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## **Caroline Weiss v. Liberty Mutual Insurance Co.**

CHIEF JUSTICE: GOOD MORNING, EVERYONE. JUSTICE LEWIS AND JUSTICE CANTERO ARE RECUSED ON THIS FIRST CASE THAT WE HAVE THIS MORNING. FOR THE BENEFIT OF THE LAWYERS IN THE AUDIENCE, WE WILL BE TAKING A FIVE-MINUTE RECESS IMMEDIATELY AFTER THE ARGUMENT IN THE FIRST CASE, TO ALLOW THOSE JUSTICES TO JOIN US. WITH THAT ANNOUNCEMENT, WE WILL GET RIGHT TO THE FIRST CASE. IT LOOKS LIKE COUNSEL IS READY ON WEISS VERSUS LIBERTY MUTUAL. YOU MAY PROCEED.

GOOD MORNING. MACK COOPER ON BEHALF OF PETITIONER. INTERCONTINENTAL PROPERTIES WAS A FAMILY BUSINESS OWNED BY JACK AND CAROLINE WEISS. LIBERTY SOLICITED ITS BUSINESS, BUT THE POLICY LIBERTY WROTE WAS NOT LIMITED TO THE COMPANY'S BUSINESS. THE POLICY ALSO INSURED --

LET ME ASK YOU TO, FIRST, ADDRESS THE JURISDICTIONAL ISSUE, MR. COOPER.

YES.

THE McDONALD CASE IS THE CASE WHICH APPEARS TO BE THE BASIS OF CONFLICT HERE, AND THE PROBLEM I AM STRUGGLING WITH IS THAT THE McDONALD CASE IS NOT A DRIVE-OTHER-KAREN DOORSMENT, IS IT?

IT IS.

WELL, OKAY.

THE McDONALD CASE, FIRST OF ALL, THE CONFLICT APPEARS AS FOLLOWS. THE THIRD DISTRICT OPINION SAID THIS. QUOTE. THE LAW IS WELL SETTLED THAT A BUSINESS AUTO POLICY, SUCH AS ONE AT ISSUE, DOES NOT PROVIDE COVERAGE FOR OFFICERS, UNLESS THE PERSON IS WITHIN A COVERED VEHICLE. NOW, THAT RULE OF LAW ANNOUNCED BY THE THIRD DISTRICT IS DIRECTLY, IF THAT IS CORRECT, McDONALD IS WRONG. McDONALD INVOLVED A BUSINESS AUTO POLICY. THE PLAINTIFFS WERE NOT IN A COVERED VEHICLE. AND THE COURT NEVERTHELESS HELD THAT, UNDER MULLIS, THEY WERE ENTITLED TO COVERAGE. NOW, THE ENDORSEMENT IN McDONALD EXTENDED COVERAGE TO VEHICLES, THE NAMED INSURED DOESN'T OWN, HIRE OR BORROW.

THEY BECAME COVERED AUTOS.

RIGHT. AND OUR ENDORSEMENT, THE DOC ENDORSEMENT IN THIS CASE SAYS THE VERY SAME THING. IT EXTENDS COVERAGE TO VEHICLES YOU DON'T OWN, HIRE OR BORROW. THE TWO ENDORSEMENTS ARE EXACTLY THE SAME, AND WHAT THE THIRD DISTRICT SAID IS YOU LOOK TO THE NATURE OF THE POLICY. IF IT IS A CORPORATE POLICY, THAT IS THE END OF THE GAME. YOU CAN NEVER EXTEND COVERAGE TO INDIVIDUALS AND THE MEMBERS OF THEIR FAMILY. McDONALD SAYS THAT IS WRONG. YOU HAVE TO LOOK TO THE TERMS OF THE POLICY, AND EVEN THOUGH IT IS A CORPORATE POLICY, IT CAN EXTEND COVERAGE, BY ITS TERMS, TO NAMED INDIVIDUALS AND THEIR FAMILY. THAT IS WHAT THE POLICY IN McDONALD DID. THAT CASE DOESN'T STAND ALONE. THE SINZ CASE DOES THE SAME EXACTLY THING OUT OF THE FOURTH DISTRICT. IT WAS A CORPORATE POLICY, BUT IT ALSO INSURED THE CORPORATE OFFICER AND THEREFORE HIS FAMILY, AND THAT CASE INVOLVED AN UNINSURED MOTORIST CLAIM BY A

MEMBER OF HIS HOUSEHOLD. THE FOURTH DISTRICT IN SINZ SAID IT DOES NOT EXTEND COVERAGE.

DID YOU RELY ON McDONALD IN THE THIRD DISTRICT?

YES. THIS WAS FULLY BRIEFED IN THE THIRD DISTRICT. WE RELIED ON IT, AND THE THIRD DISTRICT SIMPLY SAID THESE SORTS OF POLICIES DON'T PROVIDE THAT KIND OF COVERAGE.

WAS THE THIRD DISTRICT TALKING ABOUT, IN THAT INSTANCE, THE ACTUAL POLICY THAT WAS ISSUED TO THE COMPANY, VERSUS THE DOC PORTION OF IT?

NO. THEY CLEARLY ADDRESSED THE DOC PORTION, AND WHAT THEY SAID AS TO THE DOC PORTION WAS MOREOVER A DRIVE-OTHER-KAREN DOORSMENT, PROVIDING FOR PROPERTY DAMAGE, DID NOT INSURE WHO WAS IN DEFINITION ON THE UM COVERAGE, AND THEY ARE WRONG THERE, BECAUSE ONCE IT MODIFIES THE DEFINITION OF WHO IS INSURED FOR LIABILITY COVERAGE, IT, AS A MATTER OF LAW, MODIFIES OF DEFINITION OF WHO IS AN INSURED FOR UM COVERAGE. I AM SAYING IN THE DOC PROVISION, WE ARE NOW GOING TO PROVIDE LIABILITY COVERAGE TO JACK WEISS, FOR VEHICLES YOU DON'T OWN, HIRE OR BORROW. THE OTHER PORTION OF THE POLICY SAYS WE PROVIDE COVERAGE TO VEHICLES YOU DO OWN, HIRE OR BORROW. WE ARE NOW NAMING JACK WEISS BY NAME, AND THOSE TWO PROVISIONS WHICH ARE MIRROR IMAGES OF EACH OTHER, NOW PROVIDE LIABILITY CUFF RAMMING TO JACK WEISS, REGARDLESS OF THE VEHICLE HE IS IN.

WHAT WAS THE BASIS OF THE TRIAL COURT'S DECISION, FINDING THAT WEISS WAS AN INSURED UNDER THE POLICY?

THE TRIAL COURT FOUND THAT HE WAS INSURED UNDER THE POLICY AS AGENT, FOR THEIR OWN AMBIGUITY, BECAUSE HOW MANY WERE INSURED? TWO INSUREDS NOT ONE, THE CORPORATION AND THE AGENT OF THE CORPORATION, AND THE TRIAL COURT FOUND HE WAS AN AGENT, BUT THE TRIAL COURT ALSO FOUND COVERAGE UNDER THE DOC PROVISION, SO THERE WERE MULTIPLE HOLDINGS BY THE TRIAL COURT HERE, SO HERE WE HAVE THE SAME EXACT POLICY PROVISION --

THE POLICY PROVISION IN McDONALD SAYS THAT THE, THIS INCLUDES AUTOS OWNED BY YOUR EMPLOYEES OR MEMBERS OF THEIR HOUSEHOLD BUT ONLY WHILE USED IN YOUR BUSINESS OR YOUR PERSONAL AFFAIRS. NOW, THAT IS, THAT IS WHAT I AM GETTING AT. WE ARE DEALING, REALLY, WITH A DIFFERENT TYPE OF CLAUSE THERE.

