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Barry I. Hechtman v. Nations Title Ins. of New York

THE NEXT CASE ON THE ORAL ARGUMENT CALENDAR IS HECHTMAN VERSUS NATIONS TITLE INSURANCE. WE HAVE NOW BEEN JOINED BY JUSTICE PARIENTE FOR THIS CASE.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. HENDRICK MIM, ON BEHALF OF THE PETITIONERS IN THIS ACTION. BARRY HECHTMAN WAS ADMITTED TO THE BAR IN 1992. HE RESIGNED IN 1997, AND IN THE MEANTIME HE PLUNGEDERRED HIS TRUST ACCOUNT IN THE LINE OF MILLIONS OF DOLLARS. AND THE DUMMY TRANSACTIONS THAT HE USED IN TAKING IN AND KEEPING THE MONEY, TITLE INSURANCE POLICIES WERE I SHOULD, AND THE VARIOUS TITLE -- WERE ISSUED, AND THE VARIOUS TITLE INSURORS THAT ARE HERE TODAY, NATIONS TITLE AND COMMONWEALTH LAND TITLE, PAID UP, ACCORDING TO THOSE POLICIES. HOWEVER, WHEN ALL THAT WAS SAID AND DONE, IT LEFT ABOUT A MILLION DOLLARS LEFT UNACCOUNTED FOR AND OUR FOCUS ON THE STATUTE TODAY. BARRY AND BRENDA HECHTMAN ARE TWO OF A NUMBER OF PRIVATE MORTGAGE INSURANCE LENDERS WHO ARE AFFECTED BY THIS ISSUE. THEY ARE AT A SMALL PIECE OF THIS MONEY AND THERE ARE OTHERS WHOSE CASES ARE NOT RIGHTFUL IN THIS LITIGATION WHO ARE NOT BEFORE YOU, BUT THEIRS IS, IN A SENSE, A TEST CASE FOR ALL OF THAT MONEY AND THE APPLICATION OF THIS STATUTE AS IT APPLIES TO THE TITLE INSURANCE INDUSTRY IN FLORIDA GENERALLY. YOUR HONORS KNOW THAT 627.792, THE STATUTE THAT WE ARE DEALING WITH, HAS THREE LIMBS. IT HAS THE FIRST SENTENCE, THAT SAYS THE TITLE INSUROR IS LIABLE FOR, I WILL PARAPHRASE, CONVERSIONAL MISAPPROPRIATION, BASICALLY THEFT OF ITS LICENSED TITLE INSURANCE AGENT. THE SECOND SENTENCE SAYS, IF THAT AGENT IS LICENSED BY -- SIR --

YES, YOUR HONOR.

IT SAYS IF IT IS HELD IN TRUST, PURSUANT TO 626.8473.

IT DOES, YOUR HONOR.

ARE YOU -- SO AS YOU DISCUSS THIS, IF YOU COULD DISCUSS WHETHER THAT STATUTE, THAT ESCROW AND TRUST FUND, IS EQUALLY APPLICABLE TO ATTORNEYS.

I THINK IT IS, YOUR HONOR. IF YOU READ THAT STATUTE, YOU WILL SEE THAT IT REFERS TO TITLE INSURANCE AGENTS, AND THERE IS NO EXEMPTION FOR LAWYERS, ASAP APPLIES TO THAT PARTICULAR TRUST TRUST.

IS THAT A SIGNIFICANT PART OF YOUR ARGUMENT, THAT BY REFERENCING THAT STATUTE, WE HAVE GOT TO LOOK AT THAT STATUTE AND SEE IF THAT STATUTE APPLIES EQUALLY TO ATTORNEYS, AS WELL AS TO OTHER NONATTORNEYS?

YOUR HONOR. I THINK YOU HAVE TO LOOK AT EVERY WORD IN THE STATUTE AND YOU HAVE TO TRY AND HARMONIZE EVERYTHING THAT IS USED HERE. IF YOU GO TO THE TRUST FUND STATUTE, YOU, OF COURSE, HAVE TO SATIES PHI THAT, AND IT IS HEADED TRUST FUND AND ESCROW AGENT, AND YOU CAN GO THROUGH THE WHOLE THING. THERE IS NO DISTINCTION IN THAT STATUTE BETWEEN LICENSED AGENTS, AGENTS WHO DON'T GET LICENSES, AGENTS WHO ARE EXCUSED FROM GETTING DEPARTMENT OF INSURANCE LICENSES, AND HRS TITLE INSURANCE. YOUR HONOR, THE BULK OF THAT WOULD APPLY TO ALL TITLE INSURANCE AGENTS.

SO AN ATTORNEY WOULD BE LIABLE FOR EITHER A MISDEMEANOR, FELONY UNDER THE 626.8 --

I THINK QUITE CLEARLY, YES, YOUR HONOR. I THINK AN ATTORNEY WHO STOLE FROM HIS TRUST ACCOUNT IS NOT EXEMPTED FROM THE CRIMINAL PROVISIONS OF THAT STATUTE, NOT AT ALL, YOUR HONOR. NOW --

WAS THAT AN ARGUMENT THAT WAS A PART OF THIS, ALSO, OR WAS THIS STRICTLY AN ACTION THAT WAS BROUGHT UNDER 792?

THE ACTION WAS BROUGHT UNDER 792. THE ACTUAL PENALTY OF THE TRUST FUND ISSUE ARE CRIMINAL PENALTIES. THEY DON'T SPECIFICALLY APPLY HERE. THAT PART OF IT HAS ONLY BEEN FOOTNOTED BY ANY OF THE PARTIES IN THE BRIEFS. YOUR HONOR, I THINK WHAT THIS DEBATE COMES BACK TO IS THE MEANING OF THE WORD LICENSED, AS IT APPEARS IN 792. NOW, AS YOU KNOW, THE DEBATE ON LICENSE, THE TRIAL COURT, THE WAY IT APPEARS IN THE FIRST SENTENCE, WE WENT TO THE THIRD DISTRICT KOUST APPEALS AND TWO JUDGES FOCUSED ON LICENSES AS IT APPEARED IN THE FIRST STATUTE AND SAID IT MAY BE UNWEISS, BUT WE HAVE TO DECIDE THIS ONE WAY. CHIEF JUDGE SWORE IT WAS VERY UPSET WITH THAT AND SAID YOU ARE IN A STRAIGHT JACKET OF YOUR OWN MAKING. THERE IS ANOTHER WAY TO CONSTRUE THIS, AND THEN ON END REVIEW, THE COURT SPLIT 6-TO-5 AS TO WHETHER THEY WOULD TAKE IT, AND THEN THE ORIGINAL PANEL SAID, WELL, LET'S REFER IT TO YOUR HONORS FOR DECISION, BECAUSE IT IS AN IMPORTANT QUESTION, AND IT IS SUSCEPTIBLE OF VERY FAIR DEBATE. YOUR HONOR, AS IT COMES BEFORE YOU TODAY, I WOULD SUBMIT THAT THERE IS A DISPOSITIVE POINT HERE THAT NEITHER THE TRIAL COURT NOR THE THIRD DISTRICT HAS FOCUSED ON. I FOCUSED ON IT IN MY BRIEFS BEFORE THE THIRD DISTRICT AND I FOCUSED ON IT IN MY BRIEFS BEFORE YOU, AND THAT IS THAT THE WORD "LICENSED" APPEARS IN THE SECOND SENTENCE OF THIS STATUTE. AS IT APPEARS IN THAT SECOND SENTENCE, IT CANNOT MEAN LICENSED BY THE DEPARTMENT OF INSURANCE. AS IT APPEARS IN THE SECOND SENTENCE OF THAT STATUTE, IT SAYS, IF THE AGENT IS LICENSED BY TWO OR MORE TITLE INSURORS. WHAT DOES THAT MEAN? IT IS AN ACTION BY THE TITLE INSURORS. IT IS NOT AN ACTION BY THE DEPARTMENT. YOU DO NOT GET A LICENSED INSUROR BY INSUROR. YOU ARE APPOINTED INSUROR BY INSUROR. YOU GET A SINGLE LICENSE OR A SINGLE EXEMPTION FROM GENERAL LICENSURE, BY BEING A LAWYER, BUT YOU ARE NOT LICENSED BY THE INSURORS IN THE SENSE THAT ALL THE JUDGES HAVE FOCUSED ON THIS AND LOOKED AT THE INSURORS.

