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Amerisure Insurance Co. v. State Farm

MARSHAL: PLEASE BE SEATED.

CHIEF JUSTICE: OKAY. THE LAST CASE ON THE DOCKET FOR THIS MORNING, IS A CASE ENTITLED AMERISURE INSURANCE COMPANY VERSUS STATE FARM MUTUAL INSURANCE COMPANY. SO WE HAVE GOT INSURANCE COMPANY VERSUS INSURANCE COMPANY. SOMETHING WE DON'T SEE TOO OFTEN, SO PARTIES READY? YOU MAY PROCEED.

MAY IT PLEASE THE COURT. COUNSEL. MY NAME IS MITCH ESPAT, AND IT IS INDEED A GREAT PLEASURE TO STAND HERE BEFORE THIS COURT TODAY, REPRESENTING AMERISURE INSURANCE COMPANY, AN APPEAL CERTIFIED BY THE SECOND DISTRICT COURT OF APPEALS AS A RESULT OF CONFLICT BETWEEN THE SECOND DISTRICT COURT OF APPEAL, THE FIFTH DISTRICT COURT OF APPEAL, THE THIRD DISTRICT COURT OF APPEAL, AND MOST RECENTLY THE FIRST DISTRICT COURT OF APPEAL.

IT IS REALLY THE THIRD DISTRICT --

YES, YOUR HONOR, IT VIOLATES EQUAL PROTECTION BECAUSE IT CLASSIFIES COMMERCIAL VEHICLES AND THE INSURERS.

IS THERE ANY ISSUE HERE, WITH REFERENCE TO THE FACT THAT THE STATUTE DOES MAKE THAT PROVISION, THAT IS THAT IT DOES DISTINGUISH BETWEEN COMMERCIAL AND PERSONAL POLICIES? DO YOU AGREE ON THE FACE OF THE STATUTE?

INDEED, THE STATUTE DOES DISTINGUISH BETWEEN COMMERCIAL VEHICLE OWNERS AND THEIR INSURERS, AS WELL AS PRIVATE INSURERS.

SO THE ONLY ISSUE WE HAVE, IS THE CONSTITUTIONAL ISSUE?

THERE ARE SEVERAL CONSTITUTIONAL ISSUES, YOUR HONOR, BUT, YES, THE CONFLICT ARISES OUT OF AN EQUAL PROTECTION DISAGREEMENT BETWEEN THE CIRCUITS.

WHAT CONSTITUTIONAL ISSUES WERE RAISED BELOW?

THE ISSUE THAT WAS RAISED BELOW IS EQUAL PROTECTION.

IS THAT THE ONLY CONSTITUTIONAL ISSUE THAT WAS RAISED BELOW?

IT IS MY UNDERSTANDING THAT, AT THE TRIAL LEVEL, THAT IS CORRECT.

ALL RIGHT. WOULD YOU GO AHEAD, THEN, AND ADDRESS THAT ISSUE.

CERTAINLY. WITH REGARDS TO THE STATUTE, EQUAL PROTECTION, WE BELIEVE AT LEAST ON BEHALF OF AMERISURE, BELIEVE THAT IT IS VIOLATED, BECAUSE IT CREATES AN ARBITRARY DISTINCTION BETWEEN COMMERCIAL VEHICLE OWNERS AND COMMERCIAL INSURERS, WITHOUT A REASONABLE BASIS FOR DOING SO.

SO UNDER THE STATUTE, WHENEVER THERE, LET ME SEE IF I UNDERSTAND WHAT THE STATUTE

SAYS, FIRST OF ALL. IF THERE IS A COMMERCIAL VEHICLE INVOLVED AND THERE IS THE PAYMENT OF PIP, THEN, BY SOMEONE OTHER THAN THE COMMERCIAL VEHICLE CARRIER, THAT INSURER CAN GET THEIR MONEY BACK FROM THE COMMERCIAL CARRIER IN ALL SITUATIONS.

I BELIEVE IT SPECIFIES THAT A PRIVATE PIP INSURER WOULD GET THAT RIGHT OF REIMBURSEMENT. THAT'S CORRECT, YOUR HONOR.

BECAUSE IN PIP GENERALLY, EVEN THOUGH SOMEBODY IS AN OCCUPANT OF THE VEHICLE, THEY, THEMSELVES, OWN A VEHICLE, YOU LOOK, FIRST, TO THAT PIP, YOUR OWN PIP INSURER.

THAT WOULD BE CORRECT, YOUR HONOR.

SO THIS IS ALL THAT THE LEGISLATURE IS DOING, IS REORDERING, THEN, IN A CASE WHERE SOMEBODY IS AN OCCUPANT OF A COMMERCIAL VEHICLE, THAT IN EFFECT, THEY ARE REALLY SAYING YOU LOOK TO THE COMMERCIAL VEHICLE FIRST. I MEAN, EVEN THOUGH IT IS SORT OF A ROUNDABOUT WAY, YOU GO TO YOUR OWN INSURER, BUT THEN THAT INSURER CAN GET MONEY BACK FROM THE COMMERCIAL CARRIER, CORRECT?

THAT'S CORRECT.

AND WHY ISN'T THAT, I GUESS WITH THAT SCHEME IN MIND, WHY ISN'T THAT REASONABLE, AS FAR AS THERE IS LESS LIKELY THAT SOMEONE THAT IS OCCUPYING A COMMERCIAL VEHICLE MAY LIKELY HAVE THEIR OWN INSURANCE, BUT YET THEY REQUIRE PIP INSURANCE TO BE CARRIED BY COMMERCIAL VEHICLES, SO MAYBE THOSE, THAT SOURCE IS BEING UNDERUTILIZED BECAUSE OF THE WAY THAT INSURANCE WORKS IN THIS STATE, SO WHY ISN'T IT A REASONABLE REALLOCATION OF SPREADING THE RISK?

I BELIEVE IT IS UNREASONABLE, SIMPLY BECAUSE WHEN YOU LOOK AT THE EQUAL PROTECTION CLASSIFICATION, AND HONESTLY, ON ITS FACE I BELIEVE THAT I WOULD LOSE CREDIBILITY WITH THIS COURT AND OTHERS, IF I SAID THAT DIDN'T INCLUDE REASONABLE ISSUES, BUT THE DISTINCTION BETWEEN COMMERCIAL AND PRIVATE, IT, THEN, LEADS TO AN INFRINGEMENT, IF YOU WILL, OF COURT ACCESS, BECAUSE --

WHAT ABOUT THE ANSWER TO THE QUESTION THAT THE CHIEF HAS POSED TO YOU, THAT IS WHY ISN'T IT JUST AS REASONABLE WHERE THERE ARE TWO POLICIES IN EFFECT, AS OPPOSED TO HAVING THE PERSONAL POLICY BE PRIMARY THAT, IN EFFECT, THIS MAKES THE COMMERCIAL POLICY BE PRIMARY. WHY ISN'T IT JUST AS REASONABLE, IF YOU HAVE GOT TWO POLICIES THAT COVER THE SAME SITUATION, TO HAVE THE COMMERCIAL POLICY BE PRIMARY, JUST AS IT WOULD HAVE BEEN TO HAVE THE PERSONAL POLICY BE PRIMARY? WHY WOULDN'T IT BE JUST AS REASONABLE TO HAVE THE COMMERCIAL POLICY BE PRIMARY? DO YOU AGREE THAT IS REALLY THE EFFECT?