UNDER HEAD NOTE ONE IN McDONALD, THEY SAY, THEY HAVE, THIS POLICY ALSO PROVIDES, QUOTE, LIABILITY PROTECTION FOR AUTOS YOU DON'T OWN. THAT IS THE FORM THERE, AND IT SAYS THIS SECTION DESCRIBES NON-OWNED AUTOS AS FOLLOWS. QUOTE, WILL COVER AUTOS YOU DON'T HIRE, OWN, LEASE OR BORROW. THAT IS THE SAME EXACT PROVISION THAT EXISTS IN THE DOC PROVISION IN THIS CASE.

GIVE US SOME UNDERSTANDING OF YOUR POSITION ON WHY THIS POLICY IS PURCHASED THIS WAY BY THIS CORPORATION.

IT IS VERY SIMPLE. YOU TAKE A BUSINESS AUTO POLICY, AND VERY OFTEN SMALL FAMILY BUSINESSES, THEY INSURE THEIR VEHICLES UNDER A BUSINESS AUTO POLICY. THE TYPICAL BUSINESS AUTO POLICY ONLY INSURES YOU WHEN YOU ARE IN A COVERED VEHICLE. IT ONLY INSURES CLASS TWO INSUREDS. NOW, IF YOU HAVE FAMILY VEHICLE AS THAT ARE COVERED, THAT DOESN'T PROVIDE THE TYPE OF PROTECTION THAT WOULD ORDINARILY BE UNDER A FAMILY POLICY, SO THEY ADD THIS ENDORSEMENT, THE DOC ENDORSEMENT, AND AS LIBERTY MUTUAL'S OWN WEB SITE SAYS, THIS IS DESIGNED TO PROVIDE THE TYPE OF FAMILY PROTECTION WHICH WOULD EXIST IN A FAMILY POLICY, AND WHAT IT DOES IS, BY ITS TERMS, IT SAYS YOU, IT

NAMES THE PEOPLE, JACK AND CAROLYN WEISS, WHO ARE -- JACK AND CAROLINE WEISS, WHO ARE NAMED BY NAME. THE TITLE BY THIS ISN'T JUST DOC COVERAGE. IT IS BROAD END COVERAGE FOR NAMED INDIVIDUALS. IT PROVIDES BROADENED COVERAGE FOR JACK AND CAROLINE WEISS, THE PEOPLE WHO ARE NAMED THERE. IT SAYS YOU ARE NAMED, YOU ARE INSURED, NOT JUST WHEN YOU ARE IN THOSE FIVE VEHICLES OR SEVEN VEHICLES LISTED IN THE POLICY, BUT YOU ARE NOW INSURED, REGARDLESS OF THE VEHICLE YOU ARE IN, SO FOR INSTANCE IF JACK WEISS BORROWS A FRIEND'S VEHICLE AND HE IS IN AN ACCIDENT, THIS POLICY COVERS HIM. IF HE BORROWS ANYBODY'S VEHICLE, IT COVERS HIM. IT COVERS HIM, WHETHER HE IS IN THOSE FIVE OR SEVEN VEHICLES INSURED UNDER THE POLICY. IT COVERS HIM IF HE IS IN ANY OTHER VEHICLE. THAT, AND IT NAMES HIM BY NAME. THAT IS THE HALLMARK.

SO THEY INSURED ALL OF THEIR VEHICLES THAT, EVEN THOUGH THEY WEREN'T CORPORATE VEHICLES UNDER THIS POLICY?

YES. FOR INSTANCE, THEIR DAUGHTERS. THEY HAD TWO ADULT DAUGHTERS. THE DAUGHTERS EACH HAD CARS. THOSE CARS, THE DAUGHTERS HAD NOTHING TO DO WITH THE BUSINESS. THOSE CARS ARE INSURED UNDER THIS POLICY.

AND LIBERTY MUTUAL'S POSITION IS, IF WE GET PAST THE CONFLICT ISSUE, IS SIMPLY THAT THE DOC ENDORSEMENT DOES THE -- DOES NOT ALSO EXTEND TO PROVIDE UNINSURED MOTORIST COVERAGE.

THAT IS THEIR POSITION, BUT THE POSITION BEFORE THAT, BEFORE WE REACH THAT ISSUE, IS BECAUSE THIS POLICY PROVIDES THAT BROAD COVERAGE, IT ENSURES JACK WEISS BY NAME, AND IT ENSURES HIM REGARDLESS OF THE VEHICLE HE IS IN. THAT MAKES HIM A CLASS ONE INSURED. AND AS THIS COURT SAID IN, YOU KNOW, FROM MULLIS ON DOWN THROUGH HURTADO, WHEN YOU ARE A CLASS ONE INSURED, YOU HAVE UNINSURED MOTORIST COVERAGE, AS A MATTER OF LAW. THE INSUROR CANNOT, QUOTE, WHITTLE AWAY, IN THE WORDS OF MULLIS, THAT COVERAGE, UNLESS THERE IS A REJECTION, AND HERE THERE IS NO REJECTION OF PRIMARY COVERAGE UNDER THE AUTO POLICY.

UNDER THESE DO DR. POLICIES THAT, IF YOU ARE A CLASS -- UNDER THESE DOC POLICIES, THAT IF YOU ARE A CLASS ONE INSURED, THEY ARE NAMED AS INSUREDS IN THE DOC POLICY.

CORRECT. HE IS NAMED IN THE DOC POLICY.

BUT THE STATEMENT THAT YOU CITED AS A CONFLICT STATEMENT THAT LAWS WILL SETTLE THAT A BUSINESS AUTO POLICY DOES NOT PROVIDE CUFF RAMMING TO OFFICERS, UNLESS THE PERSON IS WITHIN A COVERED VEHICLE THAT, IS TRUE IF, AS TO ANYBODY WHO IS A CLASS TWO INSURED.

CORRECT, BUT THE THIRD DISTRICT ANNOUNCED IT AS A PROPOSITION OF LAW, WHICH APPLIES TO A CORPORATE POLICY, REGARDLESS OF ITS TERMS. SO THERE IS CONFLICT WITH RESPECT TO THAT STATEMENT. THAT IS NOT A CORRECT STATEMENT OF LAW. IF THIS COURT SAYS, AFFIRMS THE THIRD DISTRICT OR SAYS THAT THERE IS NO CONFLICT BUT WE ARE LEFT WITH LIBERTY MUTUAL'S POSITION IN THIS CASE, BECAUSE THIS IS CALLED A CORPORATE POLICY, IT CAN'T PROVIDE COVERAGE TO PEOPLE LIKE JACK WEISS WHILE A PEDESTRIAN, AND McDONALD SAYS THAT IS NOT TRUE. YOU HAVE GOT TO LOOK AT THE POLICY TERMS, SO WE SUGGEST THAT THERE IS CONFLICT, AND ALSO WHEN WE GO TO THIS OTHER STATEMENT --

YOUR BASIC POSITION IS AS TO WHY UNINSUREDRIES COVERAGE APPLIES HERE -- UNINSURED MOTORIST COVERAGE APPLIES HERE IS BECAUSE UNDER THIS DRIVE-OTHER-CAR PROVISION THAT IS IN THE POLICY THAT, ANY AUTO YOU DON'T OWN, HIRE OR BORROW IS A COVERED AUTO.