WHAT YOU ARE SAYING IS THAT, IN THE SECOND SENTENCE, THE USE OF THE WORD "LICENSED", MEANS LICENSED BY ANY ENTITY?

WHAT I AM SAYING IS THAT, AS IT APPEARS IN THE SECOND SENTENCE, YOU COULD READ IT AS MEANING LICENSED BY ANY ENTITY, BUT I WOULD SUGGEST TO YOU THAT WHAT IT MEANS IS LICENSED BY TWO OR MORE INSURORS. YOU HAVE TO SAY, WELL, WHAT DOES IT MEAN? IS THERE A MEANING TO LICENSE THAT YOU CAN GIVE THAT? AND YOU CAN. IT IS AUTHORIZED TO ACT. IT IS AUTHORIZED TO ACT. LEGALLY PRIVILEGED TO DO SOMETHING THAT WOULD OTHERWISE BE LEGALLY WRONG. THIS IS A REGULATED INDUSTRY, AND YOU HAVE TO BE EITHER LICENSED BY THE DEPARTMENT OR EXCUSED FROM LICENSURE, BY HAVING COMPLIED WITH THE HIGHER CRITERIA THAT LAWYERS HAVE TO GO THROUGH, AS TO TRUSTWORTHINESS AND SKILL.

IN OTHER PARTS OF WHERE, AGAIN, GOING BACK EVEN TO 626.8473, THE BOARD JUST USED "TITLE INSURANCE AGENT". THERE IS NOT THE USE -- HOW MANY PLACES IS THE ADDITIONAL ADD SECRETARY I HAVE "LICENSED TITLE INSURANCE AGENT" USED, AND THE VERY FACT THAT THAT ADDITIONAL WORD IS USED, YOU ARE SAYING IT IS SURPLUS AGE, BECAUSE BECAUSE ANY INSURANCE AGENT WRITING TITLES IS AUTHORIZED, SO YOU WOULDN'T NEED TO PUT THAT WORD IN.

JUSTICE PARIENTE, YOU COULD CONSIDER IT, PERHAPS, AS SURPLUSAGE, WHICH WOULD NOT BE

OUR COURSE IN STATUTORY CONSTRUCTION. YOU COULD SAY IT IS AN INFAMOUS CHOICE OF WORDS. YOU COULD SAY, LIKE JUSTICE SCHWARTZ SAID IN THE FIRST SENTENCE, IT IS INCONSEQUENTIAL.

WHY WOULD IT BE IN CONSEQUENCE CONVENTION, IF -- INCONSEQUENTIAL, IF OTHER PLACES THE AGENT IS REFERRED TO AS A TITLE INSURANCE AGENT?

WELL, TO ANSWER YOUR QUESTION, THEN, IF YOU LOOK AT THE WORD "LICENSED", YOU HAVE TO LOOK AT IT, ALSO, IN THE SECOND SENTENCE. LET'S LOOK AT IT THERE AND SAY, WELL, IT APPEARS THERE.

WHERE DOES IT APPEAR?

THE SECOND SENTENCE, 792, IT SAYS "IF THE AGENT IS LICENSED BY TWO OR MORE TITLE INSURORS". YOUR HONOR, THERE ARE TWO VERSIONS OF THIS STATUTE. THERE IS THE ONE UNDER CONSIDERATION, WHICH WAS FROM 1985, AND THEN IT WAS RECENTLY CHANGED BY THE LEGISLATURE.

IT WAS CHANGED.

THAT WORD IS NOT IN THERE ANY MORE.

NOT ANYMORE. SIXTEEN YEARS LATER THERE HAS BEEN A REVISION, AND THEN YOU GET TO ANOTHER ISSUE, BUT THE STATUTE THAT WE ARE DEALING WITH THE STATUTE THAT WE HAVE DEALT WITH THROUGHOUT THIS, WAS THE '85 VERSION, AND THAT SAYS "IF THE AGENT IS LICENSED BY TWO OR MORE TITLE INSURORS --" IT SAYS THAT IN THAT SENTENCE, AND YOU CAN'T CUT THAT WORD OUT AND THROW IT AWAY. YOU HAVE GOT TO CONSTRUE THAT WORD, AND IF YOU CONSTRUE THAT WORD AS MEANING SOMETHING, THEN YOU HAVE GOT TO MAKE IT CONSISTENT WITH THE WORD IN THE FIRST SENTENCE, AND IF DO YOU THAT, YOU WIND UP SUBSCRIBING TO MY ARGUMENT, WHICH IS THAT THE LEGISLATURE MEANT, BY "LICENSED TITLE INSURORS WHO ARE AUTHORIZED TO ACT FOR TITLE INSURORS", AND THAT, YOUR HONOR, DISPOSES THE ARGUMENT. IF THAT ISSUE TROUBLES YOU, AS I SUBMIT THAT IT SHOULD, IF IT SUGGESTS ITSELF TO YOU AS A DISPOSITIVE POINT, WHICH I SUGGEST IT SHOULD, SINCE WE ARE HERE ON ORAL ARGUMENT, I WOULD TITLE INSURORS CAN BE ASKED TO MAKE THOSE TWO WORDS CONSISTENT, BECAUSE I DON'T SEE HOW IT CAN BE DONE. NATIONS TITLE TRIED TO DO IT IN THEIR BRIEFING AT PAGE 69. THEY SAY IT DOES IT IN THE SECOND SENTENCE, AND IN SOME WAY THEY ARE LICENSED, BY ALL TITLE INSURORS. THEY DIDN'T GET QUITE AS FAR AS SAYING IT JUST MEANS AUTHORIZED.