I BELIEVE THAT'S CORRECT, YOUR HONOR.

WHY ISN'T IT JUST AS REASONABLE FOR THE LEGISLATURE TO MAKE THE COMMERCIAL POLICY PRIMARY, AS OPPOSED TO THE PRIVATE POLICY?

THE COMMERCIAL OWNER HAS ALREADY OBTAINED WORKERS COMPENSATION COVERAGE, WHICH IS DIRECTED TO COVER SOMEONE WHO IS INJURED IN THE COURSE OF THEIR EMPLOYMENT.

WHAT DOES THIS HAVE TO DO WITH THIS PIP SITUATION, WHERE YOU HAVE GOT TWO POLICIES, AND EVERYBODY AGREES THEY COVER THIS SITUATION, AND ALL THE LEGISLATION REALLY DOES IN EFFECT, IS MAKE THE COMMERCIAL POLICY PRIMARY?

BECAUSE I DON'T BELIEVE THAT THE COMMERCIAL CARRIER WOULD, IS INVOLVED IN INSURING THE PRIVATE INDIVIDUAL WHO, ALL OF A SUDDEN, BECOMES INVOLVED IN AN ACCIDENT, EITHER AS A PASSENGER OR A DRIVER.

WHAT DO YOU MEAN "ALL OF A SUDDEN? IF SOMEONE IS OCCUPYING THIS COMMERCIAL VEHICLE, THIS COVERAGE, THERE IS JUST AS MUCH EXPECTATION THAT AN ACCIDENT WOULD HAPPEN AS OPPOSED TO A PERSONAL SITUATION. I AM HAVING TROUBLE WITH SOMEHOW YOU SAYING THAT THERE IS A CONSTITUTIONAL VIOLATION, WHEN THE LEGISLATURE REALLY HAS A CHOICE TO MAKE, NOW, WITH TWO POLICIES AND ONE PRIMARY, AS YOU ACKNOWLEDGE, AND WHAT IS UNREASONABLE ABOUT MAKING IT BE PRIMARY? YOU DIVIDE IT UP OR SOMETHING LIKE THAT. WHY ISN'T IT JUST AS REASONABLE TO HAVE THE COMMERCIAL POLICY BE PRIMARY?

I DON'T BELIEVE IT IS A COMMERCIAL INSURER, TAKING ASSUMPTION OF THE RISK. PIP IS SAID TO FOLLOW THE PERSON, AND WHEN A PRIVATE INSURER INSURES AN INDIVIDUAL, IT FOLLOWS THAT INDIVIDUAL.

WHEN A PRIVATE INSURER SURES AN INDIVIDUAL, THEY ARE INSURING AN INDIVIDUAL AND IF THAT INDIVIDUAL IS IN A COMMERCIAL VEHICLE AND IS INVOLVED IN A CRASH THEY ARE LOOKING TO THEIR PIP CARRIER FIRST AND I THINK EVEN THE INSURANCE POLICIES ADD RESS PRIORITY OF COVERAGE AND WHEN YOU GET INTO THE LANGUAGE OF WHO IS PRIMARY AND WHO ISN'T BUT WHEN YOU DEAL WITH A MANDATE ABOUT IF YOU WILL HAVE THE LEGISLATURE THAT SAYS YOU, MR. COMMERCIAL OWNER, OR YOU MR. COMMERCIAL INSURANCE CARRIER, ARE NOW GOING TO HAVE TO REIMBURSE A PRIVATE PIP CARRIER FOR BENEFIT SPaid THEN IT SAYS TO THE EXTENT OF ANY BENEFIT SPaid. NOT REASONABLE, NOT NECESSARY

THAT'S NOT REALLY PART OF THE EQUAL PROTECTION ARGUMENT, IS IT? THAT'S A WHOLE SEP ARATE ISSUE, YOU KNOW, ON THE CONSTITUTIONAL SIDE, IS IT NOT?

I BELIEVE

WHAT DOES THAT HAVE TO DO WITH THIS EQUAL - - WHETHER ONE IS PRIMARY OR THE OTHER ?

IT MAY NOT HAVE TO DO DIRECTLY WITH WHO IS PRIMARY OR WHO ISN'T BUT IT IS INTERTWINED WITH THE CLASSIFICATION THAT VIOLATE S EQUAL PROTECTION AND I DON'T NOT UNLIKE THIS COURT'S DECISION IN THE PINA CL E DELTA CASE WHERE MAN NE D TERROR ARBITRATION IMPOSED ON A MEDICAL PROVIDER WHO RECEIVED AN ASSIGNMENT FROM THE INSURED WAS FOUND TO BE AN ARBITRARY AND UNREASONABLE CLASSIFICATION BECAUSE THEY HAD ACCESS TO THE COURTS TO CHALLENGE THE CLAIM, DETERMINING ON WHO OWNS THE CLAIM WHETHER THE INSURED OWNS THE CLAIM OR WHETHER THE PROVIDER OWNS THE CLAIM BY ASSIGNMENT. WHAT DID THE SECOND AND THE 5TH AND THE 1ST SAY ABOUT THERE BEING SOME REASONABLE BASIS FOR THIS LEGISLATION?

THEY ALL FELT THAT THE LEGISLATURE SATISFIED THE REASONABLE BASIS TEST.

NO, BUT WHAT DID THEY SAY? DID THEY SPECULATE IN TERMS OF THE LEGISLATIVE POLICY FOR THAT?

YES, YOUR HONOR, THEY FELT THAT THE LEGISLATURE COULD DO THIS IN CONJUNCTION WITH TRYING TO KEEP DOWN INSURANCE PREMIUM : .

AND WHAT EVIDENCE DID YOU PRESENT CONTRARY TO THAT TO THE TRIAL COURT OR OTHERWISE?

I D O N ' T B E L I E V E A N Y - - I W A S N O T T R I A L C O U N S E L . A T T H E D I S T R I C T L E V E L , H O W E V E R , W E R E L I E D O N T H E T R O P I C A N A C A S E O U T O F T H E T R O P I C A N A C A S E O U T O F T H E 3 R D D I S T R I C T W H I C H I U N D E R S T A N D T H A T I S A S H O R T O P I N I O N T H A T E S S E N T I A L L Y H E L D T H E R E W A S A N A R B I T R A R Y A N D U N R E A S O N A B L E C L A S S I F I C A T I O N A N D T H A T ' S W H Y I T H A D V I O L A T E D E Q U A L P R O T E C T I O N .

T H E Q U E S T I O N W A S W H A T D I D T R I A L C O U N S E L P R E S E N T , W H A T E V I D E N C E D I D T R I A L C O U N S E L P R E S E N T T O T H E T R I A L C O U R T T H A T W A S C O N T R A R Y T O T H E F A C T T H A T T H I S W A S A R A T I O N A L E C L A S S I F I C A T I O N T O D I S T I N G U I S H B E T W E E N A C O M M E R C I A L V E H I C L E S A N D O T H E R V E H I C L E S ?