CORRECT.

AND YOU GO, YOU GET THERE UNDER MULLIS, IS THAT CORRECT?

CORRECT.

NOW, WHAT ABOUT THE ARGUMENT THAT LIBERTY RAISES IN RESPECT TO THE FACT THAT ACTUALLY 727 PROVIDES THAT THERE IS TO BE UNINSURED MOTORIST COVERAGE ON SPECIFICALLY IDENTIFIED VEHICLES IN POLICIES, FOR VEHICLES WHICH ARE PRINCIPALLY GRAJD IN FLORIDA. NOW, THAT DOESN'T MEET THIS TEST, DOES IT?

IT DOES, YOUR HONOR. THIS IS WHAT I CALL THEIR TWO-POLICY ARGUMENT. THEY TAKE THIS POLICY, THERE WAS ONLY ONE PRIMARY POLICY ISSUED, ONE AUTO POLICY ISSUED, IT CONTAINED A BUSINESS AUTO FORM AND IT CONTAINED THE DOC PROVISION. THEY WERE PART AND PARCEL OF ONE POLICY. NOW, LIBERTY TAKES THAT AND TURNS IT INTO TWO POLICIES, BUT IF WE LOOK AT THE STATUTORY PROVISION THAT YOUR HONOR IS TALKING "B" 626.727 SUBSECTION 1, NO MOTOR VEHICLE LIABILITY INSURANCE POLICY, NOT ENDORSEMENT, POLICY WHICH PROVIDES BODILY INJURY, LIABILITY COVERAGE, SHALL BE DELIVERED OR ISSUED FOR DELIVER IN THIS STATE, WITH RESPECT TO ANY SPECIFICALLY SPECIFICALLY-INSURED OR IDENTIFIED MOTOR VEHICLE, UNLESS IT PROVIDES COVERAGE. WELL, THIS POLICY, THE LIBERTY POLICY SPECIFICALLY INSURES FIVE VEHICLES.

BUT WHAT YOUR POSITION IS, AS I UNDERSTAND IT, IS THAT THIS PERSON IS A CLASS ONE INSURED.

BY VIRTUE OF THE ENTIRE POLICY.

BY VIRTUE, THOUGH, OF BEING SCHEDULED IN THE DOC PROVISION.

BY VIRTUE OF BEING SCHEDULED IN THE DOC PROVISION OF THIS POLICY. A POLICY CONSISTS OF PIECES OF PAPER. THERE IS A MAIN FORM AND THERE IS A ENDORSEMENT. THAT IS ONE POLICY. UNDER THIS ONE POLICY, JACK WEISS IS NAMED IN THE DOC PROVISION, AND HE IS INSURED, REGARDLESS OF THE VEHICLE HE IS IN. THE RESULT DOESN'T CHANGE, IF WE TAKE THE WORD "ENDORSEMENT" OFF THE DOC PROVISION. IN FACT, I DON'T EVEN KNOW THAT IT HAS THE WORD ENDORSEMENT ON IT, IT IS, IF WE LOOK AT THE DECLARATIONS, IT IS ONE OF THE FORMS OF THIS POLICY.

WHAT I AM QUESTIONING IS WHETHER THE INTENT OF THIS STATUTE AND THE INTENT OF MULLI. IS TO SAY THAT -- OF MULLIS IS TO SAY HA, WHEN A D.O.C. INSUROR WRITES FOR LIABILITY INSURANCE, THE STATUTE REQUIRES THAT, WHEN THERE IS A ENDORSEMENT, THAT THERE IS ALSO ENINSURED MOTORIST INSURANCE, UNLESS IS RE-- ALSO UNINSURED MOTORIST INSURANCE, UNLESS IT IS REJECTED. HOW DOES THAT CARRY OVER TO THIS POLICY?

WHEN I LOOKED AT THE WEB SITE, IT SAYS THE PURPOSE OF THE DOC ENDORSEMENT IS TO PROVIDE THE TYPE OF FAMILY COVERAGE WHICH IS NOT EXISTENT IN A BUSINESS FAMILY POLICY. IT SAYS IN A BROAD FORM, IN MULLIS, THAT YOU ARE ENTITLED TO THE COVERAGE. A CASE WHICH THEY RELY ON SAID THIS, THE REQUIREMENT THAT CLASS ONE INSUREDS RECEIVE COVERAGE FOR CLAIMS WHEN THEY ARE PEDESTRIANS OR AUNTS IS A INTERPRETATION OF THE STATUTE ANNOUNCED IN MULLIS. THE BROAD COVERAGE FOR CLASS ONE INSUREDS IN MULLIS IS STILLMAN DATED IN ALL POLICIES -- IS STILL MANDATED IN ALL POLICIES THAT ARE INSURING FAMILY AUTOMOBILES. LIBERTY KNEW THAT, WHEN IT ISSUED THIS POLICY IT WASN'T JUST INSURING THE BUSINESS. IT KNEW THAT IT WAS INSURING THE WEISS FAMILY AUTOMOBILES. IT KNEW THAT IT WAS ADDING A PROVISION MAKING JACK WEISS INSURED BY NAME. IT KNEW IT WAS INSERTING A PROVISION THAT INSURED JACK WEISS, REGARDLESS OF THE VEHICLE HE IS IN. YOU CAN WRITE THAT IN ANY FORM YOU WANT. YOU CAN WRITE IT AS A SINGLE POLICY PROVISION OR YOU CAN WRITE IT AS A POLICY PLUS AN ENDORSEMENT, BUT THE FACT IS IT IS

ONE POLICY THAT PROVIDES THAT BROAD COVERAGE. IN FACT, YOU COULDN'T PROVIDE ANYMORE COVERAGE IN A POLICY, REGARDLESS OF THE TITLE YOU PUT ON IT. WE DON'T LOOK AT THE TITLE ON THE POLICY. WE LOOK AT THE SUBSTANCE OF IT, AND THE SUBSTANCE HERE IS IT IS INSURING THE FAMILY AUTOMOBILES AND IT IS PROVIDING COVERAGE TO JACK WEISS, REGARDLESS OF THE VEHICLE HE IS IN. THAT MAKES HIM A CLASS ONE INSURED. AND ENTITLED TO COVERAGE AS A MATTER OF LAW, AND WITH THAT, I SEE I AM ALMOST AT THE END OF MY TIME. I WILL SAVE THE REST FOR REBULINGTS. -- FOR REBUTTAL.

GOOD MORNING. MY NAME IS DAVID CASSETTY ON BEHALF OF LIBERTY MUTUAL INSURANCE COMPANY. I THINK THAT THERE WERE SOME PARTS OF THE THIRD DISTRICT'S OPINION THAT WERE LEFT OUT IN THE DESCRIPTION OF THE HOLDING WE ARE TALKING ABOUT, WHETHER OR NOT THERE IS CONFLICT JURISDICTION. WHAT THE THIRD ACTUALLY SAID WAS A BUSINESS AUTO POLICY SUCH AS THE ONE AT ISSUE HERE, DOES NOT PROVIDE COVERAGE FOR OFFICERS, UNLESS IN A COVERED VEHICLE.

HOW DOES THIS POLICY DIFFER, IN SO FAR AS THE DOC? YOUR OPPONENT POINTS OUT THAT THIS IS A DRIVE-OTHER-CAR PROVISION IN BOTH POLICIES. IS THAT NOT CORRECT?