BUT HAVE JUST THREE WORDS AWAY FROM THE TWO THAT YOU ARE STRESSING, TWO OR MORE INSURORS. IS LICENSED BY TWO OR MORE INSURORS. DON'T YOU HAVE TO READ THAT IN A MORE LOGICAL READ SOMETHING PERHAPS THERE IS A UNFORTUNATE USAGE THERE, BUT ISN'T THAT THE MORE LOGICAL READING, TWO OR MORE INSURORS?

IT SAYS IT HAS GOT TO BELIESENSED BY TWO OR MORE TITLE INSURORS, BUT THAT MEANS THEY ARE LICENSED BY THE TITLE INSURORS.

TITLE INSURORS, TWO OR MORE INSURORS.

NO, YOUR HONOR. IN THE STATUTE THAT WE ARE DEALING WITH, IT SAYS TITLE INSURORS, YOUR HONOR. I THINK YOU WERE GOING FROM THE NEW VERSION OF THE STATUTE AGAIN WHICH IS WHETHER THEY CHANGED IT TO ACT OR AGENCY.

IF THE AGENCY IS LICENSED BY TWO OR MORE INSURORS, YOU SAY TITLE INSURORS?

TITLE INSURORS, YES, YOUR HONOR.

I AM NOT READING THAT.

THE ISSUE IS THERE ARE TWO PLACES "LICENSE" APPEARS. THEY HAVE GOT TO MEAN THE SAME THING. AND THE ONLY WAY -- I AM SORRY, YOUR HONOR.

IT WOULDN'T CHANGE MY CONCERN.

LET ME UNDERSTAND YOUR CONCERN, JUSTICE STAY SHAW. TO BELIESENSED -- JUSTICE SHAW. TO BELIESENSED AS THE OTHER JUDGE -- TO BE LICENSED, AS THE OTHER JUDGES CONSIDERED THE PROBLEM, THEY SAID MEANT TO BE LICENSED BY THE DEPARTMENT OF INSURANCE, NOT EXCUSED FROM LICENSURE BUT LICENSED BY THE DEPARTMENT OF INSURANCE. AS IT SAYS IN THE SECOND SENTENCE, HOWEVER, LICENSED DOES NOT MEAN LICENSED BY THE DEPARTMENT OF INSURANCE. IT IS AN ACTION DONE BY THE INSURORS, AND IT IS QUITE CLEARLY SOMETHING LIKE AUTHORIZED OR PERMITTED TO ACTOR APPOINTED, WHICH IS THE ORDINARY STATUTORY TERMINOLOGY, AS TO WHAT THE INSURORS DO FOR THEIR AGENTS. NOW, 16 YEARS LATER THAT, LIMB HAS BEEN CLEARED UP. THEY HAVE NOW, THEY AGREE WITH ME, IF YOU SAY THAT THAT LEGISLATURE THEN AND THIS LEGISLATURE NOW, AND THERE WAS GAP OF MEMBERSHIP OR THINKING IN BETWEEN, AND IN 1985, WHAT DID IT MEAN, IN THE LEGISLATIVE HISTORY, IS IT UNCLEAR, BUT YOU START OUT WITH THE STATUTE, AND THE STATUTE SAYS "LICENSED" IN TWO PLACES, AND NO JUDGE FOCUSED ON THAT SECOND LIMB, JUSTICE PARIENTE, NO JUDGE FOCUSED ON THAT SECOND LIMB, WHERE IT SAYS "LICENSED BY TWO OR MORE INSURORS", AND IT CANNOT MEAN LICENSED BY THE DEPARTMENT OF INSURANCE.

YOU ARE IN YOUR REBUTTAL TIME TIME.

THANK YOU. THEN I WILL RESERVE.

GOOD MORNING. MY NAME IS JIM TELEPMAN, AND I AM HERE TODAY ON BEHALF OF NATIONS TITLE AND I WILL SPLIT MY TIME WITH MR. COHEN, WHO IS HERE ON BEHALF OF COMMONWEALTH LAND TITLE TO. UNDERSTAND THIS CASE, YOU HAVE TO LOOK AT THE STATUTORY FRAMEWORK OF 626.817, ET CETERA, AND THE PORTIONS OF CHAPTER 627 THAT WE ARE LOOKING AT, WHERE THE LEGISLATURE ESSENTIALLY CREATED A SCHEME FOR LICENSING NON-LAWYER PERSONS, AND COMPANIES THAT WISH TO WRITE TITLE INSURANCE IN THE STATE, ISSUE TITLE INSURANCE IN THE STATE. 626.841 IS ALL ABOUT LICENSING. IT IS WHAT IT IS ALL ABOUT, AND THE PHRASE "LICENSED TITLE INSURANCE AGENT" HAS A VERY SPECIFIC MEANING AS A RESULT. SO I AGREE WHOLEHEARTEDLY --

DID YOU FIND THAT ANYWHERE? IS LICENSED TITLE INSURANCE AGENT FOUND IN ANY PART OF THE STATUTE, 626, 627?

NO, MA'AM, BUT THE TITLE INSURANCE AGENT, AND A TITLE INSURANCE AGENT, INTERESTINGLY ENOUGH, IS DEFINED, I THINK AT 626.841, AS SOMEONE WHO IS APPOINTED BY A TITLE INSUROR, TO WRITE TITLE INSURANCE IN THIS STATE.

THAT IS -- THAT BROAD DEFINITION, OF COURSE, INCLUDES ATTORNEYS AND NONATTORNEYS.

CORRECT. CORRECT.

BUT THEN, WHEN YOU ADD THE WORD "LICENSED" TO THE PHRASE "TITLE INSURANCE AGENT", IT TAKES ON A WHOLE NEW MEANING, WHICH HAS TO BE CONSIDERED IN THE CONTEXT OF THE ENTIRE STATUTORY FRAMEWORK OF LICENSING NONLAWYER PERSONS AND ENTITIES TO WRITE TITLE INSURANCE IN THIS STATE.

ONCE WE DO THAT, ONCE WE SAY THAT WE CAN'T TELL, FROM JUST READING THAT LINE, WHAT LICENSED TITLE INSURANCE MEANS, THEN THE PROBLEM I HAVE IS WE ARE NOT DEALING WITH THE PLAIN MEANING OF THE STATUTE ANYMORE. WE HAVE GOT TO LOOK AT STATUTES, READ THEM TOGETHER, AND COME UP WITH A CONSISTENT LOGICAL REASON FOR THE FRAMEWORK. RIGHT? WE ARE DEALING WITH AN AMBIGUITY, THEN, IN THE TERM.

