROTECTING FLORIDA RESIDENTS FROM A PROVISION OF THE INSURANCE COMPANY THAT IS REPUGNANT TO THE PUBLIC POLICY OF FLORIDA. LET'S, AGAIN, WE'LL DEAL WITH THE ISSUE OF WHETHER THEY ARE FLORIDA RESIDENTS OR NOT. WHAT IS IT ABOUT THE DIFFERENCE IN THE TWO TYPES OF UNINSURED MOTORIST COVERAGE THAT IS REPUGNANT TO THE PUBLIC POLICY OF FLORIDA?

WELL, THERE IS COVERAGE UNDER FLORIDA LAW IN THIS CASE AND THERE IS NO COVERAGE UNDER ANY OTHER LAW.

CHIEF JUSTICE: SO IN OTHER WORDS A DIFFERENCE IN THE LAW MAKES IT REPUGNANT, IS THAT THE TEST?

IF YOU ARE QUARRELING WITH ME YOU ARE QUARRELING WITH YOURSELF BECAUSE YOU SAID THOSE WORDS IN GILLEN. THOSE ARE THE WORDS OF THIS COURT.

CHIEF JUSTICE: JUST FOR WHOEVER WAS LISTENING I WASN'T ON THE COURT IN GILLEN AND I UNDERSTAND YOU ARE SAYING THE SUPREME COURT USED THE WORD AND THEY USED THAT UNINSURED MOTORISTS, THAT ANY TIME THE LAW WAS DIFFERENT THAT WAS ENOUGH TO INVOKE PUBLIC POLICY EXCEPTION?

ONLY ON THE UM COVERAGE. GILLEN SAYS THAT AND AS JUSTICE LEWIS OBSERVED THERE ARE SEVEN OR EIGHT CASES THAT HAVE FOLLOWED THAT OVER THE YEARS. SOME OF THEM POST STURIANO AND THE REASON WHY GILLEN IS STILL THE LAW NOTWITHSTANDING STURIANO IS BECAUSE THIS COURT SAID THAT IN THE STROCHAK CASE.

CHIEF JUSTICE: LET'S TALK ABOUT HOW IT IS THAT THE HODGES ARE FLORIDA RESIDENTS?

BECAUSE THEY OWN A HOME HERE, THEY LIVE HERE.

CHIEF JUSTICE: AREN'T THEY ALSO INDIANA RESIDENTS?.

SIX MONTHS OUT OF THE YEAR THEY RESIDE IN INDIANA. SIX MONTHS OUT OF THE YEAR THEY ARE RESIDENTS OF THE STATE OF FLORIDA.

CHIEF JUSTICE: SO IF I HAD HOMES IN SIX DIFFERENT PLACES AND I LIVED THERE EACH TWO MONTHS I WOULD BE RESIDENTS OF ALL OF THOSE DIFFERENT STATES?

NOBODY HAS SIX HOMES. I CAN'T DEAL WITH A HYPOTHETICAL LIKE THAT, YOUR HONOR.

LET ME ASK THE QUESTION. YOU BEGAN YOUR ARGUMENT BY THE BROAD PUBLIC POLICY BECAUSE OF HUNDREDS OF THOUSANDS OF PEOPLE IN THE STATE OF FLORIDA. THE LEGISLATURE PASSED THIS LAW, CORRECT?

YES.

AND THEY HAVE NEVER ADOPTED THE PUBLIC POLICY THAT YOU ARE ASKING THIS COURT TO ADOPT DIRECTLY, HAVE THEY?

WHY SHOULD THEY? THIS COURT DID THAT 30 YEARS AGO AND THE CASES HAVE BEEN CONSISTENTLY FOLLOWING GILLEN EVER SINCE. THE LEGISLATURE DOESN'T NEED TO ENFORCE THAT BY -- BUT IT IS INTERESTING THAT YOU ASKED THAT.

THE PRIOR CASES TALKED ABOUT RESIDENCY OR PRIMARY GARAGING?

I DON'T THINK GILLEN WAS. GILLEN INVOLVED MILITARY PERSONNEL WHO GOT ORDERS TO FLORIDA. WELL, HE IS GOING TO BE HERE FOR A WHILE AND THEN HE IS GOING TO GET ORDERS TO TEXAS. I WAS IN THE MILITARY FOR SIX AND A HALF YEARS.

BUT HE IS GOING TO BE A RESIDENT OF THE STATE OF FLORIDA?