WELL, THEY ARE SIMILAR PROVISIONS, BUT THERE ARE DIFFERENCES IN THEM, AND THAT IS REALLY, I THINK, THE SECOND QUESTION, AND IN ANSWERING JUSTICE QUINCE'S QUESTION, THEY WERE DISCUSSING, AT THAT POINT, THE MAIN POLICY AND NOT THE ENDORSEMENT, WHEN THEY MADE THAT STATEMENT, AND YOUR STATEMENT GETS DOWN, TO YOUR QUESTION GETS DOWN TO THE VERY END OF THE OPINION, WHERE THEY, ALL THAT THEY SAID, ALL THE THIRD DISTRICT SAID IN THIS CASE ABOUT THE DRIVE-OTHER-CAR, WAS MOREOVER THE DRIVE-OTHER-KAREN DOORSMENT PROVIDING FOR BODILY INJURY AND PROPERTY DAMAGE DID NOT MODIFY THE DEFINITION OF WHO WAS INSURED FOR UM COVERAGE.

ISN'T THE ST. PAUL CASE, YOU HAVE TWO EMPLOYEES WHO WERE IN A VEHICLE THAT WAS NOT A COVERED VEHICLE, CORRECT?

THERE WAS AN ISSUE OF WHETHER IT WAS COVERED VEHICLE, BECAUSE THEIR DRIVE-OTHER-KAREN DOORSMENT, UNLIKE THE ONE THAT WAS WRITTEN HERE AND SPECIFICALLY WITHIN THE FOUR CORNERS OF THE OPINION IS WHAT JUSTICE WELLS READ. THIS INCLUDES AUTOS USED BY EMPLOYEES OR MEMBERS OF THEIR HOUSEHOLD, WHEN DOING BUSINESS OR PERSONAL AFFAIRS. THAT IS ENTIRELY ABSENT, NOT FROM THE THIRD DISTRICT'S OPINION BUT ENTIRELY ABSENT FROM THE LIBERTY MUTUAL POLICY. SO THE QUESTION IS WHETHER THESE PEOPLE WHO WERE ON A TRIP THAT WAS RELATED TO THE BUSINESS BUT IT WAS REALLY TO AN AMUSEMENT PARK AND THAT WAS THE SECOND HALF OF THE McDONALD OPINION IS THAT IT IS IN THE COURSE AND SCOPE, RELATES TO A PROVISION IN THEIR POLICY, WHICH IS ABSENT FROM LIBERTY MUTUAL'S, AND CERTAINLY THERE IS NOING IN -- AND CERTAINLY THERE IS NOTHING IN THE FOUR CORNERS OF THEIR OPINION WHICH SUGGEST IT IS IN CONFLICT.

BUT IS THAT STATEMENT, THE MOREOVER STATEMENT THAT YOU JUST READ CONCERNING WHETHER OR NOT THE DRIVE-OTHER-CAR PROVISION CHANGED THE UM COVERAGE, IS THAT AN ACCURATE STATEMENT? BECAUSE ISN'T THE DECEDENT, WASN'T THE DECEDENT ACTUALLY COVERED FOR LIABILITY UNDER THIS DRIVE-OTHER-CAR PROVISION? AND IF THAT IS TRUE, THEN ISN'T HE ENTITLED, UNDER THE STATUTE, TO UM COVERAGE, ALSO?

YES AND NO. IT IS, THIS IS AN ACCURATE STATEMENT. WHAT THEY ARE SAYING IS THAT IT PROVIDED COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE, BECAUSE THAT IS THE COVERAGE WHICH WAS PURCHASED UNDER THE ENDORSEMENT. THEY COULD HAVE, ALSO, PURCHASED UNINSURED MOTORIST COVERAGE BUT DID NOT. AND HAD THEY PURCHASED THE UNINSURED MOTORIST, THEN IT WOULD HAVE COVERED THIS ACCIDENT AND THERE WOULDN'T BE A LAWSUIT. SINCE THEY DID NOT, THIS IS A ACCURATE STATEMENT. IT ONLY PROVIDES

COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE. THAT IS WHAT THEY PURCHASED.

COULDN'T THEY HAVE PURCHASED IT UNDER THE DOC ENDORSEMENT?

THE DESCRIPTION THAT THIS IS DESIGNED TO FAMILY CUFF HANDLE, THAT IS NOT ON THE RECORD ANYWHERE, BECAUSE THAT WAS NEITHER RAISED IN THE TRIAL COURT OR THE DISTRICT COURT OF APPEAL, BUT THE PURPOSE BEHIND THE DRIVE-OTHER-KAREN DOORSMENT, IS BECAUSE THIS COURT SAID IN HURTADO, THE MAIN THRUST OF THE DISSENT BY JUSTICE BARKETT, THAT YOU ONLY HAVE CLASS TWO'S ON A CORPORATE POLICY SUCH AS THIS. RATHER THAN CHANGE THE LAW AS JUSTICE BARKETT WANTED, YOU HAVE AN ENDORSEMENT, WHICH ACCOMPLISHED THE SAME THING, BUT YOU HAVE TO BUY THE COVERAGE. THERE IS NO CASE THAT SAID UNDER AN ENDORSEMENT SUCH AS THIS, THAT IT IS A SEPARATE POLICY, AND WHILE THEY SAY UNDER OUR ARGUMENT THAT THIS IS A TWO-POLICY SITUATION, THAT IS REALLY OUR CONDITION, BECAUSE YOU HAVE TO HAVE THE DRIVER OF THE KAREN DOORSMENT PROVIDING, IT DOESN'T MEET REQUIREMENTS OF SUBSECTION ONE OF THE STATUTE 727. IT DOES NOT PROVIDE COVERAGE FOR ANY SPECIFICALLY IDENTIFIED VEHICLES AND THAT IS ONLY WHERE JACK WEISS IS NAMED. HE IS NOT THE INSURED IN THIS POLICY.

ISN'T McDONALD, THE REASON THAT THE PLAINTIFFS IN McDONALD RECEIVED UNINSURED MOTORIST COVERAGE WAS BECAUSE OF THE DOC ENDORSEMENT, CORRECT?

CORRECT. IT IS BECAUSE OF THE, IT IS NOT A D.O.C.. IT IS LIABILITY PROTECTION FOR AUTOS YOU DON'T OWN, AND IT IS A DIFFERENT, BUT IT HAS MANY OF THE SAME FEATURES.

AND THE ISSUE IN THAT CASE IS WHETHER, EVEN THOUGH UNINSURED MOTORIST COVERAGE WAS NOT PURCHASED FOR THAT ENDORSEMENT, WHETHER IT WAS EXTENDED BECAUSE IT IS A LIABILITY COVERAGE, CORRECT?

CORRECT. WELL, THEY HAVE TWO ALTERNATIVES, AND THAT, I BELIEVE, IS THE SECOND THAT THEY GIVE FOR, FURTHER MOORE, TAYLOR AND JONES CONTENDS THAT IT WAS REQUIRED BY STATUTE TO PROVIDE UNINSURED MOTORIST FOR THE SECOND OCCUPANT, SO THE SECOND ALTERNATIVE IS WHAT THEY GIVE.