WELL, I DON'T AGREE THAT WE ARE DEALING WITH AMBIGUITY. HOWEVER, I DO AGREE THAT IT DOESN'T HURT, AND IT HELPS OUR CASE TO LOOK AT THE ENTIRE STATUTORY FRAMEWORK AND TO LOOK AT RELATED STATUTES IN DETERMINING IF YOU ARE GOING TO GET TO THAT POINT, WHAT DOES THE WORD "LICENSED" MEAN IN THIS CONTEXT, AND YOU HAVE 626.8417, WHICH, AGAIN, IS THE HEART OF THE LICENSING FRAMEWORK, IN WHICH A SUBSECTION OF WHICH EXEMPTS ATTORNEYS FROM LICENSURE SO WE HAVE A LICENSING FRAMEWORK. WE HAVE AN EXEMPTION. THERE IS A DIFFERENCE BETWEEN ONE WHO IS LICENSED BY THE STATE AND ONE WHO DOES NOT NEED TO BE LICENSED BY THE STATE, AND THE LEGISLATURE, AS WAS ARGUED THIS MORNING, WAS CERTAINLY AWARE OF THESE OTHER STATUTES, WHEN IT CONTEMPLATED 626.792.

DO YOU AGREE THAT 8473, THE EX-CROW TRUST ACCOUNT, IS THAT APPLIED TO ATTORNEYS ALIKE, OR IS THAT IN CONFLICT, SOMEHOW, WITH THE FLORIDA'S RULES? IS THERE ANY INCONSISTENCY, OR DOES THIS IMPOSE GREATER OBLIGATIONS ON AN ATTORNEY WHO IS HOLDING FUNDS IN TRUST, PURSUANT TO THE TITLE INSURANCE PURPOSES?

WELL, I THINK THAT IT IS NOT SO CLEAR-CUT AS MY COLLEAGUE WOULD SUGGEST, THAT THAT STATUTE ABSOLUTELY APPLIES TO ATTORNEYS ACTING AS TITLE INSURANCE AGENTS AND AS YOUR HONOR WELL KNOWS, THIS COURT AND THE FLORIDA BAR GOVERN THE PRACTICE OF ATTORNEYS IN THIS STATE. NUMEROUS SIGNIFICANT RESTRICTIVE RULES CONCERNING TRUST ACCOUNTS ARE ESTABLISHED, TO OVERSEE ATTORNEYS' USE OF TRUST ACCOUNT AND ESCROW MONIES IN THIS STATE, WHEN THEY ACT AS ATTORNEYS. THE FIRST PARAGRAPH OF THE STATUTE TO WHICH YOU JUST REFERRED MAKES REFERENCE, IN THE LAST LINE, I THINK, TO -- WHAT IT SAYS IS THAT TITLE INSURANCE AGENTS CAN TAKE MONEY INTO ESCROW FOR REAL ESTATE TRANSACTIONS, ASSUMING THEY ARE LICENSED, AND I AM PARAPHRASING, PERHAPS, TOO LIBERALLY, BUT ASSUMING THAT THEY ARE LICENSED UNDER THE LICENSING STATUTE, OR THAT IF IT IS ACCOMPANY, THAT THERE IS SOMEONE IN THE COMPANY WHO IS LICENSED, PURSUANT TO THE STATUTE, I THINK AN ARGUMENT CAN BE MADE THAT THAT SECTION OF THE FLAT STATUTES HAS NO APPLICATION TO ATTORNEYS ACTING AS TITLE AGENTS AS ALL. AND IF YOU BELIEVE THAT IS, AND I ENCOURAGE YOU TO BELIEVE THAT, THEN 627.792 CERTAINLY DOESN'T APPLY TO ATTORNEYS ACTING AS TITLE INSURANCE AGENTS, BECAUSE THAT STATUTE ONLY COMES INTO PLAY, WHEN YOU ARE DEALING WITH ESCROW MONIES THAT ARE TAKEN IN BY WHOEVER TAKES THEM IN, UNDER THE STATUTE THAT YOUR HONOR JUST REFERRED TO.

COUNSEL, WOULD YOU ADDRESS THIS. YOU HAVE MENTIONED BEFORE THIS IS IN THE LICENSING AREA, AND THIS WHOLE SECTION, I MEAN NOT THIS SECTION BUT THIS CHAPTER DEALS WITH HEALTH INSURANCE, LIFE INSURANCE, GENERAL LINES. I MEAN IT IS A BROAD SPECTRUM. IN MOST OF THOSE INSTANCES, GENERAL AGENCY, FOR EXAMPLE, WHERE YOU GET YOUR AUTO INSURANCE, THE INDIVIDUAL AGENT WILL HAVE A LICENSE WITH THE STATE. THEY GET A 220 LICENSE OR WHATEVER THEY OBTAIN. BUT THEN THERE IS A PROCESS BY WHICH THAT INDIVIDUAL, CALL THEM AN INDEPENDENT AGENT, WILL SIGN UP PROGRESSIVE. THEY WILL SIGN UP WHATEVER. THEY WILL SIGN UP MULTIPLE INSURANCE COMPANIES, AND THEN, JUST BY REGISTERING WITH THE INSURANCE COMMISSIONER'S OFFICE, THEY ARE, THEN, LICENSED TO DO BUSINESS FOR THOSE VARIOUS COMPANIES. THAT PHRASE SEEMS TO BE USED. IS THERE A SIMILAR CONCEPT IN TITLE

WHAT DO YOU MEAN?

A TITLE AGENT, WHERE IT IS AT ISSUE WHO IS OUT THERE SIGNING POLICIES AND ISSUANCE ON BEHALF OF OUR COMPANY?

I DON'T KNOW HOW TO ANSWER THAT QUESTION. MAYBE MR. COHEN DOES.

IT SEEMS TO ME THAT GENERALLY EVERYONE WHO DOES INSURANCE KIND OF WORK, THEY GO AND GET A LICENSE FROM THE DEPARTMENT OF INSURANCE, BUT THEY ARE NOT LICENSED, COMPANY BY COMPANY. THERE IS AN OVERALL INSURANCE LICENSE, AND THEN TO DO BUSINESS FOR PARTICULAR COMPANIES, YOU SPEAK OF IT IN TERMS OF BEING LIES EBBSED FOR THAT COMPANY -- LICENSED FOR THAT COMPANY, AND THAT IS WHERE I AM HEADED. BUT IS THERE A SIMILAR SITUATION FOR TITLE INSURANCE LICENSE AGENTS?

TITLE INSURANCE COMPANIES HAVE SEVERAL UNDERWRITERS, AND I BELIEVE THAT IS WHAT YOU ARE DRIVING AT, WHERE THE AGENTS WILL CONTRACT WITH THE UNDERWRITERS, IN ORDER TO REPRESENT THEM, IF YOU WILL, IN ORDER TO ISSUE TITLE INSURANCE POLICIES UNDER THEIR AMBIT. THE STATE HAS NOTHING TO DO WITH IT.