A RESIDENT, YES, AND I CONTEND AND THE SECOND DISTRICT SAID THAT THESE SNOWBIRDS WHO LIVE IN THIS STATE DURING THE SIX COLD MONTHS OF THE YEAR ARE RESIDENTS OF FLORIDA. THEY PAY TAXES OR THEIR -- ON THEIR PROPERTY, THEY ARE SUBJECT TO JURY DUTY, THEY CONTRIBUTE TO THE ECONOMY. THEY ARE RESIDING HERE SIX MONTHS OUT OF THE YEAR.

CHIEF JUSTICE: I THINK I HAVE, I WANT TO GO BACK TO SOMETHING THAT I'M HAVING TROUBLE WITH AS FAR AS WHETHER THIS EXCEPTION SWALLOWS THE RULE THAT STURIANO STATES. IT SAYS THE PUBLIC POLICY EXCEPTION, THIS IS FROM THE SECOND DISTRICT CASE, IS PROPERLY INVOKED WHEN FLORIDA BEARS A SIGNIFICANT CONNECTION TO THE INSURANCE COVERAGE AND WHEN THE INSURANCE COMPANY HAS REASONABLE NOTICE THAT THE PERSON AND RISKS COVERED BY THE INSURANCE POLICY ARE CENTERED IN FLORIDA. IS THAT WHAT THE -- IS THAT WHAT THE TEST THAT WE SHOULD BE APPLYING IN THIS CASE IS?

YES, YOUR HONOR, THERE ARE TWO LINES OF CASES THAT COME OUT OF GILLEN. ONE IS A SERIES OF CASES OUT OF THE THIRD DISTRICT WHICH REACHES THE VERY SENSIBLE CONCLUSION THAT IF A POLICY IS ISSUED OUT OF STATE AND SOMEBODY DRIVES INTO THE STATE ON A TRANSITORY EXCURSION LIKE SPENDING A WEEK IN DISNEY WORLD AND HAS AN ACCIDENT IN FLORIDA THEN THE POLICY PROVISIONS OF THE OUT OF STATE POLICY WILL NOT BE DISREGARDED AND THE FLORIDA UM STATUTE WILL NOT BE APPLIED. ALL OF THOSE THIRD DISTRICT CASES STATE FARM IS RELYING ON AND THEN THERE IS GILLEN AND STROCHAK WHO SAY HOWEVER IF IT IS MORE THAN MERELY TRANSITORY AND YOU HAVE CHANGED YOUR RESIDENCE AND YOU NOTIFY YOUR INSURANCE COMPANY THAT THE RISK THEY INSURE IS NOW CENTERED IN FLORIDA THEN WE ARE GOING TO APPLY FLORIDA LAW.

CHIEF JUSTICE: SO YOU ARE TELLING US THAT THE LAW IS SO CLEAR. WHAT IS IT ABOUT WHY DOES THE SECOND DISTRICT, WHAT'S THE REASON FOR CERTIFICATION? YOU SHOULD BE ARGUING THAT THERE IS NO REASON, THIS IS JUST LIKE EVERY OTHER CASE THAT WE'VE HAD FOR THE LAST 30 YEARS?

WELL, BECAUSE I WAS FRANK WITH THE SECOND DISTRICT AS I ALWAYS AM AND I SAID THE CASES THAT HAVE COME OUT ARE THE BOOK ENDS THE TRANSITORY EXCURSION WE LOSE, THE OTHER CASES DEALT WITH CHANGES OF RESIDENCE, NOT THE BACK AND FORTH SIX MONTHS, SIX MONTHS. MY CASE FALLS SOMEWHERE IN THE MIDDLE AND I SUSPECT THAT BECAUSE MY CASE FELL SOMEWHERE IN THE MIDDLE OF THOSE TWO BOOK ENDS THAT ARE ESTABLISHED BY THE DECISION OF LAW THAT THE SECOND DISTRICT WAS NOT ENTIRELY COMFORTABLE WITH THE RESOLUTION.

HAS THE SECOND DISTRICT RESTATED THE TEST AS THE CHIEF JUSTICE HAS QUOTED ISN'T THAT ESSENTIALLY ANOTHER WAY OF APPLYING THE RESTATEMENT TEST? IT SEEMS LIKE IF YOU APPLIED THE RESTATEMENT TEST WITHOUT SAYING THEY WERE APPLYING THE RESTATEMENT TEST AND SOME OF THESE OTHER CASES THAT DISCUSS SIGNIFICANT CONNECTION OR SIGNIFICANT RELATIONSHIP ARE REALLY APPLYING A RESTATEMENT TEST AND NOT THE LEX LOCI CONTRACTUS CASE.

