Allstate Insurance Co. v. Dino Kaklamanos

CHIEF JUSTICE: GOOD MORNING, EVERYONE. WE HAD A CLASS FROM FLORIDA A&M UNIVERSITY WITH US THIS MORNING. WE WELCOME THAT CLASS. WE KNOW THE ATTORNEYS WILL DO AN EXTRA SPECIAL JOB, AND HOPEFULLY THE JUDGES WILL, TOO, DURING THE COURSE OF ORAL ARGUMENT, BECAUSE OF YOUR PRESENCE, BUT WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE THAT WE HAVE THIS MORNING IS ACTUALLY TWO CASES. THE COURT IS A WEAR OF THAT THERE ARE COLLATERAL ISSUES THAT HAVE BEEN RAISED IN THIS CASE, WHILE IT HAS BEEN PENDING HERE, AT THE COURT, AND, OF COURSE, THE COURT HAS THOSE MATTERS PENDING IN ITS BOSOM AND WILL ADDRESS THOSE IN DUE COURSE. WE INTEND THIS MORNING, THOUGH, SIMPLY TO ADDRESS THE MERITS THAT HAVE BEEP RAISED, THE LEGAL ISSUES THAT HAVE BEEN RAISED. I UNDERSTAND THAT THE LAWYERS HAVE WORKED OUT THEIR TIME ALLOCATION, WITH REFERENCE TO THIS CASE, SO WE ASK THAT YOU BE VERY CAREFUL ABOUT THAT, AND HOPEFULLY OUR MARSHAL WILL ATTEMPT TO ASSIST YOU IN THAT REGARD, BUT WITH THOSE ADMONITIONS, YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS PETER VALETA. I REPRESENT ALLSTATE INSURANCE COMPANY ALONG WITH CO-COUNSEL CHARLES BEAL. I WILL SAVE 5 MINUTES FOR MY REBUTTAL AND USE 15. THE CLAIMANT'S INSURANCE IS INNATE WITH THE STRUCTURE OF THE PIP STATUTE THAT WAS ESTABLISHED BY THE FLORIDA LEGISLATURE. THE STATUTORY PIP COVERAGE IS INTENDED TO REMOVE THE CLAIMANT FROM THE MEDICAL PAY PROCESS, WITH REGARD TO THOSE COVERED BENEFITS, AND THAT WILL HAPPEN, UNLESS THE INSURED CHOOSES TO PAY THE BILLS, THEMSELVES, AND RECEIVE REIMBURSEMENT DIRECTLY FROM THE INSURED. HOW IS THAT DONE? DIRECTLY BY THE STATUTORY METHOD THAT WAS CREATED. THE PIP STATUTE AUTHORIZES INSURORS TO PAY PROVIDERS DIRECTLY. THEY ESTABLISH A PROCEDURE BY USING A STANDARD FORM. THE PIP HEALTH INSURANCE FORM THAT IS TO BE SUBMITTED FOR THOSE PAYMENTS, AND BY ALLOWING THE PROVIDERS TO CHARGE ONLY REASONABLE AMOUNTS FOR NECESSARY AND RELATED MEDICAL SERVICES.

COULD YOU ARTICULATE FOR US, AT THE OUTSET, WHAT THE HOLDINGS WERE OF THE TWO COURTS. IT IS THE FIRST AND THE SECOND DISTRICT COURTS OF APPEAL, RIGHT, THAT ARE IN CONFLICT ON THIS LEGAL ISSUE, AND COULD YOU ARTICULATE FOR US SUCCINCTLY, THE HOLDINGS OF THOSE RESPECTIVE COURTS ABOUT THIS ISSUE.