ISN'T THAT WHAT WE ARE DEALING WITH HERE IS THAT LIBERTY MUTUAL COULD EXCLUDE, UNLESS THEY HAD FIRMLY REJECTED UNINSURED MOTORIST COVERAGE FOR THE, AS A RESULT OF NAMING WEISS AS AN INSURED, UNDER THE DOC ENDORSEMENT? I MEAN, YOU KNOW, WE ARE GETTING, THAT IS WHY THERE APPEARS TO ME, THAT THERE IS A CONFLICT IN THE PHILOSOPHY OF THE TWO CASES.

WELL, I AGREE THAT THAT IS THE ISSUE WE WOULD BE DISCUSSING, IF THE COURT DECIDES TO RETAIN JURISDICTION. HOWEVER THAT, HOLDING THERE IS NOT IN DIRECT CONFLICT WITH ANYTHING STATING --

YOU HAVE NO PROBLEM WITH THE McDONALD CASE. YOU THINK THAT --

NO. I THINK IT IS INCORRECTLY DECIDED, BECAUSE I THINK IT MISREADS THE LEGISLATION, PARTICULARLY SUBSECTION ONE. THEY MISREAD WHAT THAT REQUIRES. HOWEVER, WHAT THEY, ALSO, SAY IS, UNDER THE PROVISIONS OF THE POLICY AND CIRCUMSTANCES OF THIS CASE, THEY FIND THAT IT IS COVERED. AND THAT PROVISION AND THOSE CIRCUMSTANCES ARE NOT THE SAME AS THIS CASE, AND YOU HAVE TO READ INTO THE ONE SENTENCE THAT DEALS WITH DRIVE-OR -- WITH DRIVE OTHER-CAR IN THE WEISS OPINION, FIRST OF ALL, THERE IS NOTHING THIS OPINION THAT SAYS JACK WEISS WAS NAMED IN THE DOC.

WHAT DO YOU VIEW AS THE PURPOSE OF THE ENDORSEMENT?

THE PURPOSE OF THE ENDORSEMENT WAS IN THE EVENT THAT JACK WEISS WAS IN A CAR THAT WASN'T ONE OF THEIR SEVEN VEHICLES, AND HE WOULD HAVE COVERAGE. SO, FOR INSTANCE, IF ONE OF HIS DAUGHTERS MOVED TO CHICAGO TO GO TO LAW SCHOOL. IF SHE PURCHASED A CAR THEN THEY DIDN'T ADD IT TO THIS POLICY AND HE WAS DRIVING HER CAR, HE WOULD HAVE COVERAGE UNDER THAT. IF HE WAS DRIVING CAR THAT HE BORROWED FROM A FRIEND. IF HE TAKES HIS NEIGHBOR'S CAR. HE HAS NOW GOT COVERAGE FOR HIM ALREADY HAVE FOR -- FOR HIMSELF FOR BOTH BODILY INJURY AND LIABILITY, AND IF HE HAD CHOSEN TO PURCHASE IT, HE WOULD HAVE UNINSURED MOTORIST COVERAGE AS WELL AND HE CHOSE NOT TO PURCHASE THAT, OR THE NAMED INSURED IN THIS CASE CHOSE NOT TO PURCHASE IT.

WHAT MAKES THIS POLICY --

I AM SORRY. GO AHEAD.

WHAT MAKES THIS POLICY DIFFERENT FROM ANY OTHER LIABILITY POLICY THAT WOULD COVER A PERSON IN A VEHICLE? I AM HAVING A HARD TIME UNDERSTANDING WHY THIS ENDORSEMENT IS DIFFERENT FROM JUST A REGULAR LIABILITY POLICY THAT WOULD HAVE BEEN PURCHASED BY MR. WEISS FOR HIS FAMILY VEHICLES. THAT IS THE BOTTOM LINE HERE IS WHY IS THIS DIFFERENT.

WELL, THE ENDORSEMENT IS DIFFERENT BECAUSE IT -- WHY IS THIS DIFFERENT?

WELL, THE ENDORSEMENT IS DIFFERENT BECAUSE IT SPECIFICALLY COVERS UNIDENTIFIED VEHICLES, AND IT DOESN'T MATTER WHETHER THEY ARE PRINCIPALLY GRAND IN FLORIDA OR NOT, AND WHAT THE STATUTE, WHAT THE LEGISLATURE HAS DONE --

ASSUMING HIS PERSONAL VEHICLE IS NOT A CORPORATE VEHICLE. HIS PERSONAL VEHICLE IS COVERED UNDER THIS ENDORSEMENT, CORRECT?

NO. THAT IS INCORRECT, BECAUSE THE ENDORSEMENT ONLY PROVIDES COVERAGE TO VEHICLES THAT ARE NOT OWNED. IT IS ANY AUTO OWNED BY THAT INDIVIDUAL OR BY, THE EXCEPTIONS TO IT ARE ANY AUTO OWNED BY THAT INDIVIDUAL OR ANY MEMBER OF HIS OR HER HOUSEHOLD, SO IF HE IS DRIVING HIS OWN CAR, HE NEEDS SHOWS THAT. THIS IS FOR IF HE IS DRIVING SOMEBODY ELSE'S CAR, SO IF HE IS DRIVING HIS OWN CAR IN THIS CASE, IN THIS CASE HE WAS AN OFFICER OF THE COMPANY AND HIS CAR WAS INSURED, SO HE IS COVERED UNDER THE BISKNOWS AUTO -- UNDER THE BUSINESS AUTO POLICY, BUT IF HE IS DRIVING --

TELL US IF THIS CORRECT, THAT IF THIS POLICY IS COVERING AN ENDORSEMENT, IT IS A FAMILY POLICY THAT COVERS HIS WIFE AND OTHER FAMILY VEHICLES.

THE PETITIONER IS INCORRECT IN THAT STATEMENT. THE OPERATIONAL PAGE OF THAT ENDORSEMENT PROVIDES COVERAGE SPECIFICALLY FOR UNIDENTIFIED VEHICLES. IF HE OWNS IT OR ONE OF HIS RESIDENT FAMILY MEMBERS OWN IT, IT IS NOT COVERED BY THE ENDORSEMENT.

BUT IN THIS CASE, THE VEHICLES THAT WERE INSURED UNDER THIS POLICY WERE HIS FAMILY'S VEHICLES.

CORRECT.

SO IF HE WAS DRIVING ONE OF THOSE VEHICLES, THEN HE WOULD HAVE GOTTEN UNINSURED MOTORIST COVERAGE, CORRECT?

CORRECT.

AND NOW WE ARE THROWING BACK OUT THAT, WHEN HE WAS A PEDESTRIAN, EVEN THOUGH IS

HE NAMED AS AN INSURED AND EVEN THOUGH ALL OF HIS VEHICLES ARE INSURED UNDER THIS POLICY, WHETHER LIBERTY MUTUAL CAN EXCLUDE HIM FROM UNINSURED MOTORIST COVERAGE.

INCORRECT, BECAUSE IS HE NOT NAMED. HE IS NOT THE NAMED, AND THAT IS THE CRITICAL DISTINCTION. WHAT MULLIS SAID WAS WHEN THE NAMED INSURED AND ITS RESIDENT FAMILY MEMBERS HAVE TO BE, THEY ARE CLASS ONE AND IT HIS FAMILY COVERAGE, BUT BARTOSOWICZ SAID, AND AGAIN IN THIS COURT, SAID IF IT IS A CORPORATION, THEN THE OFFICERS AND DIRECTORS AREN'T CONSIDERED CLASS ONE. WHAT THEY ARE TRYING TO DO --

ALL OF THESE FAMILY VEHICLES. I AM JUST TRYING TO UNDERSTAND EXACTLY WHERE WE ARE HERE. ALL OF HIS FAMILY VEHICLES ARE COVERED UNDER THE MAIN PORTION OF THE POLICY. THAT IS WHAT YOU ARE SAYING.