I ' M N O T S U R E T R I A L C O U N S E L , T H E R E W A S A N Y D I S C O V E R Y D O N E . I T H I N K W A S T H E R E A N E V I D E N T I A R Y H E A R I N G O N T H I S ?

T H I S W A S C R O S S M O T I O N S F O R S U M M A R Y J U D G M E N T A N D T H E R E W A S A S T I P U L A T E D S E T O F F A C T S B E T W E E N U N D E R L Y I N G C O U N S E L F O R S T A T E F A R M A N D F O R A M E R I S U R E .

S O B A S I C A L L Y I T W A S B A S E D O N T H E L A N G U A G E O F T H E S T A T U T E A N D C A S E L A W ?

T H A T ' S C O R R E C T A N D I B E L I E V E T H E C O U R T I N P A R A G R A P H 2 A N D I B E L I E V E I T I S P A G E 5 2 S T A T E S A S A M A T T E R O F L A W , A L L B E N E F I T S , % % -- p p I R R E S P E C T I V E O F W H E T H E R T H E Y W E R E R E A S O N A B L E O R N O T A R E T O B E P A I D B Y A M E R I S U R E , W H I C H , A G A I N , B E C A U S E Y O U A R E C L A S S I F Y I N G A P R I V A T E P I P C A R R I E R D O E S H A V E T H E R I G H T T O C H A L L E N G E A N I N S U R E D ' S C L A I M I N C O U R T . .

I S N ' T T H A T A D U E P R O C E S S C L A I M R E A L L Y ? I N O T H E R W O R D S , T H A T ' S N O T P A R T O F T H E E Q U A L P R O T E C T I O N A N A L Y S I S , I S I T ?

W E L L , I T H I N K I N A S E N S E I T I S , J U S T I C E P A R I E N T E . I T H I N K I F Y O U L O O K A T W H A T I S H A P P E N I N G H E R E , Y O U H A V E A S I T U A T I O N W H E R E P R I V A T E P I P C A R R I E R C A N D E F E N D I T S E L F A G A I N S T T H E I N S U R E D I N A C O U R T H O U S E , B E I T A N E C E S S A R Y , R E A S O N A B L E N E S S , A M O U N T , W H A T H A V E Y O U . B Y V I R T U E O F T H E C L A S S I F I C A T I O N A C O M M E R C I A L C A R R I E R C A N N O T D E F E N D I T S E L F .

H O W I S T H A T N E C E S S A R I L Y T R U E ? T H A T I S , W E D O N ' T H A V E I N T H I S C A S E T H A T C L A I M R E A L L Y B E I N G A D D R E S S E D I N T H E C O U R T S , D O W E ? W E D O N ' T H A V E T H A T B E I N G A D D R E S S E D A T T H E T R I A L C O U R T L E V E L O R T H A T B E I N G A D D R E S S E D A T T H E A P P E L L A T E L E V E L B E F O R E I T C A M E T O U S . S O , Y O U K N O W , Y O U H A V E R A I S E D I T A S A C O L L A T E R A L I S S U E H E R E O R A S A N O T H E R I S S U E A S K I N G U S T O D E A L W I T H I T , B U T Y O U H A V E A S K E D U S F O R T H R I G H T L Y A S Y O U W E R E C A N D I D A N D W E A P P R E C I A T E D I N T H E B E G I N N I N G W I T H R E F E R E N C E T O T H E S T A N D A R D , Y O U K N O W , F O R A C O U R T T O A P P L Y T O T H I S , B U T T H A T I S A S E P A R A T E I S S U E , A S Y O U R A I S E D I T A S A S E P A R A T E I S S U E , I S I T N O T ?

I N D E E D I T I S V I E W E D M O S T O F T H E T I M E A S A S E P A R A T E I S S U E , B U T I T H I N K B Y V I R T U E O F T H E C L A S S I F I C A T I O N B E I N G M A D E , A C O M M E R C I A L C A R R I E R H A S N O R E C O U R S E B Y T H E D I S T R I C T L A N G U A G E O F T H E S T A T U T E T O C H A L L E N G E R E A S O N A B L E N E S S .

W A S T H A T A R G U M E N T M A D E R E G A R D L E S S O F H O W I T W A S C O U C H E D , E I T H E R E Q U A L P R O T E C T I O N G R O U N D S O R D U E P R O C E S S ? W A S T H A T S P E C I F I C A R G U M E N T M A D E T O T H E T R I A L C O U R T ?

I D O N O T B E L I E V E S O , B E C A U S E T H E R E I S N O R E C O R D O F T H E S U M M A R Y J U D G M E N T P R O C E E D I N G S . A T T H E L E V E L B E L O W , A N D I D O R E C O G N I Z E A L S O , T H A T N O N E O F T H E D I S T R I C T C O U R T S , B E I T O N S T A T E F A R M ' S S I D E O R A M E R I S U R E ' S S I D E H A V E A D D R E S S E D

THOSE ISSUES.

IT SEEMS TO ME THAT THE ONLY ISSUE RAISED IS THE SIMPLE CLASSIFICATION ISSUE, THAT IS, A NISSUE, A GAIN, FORTHRIGHTLY DISCUSSED HERE AS THE STATUTE PROVIDES. NOWHERE DO WE SEE IN ANY OF THE PROCEEDINGS BEFORE THE CASE ARRIVES HERE, ANY ADDRESS OF THIS ISSUE ABOUT, WELL, WE'RE ALSO FOR ECLOSED FROM MAKING A DEFENSE AS TO THE REASONABLENESS OR NECESSITY OF THE ACTUAL, YOU KNOW, MEDICAL EXPENSES OR WHATEVER THAT ARE INVOLVED HERE. IS THAT CORRECT?

THAT IS CORRECT. I MEAN, THERE WAS NO STRAIGHTFORWARD FREE STANDING CLAIM AS FAR AS I'M CONCERNED OR THAT I'M AWARE OF THAT VIOLATED COURT ACCESS BY ITSELF.

WELL, NEITHER WAS THERE A CLAIM NOT FREESTANDING, CONNECTED TO THE EQUAL PROTECTION. IN OTHER WORDS, WE SEE NO APPEARANCE OF THIS ISSUE, EITHER, IN CONNECTION WITH THE EQUAL PROTECTION ARGUMENT, DO WE?

WELL, MY BRIEF SPELLED OUT THE FACT THAT IT WAS AMERISURE'S POSITION THAT SOME OF THESE, ALTHOUGH THEY COULD HAVE BEEN RAISED ON A FREESTANDING BASIS ARE INTERTWINED WITH THE EQUAL PROTECTION ANALYSIS.

BUT WHEN YOU STARTED OUT YOUR ARGUMENT AND YOU SAID THAT AMERISURE WAS ORDERED TO PAY ALL OF THESE EXPENSES, CORRECT?

INDEED, YOUR HONOR.

AND AT THE POINT WHEN THE JUDGE DID THAT, DID AMERISURE MAKE AN ARGUMENT THAT SAID, WAIT, SOME OF THE SEEMAY NOT BE REASONABLE EXPENSES COULD WE AT LEAST DECIDE THAT, HAVE A HEARING ON THAT OR SOMETHING TO THAT EFFECT?