THE KAKLAMANOS COURT, THE FIRST DISTRICT COURT OF APPEALS, HELD THAT AN INSURANCE COMPANY IS NOT REQUIRED TO, EXCUSE ME, AN INSURED IS NOT REQUIRED TO BE BILLED ORAL EDGE ANY OTHER FORM OF ACTIVE COLLECTION ACTIVITY, BEFORE BRINGING A CLAIM FOR BREACH OF THE PIP CONTRACT BY THE INSURANCE COMPANY. IT DID SO BY DETERMINING THAT THE CIRCUIT COURT SITTING IN ITS APPELLATE CAPACITY, HAD VIOLATED, HAD CLEARLY, HAD STEPPED AWAY FROM CLEARLY-ESTABLISHED AREAS OF LAW ON THIS ISSUE AND THEREBY TAKING THAT CASE BY WRIT OF CERTIORARI. IN THE CARAVAKIS CASE, THE DISTRICT COURT REACHED THE OPPOSITE CONCLUSION. THE CIRCUIT COURT, IN ITS APPELLATE CAPACITY, HAD DETERMINED THAT AN INSURED WHO HAD NOT PAID A BILL OR BEEN SUBJECTED TO ANY OF THE COLLECTION EFFORTS OR ANY OTHER ACTUAL DAMAGE, COULD NOT BRING A CASE, DID NOT HAVE STANDING, TO BRING A SUIT FOR UNPAID MEDICAL BILLS, UNDER THE PIP STATUTE, AND THE DISTRICT COURT OF APPEAL DENIED THE CERTAIN PETITION THERE, SAYING THAT -- THE CERT PETITION THERE, SAYING THAT THEY DID NOT VIOLATE A STATUTE.

SO THE THRESHOLD HERE IS WHETHER THERE WAS, IN FACT, A COMMON LAW CERT JURISDICTION IN THE CIRCUIT COURT TO REACH THIS ISSUE. WAS ALLSTATE CONTESTING THAT?

YOUR HONOR, YES, WE DID. WE BELIEVE THAT THE KAKLAMANOS COURT WAS IN ERROR IN ACCEPTING CERTIORARI OVER ITS CASE, BECAUSE THERE WAS NO CLEARLY-ESTABLISHED LAW IN THE STATE OF FLORIDA, BY ANY DISTRICT COURT OF APPEAL OR BY THIS COURT, ON THE QUESTION OF AN INSURED STANDING, TO BRING A PIP SUIT FOR BENEFITS, WHERE THE INSURED HAD NOT SUFFERED ANY DAMAGE BY PAYING A BILL OR BEING SUBJECTED TO ANY COLLECTION EFFORTS OR ANY OTHER FORM OF DAMAGE BEINGAL EMINGD. THE CARAVAKIS COURT GOT IT CORRECT. -- BEING ALLEGED. THE CARAVAKIS COURT GOT IT CORRECT. IT SAID THE ZURBLINGT COURT IN ITS APPELLATE CAPACITY REVIEWED IT AND DIDN'T BREACH ANY STATUTES OF LAW AND THEREFORE WE DISAGREE. THIS COURT HAS ANNOUNCED IN THE IVEY CASE AND THE CASES BEFORE THAT, THE CERTIORARI PROCEDURE DOES NOT EXIST TO ALLOW A PARTY A SECOND APPEAL. RATHER, IT EXIST TO SAY ALLOW THE DISTRICT COURT TO CORRECT SERIOUS AND EGREGIOUS ISSUES OF LAW AND THAT CLEARLY HAS NOT HAPPENED, WITH REGARD TO THE OPINIONS HERE. BOTH CIRCUIT COURTS, SETTING IN THE APPELLATE CAPACITY, REVIEWED --

DOESN'T THAT RAISE A FUNDAMENTAL QUESTION HERE. IF WE HAVE GOT SOMETHING THAT IS REGULARLY LITIGATED IN FLORIDA AND REGULARLY LITIGATED IN THE COUNTY COURT, THAT THIS PIP STATUTE, AND IS ALLSTATE SATISFIED THAT IT SHOULD BE, THAT THE FINAL APPEALS AS TO THE PIP STATUTE, SHOULD BE IN THE CIRCUIT COURTS, RATHER, WHICH, OF WHICH THERE ARE TWENTY, RATHER THAN IN THE COURTS OF APPEAL?

ALLSTATE WOULD BE DELIGHTED TO HAVE THE DECISION BY THIS COURT OR BY THE DISTRICT COURTS OF APPEAL, THAT REACHES THE CONCLUSION THAT THE CIRCUIT COURTS DID. OUR POSITION IS THE CIRCUIT COURTS, SETTING IN THEIR APPELLATE CAPACITY, REACHED THE RIGHT DECISION. THEY REVIEWED THE EXISTING LAW AND SAID, BASED UPON ALL OF THE LAW TO DATE AND APPLYING THE PRINCIPLES OF THE STATUTE, THESE PLAINTIFFS DO NOT HAVE STANDING TO BRING A SUIT. THEY REACHED THE RIGHT RESULT. I AM GLAD TO HAVE YOU AGREE.