UNDER THE BUSINESS AUTO POLICY, THAT'S CORRECT.

UNDER THE BUSINESS PORTION AND NOT UNDER THE ENDORSEMENT.

SO HE HAS UM COVERAGE WITHIN HIS FAMILY VEHICLE BUT HE DIDN'T HAVE UM COVERAGE AS A PEDESTRIAN BECAUSE HE IS NOT A CLASS ONE. IS HE A CLASS TWO, AND THAT IS PRECISELY WHAT JUSTICE BARKETT'S LAMENT WAS IN THE HUR DAD -- IN THE HURTADO DISSENT, BUT THAT WASN'T THE SCHEME.

ARE HIS FAMILY VEHICLES COVERED AS IDENTIFIED VEHICLES?

THERE ARE SCHEDULED VEHICLES, AND AT THE TIME OF THE ACCIDENT, I BELIEVE THERE WERE SEVEN VEHICLES SCHEDULED, AND THEY INCLUDED THE FAMILY VEHICLES, AND ALL OF THE THING IS, WHILE THEY SAID THAT THE DAUGHTERS HAD NOTHING TO DO WITH THE CORPORATION, THAT IS NOT ACTUALLY CORRECT. THEIR TUITION WAS PAID BY THE CORPORATION. THE HOUSE THEY LIVED IN WAS PAID FOR BY THE CORPORATION. THEY DIDN'T HAVE ANY PERSONAL ASSETS. ALL BANK ACCOUNTS WERE CORPORATE. THERE WERE NO PERSONAL BANK ACCOUNTS. CARS.

WERE THE VEHICLES, ALL OF THE VEHICLES THAT WERE SCHEDULED, WHICH WERE REFERRED TO AS FAMILY VEHICLES, IN WHOSE NAME WERE THE OTHERS? WHO HELD THE TITLE TO THOSE VEHICLES?

YOU KNOW, THE RECORD IS UNFORTUNATELY NOT VERY CLEAR ON THERE. THE TITLE TO SOME OF THEM CERTAINLY WERE IN THE FAMILY MEMBERS' NAMES, WHETHER THEY WERE LEASED BACK TO THE COMPANY OR WHETHER THE LEASE BACK WASN'T DONE, BUT CERTAINLY WHEN THE POLICIES WERE SOLD, THEY WERE KNOWN TO BE DRIVEN BY THE WEISSES, AND THERE IS NOT ANY QUESTION ABOUT THAT, AND WHETHER THE LEASE, WHETHER IT WAS LEASED BACK TO THE CORPORATION TO CREATE AN INSURABLE INTEREST OR NOT WAS NEVER ACTUALLY DEVELOPED WELL AND DIDN'T ACTUALLY FEATURE IN EITHER OF THE LOWER COURT'S OPINIONS.

SO UNDER LIBERTY MUTUAL'S POSITION, THEY SOLD THIS POLICY, SCHEDULED ALL THE VEHICLES THAT WERE OWNED BY THE WEISS FAMILY MEMBERS, KNEW THAT IT WOULD BE COVERED FOR UNINSURED MOTORIST COVERAGE IF THEY WERE DRIVING ANY OF THOSE VEHICLES, AS WELL AS LIABILITY COVERAGE, KNEW THEY WOULD BE COVERED FOR LIABILITY COVERAGE, IF THEY WERE DRIVING ANYBODY ELSE'S VEHICLES, SO THE ONLY COVERAGE THAT IS EXCLUDED UNDER LIBERTY MUTUAL'S POSITION, IS UNINSURED MOTORIST THE COVERAGE FOR WHEN -- UNINSURED MOTORIST COVERAGE FOR WHEN THEY WERE A PEDESTRIAN.

NOT PRECISELY, BECAUSE THE ONLY TWO FAMILY MEMBERS THAT PURCHASED THE LIABILITY COVERAGE ON THE DRIVE-OTHER-KAREN DOORSMENT WERE JACK AND CAROLINE WEISS -- DRIVE-OTHER-CAR ENDORSEMENT, WERE JACK AND CARLINE WEISS. THE OTHER DRIVERS

WOULDN'T HAVE COVERAGE, BECAUSE THEY WERE NOT ON THE ENDORSEMENT AND THEY DIDN'T PURCHASE IT, EITHER, SO JACK AND CAROLINE WOULD HAVE UM COVERAGE EXCLUDED BECAUSE THEY DIDN'T PURCHASE THAT, AND THE DAUGHTERS WOULD HAVE ALL COVERAGE EXCLUDED, BECAUSE THEY DIDN'T PURCHASE ANYTHING, IF THAT ANSWERED YOUR QUESTION. AND, AGAIN, I THINK --

QUESTION OF LAW GOES BACK TO THIS, WHICH IS THAT, ASSUMING, IF THEY ARE CLASS ONE INSURED, THEN, WELL, IF THEY ARE CLASS ONE INSURED, THEN LIBERTY, THEN YOU WOULD AGREE --

QUESTION IS WHETHER THEY ARE CLASS ONE INSURED, I THINK.

AND WHETHER THE PURCHASE OF THIS DOC ENDORSEMENT, WHERE THEY ARE NAMED, MAKES THEM CLASS ONE INSURED.

THAT WOULD BE THE QUESTION, AND THERE ISN'T ANY AUTHORITY THAT SAYS THAT IS SO. FIRST OF ALL, I THINK WHAT COUNSEL'S ARGUMENT KIND OF TAKES IT IN REVERSE. HE SAID THE HALLMARK OF CLASS ONE INSURED ARE THAT THEY ARE COVERED, REGARDLESS OF ANY VEHICLE THEY ARE IN. WELL, THE HALLMARK ACTUALLY OF CLASS ONE INSURED IS THAT THEY ARE FAMILY MEMBERS OF THE NAMED INSURED. THAT IS THE DEFINITION. THAT WAS WHAT MULLIS HELD. THAT IS WHAT HER TITLE REAFFIRMED. THAT IS WHAT THIS COURT HAS CONSISTENTLY SAID. NOT WE ARE GOING TO TAKE A LOOK AT HOW MANY VEHICLES ARE COVERED, AND IF THAT IS THE CASE, NO MATTER HOW MANY VEHICLES ARE COVERED, THAT IS NOT THE TEST FOR CLASS ONE. CLASS ONE DEPENDS ON WHO IS THE NAMED INSURED AND THE RESIDENT FAMILY MEMBERS.

AND THE THIRD DISTRICT OPINIONS SAY IN A VERY NARROW SENSE THAT, A CLASS ONE INSURED UNDER A CORPORATE POLICY IS ONLY THE CORPORATION.