I DON'T BELIEVE THAT'S WHAT THE SECOND DISTRICT INTENDED BY THAT STATEMENT. WHAT THEY INTENDED TO DO WAS DRAW A LINE BETWEEN THE THIRD DISTRICT CASES WHICH SAY WHERE YOU COME HERE AND YOU STAY IN A MOTEL FOR A WEEK AND YOU HAVE AN ACCIDENT WE ARE NOT GOING TO GIVE YOU THE BENEFIT OF UM LAW. WE'RE GOING TO FOLLOW THE CONTRACT PROVISIONS BUT THE OTHER END OF THE BOOK ENDS WHERE YOU COME DOWN HERE WITH SOME DEGREE OF PERMANENCY AND SIX MONTHS RESIDENCE FOR NINE SOLID YEARS OF WHICH THE INSURANCE COMPANY KNOWS ABOUT THEN WE ARE GOING TO APPLY FLORIDA LAW.

SO WHAT ABOUT IF IT IS FOUR MONTHS?

WELL, OR THREE MONTHS.

WHERE DO WE DRAW THE LINE SO THAT AN INSURANCE COMPANY IN CALCULATING THE AMOUNT OF THE PREMIUM HAS SOME REASONABLE UNDERSTANDING THEY MAY BE AT RISK FOR ADDITIONAL COVERAGE?

YOU CANNOT DRAW A BRIGHT-LINE RULE. THE LAW HAS TO DEAL IN PARADIGMS. THERE ARE NO BRIGHT-LINE RULES IN MOST CONTEXT, REASONABLE CARE UNDER THE CIRCUMSTANCES, A SIGNIFICANCE DEGREE OF --

CHIEF JUSTICE: I'M NOT SAYING THIS IS INTELLECTUALLY DISHONEST BUT THE RESTATEMENT GIVES A FRAMEWORK FOR THEN EVALUATING WHAT FACTUAL VALUES. IF WE WENT WITH BOTH WHEN THE FLORIDA BEARS A SIGNIFICANT CONNECTION TO THE INSURANCE COVERAGE WE ARE JUST MAKING UP OUR OWN, WHETHER THAT WAS SAID IN GILLEN OR NOT FOR STABILITY IN THE LAW IT SEEMS THAT WE WOULD BE MORE HONEST IF WE SAID, DO YOU KNOW WHAT, MAYBE THE RESTATEMENT MORE ACCURATELY EXPLAINS WHAT WE ARE DOING IN THESE CASES WHERE YOU'VE GOT SNOWBIRDS AND SEE IF IT FITS IN OR DOESN'T FIT IN. SO STILL THE PLACE OF CONTRACTING AND THE PLACE OF THE NEGOTIATION OF THE CONTRACT STILL ARE PRETTY IMPORTANT FACTORS, NOT JUST WHERE PEOPLE HAPPEN TO BE, YOU KNOW, WANDERING IN THE COURSE OF A YEAR.

WELL, I WOULD FIND THAT A MOST CURIOUS RESULT IN THIS CASE, YOUR HONOR, BECAUSE I HAVEN'T ASKED YOU TO OVERRULE STURIANO AND YOU WOULD HAVE TO OVERRULE STURIANO