THAT SORT OF AVOIDS MY QUESTION. CERTAINLY, ALLSTATE IS SATISFIED, IF THEY GET THE RESULT THAT THEY LIKE. I UNDERSTAND THAT, BUT HERE WE HAVE GOT A SITUATION IN WHICH WE ARE REGULARLY, IVEY WAS EXACTLY, WE HAVE GOT A STANDARD OF REVIEW WHICH IS, REALLY, VERY DIFFICULT TO APPLY, IN THAT WE HAVE SAID THAT THERE ON THE NOT TO BE A SECOND APPEAL TO CORRECT LEGAL ERROR, BUT THEY WE HAVE SAID SOMETHING ELSE THAT, WELL, IN SITUATIONS THERE COULD BE, IF THE ERROR IS SERIOUS ENOUGH. AND WHAT I AM CONCERNED ABOUT IS WHAT THE INSURANCE INDUSTRY LOOKS AT FROM A POLICY STANDPOINT, IS WHERE THESE TYPE OF ISSUES SHOULD BE RESOLVED.

WELL, YOUR HONOR, I DON'T KNOW THAT I CAN SPEAK FOR THE ENTIRE INDUSTRY, BUT I CAN SAY THAT IT IS A GENERAL PROPOSITION. CERTAINTY OF THE LAW IS DECLARED BY THE HIGHEST COURTS. THIS COURT AND THE DISTRICT COURTS OF APPEAL PROVIDES A BACKGROUND AGAINST WHICH COMPANIES SUCH AS MY CLIENT CAN MAKE DECISIONS AND IMPLEMENT THEIR POLICIES AGAINST KNOWN LAW, RATHER THAN HAVING THE MULTIPLICITY OF LEGAL DETERMINATIONS THAT DO OCCUR, WHEN YOU HAVE VARIOUS CIRCUIT COURTS MAKING THESE DECISIONS IN AN APPELLATE CAPACITY, SO, YES, FROM THAT STANDPOINT, IT IS BETTER TO HAVE THAT DECISION COMING FROM UP ABOVE, RATHER THAN HAVING IT IN VARIOUS LEVELS ALL OVER THE PLACE, AND AS YOUR HONOR POINTED OUT, IT IS A PROBLEM IN THE STATE OF FLORIDA, GIVEN THE VOLUME OF PIP LITIGATION THAT IS GOING ON AT ALL LEVELS.

I GUESS THE REAL PROBLEM HERE IS THAT, IN BOTH OF THE DISTRICT COURT OPINIONS, THEY BOTH CITE TO WHAT THE STANDARD FOR CERT IS, AND ONE COURT SAID, BASICALLY SEEMS TO SAY THAT WE NEED SOME CASE LAW, IN ORDER TO DETERMINE WHETHER OR NOT THERE IS A CLEARLY-ESTABLISHED LEGAL RIGHT, WHEREAS THE OTHER COURT SEEMS TO SAY THAT YOU

DON'T HAVE TO HAVE CASE LAW, THAT IT CAN BE BASED ON STATUTORY LAW, CONSTITUTIONAL LAW, AND SO WHERE DO YOU FALL ON THOSE TWO ISSUES? WHETHER IT HAS TO BE, WHETHER YOU NEED SOME CASE LAW IN ORDER TO SHOW THAT IT IS A CLEARLY-ESTABLISHED RIGHT, OR WHETHER A COURT CAN PROCEED UNDER THE STATUTE AND SAY THAT THAT IS A CLEARLY-ESTABLISHED LEGAL RIGHT.

I BELIEVE, YOUR HONOR, THAT BOTH STANDARDS ARE APPROPRIATE, AS I HAVE READ THIS COURT'S OPINIONS REGARDING THE STANDARD. IT IS NOT NECESSARILY THAT THERE IS A CASE ON ALL FOURS. IF THE APPELLATE COURT IN THE CIRCUIT CAPACITY WERE TO ESTABLISH A CLEAR LANGUAGE OF STATUTE, I BELIEVE THAT IS A SERIOUS ENOUGH OF AN ISSUE THAT THAT MAY ESTABLISH THE CASE. IT IS IS A BALANCING ACT NOT JUST ABOUT THE QUALITY OR QUANTITY OF ERROR, IF YOU WILL, BUT ALSO THE SERIOUSNESS OF A SITUATION, HOW SERIOUS OF A TRANSGREETINGS OF JUSTICE -- OF A TRANSGRESSION OF JUSTICE WOULD THERE BE TO ALLOW THE CASE TO STAND.