ARE THOSE, THEN, REGISTERED IN SOME WAY WITH THE STATE?

THAT I DO NOT KNOW. AGAIN, I BELIEVE, AND, AGAIN, MR. COHEN IS MUCH MORE KNOWLEDGEABLE ABOUT IT THAN I AM BUT I BELIEVE IT IS A CONTRACTUAL RELATIONSHIP BETWEEN THE AGENTS AND THE INSUROR. THE STATE ONLY COMES IN BECAUSE IT ESTABLISHED A FRAMEWORK FOR NONATTORNEYS TO GET INTO THIS BUSINESS AND PRESUMABLY SET UP THIS LICENSING ARRANGEMENT, BECAUSE ATTORNEYS -- ARRANGEMENT BECAUSE ATTORNEYS HAVE NO PEOPLE WALKING IN OFF THE STREET.

WOULD YOU DEAL WITH THAT AND GO TO THE POLICY CONCERNS WHICH YOU BELIEVE WERE INVOLVED WITH THE ENACTMENT OF THIS STATUTE AND WHY IT WOULD BE LOGICAL, UNDER THOSE POLICY CONCERNS, FOR LAWYERS TO BE EXCLUDED OR INCLUDED?

LOGIC. OKAY. AGAIN, JUDGE, I CAN ONLY PRESUME WHAT WAS IN THE HEADS OF THE LEGISLATORS, WHEN THEY ENACTED THIS LEGISLATION.

JUSTICE QUINCE HAD A QUESTION.

I AM SORRY.

COULD YOU FINISH THAT ANSWER. THAT IS FINE.

SURE. AGAIN, CERTAINLY THE TIME THAT THIS LEGISLATION WAS ENACTED, THERE WAS ALREADY IN PLACE, THROUGH THIS COURT, WHICH HAS THE SOLE AUTHORITY TO REGULATE THE PRACTICE OF LAW IN THIS STATE, A BODY OF REGULATION WHICH GOVERNED ATTORNEYS IN THE PRACTICE OF LAW, WHICH GOVERNED ATTORNEYS IN THE PRACTICE, IF YOU WILL, OF TAKING IN ESCROW MONIES, WHICH GOVERNED ATTORNEYS IN TERMS OF MALFEASANCE. IF AN ATTORNEY CHOSE TO ENGAGE IN MALFEASANCE, WHEREAS AN INDIVIDUAL WHO DECIDED HE OR SHE WANTED TO BE A TITLE INSURANCE AGENT UNDER THIS NEW FRAMEWORK HAD NONE OF THAT. THERE WERE NO RESTRICTIONS ESTABLISHED, OTHER THAN THOSE EXISTING AT COMMON LAW, WITH RESPECT TO THEIR HANDLING OF ESCROW MONIES, FOR EXAMPLE, SINCE THAT IS WHAT IS AT ISSUE IN THIS CASE, AND SO AS THE THIRD DISTRICT MAJORITY OPINED, ATTORNEYS ARE ALREADY REGULATED. THE LEGISLATIVE HISTORY IN THIS CASE REFLECTS THE ATTORNEYS WHO PRACTICE LAW AND WHO, ALSO, ENGAGE IN THE TITLE INSURANCE BUSINESS, ARE ALREADY REGULATED. NONATTORNEYS WERE NOT. THEREFORE THIS BODY OF LAWS WAS CREATED TO RESTRIBLTH AND REGULATE THAT. AND I ARGUED IN MY BRIEF IT IS LEFT TO THE PEOPLE UP THE STREET. CERTAINLY IT IS NOT WEISS TO OVERRULE THE APPLICATION OF A PARTICULAR STATUTE AND OVERTURN THE APPLICATION OF A PARTICULAR STATUTE ON THAT BASIS.

AS I UNDERSTOOD YOUR ARGUMENT EARLIER, YOU WERE BASICALLY AGREEING THAT THE TERM "LICENSED "LICENSED" HAS DIFFERENT MEANING IN DIFFERENT PLACES?

IN THE ORLED STATUTE, YES. I DON'T SEE HOW YOU CAN AVOID. THAT I MEAN, IT SAYS WHAT IT SAYS, AND I DON'T THINK IT IS CONSTRUED THE SAME WAY IN BOTH PLACES, AND FOR MY COLLEAGUE TO STAND UP AND SAY YOU HAVE TO CONSTRUE THEM THE SAME WAY IN BOTH PLACES, I DON'T THINK IS A VALID ARGUMENT TO MAKE.

BE AWARE OF YOUR TIME.

YES. THANK YOU.

MAY IT PLEASE THE COURT. ROBERT CONE. CONE/FOX --

IF I CAN FIN -- COHEN-FOX --

IF I CAN FINISH UP, WOULD YOU AGREE THAT, WHEN YOU ARE USING THE TERM IN ONE PARTICULAR SECTION OF THE STATUTE, THAT IT SHOULD BE CONSTRUED IN THE SAME MANNER?

I BELIEVE FOR THE MOST PART THAT IS TRUE. HOWEVER --

IF, IN THE FIRST SENTENCE OF THE STATUTE THAT WE ARE DEALING WITH, IF, WHERE IT SAYS LICENSED TITLE AGENT, IF WE ARE TO CONSTRUE IT TO MEAN LICENSED BY THE STATE, WOULDN'T THAT HAVE BEEN EASY LANGUAGE TO PUT THERE, IF THAT IS WHAT THE "LICENSED" MEANT?

THE LANGUAGE THROUGHOUT THE REST OF THE STATUTES REFERENCES LICENSED AND STAKES IT -- AND TAKES IT IN THAT CONTEST, AND I THINK I CAN BEST ANSWER YOUR QUESTION, IF WE CAN JUST BACK IT UP JUST A MOMENT.

WOULD YOU DEAL WITH THE NEXT SENTENCE.