IN ORDER TO REACH THAT CONCLUSION AND I DON'T THINK YOU NEED TO GO THAT FAR AND I'VE BEEN TRYING TO GET TO THE STROCHAK CASE FOR 15 MINUTES BECAUSE THE EXACT SAME ARGUMENT WAS MADE IN THE STROCHAK CASE. THEY ARGUE THAT FLORIDA LAW DOES NOT APPLY BECAUSE UNDER FLORIDA CHOICE OF LAW RULES A CONTRACT FOR AUTOMOBILE INSURANCE IS CONTROLLED BY THE LAW OF JURISDICTION WHERE THE CONTRACT WAS EXECUTED AND THE POLICY WAS EXECUTED IN NEW JERSEY. HE RELIES ON STURIANO VERSUS BROOKS, AND THEN THE COURT REJECTED THAT ARGUMENT AND SAID IN STURIANO THIS COURT CONCLUDED THAT NEW YORK LAW APPLIED BECAUSE THE INSURANCE CONTRACT WAS EXECUTED THERE BUT WE NOTED THAT THE INSURANCE COMPANY DID NOT KNOW OF THE INSURED'S MOVE OR CONNECTION TO FLORIDA. IN THE INSTANCE CASE, THEY KNEW OF RITA STROCHAK'S MOVE AND CONNECTION TO FLORIDA AND THEREFORE IT DID NOT APPLY STURIANO TO BROOKS SO TO REACH STATE FARM'S POSITION HERE YOU ARE GOING TO HAVE TO OVERRULE GILLEN, YOU ARE GOING TO HAVE TO DISAPPROVE ALL OF THE DISTRICT COURT OF APPEAL DECISIONS AND THERE ARE SEVEN OR EIGHT OF THEM THAT HAVE FOLLOWED GILLEN OVER THE YEARS, YOU'RE GOING TO HAVE TO OVERRULE STURIANO VERSUS BROOKS AND STROCHAK.

CHIEF JUSTICE: WELL, YOU GOT IT OUT RIGHT BEFORE YOUR TIME EXPIRED. CONGRATULATIONS TO YOU. THANK YOU.

I JUST WANTED TO ADDRESS THE NOTICE QUESTION THAT YOU BROUGHT UP, YOUR HONOR. THE QUESTION IS NOTICE OF WHAT, THAT ISSUE CAME UP IN GILLEN, AND THIS IS WHAT THEY SAY. THE GILLEN'S NOTIFIED UNITED OF THEIR MOVE TO FLORIDA AND WERE SUBSEQUENTLY ISSUED A POLICY. THIS CAN BE SEEN AS AN ACKNOWLEDGEMENT OF DOMICILIARY CHANGE AND WOULD INDICATE TO UNITED THAT COVERAGE UNDER BOTH POLICIES WOULD BE SHIFTED TO FLORIDA. CONCERNING AND THEN THEY GO ON TO SAY SO WHY IT MATTERS, WHAT MATTERED WAS THAT THEY HAD MOVED PERMANENTLY TO FLORIDA. IF YOU TAKE OUR CASE, AND THEY SAY THAT THE THINGS THAT WERE IMPORTANT TO THEM CONCERNING PROTECTION OF ONE'S CITIZENRY IT SHOULD BE NOTED THAT THE GILLEN'S HAD PURCHASED AUTOMOBILE TAGS, DRIVER'S LICENSE, MORTGAGED THEIR HOME IN FLORIDA AND ENTERED THEIR CHILDREN IN LOCAL SCHOOLS. THEY WERE IN THE PROCESS OF ESTABLISHING THEMSELVES AS PERMANENT RESIDENTS OF THIS STATE AND AS SUCH ARE PROPER SUBJECT OF THIS COURT'S PROTECTION FROM INJUSTICE OR INJURY. SO NOTICE IN THIS CASE LET'S SAY THERE WAS NOTICE, LET'S JUST ASSUME FOR A MOMENT THAT THERE WAS NOTICE. WE'RE GOING TO BE IN FLORIDA OR WE HAVE A HOUSE IN FLORIDA FIVE OR SIX MONTHS OF THE YEAR. WHAT COULD THE STATE FARM AGENT DO WITH THAT, AND, YOUR HONOR, WITH ALL DUE RESPECT JUST BECAUSE STATE FARM IS LICENSED TO SELL IN ALL OF THE STATES YOU STILL HAVE TO SELL THROUGH AGENTS AND THE AGENTS MUST COMPLY WITH THE LOCAL LAWS OF THE STATE. ALL THAT YOU COULD DO WAS NOTICE FROM YOUR INSURED THAT I HAVE A HOUSE IN FLORIDA FOR FIVE MONTHS OF THE YEAR THAT I MAY BE GOING TO FIVE MONTHS OF THE YEAR IS TELL THEM, WELL, THERE ARE OTHER INSURANCE COVERAGE THAT YOU MAY WANT TO GET WHILE YOU ARE THERE BECAUSE THE COVERAGE IS DIFFERENT THERE. YOU'LL HAVE TO PAY FOR IT BUT IF YOU WANT TO GET IT YOU CAN GET IT, BUT WHAT COULD NOT HAPPEN IS YOU COULD NOT ISSUE A DIFFERENT POLICY FROM INDIANA PROVIDING COVERAGE THAT'S PROHIBITED BY INDIANA LAW. SO THE NOTICE REALLY DOESN'T, I THINK, ANSWER THE QUESTION FOR THIS FIVE-MONTH, WHAT GILLEN WAS CREATING AN EXCEPTION FOR PUBLIC POLICY EXCEPTION WAS FLORIDA CITIZENRY WHERE THE INSURANCE COMPANY KNOWS THAT THE WHOLE RISK HAS SHIFTED TO IS CENTERED IN. I MEAN THEY GO ON TO SAY GENERALLY SPEAKING, WELL, WHERE THEY MENTION THE FACT THAT I KNOW THAT I'M SORRY, THE PART THAT I WAS INTERESTED IN IN MENTIONING, THE RISK OF THE POLICY WAS CENTERED IN FLORIDA AND ONLY MINIMAL CONTACT WITH NEW HAMPSHIRE EXISTED IN TERMS OF ACTUAL RISK. THAT'S COMPLETELY DIFFERENT FROM OUR CASE. THESE ARE PERMANENT, INDIANA RESIDENTS. THERE IS NO MINIMAL RISK LEFT IN INDIANA BECAUSE THEY HAVE DEPARTED. THERE ARE STILL INDIANA RESIDENTS, THAT'S WHERE THEIR CARS ARE GARAGED AND THAT'S WHERE THEY ENTERED INTO THE CONTRACT AND THAT'S WHAT WE GOT THE MONEY FOR WAS THE INSURANCE.