BASED ON THE LANGUAGE IN THE JUDGE'S ORDER AS A MATTER OF LAW, AMERISURE IS LIABLE FOR ALL, I DO NOT BELIEVE THAT IT COULD HAVE BEEN MADE. NOW, WHETHER IT WAS MADE OR NOT, I CAN NOT REPRESENT TO THE COURT ONE WAY OR THE OTHER, BECAUSE QUITE FRANKLY THERE WAS NO TRANSCRIPT OF THE SUMMARY JUDGMENT.

REGARDLESS OF ANY TRANSCRIPT WHAT ABOUT THE RESPONSE FOR MOTION FOR SUMMARY JUDGMENT, ANY OF THOSE, WAS THERE ARGUMENT MADE THERE?

I DO NOT BELIEVE TRIAL COUNSEL RAISED THAT SPECIFICALLY, YOUR HONOR.

WOULD YOU ADDRESS THIS PART OF THE CLASSIFICATION I WOULD ASK MISS GALLAGHER TO ADDRESS THIS AS WELL. WHEN ADDRESS THIS AS WELL. WHEN YOU THINK COMMERCIAL, BIGGS, AND THEN WORKING WORKERS' COMP DOES COME TO THE FOREFRONT, ALTHOUGH IN NOT ALL CIRCUMSTANCES BUT I WOULD VENTURE TO SAY THE MAJORITY OF THE CASES IT WILL BE IN THE COURSE AND SCOPE OF EMPLOYMENT BECAUSE THAT'S WHAT COMMERCIAL VEHICLES ARE USED FOR SO WE HAVE THIS INTERPLAY OF PRIVATE INSURANCE VERSUS A COMP SYSTEM, SO IN THIS CLASSIFICATION PROCESS COULD YOU HELP ME UNDERSTAND WHETHER STATUTES OR BY OPERATION, FOR EXAMPLE, IF IT IS PAID AS PART OF A COMP CLAIM THERE IS A COMPLIANCE, NO SET OFFS AND THE FULL CLAIM IS MADE FROM THE PARTY RESPONSIBLE AND THEN THE CARRIER IS REIMBURSED. IF YOU ALLOCATED THAT TOP IP THERE IS A SET OFF AND THERE IS NO RECOVERY SO THERE IS AN INTERPLAY BETWEEN COMP AND WHEN YOU START CLASSIFYING SO CAN YOU HELP ME RESOLVE HOW DOES THIS PLAY OUT ON THE GROUND AND HOW DOES THAT IMPACT ANY CLASSIFICATIONS THAT WE MAY GO THROUGH?

WELL, CERTAINLY, I THINK FROM THE PERSPECTIVE AND LET'S LEAVE THE COMMERCIAL

INSURER OUT OF IT FOR THE TIME BEING. THE COMMERCIAL OWNER OBVIOUSLY BUY S COM P INSURANCE OR HE O R S HE SHOULD. YOU THEN GET I NT O A N ACCIDENT, AND THE I NS URED U NDER T HE PIP P OL IC Y CAN ELECT TO G O PIP A VENU E , O R C AN E LE CT T O G O W O R K C OM P AVENUE. IF HE OR SHE E LECT S TO G O PIP AVENUE AT SOME P OI NT I N TIME THAT PIP CARRIER I S GOING TO LOOK TO THE WORKERS' COM PENSATION CARRIER F OR REI MBUR SE ME NT . THE PROBLEM I S THA T I F Y OU H AVE THE P IP C ARRIER G OING BACK AGAINST THE COMP CARRIER OR AGAINST THE COMMERCIAL OWNER INDIVIDUALLY, MEANING T HE BUSINESS, OR AGAINST T HE COMMERCIAL OWNERS INS UR ER , YOU A RE NOW A P IP C ARRIER THAT IS GET TING \$10,0 00 O R WHA TEVER T HE AMO UN T M AY BE BACK. I T HINK IT I S A S LI PPER Y SLOPE WHEN YOU LOOK AT IT FROM THE COLLATERA L S OU RCE END OF IT. AS YOU INDIC AT ED A P IP CARRIER, THE P IP B EN EFIT S ARE USUALLY COLLATERALS OR SET-OFF S. WHAT IF I N OUR C ASE O R A NY OF THE CASES AT THE D IS TRIC T LEVEL T HE NAMED INS URED UNDER THE P IP POLICY , T HE PRIVATE PIP POLICY MADE A U M CLAIM? STATE FAR M I N T HA T W OUL D N OT ONLY GET A SET OFF F OR BENEFITS PAID BUT I T WOU LD ALSO HAVE I N ITS P OC KE T \$10,000 THAT I T E I T HE R G OT FROM THE COMP CARRIER , THE COMMERCIAL OWNER OR THE COMMERC IAL INSURER.

AREN'T YOU G OING F AR AFIELD FROM THE ISSUES WE HAVE HERE? I N FACT , R EALL Y I SN'T A C OMMERCIAL O WN ER , B UT ARE BEN EFITED BY THE FACT T HAT THEY HAVE BOT H W O R K E S COMPENSATION WORKERS' COMPENSATION AND P IP BEC AUSE THERE IS NOT GOING TO BE A DUPLICATION OF BENEFITS. THAT IS , THAT T HE O RDIN ARY CLAIM IS GOING T O INVOL VE SOMEBODY THA T I F THE Y ARE O PERATING A C OMME RC IA L VEHICLE I N THE COURSE OF BUSINESS, IT IS GOING T O B E COVERED BY W ORKE RS' COMPENSATION AND SO THE COMMERCIAL OWNER REALLY IS GOING TO BENEFIT BY T HE F AC T THAT THEY HAVE BOT H P IP COVERAGE AND W O R KERS ' COMPENSATION COVERAGE BECAUSE THERE WILL B E S OME OFFSET BETWEEN T HO SE TWO O F A LIABILITY T HAT THE COMMERCIAL PEOPLE HAVE A NYWAY.

WELL, I TH I NK , A ND T HA T ' S WHAT I THINK THE A MERI CA N FREIGHT DECISION OUT O F SECOND BCA O N WHI CH T HE DEALERS I N THE 5TH R ELIE D UPON AND THE ISSUE THERE REALLY IS IS IT IS DUPLICATING IT BECAUSE I F A C OMMERCIAL OWNER HAS W O R K COMP COV ERAG E , N OW THE Y A RE HAVING TO PAY AN E XTRA \$ 10,000.

ARE THEY? I N OTHER WORDS, ARE YOU SAYING THAT T HE COM ME RC IAL CARRIER IS GOING TO H AV E T O BOTH PAY T HI S B ILL , O KA Y , WITH THE P IP COVER AG E , A ND THEY ARE GOING TO HAVE T O PAY I T WITH THE WORKERS' COMP A ND S O THA T T HE I NJUR ED EMPLOYEE GETS P AID T WICE ; IS THAT WHAT YOU ARE SAYING?