I WILL GET TO THAT. YES. OKAY. IT STARTS OFF, IN 84.17, TITLE INSURORS, THEMSELVES, OR ATTORNEYS DULY ADMITTED, ARE EXEMPT FROM LICENSING. YOU GO ON TO A SECTION CALLED 627.791 THAT TALKS ABOUT, AND THE TITLE OF IT IS "PENALTIES AGAINST TITLE INSURORS FOR VIOLATIONS BY PERSONS OR ENTITIES NOT LICENSED." THEY HAVE USED THE WORD AGAIN. AND SUBPART TWO IS "AN ATTORNEY IS INCLUDED IN THE GROUP THAT THEY MUST GOVERN THAT ARE NOT LICENSED. AN ATTORNEY, WHEN ISSUING BINDERS OR POLICIES OF TITLE INSURANCE OR GUARANTEES ON BEHALF OF THE TITLE INSUROR." ONCE AGAIN WE ARE USING T AND AS COUNSEL ALLUDED TO, THIS WAS MEANT TO APPROACH THE NON-LAWYER AGENTS. LET ME JUST GO BACKGROUND ONCE AGAIN. LAWYERS WERE TAKING DEPOSITS, HANDLING TRANSACTIONS, AND ISSUING TITLE INSURANCE IN THE STATE OR TITLE OPINIONS, LONG BEFORE TITLE INSURANCE COMPANIES HAD AGENTS. AND THAT HAS BEEN A TRADITIONAL FUNCTION OF THE LAW. IT IS VERY STRONG IN FLORIDA, COMPARED TO MOST STATES. THERE REACHED A POINT IN TIME THAT NONATTORNEYS WERE ALLOWED TO DELVE INTO THIS AREAS. THEY WEREN'T ALLOWED TO HOLD MONEY. THE UNDERWRITERS WERE TO GOVERN THESE NONLAWYER AGENTS. ULTIMATELY IN 1980, THE LEGISLATURE SAID YOU KNOW WHAT? WE NEED TO HAVE THESE PEOPLE GOVERNED. THEY ARE NOT LIKE LAWYERS. THEY DON'T HAVE THIS WHOLE SYSTEM OF REGULATION. THEY DON'T HAVE SYSTEMS AS TO TRUST ACCOUNTS, AND THERE WAS A BILL PROPOSED, IN THE LEGISLATIVE HISTORY, PIECES DUG UP AND ATTACHED TO THE BRIEFS, WHERE LICENSING OF NONATTORNEYS WAS ESTABLISHED, AND MOST INTERESTINGLY, THERE WAS AN AMENDMENT. THAT AMENDMENT SAID WE ARE EVEN GOING TO LET THEM HOLD MONEY. WE ARE GOING TO ESTABLISH THE ESCROW AGENTS. THAT IS IN THE AMENDMENTS IN THE NOTES FROM THE LEGISLATIVE HISTORY. AND WHEN THAT WAS BEING DISCUSSED, THE INDUSTRY SUPPORTED

IT, THE SENATE BANKING COMMITTEE SUPPORTED IT, AND THERE WAS LITTLE ISSUE AT THE ACTUAL COMMITTEE HEARING, ONE PERSON IN THE ROOM, SENATOR SCOTT, RAISED A QUESTION. IT IS MY UNDERSTANDING THIS DOES NOT APPLY TO ATTORNEYS WHO ISSUE TITLE INSURANCE. NOW, THE BILL THEY WILL BE TALKING ABOUT IS A LICENSING STATUTE WITH AMENDMENT. THEY ARE TALKING ABOUT THE AMENDMENT THAT DEALT WITH ESCROW AND OBVIOUSLY RESPONSIBILITY FOR ESCROW, AND FROM THE AUDIENCE, A GENTLEMAN FROM THE FLORIDA LAND TITLE ASSOCIATION, SAID, SIR, IT DOESN'T SPECIFICALLY EXCLUDE ATTORNEYS WHICH, SINCE THEY ARE REGULATED BY THE SUPREME COURT, WE DON'T THINK THEY NEED ANYMORE REGULATION. THE CHAIRMAN SAID "THANK YOU" AND THE BILL WAS PASSED. THAT IS HOW NONATTORNEY AGENTS GOT INTO THE SYSTEM. NOW, THEY DRAFTED STATUTE 792. A POINT OF BACKGROUND, AT LEAST THE LAST TIME I CHECKED, AND I DO A LOT OF THIS, I THINK THERE ARE TWO STATES IN THE COUNTRY THAT HAVE SUCH A STATUTE, UTAH AND FLORIDA. THE REST OF THE COUNTRY PROTECTS ALL OF ITS CONSUMERS, VERY SIMPLY THROUGH WHAT IS CALLED A CLOSING PROTECTION LETTER. THERE ARE THREE INSURING INSTRUMENTS. THE POLICY AND CLOSING PROTECTION LETTER. FOR WHATEVER REASON, OUR LEGISLATURE SAID LETTING THESE NONATTORNEY AGENTS INTO THIS ESCROW AGENT AREA, WE ARE GOING TO DO 84.73, WHICH TELLS THEM SOME RULES ON HOW TO HOLD THE ESCROW, AND WE ARE GOING TO MAKE THE UNDERWRITER RESPONSIBLE FOR THAT 84.73 TRUST ACCOUNT. 84.73, JUSTICE PARIENTE, MENTIONED AT THE START, AND I THINK IT IS MUCH MORE ENLIGHTENING THAN COUNSEL ADDRESSED. IT SAYS THE TITLE INSURANCE AGENT MAY ENGAGE IN BUSINESS AS AN ESCROW AGENT, AS TO FUNDS RECEIVED FROM OTHERS, PROVIDED THE LICENSED TITLE INSURANCE AGENT. IT DOESN'T SAY APPOINTED, WHICH IS THE INDUSTRY WORD USED FOR ITS AGENT. JUSTICE LEWIS, IN SUGGESTING THE AUTO INSURANCE REFERENCE, IT IS AN APPOINTMENT. PROVIDED THAT A LICENSED AND APPOINTED TITLE INSURANCE AGENT COMPLIES WITH THE REQUIREMENTS OF THE LICENSING STATUTE, AND THEN IT GOES ON TO SET FORTH VARIOUS TRUST RULES. WELL, YOU DON'T HAVE TO DO THAT FOR AN ATTORNEY. NOW, ONE OF THE LARGE UNDERWRITERS IN THE STATE, ATTORNEYS TITLE INSURANCE FUND, DEALS WITH LAWYERS. ASK THEM HOW MANY AUDITS THEY CAN DO OF A LAWYER'S TRUST ACCOUNT. IT IS VERY DIFFICULT, BECAUSE MOST LAWYERS MAINTAIN A TRUST ACCOUNT. EVERYTHING IN THERE IS PRIVILEGED FOR THE MOST PART, AND SO THAT IS A COMPLETELY DIFFERENT UNDERTAKING THAN WHEN YOU HAVE A COMMERCIAL TITLE AGENT OUT THERE, WHOSE ONLY LIFE IT IS TO WRITE TITLE INSURANCE, AND YOU CAN GO IN THERE AND YOU CAN SAY OPEN UP YOUR BOOKS AND RECORDS AND LET'S MONITOR THIS.

LET ME ASK YOU A COUPLE OF BASIC QUESTIONS.

YES.

ARE THE FUNDS THAT WE ARE TALKING ABOUT, THE FUNDS THAT ARE FOR THE ACTUAL PREMIUM FOR THE TITLE INSURANCE OR THE FUNDS FOR THE WHOLE REAL ESTATE TRANSACTION?

NO. THAT IS THE BEAUTY OF THIS, JUST ADVERTISE PARIENTE. -- JUSTICE PARIENTE. JORGE HERNANDEZ HAD MILLIONS OF DOLLARS THAT WENT THROUGH THAT TRUST ACCOUNT, FOR WHICH POLLS WERE I SHOULD. THERE WOULD HAVE BEEN A PROTECTION LETTER ON A CLOSING ACCOUNT.