IN THIS CASE, THE KAKLAMANOS CASE, THE DISTRICT COURT CITES TO THE PIP STATUTE, WHICH SAYS BASICALLY THAT, WHEN THE INSURED PRESENTS THE BILL, YOU HAVE 30 DAYS TO PAY IT, AND THEN IT IS OVERDUE AT THAT POINT. BASICALLY GIVING THE INSURED, THEN, THE RIGHT TO PROCEED. SO THAT IS THE CASE LAW THAT THE FIRST DISTRICT, NOT THE CASE LAW BUT THE STATUTORY LAW THAT IS THE FIRST DISTRICT RELIES ON, AND OF COURSE THERE ARE CASES THAT BASICALLY SAY THAT, SO HOW IS THE FIRST DISTRICT WRONG IN THEIR ANALYSIS?

THE FIRST DISTRICT IS INCORRECT IN ITS ANALYSIS, BECAUSE ITS INTERPRETATION OF THE PIP STATUTE WAS INCORRECT. THAT IS AT THE TIME OF THE KAKLAMANOS DECISION WAS ANNOUNCED, THIS COURT HAD NOT YET DECIDED UNITED AUTO VERSUS RODRIGUEZ, AND PRIOR TO THAT DECISION, THE DISTRICT COURTS AND MANY CIRCUIT COURTS, IN APPELLATE CAPACITY, WERE ALL OVER THE PLACE ON WHAT DOES SUBSECTION OVER "OVERDO STATUS QUO "MEAN?

THIS COURT, IN UNITED AUTO VERSUS RODRIGUEZ, SAID THAT ALL THAT SECTION 4 DOES IS TELLS US WHEN THE INSURED BEGINS TO INCUR PENALTY INTEREST. IT SAID YOU MUST START PAYING PENALTY INTEREST AFTER THE 30 DAYS, BUT YOU CAN CONTEST THE BILL AT ANY TIME. THAT IS A DIFFERENT TACK THAN THE INTERPRETATION THAT THE FIRST DISTRICT IS PLACING ON THE PIP STATUTE IN KAKLAMANOS, BECAUSE THE PROCESS FOR THE PIP PAYMENT, AS THIS COURT IS RECOGNIZED IN UNITED AUTO, IS ONE NOT OF UNILATERAL DETERMINATIONS PIE ANYONE AS TO WHAT IS REASONABLE. WHAT HAPPENS IS THE PROVIDER ISSUES A BILL FOR SERVICES. DOES THAT MEAN THAT THE REASONABLE AMOUNT THAT MUST BE PAID? NO.

LET ME ASK YOU THIS QUESTION, SIR. YOU ARE POSING THE ISSUE FROM VARIOUS SIDES. LET US PROPOSE THAT A COUNTY COURT WOULD FORCE AN INSURANCE COMPANY, IN THE BINDING ARBITRATION ON ONE OF THE BILLS, CERTAINLY NOT PROVIDED BY STATUTE, YOU WOULD AGREE, CORRECT?

OKAY.

AND THAT IF THE CIRCUIT COURT UPHELD THAT, WOULD YOU NOT AGREE THAT THAT IS A MISAPPLICATION, BECAUSE THERE IS NOTHING IN THE STATUTE THAT APPLIES, SAYS ANYTHING ABOUT ARBITRATION OF ANY OF THESE CLAIMS.

I BELIEVE ARGUABLY, THAT THAT WOULD BE, THAT COULD BE A PROPRIETARY.

THE STATUTE.

THE STATUTE NO LONGER HAS THAT.

THE LEGAL TRIBUNAL WOULD REVIEW IN THIS CASE THAT THERE IS NO STATUTORY BASIS THAT

WOULD TRANSFORM PIP COVERAGE INTO SOME FORM OF LIABILITY COVERAGE FOR MEDICAL EXPENSES, REQUIRING A LAWSUIT AGAINST AN INSURED, BEFORE THE INSURANCE COMPANY HAS TO DO ANYTHING. WOULD THAT NOT, THEN, BE A DEPARTURE THAT IS SUFFICIENT FOR THE COURT TO LOOK AT, FROM A DEPARTURE FROM THE EXCEPTION REQUIREMENTS OF THAT STATUTORY SCHEME?

IF THE INTERPRETATION VARIED FROM THE STATUTORY LANGUAGE IN SUCH A MANNER, I WOULD AGREE. I WOULD AGREE ABSOLUTELY.