I'M SAYING THAT THE AMERICAN

LET ME STOP YOU RIG HT THERE. ARE YOU SAYING THA T T HE INJURED EMPLOYE E I N T HE O RDINARY CASE IS G OING T O GET PAID D UPLI CA TE B ENEF IT S , THEY ARE ENTITLED TO DUPLICATE B ENEFITS?

ONLY IF THEY MAKE A P IP CLAIM AS WELL , BECAUSE THEN UNDER THE A ME RI CAN F REIGHT DECISION , T HE C OM ME RC IA L OWNER HAS TO R EI MBUR SE T HE PRIVATE PIP CARRIER.

SO YOU ARE SAYING THEY ARE GOING TO GET DUP LI CA TE BENEFITS, THEY ARE GOING TO GET WORKERS' COMP REIMBURSEMENT FOR THIS B ILL AND P IP R EIMB UR SE ME NT F ROM THIS BILL AND I N ESSENCE FROM THE SAME S OURCE , T HE EMPLOYER?

WELL

ARE YOU MAKING THAT CLA IM ? I WANT YOU T O B E F OR TH RI GH T WITH US HERE.

I'M TRYING TO UND ERSTAND THE QUESTION BEING ASKED.

THE QUESTION IS SIMPLY WHETHER OR NOT AN EMPLOYEE THAT'S INJURED IN A COMMERCIAL VEHICLE DURING THE COURSE OF EMPLOYMENT AND IS ENTITLED TO WORKERS' COMPENSATION, ALSO IS ENTITLED TO PIP BENEFITS, IS ENTITLED TO COLLECT BOTH AND %-- pp THAT THAT'S THE LAW? IS THAT WHAT YOU ARE SAYING?

NO.

I DIDN'T THINK SO.

WE WANT YOU TO BE MINDFUL THAT YOU ARE WAY INTO YOUR REBUTTAL.

OKAY.

IN OTHER WORDS THIS MIGHT BE A GOOD TIME TO PAUSE.

I WILL, BUT I WILL ANSWER YOUR DID I ANSWER YOUR QUESTION, JUSTICE LEWIS?

YES.

ALL RIGHT.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS BETSY GALLAGHER WITH COLE, SCOTT AND KISSANE AND I REPRESENT THE RESPONDENT, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY. THE APPLICATION OF SECTION 627.7405, WITHOUT REGARD TO FAULT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

HOW DID THIS PROVISION GET IN THERE? CAN YOU JUST GIVE US A HISTORICAL BASIS? IS IT IN THERE FROM THE BEGINNING OF THE PIP NO FAULT STATUTE?

NO, IT WASN'T. IT CAME INTO BEING AT THE SAME TIME THAT COMMERCIAL MOTOR VEHICLES WERE REQUIRED TO CARRY PIP.

SO IS THERE ANY LEDGE SLATE IF HISTORY ABOUT -- LEGISLATIVE HISTORY ABOUT WHAT WAS IN THE MINDS OF THE LEGISLATURE OR A TRADE-OFF FOR THE COMMERCIAL INSURERS OF COMMERCIAL VEHICLES THAT HAVE THIS SCHEME WAS GOING TO WORK?

WELL, I THINK THAT THE STATUTE ITSELF, 7405, EXPLAINS HOW IT WAS EXPECTED TO WORK.

BUT AS FAR AS THE IDEA THAT MAY BE WERE THE PREMIUMS GOING TO BE LESS BECAUSE IT WAS UNDERSTOOD THEY WOULD BE GETTING BACK A CERTAIN AMOUNT OF THE MONEY THAT WAS PAID OUT OR, YOU KNOW, SO FORTH, HOWEVER?

I THINK THAT THE -- I THINK

PREMIUMS WITH STATE FARM.

I THINK WHAT IS CRITICAL ABOUT THIS IS THAT THE STATUTE WAS, I THINK, EVEN ACTED TO GIVE -- ENACTED TO GIVE BALANCE TO THE RISKS THAT WERE BORN BY THE PRIVATE INSURER.

WHEN PIP FIRST STARTED THE COMMERCIAL VEHICLE DID NOT HAVE A REQUIREMENT TO CARRY PIP.

YOU'RE ABSOLUTELY CORRECT.

OKAY. AND THEN THERE CAME A LONG IN ABOUT '79, A LEGISLATIVE PROVISION THAT

CHANGED THAT REQUIREMENT SO THAT THE WHOLE -- THERE WAS, IN FACT, A SHIFT IN IDENTIFICATION OF WHERE THIS WAS GOING TO FALL FROM THE PRIVATE TO THE COMMERCIAL VEHICLE. I MEAN, THAT WAS A LEGISLATIVE DECISION THAT WAS MADE AT THAT TIME. ISN'T THAT THE WAY IT WORKED?

CORRECT, AND I THINK IT WAS ENACTED TO GIVE SOME BALANCE TO THE RISKS BY THE PRIVATE PASSENGER INSURER, BECAUSE WITHOUT THAT STATUTE, THE INSURERS OF THE PRIVATE PASSENGER VEHICLES WERE BEARING THE ENTIRE RISK.

WELL, THERE ALSO MAY BE SOME CIRCUMSTANCES WHERE SOMEBODY WAS NOT IN THE COURSE AND SCOPE OF EMPLOYMENT BUT WAS IN A COMMERCIAL VEHICLE. DID NOT OWN THE IRON VEHICLE AND SO THEY WOULD NOT HAVE HAD PIP BENEFITS AT ALL.

CORRECT. ABSOLUTELY.

IT WOULD REMEDY THAT SITUATION AS WELL.

ABSOLUTELY.

IS THERE ANY LEGISLATIVE HISTORY, THOUGH, TO SHOW THESE POSSIBLE REASONS FOR ENACTING?

NONE THAT I AM AWARE OF AND NONE THAT ARE CERTAINLY PART OF THE RECORD HERE. I CAN SAY THAT WITH REGARD TO THE ISSUE OF PLAIN REQUESTING THIS COURT TO WRITE IN A FAULT REQUIREMENT, THAT THAT IS TOTALLY CONTRARY TO THE WORDING OF 627.731 WHICH SPECIFICALLY SAYS THAT BENEFITS UNDER THESE STATUTES, THE SEVERAL STATUTES THAT APPLIED TO NO-FAULT COVERAGE, ARE TO BE PROVIDED WITHOUT REGARD TO FAULT.

CAN I JUST AGAIN TRY TO UNDERSTAND THE SEQUENCE? YOU'VE GOT '79 AS JUSTICE BELL POINTS OUT AND THEN BY '84 THEY ARE SAYING THIS IS UNCONSTITUTIONAL?

CORRECT.

SO FOR 20 YEARS IN THE 3RD DISTRICT THIS PROVISION HASN'T BEEN IN FORCE?

CORRECT.

THERE HAS BEEN NO LEGISLATIVE, NOTHING ELSE HAPPENED IN THE LEGISLATURE?

NO.

YOU HAVE FOUR OTHER DISTRICTS WHERE IT HAS BEEN ENFORCED?

THREE OTHERS WHERE IT HAS BEEN ENFORCED.

WHAT ABOUT THE 5TH?