IF YOU GET THE TITLE INSURANCE AND AN ATTORNEY OR WHOEVER SCREWS UP, THAT IS WHAT WE HAVE GOT THE INSURANCE FOR.

THAT IS WHERE COMMITMENT OR POLICY WILL HELP, AND IF YOU SIMPLY REQUEST A CLOSING PROTECTION LETTER, THEN THE UNDERWRITER DIRECTLY INSURES EVEN THE ATTORNEY AGENTS, FOR MONIES THAT ARE HELD BY THAT AGENT WHILE THE TRANSACTION IS CLOSING, AND THE REASON THERE ARE NO CASES, AND THIS HAS NEVER COME UP BEFORE, IS BECAUSE LENDERS AND MOST PEOPLE DEALING WITH US, GET CLOSING PROTECTION LETTERS. THIS PARTICULAR

LENDER DIDN'T, AND IN FACT THERE IS A CONSOLIDATED CASE BELOW, ONE OF THE PLAINTIFFS BELOW'S CLAIMS WAS THAT THEY PUT \$1 MILLION INTO THE LAWYER'S TRUST ACCOUNT, NOT FOR A TRANSACTION, NOT FOR A TITLE POLICY. IT WAS NO DIFFERENT THAN THINGS WHO WERE ENTRUSTED TO YESTERDAY'S HEARING, F. LEE BAILEY, BUT WE ARE SUPPOSED TO GO IN AND BE RESPONSIBLE FOR THAT TRUST ACCOUNT? NO. THE STATUTE 792 THAT IS VERY NARROW ISSUE, SAYS LICENSED TITLE AGENT.

BUT THE FUNDS THAT YOU AGREE YOU ARE RESPONSIBLE FOR, IF THERE ARE DEFALCATIONS, ARE THOSE FOR THE PREMIUM OR THE ENTIRE --

THE TRUST ACCOUNT, BASICALLY.

GETTING WHAT? THE TITLE INSURANCE AGENT THAT IS NOT A LAWYER WOULD BE GETTING WHAT ELSE, OTHER THAN THE PREMIUM FOR THE TITLE INSURANCE?

THE DEPOSITS FOR THE TRANSACTION, THE LOAN PROCEEDS COULD BE IN TRANSIT.

SO THEY ARE ABLE TO HOLD ALL OF THAT IN --

WE ALLOW THEM TO HOLD EVERYTHING, AND THE UNDERWRITERS ARE FULLY RESPONSIBLE FOR THAT UNDER THIS STATUTE FOR THEIR NONATTORNEY AGENTS, BUT DUE TO THE DIFFERENCE IN HOW THE PRODUCT IS RENDERED, LAWYERS HAVE NEVER BEEN INCLUDED, UNDER THE DEFALL INDICATION STATUTE, AND AND AS YOU POINTED OUT, 8473 ARE FOR AGENTS THAT ARE LICENSED AND APPOINTED AND SET UP THEIR LITTLE TRUST RULES.

YOUR CONTENTION IS THAT THAT SECTION 8473 HAS NO APPLICATION TO ATTORNEYS.

NOT TO ATTORNEY AGENTS. THE ONLY EXCEPTION WOULD BE THAT THERE ARE ATTORNEYS THAT SET UP TITLE INSURANCE COMPANY AGENCIES BUT THEY GET A LICENSE FROM THE STATE, AND THEN THEY WOULD HAVE A TRUST ACCOUNT THAT IS A SOLE PURPOSE FOR TITLE INSURANCE, SUBJECT TO AUDIT AND ALL OF THE OTHER THINGS THAT WE LIKE TO DO. ONE OTHER POINT THAT I WOULD LIKE TO MAKE, WHICH CAME UP THIS MORNING, AND APPARENTLY CAUSED SOME CONFUSION, WHICH WE APOLOGIZE FOR. WE DIDN'T DO AS GOOD A JOB OF BRIEFING AS WE SHOULD. THE STATUTE WAS CHANGED IN 2000. AND IF THAT IS ANY INSIGHT, THE WORD "LICENSE" THAT IS CAUSING THIS CONFUSION, THE SECOND SENTENCE THAT COUNSEL SPEAKS OF, WAS REMOVED.

DO WE KNOW WHY IT WAS REMOVED?

IN THE INDUSTRY? YES. I SAT ACROSS THE STREET WITH WALLY CENTER AND OTHERS. I KNOW WHY. IT WAS A LOT OF CLEANUP -- YOU WILL NOTICE THE DIFFERENCE IN STATUTE ALSO INCLUDES, FOR EXAMPLE, THE REMOVAL OF "GUARANTEE". TITLE GUARANTEES. THERE WERE THINGS THAT WERE NO LONGER CURRENT IN OUR INDUSTRY, AND THEY WERE REMOVED, AND THE WORD "LICENSE" ISN'T USED IN THIS INDUSTRY, SO THAT WAS REMOVED.

THANK YOU. THANK YOU, COUNSEL. REBUTTAL.

THANK YOU. THANK YOU, YOUR HONOR. MR. COHEN IS VERY WELL SCHOOLED IN THE INDUSTRY. VERY LITTLE OF WHAT HE SAID CAN BE FOUND IN LEGISLATIVE HISTORY OR IN THIS STATUTE. IT IS CERTAINLY TRUE TO SAY THAT THERE CAME A TIME WHEN THE STATE OF FLORIDA DECIDED TO REGULATE TITLE INSURANCE, AND THEY ENACTED A CODE THAT REGULATED TITLE INSURANCE, AND IT APPLIES, IN GENERAL TERMS, TO LAWYERS, TOO. THERE ARE PLACES WHERE IT DOESN'T APPLY. FOR INSTANCE, A LAWYER WHO ALREADY HAS TO GO THROUGH A GREAT DEAL MORE EDUCATIONAL REQUIREMENT, BACKGROUND CHECKS AND SO ON AND SO FORTH AND HAS HIS ENTIRE LICENSE TO PRACTICE LAW, STANDS TO LOSE THAT, IF HE STEALS FROM HIS