CHIEF JUSTICE: IT SEEMS TO ME IT GOES BACK TO IN GILLEN WHICH WAS 1974 SO WE MAKE SURE I DON'T THINK I WAS BORN BACK WHEN THAT CASE WAS HEARD.

I WAS 50.

CHIEF JUSTICE: THAT WE ARE REALLY, IF WE DON'T BRING SOME CERTAINTY TO THIS AREA, THAT IS THAT IT SEEMS THAT THE EXCEPTION, THE GILLEN EXCEPTION WOULD BE ALMOST MORE -- LESS CERTAIN FOR AN INSURANCE COMPANY THAN FOLLOWING THE RESTATEMENT.

WELL, AGAIN THE COURT IS THINK AHEAD, BUT I CAN ONLY TELL YOU ABOUT THIS CASE. THERE IS A DIFFERENCE BETWEEN INDIANA UNINSURED MOTORIST COVERAGE AND FLORIDA UNINSURED MOTORIST COVERAGE BUT THAT IS NOT A QUESTION OF PARAMOUNT PUBLIC IMPORTANCE SO YOU DON'T -- ME, I'M HAPPY WITH STURIANO, I LIKE BLACK AND WHITE RULES BUT THAT'S ME PERSONALLY, I THINK THEY WORK AND EVERYBODY KNOWS WHAT IS GOING ON AND THEY WORK FOR AUTOMOBILE INSURANCE BECAUSE ONLY THE INSURED KNOWS IF THEY ARE GOING TO GO MOVE AWAY PERMANENTLY OR MOVE SOMEWHERE FOR A LONG PERIOD OF TIME AND THEN THEY CAN DO SOMETHING ABOUT IT IF THEY NEED TO, BUT OTHERWISE WE DON'T REALLY EVEN HAVE TO REACH ANY OF THOSE QUESTIONS BECAUSE YOU JUST DON'T -- THE FACTS THAT ARE INVOLVED HERE ARE PEOPLE WHO ARE NOT PUBLIC CONCERN OF FLORIDA, AND AS I SAY, FLORIDA DOES NOT -- STURIANO ITSELF WAS UNINSURED MOTORIST COVERAGE.

CHIEF JUSTICE: RED LIGHT.

OH, I'M SORRY. WE WOULD ASK THAT THE SECOND DISTRICT BE REVERSED AND THE JUDGMENT OF THE TRIAL COURT BE REINSTATED.

CHIEF JUSTICE: AND THANK YOU VERY MUCH. IT IS ALWAYS A PLEASURE TO HAVE EXPERIENCED APPELLATE ADVOCATES ON BOTH SIDES APPEARING BEFORE THE COURT, AND WE APPRECIATE YOUR BENEFIT OF THE ARGUMENT AND YOUR EXCELLENT BRIEFS IN THIS CASE. THANK YOU VERY MUCH.