THE 4TH DISTRICT HASN'T ADDRESSED IT. THE DEALERS CASE CAME OUT OF THE 5TH DISTRICT IN 1989, FIVE YEARS AFTER THE 3RD DISTRICT DECISION.

AND IT HAS BEEN ENFORCED THERE?

YES, AND THE NARISURE CHOSE TO FOLLOW THE DEALERS DECISION AND I THINK SINCE THE BRIEFING IN THIS CASE

IT MUST NOT HAVE CATASTROPHIC EFFECTS EITHER WAY IF IT HAS BEEN LEFT TO SORT OF RIDE ALONG FOR 20 YEARS. I MEAN, I DON'T KNOW. WE DON'T HAVE IT IN THIS RECORD ABOUT HOW MUCH WE ARE REALLY TALKING ABOUT AS FAR AS ACTUAL DOLLARS THAT ARE, YOU KNOW, AN ISSUE HERE.

I DON'T THINK IT HAS BEEN A BIG BURNING ISSUE IF THAT'S WHAT THE COURT IS ASKING. IT IS AN ISSUE, MAYBE, I DON'T THINK BURNING WOULD BE WHAT I WOULD CATEGORIZE THIS AS.

IN EFFECT, OF COURSE, THE COURT HAS HELD THAT THE FACT THAT THERE IS SO MUCH INEQUALITY IN TREATMENT DOES NOT RENDER A STATUTE UNCONSTITUTIONAL UNDER EQUAL PROTECTION GROUNDS AND ANOTHER THING I WANTED TO POINT OUT I WANTED TO GO BACK TO THE FACT THAT, YOU KNOW, WITHOUT THE STATUTE YOU WOULD HAVE HAD WITHOUT THESE CHANGES THE INSURERS OF PRIVATE PASSENGER VEHICLES ASSUMING THAT A PERSON INVOLVED IN THE ACCIDENT DID HAVE A PRIVATE POLICY, A PRIVATE POLICY, THAT THEY WOULD HAVE HAD TO BEAR THE ENTIRE RISK IN EXPOSURE INCIDENTS AS A RESULT OF THE PRIOR POLICIES OF COVERAGE ESTABLISHED UNDER 627.734.

THEY DID THAT, ANYWAY, IF IT IS TWO DIFFERENT PRIVATE PASSENGER VEHICLES.

IT IS NOT LIKE THEY ARE GETTING OFF THE HOOK.

THEY STILL HAVE TO AFFORD BENEFITS IN BOTH SITUATIONS.

ISN'T THAT THE FUNDAMENTAL SCHEME, THOUGH, OF THE PIP COVERAGE AND DOESN'T THIS PROVISION REALLY SKEW THAT FUNDAMENTAL SCHEME? DOESN'T IT REALLY CHANGE IT COMPLETELY?

NO, WHAT IT DOES IS IT PROVIDES BALANCE, BECAUSE OTHERWISE DOES IT MAKE SENSE THAT THE INSURER OF A PRIVATE PASSENGER VEHICLE NOT EVEN INVOLVED IN AN ACCIDENT BEAR THE ENTIRE RISK AND EXPOSURE OF LOSSES FROM AN ACCIDENT INVOLVING A COMMERCIAL VEHICLE? THAT DOESN'T SEEM TO MAKE ANY SENSE TO ME.

WHAT DO YOU MEAN NOT EVEN INVOLVED IN AN ACCIDENT WHEN THEY ARE ON NOTICE THAT THEIR INSURANCE FOLLOWS THE PERSON, CORRECT?

CORRECT.

AND THAT'S THE FUNDAMENTAL SCHEME AND THAT'S WHY I SAY, DOESN'T THIS REALLY SKEW THE ENTIRE SCHEME OR CONCEPT THAT WAS FIRST ENACTED IN '79 OR WHENEVER? IN OTHER WORDS, THAT NOW IT IS NOT FOLLOWING THE PERSON OR HAVING THE OVERLAY OF ANOTHER POLICY THAT'S OUT THERE, REALLY FOLLOWING NOW THE VEHICLE AS OPPOSED TO THE PERSON?

WELL, JUSTICE ANSWERED, IF YOU ARE ASKING ME DID THIS CHANGE THINGS, ABSOLUTELY.

WE'RE TRYING TO FIGURE OUT WHY IT CHANGED THINGS AND AS JUSTICE LEWIS HAD BROUGHT UP IN THE EARLIER QUESTIONING AND IT IS SOMETHING THAT I DON'T KNOW IF THERE IS CERTAINLY NOTHING IN THE RECORD THAT MAYBE THE EXISTENCE OF WORKERS' COMPENSATION SOMEHOW HAS ALTERED THE WHOLE THING SO THAT THIS WAS A REASON FOR THE REALLOCATION OF THE, YOU KNOW, THE WAY THAT REIMBURSEMENT WOULD OCCUR. DO YOU HAVE ANY WAY OF ASSISTING US ON THAT?

NO, I CAN ANSWER ONE QUESTION THAT THE COURT ASKED EARLIER AND THAT IS WHETHER OR NOT THERE IS DOUBLE RECOVERY AND THERE IS NO DOUBLE RECOVERY BECAUSE I THINK

UNDER THE COM OVER SU S SAFECO CASE, THE SUPREME COURT BAKELY SAID WHEN YOU HAVE WORKERS' COMPENSATION COVERAGE COVERAGE SOME OF THE BENEFITS THAT PIP COVERAGE CARRIES AND I THINK BOTH COVERS 60% OF LOST WAGES THAT BASICALLY THE PERSON, THE PROVIDER THAT YOU GO TO FIRST IS RESPONSIBLE, SO FOR EXAMPLE LET'S SAY THE INJURED PERSON GOES TO THE COMP CARRIER FIRST, HIS PIP CARRIER DOES GET A CREDIT FOR THAT. THERE IS NO DOUBLE PAYMENT TO THE EMPLOYEE AS A RESULT OF THOSE CLAIMS. THERE IS CERTAINLY NO DOUBLE RECOVERY.

IN THAT SITUATION THERE WOULD BE NO EVEN IF THERE IS A CREDIT THEN THE INSURER OF THE PRIVATE INSURANCE AUTOMOBILE INSURANCE WOULDN'T GO BACK AGAINST THE COMMERCIAL PIP PART?

NO. IT IS A CREDIT AND THERE WOULD BE A REDUCTION IN THE BENEFITS THAT WERE OWED UNDER THE PERSONAL POLICY.

ARE THERE OTHER STATES THAT HAVE A SCHEME LIKE THIS?

NOT THAT I'M AWARE OF. AS A MATTER OF FACT, MOST OF THE STATES ARE GETTING AWAY FROM NO-FAULT COVERAGE ENTIRELY TO TELL YOU THE TRUTH AND WHEN THIS WHOLE NO-FAULT SCHEME WAS ENACTED MOST STATES WERE IN THE PROCESS OR HAD ALREADY ENACTED THEM OR WERE IN THE PROCESS OF ENACTING THEM. NOW A LOT OF STATES ARE RETREATING FROM THIS KIND OF COVERAGE.

BUT YOU ARE NOT AWARE OF ANY OTHER STATES THAT HAVE THIS PERSONAL COVERAGE RESOLVED THIS WAY?