WELL, THEY SAY A CORPORATE POLICY SUCH AS THE ONE AT ISSUE HERE, BECAUSE THE ONE AT ISSUE HERE IS DISTINCT FROM, SAY, THE ONE IN SANZ, THAT THE FOURTH DISTRICT CONSIDERED, BECAUSE THAT SPECIFICALLY STATES THAT THE NAMED INSURED IS THE CORPORATION AND ITS RESIDENT FAMILY MEMBERS, BUT IT IDENTIFIES THE OFFICERS AS NAMED INSURED. THIS POLICY DOESN'T, SO THIS POLICY IS JUST LIKE PAR -- BARTOSOWICS, AND TO A CERTAIN EXTENT IS A CORPORATE POLICY. IT DOESN'T IDENTIFY AS NAMED INSURED. THEREFORE THEY ARE CLASS TWO. NOW, THE ENDORSEMENT NAMES HIM AS GETTING LIABILITY COVERAGE BUT IT ONLY MODIFIES BY ITS VERY TERMS, AND AS THE COURT SAYS AT THE END OF THE THIRD'S OPINION, IT ONLY MODIFIES THE DEFINITION OF WHO IS INSURED FOR THE LIABILITY. THAT DOESN'T MEAN THAT, BECAUSE HE IS NAMED IN IT, HE IS NOW A NAMED INSURED. NAMED INSURED IS A SPECIFIC TERM.

ISN'T THAT, AGAIN, AND I GUESS THAT IS WHERE THE CONFLICT IS WITH McDONALD.

AND I THINK THIS COURT RESOLVED THAT WITH THE WHITT ENVERSUS PROGRESSIVE ON-WITH THE WHITTEN VERSUS PROGRESSIVE POLL SITUATION. IT DOESN'T MEAN THAT YOU -- POLICY. IT DOESN'T MEAN THAT YOU ARE A NAMED INSURED IF NAMING YOU IN THE ENDORSEMENT. IF THAT MEANS YOU ARE A NAMED INSURED, YOU WOULD HAVE TO GET A REJECTION FROM EVERYBODY IN THE POLICY. THAT IS NOT WHAT THIS COURT --

WHO IS THE NO REJECTION IN THIS CASE?

ABSOLUTELY AND ALTHOUGH WE HAD SOME --

EXCUSE ME. NOBODY SIGNED A REJECTION FOR UNINSURED MOTORIST COVERAGE IN THIS CASE, CORRECT?

THEY SIGNED, THEY SIGNED A FORM AGO GROOELING GREEK TO THE LIMIT -- AGREEING TO THE LIMITATION EQUAL TO THE BIT LIMITS AND THEY REJECTED IT ON THE POLICY, SO THERE ARE FORMS AND THEY ARE ATTACHED TO OUR APPENDIX, BUT THEY ACCEPTED, FOR THE BUSINESS AUTO POLICIES, \$1 MILLION COVERAGE FOR THESE VEHICLES. THEY REJECTED THE STAFF COVERAGE. THE POINT IS WHO IS A NAMED INSURED? WHAT THE COURT SAID IN BARTOSOWICS AND WHO IS THE NAMED INSURED? IN SEVERAL OTHER STATES THEY SAY, LOOK, IT IS A SPECIFIC PROVISION, AND YOU LOOK TO SPECIFICALLY THIS IS NOT ONE THAT YOU INTERPRET BROADLY, LIKE THE REGULAR POLICY PROVISIONS. THE NAMED INSURED CLAUSE IS DETERMINED SPECIFICALLY, AND IN THIS CASE THERE IS NO QUESTION THAT JEFF WEISS'S NAME IS NOT SPECIFICALLY IN THERE. HE IS NOT THE NAMED INSURED. THEREFORE HE IS NOT CLASS ONE. HE IS CLASS TWO. IF THIS COURT HAS ANY OTHER QUESTIONS, AGAIN, I WOULD LIKE TO INVITE THE COURT TO RECONSIDER THE JURISDICTIONAL ISSUE, BECAUSE I DON'T THINK THAT THERE IS EXPRESS CONFLICT UNDER THE REQUIREMENTS OF THE CONSTITUTION, AND IN ANY EVENT, I BELIEVE THAT THE THIRD DCA'S OPINION IS CORRECTLY DECIDED.

IF WE WERE TO TAKE THE CASE AND WE AGREE, IF WE DISAGREE WITH, IS THAT AWAY TO RESOLVE THIS, IN YOUR VIEW, WHEN YOU TAKE THE CASE AND YOU ACTUALLY SET OUT THE FACTS, THAT CAN MAKE AN INTELLECTUALLY HONEST DISTINCTION BETWEEN THE REASONING OF THE FOURTH DISTRICT IN McDONALD AND THE THIRD DISTRICT IN WEISS?

WELL, I THINK YOU WOULD HAVE TO --

IF YOU WERE WRITING THIS OPINION, COULD YOU REALLY, IN A CONSCIENTIOUS WAY, SAY THAT THERE ARE DISTINCTIONS BETWEEN THE TWO THAT ALLOW BOTH RESULTS TO STAND, WHEN YOU GET INTO THE FACTS?

IF YOU TAKE THE CASE, I THINK THAT, WELL, THEY DON'T, THE PROBLEM IS THAT THE PROVISION IN McDONALD REALLY IS DIFFERENT THAN THIS ONE.

IS THAT HOW YOU WOULD WRITE IT? YOU WOULD SAY THAT IS BECAUSE OF THAT SECOND LINE?

I AM NOT SURE I WOULD QUESTION THE VALIDITY OF McDONALD, BUT SINCE THAT CASE IS NOT THE ONE THAT IS PRESENT, THE FACT THAT --

BUT YOU WOULDN'T WANT, WE WOULDN'T WRITE AN OPINION, ESPECIALLY IF WE TAKE IT BASED ON CONFLICT WITH McDONALD, AND IGNORE McDONALD.

WELL, THE, WELL, EXCEPT FOR THE FACT THAT THEY ARE DISTINCT PROVISIONS. THEY ARE DIFFERENT.

YOU WOULD THINK THAT IT WOULD BE LAW FOR THE STATE OF FLORIDA, SAY IT IS BECAUSE OF THAT SECOND LINE IN THERE THAT THAT IS WHY THE FOURTH DISTRICT WENT THE WAY THEY DID?

IF YOU WANT TO HARMONIZE THEM, YES. IF YOU WANT TO DO WHAT I THINK WOULD BE THE APPROPRIATE THING TO DO WOULD BE TO FIND THAT McDONALD ACTUALLY INCORRECTLY APPLIES THE STATUTE. THEY HAVE --

SO LIBERTY MUTUAL'S POSITION WOULD BE TO DISAPPROVE McDONALD.

I DON'T THINK McDONALD HAS TO BE DISAPPROVED IN ORDER TO APPROVE THE THIRD DISTRICT'S OPINION, BECAUSE I DON'T BELIEVE THAT THEY ARE THE SAME THING, AND MY POSITION IS THAT McDONALD IS INCORRECT BECAUSE THEY HAVE OVER EXPANDED WHAT THE LEGISLATURE HAS PROVIDED.

THANK YOU.

THANK YOU.

CHIEF JUSTICE: COUNSEL.

FIRST, AS I POINTED OUT BEFORE, THIS CASE AND THE POLICY IN McDONALD ARE IDENTICAL. THIS POLICY, THROUGH THE DOC ENDORSEMENT, COVERED ANY AUTO YOU DON'T HIRE, YOU DON'T OWN, HIRE OR BORROW. McDONALD SAID WE WILL COVER AUTOS YOU DON'T OWN, HIRE, LEASE OR BORROW.

IS THE DISTINCTION THE SECOND LINE? IS THAT THE DISTINCTION THAT ISN'T WITH A DIFFERENCE?