TRUST ACCOUNT AND DOES SOME OF THESE OTHER THINGS. A LAWYER DOES NOT HAVE TO GET A FORMAL LICENSE FROM THE DEPARTMENT OF INSURANCE. BUT IF YOU LOOK AT THE STATUTORY SCHEME OF 626 AND 627, HE IS EXCUSED ONLY FROM THE LICENSURE AND APPOINTMENT REQUIREMENTS. BUT HE IS IN BUSINESS AS A TITLE INSURANCE AGENT, NOT QUITE AS JUSTICE LEWIS SAID, AS AN AUTOMOBILE INSURANCE AGENT OR ANY OTHER LINE OF INSURANCE, BUT IT IS A LINE OF INSURANCE. IT IS TITLE INSURANCE. AND THERE ARE LAY PEOPLE AND THERE ARE LAWYERS WHO WRITE THIS AND A LOT OF THE INDUSTRY IN THIS STATE HIS LAWYERS. THIS STATUTE, AS IT WAS ENACTED, SAYS THAT A LICENSED AGENT, THAT A TITLE INSUROR IS LIABLE FOR HIS LICENSED AGENT. WELL, THAT IS NO GREAT SURPRISE, BECAUSE PRINCIPALS ARE LICENSED FOR AGENTS, ANYWAY. THAT IS NOT A PRINCIPLE OF LAW, AND IT WOULD APPLY TO COMMON LAW TO ATTORNEY AGENTS, ANYWAY. THE SECOND LIMB SAYS WHEN THERE IS A TITLE INSUROR AMONG SERIAL THAT THIS AGENT ACTS FOR IDENTIFIED THROUGH A TRANSACTION THEN HE IS THE ONE ON THE HOOK AND NONLS, WHICH -- AND NOBODY ELSE, IT MAKES IT CHREEMPLT WHAT THIS DOES IS LEADS UP TO THE THIRD SENTENCE WHICH IS AT ISSUE HERE, WHICH COMMON LAW DOESN'T HAVE AN ANSWER FOR. WHEN YOUR AGENT IS RUNNING ALL THIS MONEY THROUGH HIS ACCOUNT AND HE STARTS STEALING FROM IT THE CHRIGETS, AS YOU -- FROM THE CLIENT, AS YOU KNOW, THE LEGISLATIVE LANGUAGE SAID --

WHAT ABOUT TRUST HELD PURSUANT TO 626.--

THERE ARE THING THAT IS APPLY TO ATTORNEY AGENTS AND THERE ARE THING THAT IS APPLY TO EVERYBODY AND IF YOU GO TO 626.8473, THE FIRST PART SAYS "A TITLE INSURANCE AGENT MAY ENGAGE IN BUSINESS AS AN ESCROW AGENT AND FUNDS RECEIVED FROM OTHERS TO BE SUBSEQUENTLY DISBURSED BY THE TITLE INSURANCE AGENT, IN CONNECTION WITH REAL ESTATE CLOSING TRANSACTIONS INVOLVING THE ISSUANCE OF TITLE INSURANCE, BINDERS, COMMITMENTS, POLICIES, ET CETERA, WHICH IS TITLE INSURANCE REGULATION", AND APPLIES TO ALL AGENTS, LAWYERS AND NONLAWYERS, AND THEN IT GOES ON "PROVIDING THAT A LICENSED AND APPOINTED TITLE INSURANCE AGENT COMPLIES WITH THE REQUIREMENTS OF", AND THEN THERE ARE THESE ADDITIONAL REGULATIONS REGULATIONS. NOW, THE STATUTES ARE COMPLEX. THEY ARE INTERRELATED, AND THEY HAVE CHANGED OVER TIME. BUT THE --

I WANT TO GO BACK TO SOMETHING YOU SAID A COUPLE OF MINUTES AGO.

JUSTICE WELLS.

IT IS NOT TRUE, IS IT, THAT, IN CONFORMING WITH OUR LAW, THAT IN HOMEOWNERS INSURANCE AND AUTOMOBILE INSURANCE, IN THE COMMON FORMS OF INSURANCE, THAT IF A PERSON GOES TO AN INDEPENDENT AGENT AND DEALS WITH AN INDEPENDENT AGENT, THAT SIMPLY BECAUSE THAT AGENT IS -- WORKS WITH CONTINENTAL INSURANCE COMPANY, THAT CONTINENTAL INSURANCE COMPANY, AS A PRINCIPAL AGENCY RELATIONSHIP, I MEAN, THAT IS NOT THE LAW, CORRECT?

WELL, LET ME GO THROUGH IT, BECAUSE THAT BREAKS UP INTO SEVERAL SUBSETS. IF HE HAS GOT ONE AGENT AND THAT AGENT PUT HIM IN THAT POSITION, YES, THERE IS A GREAT BODY OF LAW THAT SAYS THAT THAT PRINCIPAL IS RESPONSIBLE FOR THAT AGENT STEALING THE MONEY BECAUSE HE PUT HIM IN THAT POSITION OF THE PROBLEM IS WHERE HE HAS GOT MORE THAN ONE AGENT AND HE CAN BE ARGUED TO HAVE BEEN PUT IN THAT POSITION BY A NUMBER OF PEOPLE. COMMON LAW DOESN'T GIVE AWE ANSWER THERE. ITS STATUTE GIVES AWE ANSWER. IT SAYS YOU ALLOCATE LIABILITY, BASED ON THE AMOUNT OF MONEY THE TITLE INSURORS GOT IN PREMIUMS OF THE PRIOR YEAR. DOES THAT ANSWER YOUR QUESTION OR AM I MISSING THE QUESTION?

WELL, I AM JUST NOT REACTING TO THE FACT THAT, UNDER OUR LAW IN FLORIDA, AT LEAST MY RECOLLECTION OF IT IS THAT AN INDEPENDENT INSURANCE AGENT IS NOT IN A PRINCIPAL

AGENCY RELATIONSHIP FOR RESPONDING UNDER SUPERIOR PURPOSES, WITH AN AGENTS, WITH AN INSUROR. THEY REPRESENT, AND IT IS A DUAL SITUATION.

DEPENDS ON WHETHER HE IS A BROKER OR AN AGENT. A BROKER COULD BE IN THE MIDDLE AND HIS PRINCIPAL WOULD BE LIABLE, YOUR HONOR. THERE IS A FOOTNOTE IN THE REPLY BRIEF ON THE POINT, AND I THINK I GAVE YOU A CITE, ON THE GENERAL RESPONSIBILITY OF THE PRINCIPAL WITH RESPECT TO THE AGENT, BUT, YOUR HONOR, I AM HERE TO ANSWER YOUR QUESTIONS. I THINK THE PARTIES HAVE TRIED TO DO A GOOD JOB OF BRIEFING THE ISSUES. I THINK WE HIT EVERYTHING, AND I HOPE WE HIT EVERYTHING THIS MORNING. UNLESS YOU HAVE FURTHER QUESTIONS OF ME, I WOULD SUGGEST TO YOU THAT THERE IS A WAY TO DECIDE THIS, BASED ON THE LANGUAGE, WHICH HAS TO BE IN FAVOR OF THE HECHTMANS, AND THERE IS A WAY TO DECIDE THIS ON THE SOUND PUBLIC POLICY PROTECTING THE VICTIMS OF THEFT IN THIS STATE, WHICH WOULD, ALSO BE IN FAVOR OF THE HECHTMANS, AND UNLESS YOU HAVE FURTHER QUESTIONS --

THANK YOU VERY MUCH. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS AND WILL BE IN RECESS FOR 15 MINUTES.