NO, BUT I CERTAINLY BELIEVE THAT, AGAIN, THE FACT THAT WE MAY HAVE ORIGINALLY WANTED TO MAKE AN INDIVIDUAL'S POLICY PRIMARY AND RESPONSIBLE FOR THAT, DOES NOT MEAN THAT THERE WAS ANYTHING WRONG WITH THE LEGISLATURE ENACTING A STATUTE WHICH TRIED TO ATTEMPT TO PUT SOME BALANCE INTO IT AND ALLOCATE SOME OF THE RISK.

WHAT ABOUT THE SE OTHER ISSUES?

TO COMMERCIAL CARRIERS.

WHAT ABOUT THESE OTHER ISSUES THAT YOUR OPPOSITION HAS RAISED? THAT IS WHETHER OR NOT THEY HAVE A RIGHT TO CONTEST THE REASONNESS OR NECESSITY OF THE CHARGES ONCE THE PERSONAL CARRIER SPAY THEM AND NOW IS ASKING FOR REIMBURSEMENT?

OKAY. FIRST OF ALL, THE INSURER OF THE I'VE GOT TWO STRONG ARGUMENTS. I THINK I HAVE THREE STRONG ARGUMENTS TO OPPOSE HIM ON THAT, GETTING BEYOND THE FACT THAT THOSE ISSUES ARE NOT PART OF THIS CERTIFIED QUESTION BUT OF COURSE THIS COURT CAN DO WHATEVER IT WANTS TO IN REACHING THOSE ISSUES OR NOT. YOU CAN DO WHATEVER YOU WANT TO.

MY FIRST ONE IS YOU DON'T HAVE TO DO THIS. I DO WANT TO ASK

DOESN'T IT HAVE TO BE RAISED BELOW FOR US TO CONSIDER IT?

I DON'T THINK THEY ARE STANDING HERE BECAUSE THE PLAINTIFF IN THIS CASE, DID NOT RAISE ANY PIP DEFENSES AT THE TRIAL COURT.

EVEN REGARDLESS OF STANDING AND I KNOW THAT'S A SEPARATE DISPOSITIVE ISSUE, BUT THEY HAVE TO HAVE RAISED AN ISSUE IN THE TRIAL COURT GIVEN, GIVING THE TRIAL

COURT AN OPPORTUNITY TO RULE ON THE ISSUE BEFORE AN APPELLATE COURT CAN RULE ON IT, RIGHT?

I WOULD AGREE GENERALLY WITH THAT. I THINK THERE MIGHT BE IN EXCEPTIONS IN THE AREA WHEN YOU ARE DEALING WITH THE CONSTITUTIONALITY OF STATUTES BUT - - CONSTITUTIONALITY OF STATUTES BUT I THINK BY THE MERE FACT THAT THEY DID NOT RAISE THESE DEFENSES THEY DON'T HAVE STANDING TO SHOW THAT THEY THE MS ELVES, THAT THEIR ACCESS TO THE COURTS WERE BLOCKED IN ANY WAY.

YOU ARE TELLING US, THOUGH, ARE YOU NOT, THAT THE RECORD IN THIS CASE DOES NOT REFLECT THAT AMERISURE SAID, ALL RIGHT, JUDGE, NOW THAT YOU ARE HOLDING US RESPONSIBLE, AT LEAST GIVE US AN OPPORTUNITY TO DETERMINE WHETHER OR NOT THESE CHARGES WERE REASONABLE OR NECESSARY?

THAT ISSUE WAS NOT RAISED.

OKAY.

AND I ALSO WANT TO POINT OUT THAT

BECAUSE YOU SAID THREE REASONS. I JUST WANT TO KNOW, NOT BEING RAISED WAS ONE OF THE THREE.

YES.

WHAT ARE YOUR OTHER?

SO NO STANDING.

WE LOOK AT IT MORE, NOT BEING RAISED IS REALLY NO STANDING.

LET US LOOK AT THE MERITS. FIRST THE STATUTE DOES NOT PROVIDE THAT A COMMERCIAL CARRIER CAN'T RAISE THESE DEFENSES. THERE IS NOTHING IN THIS STATUTE THAT SAYS A COMMERCIAL CARRIER CANNOT RAISE THESE DEFENSES IF IT IS APPROACHED BY THE PERSONAL CARRIER FOR REIMBURSEMENT.

WE HAVE A PRACTICAL MATTER. UNDER THIS STATUTE, HOW DOES STATE FARM ACTUALLY GET MONEY FROM AMERISURE? DO THEY FILE A LAWSUIT? IS THERE SOME KIND OF WAY YOU WOULD WRITE THE M A LETTER, ASK FOR REIMBURSEMENT?

MOST OF THE TIME THEY JUST WRITE A LETTER AND THERE IS NO LITIGATION OVER IT. THEY WRITE A LETTER TO THE M BUT I WANT TO TELL YOU SOMETHING.

AND THEN IN THE 3RD DISTRICT THEY WRITE A LETTER AND THEY SAY, TOO BAD, RIGHT?

RIGHT.

I DO WANT TO SAY THAT THE INSURER OF THE COMMERCIAL VEHICLE AND THE OWNER OF THE COMMERCIAL VEHICLE ARE ALWAYS PUT ON NOTICE OF THESE CLAIMS RIGHT FROM THE START. THEY ARE ALWAYS ON NOTICE OF THE FACT THAT THERE WAS AN ACCIDENT SO IF THEY WANTED TO COME FORWARD AND SAY, OKAY, WE ARE GOING TO BE PRIMARILY RESPONSIBLE. WE'LL TAKE CARE OF THE CLAIM RIGHT NOW AND WE'RE RAISING THESE DEFENSES SO, NUMBER ONE, THEY ARE PUT ON NOTICE JUST AS MUCH AS THE DRIVER FOR THE PERSONAL AUTOMOBILE?

BUT AS THEY WERE SMART ABOUT IT THEY WOULD TAKE IT ON AS A COMPLAIMENT BECAUSE

THEY WOULD THEN HAVE REBUILT HIM YOURS ELEMENT FROM THE TORT-FEASOR BECAUSE THEY HAVE A COMPLAINT FOR EVERYTHING THEY PAID OUT WHICH THEY WOULD NOT HAVE IF THEY TREATED IT AS A PIP CLAIM.

THIS WOULD NOT BE IF IT INVOLVED COURSE AND SCOPE.

> IT IS HOW YOU DO IT ON THE GROUND. NOT A MATTER OF THE STATUTE. THERE ARE GOING TO BE WAYS YOU CAN DEAL WITH THIS.

AND I DO WANT TO TELL YOU THAT STATE FARM AND IN TALKING TO THE PERSON AT STATE FARM HE SAYS, YOU KNOW, OF COURSE STATE FARM REPRESENTS, WHAT, 50% OF THE STATE, SO VERY OFTEN WHEN THESE CASES COME IN THEY ARE REPRESENTING, THEY HAVE THE INSURANCE ON BOTH THE PERSONAL AUTOMOBILE AND ON THE COMMERCIAL AND THEY SAY THEY JUST TURN IT OVER TO THE COMMERCIAL.