THE SECOND LINE SAYS THIS INCLUDES AUTOS OWNED BY YOUR EMPLOYEES OR MEMBERS OF YOUR HOUSE OLD -- HOUSEHOLD. THE FIRST SENTENCE SAYS WITHOUT ANY QUALIFICATION, ANY AUTO YOU DON'T OWN, HIRE OR BORROW, YOU DON'T HAVE TO SAY THIS INCLUDES. THAT INCLUDES EVERYTHING. SO THE SECOND SENTENCE OF McDONALD DOESN'T ADD ANYTHING TO THE FIRST SENTENCE HERE. DOESN'T CHANGE THE ANALYSIS. THEY SAY, IN ADDITION, WELL, WAIT A SECOND. HE IS NOT A NAMED INSURED. JACK ISN'T A NAMED INSURED UNDER THIS POLICY. IN THE BARTOSOWICZ CASE THAT THEY RELY ON, THIS COURT SAID IT HAS A RESTRICTED MEANING AND DOES NOT APPLY TO PERSONS NOT SPECIFICALLY NAMED IN THE POLICY. HERE, JACK WAS SPECIFICALLY NAMED IN THE POLICY, IN THE DOC ENDORSEMENT. THAT DOC ENDORSEMENT, AS I POINTED OUT, IS ENTITLED BROADENED COVERAGE FOR NAMED INDIVIDUALS. WHO IS THE NAMED INDIVIDUAL? JACK. HE IS NAMED IN THIS POLICY AND GIVEN BROADENED COVERAGE. IN FACT, THEIR THIRD DISTRICT BRIEF, THEY IS SAID THIS AT -- THEY SAID THIS AT PAGE 7, QUOTE, JACK WEISS WAS AN INSURED ON THE DRIVE-OTHER-CAR ENDORSEMENT. HE WAS AN INSURED HERE. AS I POINTED OUT, WHAT IS THE PURPOSE OF THE DOC PROVISION, AND COUNSEL WAS CANDID. IT PROVIDE COVERAGE FOR THE NAMED INDIVIDUALS, JACK AND CAROLINE, IF THEY WERE OPERATING ANY OTHER CAR IN THE WORLD. IF THEY WERE OPERATING A CAR THEIR DAUGHTER BOUGHT, WHICH WASN'T INSURED UNDER THIS POLICY, THAT IS A CLASS ONE INSURED.

THAT IS THE LEAP THAT TAKES YOU TO A CLASS ONE INSURED.

EXACTLY. IF THE DOC ENDORSEMENT DIDN'T EXIST. IF THE ENDORSEMENT SAID WE ARE ONLY GOING TO COVER YOU WHEN YOU ARE IN THOSE VEHICLES. IF THIS PORTION OF THE POLICY SAYS AND, IN ADDITION, WE ARE GOING TO COVER YOU FOR ALL OF THE REST OF THE VEHICLE INS THE WORLD, AND THAT IS WHAT MAKES YOU -- VEHICLES IN THE WORLD, AND THAT IS WHAT MAKES AWE CLASS ONE INSURED. THEY MAKE THE ARGUMENT THAT -- OF A CLASS ONE INSURED. THEY MAKE THE ARGUMENT THAT THE DOC ENDORSEMENT PROVIDES LIMITED COVERAGE BECAUSE THERE ARE MANY VEHICLES NOT COVERED BY THE DOC ENDORSEMENT, INCLUDING THE SCHEDULED VEHICLES UNDER THE POLICY, BUT THEN THEY DROP THE FOOTNOTE AND SAJAK WEISS WAS COVERED BUT NOT BY THE DOC ENDORSEMENT. YES. HE WAS COVERED BY THE REST OF THE POLICY FOR THE VEHICLES. WE HAVE TO CONSTRUE POLICIES AS A WHOLE NOT BUSINESS AUTO FORM ENDORSEMENT, THE ENTIRE POLICY. THIS ENTIRE POLICY NAMES JACK WEISS, INSURES ALL THE FAMILY VEHICLES AND INSURANCE HIM, REGARDLESS OF THE -- AND INSURES HIM REGARDLESS OF THE VEHICLE THEY ARE IN. THAT IS A CLASS ONE INSURED. NOW, YOU DIDN'T PAY FOR A PREMIUM FOR UM COVERAGE. WELL, EVERY SINGLE CASE WHERE THE COURT CON FLENTS -- CON FRONTS UM -- CONFRONTS UM COVERAGE AS MATTER OF LAW, THIS IS NOT AN ISSUE. IF YOU INCLUDE AN UM POLICY THAT INSURES ALL THE FAMILY BUSINESS AND DOESN'T HAVE THE FIRST WORD ABOUT UM COVERAGE AND DOESN'T PROVIDE A PENNY PREMIUM, THAT POLICY PROVIDES UM COVERAGE AS A MATTER OF LAW, SO THE PREMIUM IS IMMATERIAL, BUT IN ANY EVENT WE SUGGEST THERE WAS A PREMIUM FOR THIS, AND WE SET

THIS OUT IN OUR BRIEF. IF YOU LOOK AT THE DOC ENDORSEMENT, IT SAYS IT ONLY CHANGES COVERAGE FOR THE ONES THAT ARE CHARGED. IF YOU LOOK AT THE ENDORSEMENT, IT HAS A BOX FOR DIFFERENT COVERAGES AND THEY ARE ALL BLANK. THE BOTTOM OF THAT PAGE SAYS IF IT IS BLANK, LOOK TO THE DECLARATIONS TO FILL IN THE BLANKS. THE DECLARATIONS ARE APPEARING ON AND ENDICS A-5, AND THAT SHOWS A TOTAL PRESUMEIUM FOR THIS POLICY OF \$13,000 AND SOME CHANGE FOR WHICH THERE WAS UM COVERAGE. THERE WAS A PREMIUM FOR UM COVERAGE. THEIR OWN UNDERWRITING -- THEIR OWN UNDERWRITER, CONFRONTED WITH THAT AND WHEN ASKED IF YOU UNDERSTAND THE INTENT OF THE PROVISION WAS, HE SAID, NEW YORK CITY IT IS NOT EVIDENT TO ME. IT IS AMBIGUOUS. AND IF IT IS AMBIGUOUS TO THE PERSON WHO WROTE THE POLICY, THIS COURT KNOWS WHAT FOLLOWS FROM THAT. IT HAS TO BE CONSTRUED AGAINST THE INSUROR AND IN FAVOR OF COVERAGE.

CAN AN ENDORSEMENT TAKE OUTFIT THE STATUTORY REQUIREMENTS, SORT OF BACK THROUGH JUSTICE --

THAT GOES WAY BACK TO MULLIS, AND THROUGH THE WHOLE LINE OF CASES, MULLIS HAS BEEN REAFFIRMED HALF A DOZEN TIMES BY THIS COURT, 30 YEARS AGO. MULLIS SAID, IF IT IS A POLICY WITHIN THE STATUTE, IF IT ENSURES CLASS ONE INSUREDS, THE INSUROR MAY NOT, QUOTE, WHITTLE AWAY THE STATUTORILY MANDATED COVERAGE, THROUGH EXCLUSION AND EXCEPTIONS. THAT IS THE LANGUAGE OF MULLIS. YOU CAN'T DO IT.

CHIEF JUSTICE: WE WILL HAVE TO OWNED THAT NOTE.

THANK.

CHIEF JUSTICE: WE WILL NOW TAKE A FIVE-MINUTE RECESS, WHEN THE JUSTICES JOIN US FOR THE NEXT CASE. COURT WILL BE IN RECESS.

MARSHAL: PLEASE RISE.