SO I GUESS THAT WAS THE QUESTION I HAD, SO STATE FARM IN TERMS OF REALLY WHOSE INTEREST, IT IS STATE FARM'S POSITION HERE, NOT JUST AS THE INSURER FOR THE PRIVATE PASSENGER VEHICLE BUT ALSO FOR THE COMMERCIAL VEHICLE THAT THIS IS JUST A FAIR ALLOCATION?

ABSOLUTELY. THIS IS A FAIR ALLOCATION, AND

IS THERE, AGAIN, THERE IS NOTHING, THOUGH, THAT SAYS HABITS EFFECT PREMIUMS, WHETHER PREMIUMS WERE REDUCED BY PRIVATE INSURERS WHEN THE COMMERCIAL PIP WAS REQUIRED?

I THINK THAT'S THE COURT IN DEALERSHIP AND IN AMERISURE, I BELIEVE IN BOTH COURTS THEY POINTED OUT THAT HAS TO BE THE NECESSARY RESULT IS THAT THERE IS. IF THE PERSONAL AUTOMOBILE CARRIER IS PAYING OUT LESSES OBVIOUSLY THAT HAS TO RESULT IN A REDUCTION OF PREMIUM.

SO DID YOU GET THROUGH THAT AGAIN?

OR AN INCREASE IN PROFITS, AS THE CASE MAY BE. ONE OR THE OTHER.

YOU SAID, THOUGH, IF WE WERE TO REACH THIS ISSUE THAT AS TO THE MERIT THAT YOU ACTUALLY SAY THAT NOTHING DOES PREVENT THEM FROM RAISING DEFENSES SUCH AS THE AMOUNTS PAID OUT WERE NOT REASONABLE?

THERE IS NOTHING IN THE STATUTE. I MEAN, LIKE FOR EXAMPLE WHEN YOU HAVE A, YOU KNOW, A THIRD PARTY CLAIM AGAINST SOMEBODY, INDEMNITY OR SO FORTH THEY CAN RAISE ALL OF THE DEFENSES BUT THE Y CAN RAISE ALL OF THE DEFENSES. THERE IS NOTHING HERE TO STOP THAT.

THAT WOULD PREVENT AN INSURER FROM PAYING OUT \$10,000 WITHOUT LOOKING AT IT AND TRYING TO GET IT BACK?

THAT WOULD BE, YES, YOU KNOW, HEY, WE CAN GET IT BACK. YOU KNOW, A BSOLUTION YET THE OTHER SIDE HAS TO HAVE A DEFENSE BECAUSE NOW HAVE REGARD TO THE NEW PROVISIONS IN THE NO-FAULT STATUTE, IF, NO EXAMPLE, A PROVIDER DOESN'T MAKE A CLAIM WITHIN A CERTAIN PERIOD OF TIME THEY ARE PRECLUDED FROM MAKING THE CLAIM AND WOULD IT MAKE SENSE THAT A COMMERCIAL VEHICLE, THE INSURER OF A COMMERCIAL VEHICLE OR THE OWNER OF A COMMERCIAL VEHICLE COULD NOT RAISE THIS DEFENSE? NO, THAT DOES NOT MAKE ANY SENSE AND WE ARE OBLIGATED TO CONSTITUTE SO THAT THEY DO MEET CONSTITUTIONAL MUSTER AND THERE IS NOTHING IN THIS STATUTE

THAT SAYS THEY ARE NOT ENTITLED TO RAISE THOSE DEFENSES.

WHAT'S YOUR THIRD REASON?

DIDN'T I COVER ALL THREE OF THEM?

I'M JUST CURIOUS WHEN YOU SAID YOU HAD THREE REASONS.

MY FIRST ONE WAS THAT FIRST OF ALL THE STATUTE ALLOWS THE REIMBURSEMENT. THE SECOND ONE IS, I S T H A T THE FACT THAT THE COMMERCIAL VEHICLE EVEN IF THAT WAS THE CASE, THE CARRIER, COMMERCIAL VEHICLE CARRIER IS ALREADY PUT ON NOTICE AND THEY CAN HIDE THEIR HEAD IN THE SAND IF THEY WANT TO, OR BUT THEY ARE PUT ON NOTICE OF IT RIGHT FROM THE START. SO THEY COULD HAVE COME IN AND JUMPED IN AND SAID WE'RE THE COMMERCIAL CARRIER, WE ARE GOING TO TAKE OVER THIS. AND WE'RE RAISING THESE DEFENSES. SO THERE IS NOTHING THAT STOPS THEM FROM DOING IT AND THEY ARE PUT ON NOTICE WITH THOSE IN EVERY CASE AND THEN THE THIRD ONE WAS THE STANDING ISSUE, SO UNLESS THE COURT HAS ANY OTHER QUESTIONS I DO REALLY FEEL THAT THE EQUAL PROTECTION CLAUSES OF THE FLORIDA CONSTITUTION AND THE U.S. CONSTITUTION ARE NOT VIOLATED. THEY ARE CERTAINLY REASONABLE, RATIONALE BASIS FOR THE CLASSIFICATION IN THIS CASE. IT SPREADS THE LOSS BETWEEN THE TWO, RATHER THAN MAKING THE PERSONAL AUTO INSURER HAVE TO BEAR THE ENTIRE LOSS, WHICH IS THEN PASSED ON TO THE INDIVIDUALS ONLY. SO I WOULD RESPECTFULLY REQUEST THIS COURT TO APPROVE THE DECISION OF THE 2ND DISTRICT COURT OF APPEALS.

THANK YOU. REBUTTAL ? HALF A MINUTE.

THANK YOU. BRIEFLY, THE STATUTE EXPRESSLY STATES THAT THE PRIVATE PASSENGER OF THE MOTOR VEHICLE INSURER SHALL HAVE TO THE EXTENT OF ANY PERSONAL ENTER PROTECTION BENEFITS PAID. IT DOESN'T SAY ANYTHING ABOUT REASONABLE OR NECESSARY OR ANY OTHER DEFENSES AND IN CONJUNCTION WITH THAT PARAGRAPH 2 OF THE ACTUAL ORDER IN THE TRIAL CASE SAYS PLAINTIFF, WHICH WAS IDENTICALLY STATE FARM, NOT AMERISURE, AS A MATTER OF LAW, IS ENTITLED TO REIMBURSEMENT OF ALL MONIES PAID TO ITS INSURED SO I DO BELIEVE THERE IS AN ISSUE THERE AND THE COMPROMISE IS TO KEEP THIS STATUTE AND RULE THAT AS UNCONSTITUTIONAL, I BELIEVE THIS COURT IS IN POWER TO BE ABLE TO KEEP THE PORTION THAT'S CONSTITUTIONAL AND REDACT THE PORTION THAT ISN'T AND I WOULD ASK THE COURT TO LOOK INTO THAT ISSUE CERTAINLY IF IT FINDS THAT THERE IS NO FAULT.

THANK YOU TO BOTH OF YOU FOR YOUR ASSISTANCE ON THIS CASE, AND WITH THAT, WE WILL BE IN RECESS UNTIL 9:00 TOMORROW MORNING.

PLEASE RISE.