LET ME ASK YOU YOU WHERE IS THE STATUTORY AUTHORITY THAT SAYS PIP COVERAGE REQUIRES A LAWSUIT AGAINST THE INJURED FLORIDA CITIZEN, AND THEN TENDER THAT DEFENSE TO AN INSURANCE COMPANY. WHERE, IN THE STATUTE, DOES IT PROVIDE FOR THAT TYPE OF MECHANISM?

THE STATUTE DOES NOT PROVIDE FOR THAT MECHANISM IN THOSE WORDS, YOUR HONOR. WHAT THE STATUTE SAYS IS THAT INSURORS MUST PROVIDE COVERAGE FOR A LOSS. THE LOSS IS THE MEDICAL EX-PEPS INCURRED THAT IS REASONABLE, RELATED AND NECESSARY TO THE INDIVIDUAL'S CONDITION IN AN AUTO ACCIDENT. THE PIP STATUTE, SUBSECTION ONE OF THE PIP STATUTE, DOES NOT SAY THAT THE INSURANCE COMPANY SHALL INDEMNIFY, SHALL STEP IN AND HOLD HARMLESS T SAYS IT SHALL PAY A LOSS, AND THAT IS THIS DISTINCTION BETWEEN A CONTRACT OF INDEMNITY, WHERE, FOR EXAMPLE UNDER A GENERAL LIABILITY POLICY --

ISN'T THAT WHAT YOU HAVE TURNED THIS INTO? YOU HAVE TURNED THIS INTO A CONTRACT OF INDEMNITY BY ONLY RESPONDING IF YOUR INSURED IS SUED.

NO, YOUR HONOR, WE HAVE NOT, BECAUSE WE HAVE ACTUALLY TREATED IT AS A CONTRACT OF LOSS, TAN IS NOT JUST A QUESTION OF WHETHER THE INSURED IS SUED. THE QUESTION IS WHETHER OR NOT THERE IS ANY DAMAGE THAT HAS BEEN ALLEGED BY THE INSURED THAT THEY HAVE SUFFERED, WHETHER THEY ARE SUED --.

LIKE, SAY, ON A HOMEOWNERS POLICY, IF THE ROOF IS TORN OFF AND THEY HAVEN'T PAID FOR THE ROOF, THEN THERE IS NO SUIT AGAINST THE CARRIER ON THE FIRST PARTY BENEFITS. I GUESS THAT WOULD BE THE LOGICAL CONCLUSION FROM THAT.

THAT IS EXACTLY WHAT WE ARE SAYING HERE, YOUR HONOR. THE ROOFING COMPANY THAT WANTS THEIR BILL PAID, ARGUABLY HAS A DLAM K CLAIM AS A THIRD PARTY -- HAS A CLAIM AS A THIRD PARTY BENEFICIARY, SAYING I AM ENTITLED TO THOSE PROCEEDS.

IF YOU MUST HAVE A SUIT AGAINST THE INSURED BY THE CLAIMANT FOR THE FIRST PARTY BENEFITS, THEN DOESN'T IT STAND FIRST PARTY INSURANCE ON ITS HEAD IN THE STATE OF FLORIDA, PARTICULARLY NO-FAULT.

I DON'T BELIEVE IT DOES, BECAUSE THE KEY HERE IS THAT THERE HAS TO BE A LOSS SUFFERED. THE LOSS HAS NOT BEEN SUFFERED, UNTIL THERE IS EITHER A PAYMENT MADE OR, B, SOME INDICIA THAT THERE IS GOING TO BE A DEMAND FOR PAYMENT.

WHERE IS THE LAW THAT SUPPORTS THAT?

IT IS, THERE IS NO CASE LAW THAT HAS DECIDED THAT POINT PRECISELY, YOUR HONOR.

IS WHERE IS THERE ANY LAW THAT SUPPORTS THAT CONCEPT, THAT YOU HAVE NOT BEEN INJURED OR SUSTAINED A LOSS, AT THE TIME THE ROOF IS TORN OFF YOUR HOME OR AT THE TIME THAT YOU ARE INJURED AND GO TO A HOSPITAL AND INCUR MEDICAL BILLS?

THE PIP STATUTE, ITSELF, PROVIDES FOR THAT, YOUR HONOR, IN SUBSECTION ONE, WHERE IT

SAYS THAT THE COVERAGE IS TO PAY FOR A LOSS WHICH RESULTS FROM AN AUTO ACCIDENT, AND THE PAYMENT IS TO BE MADE IN THE FORM OF THOSE REASONABLE, RELATED AND NECESSARY MEDICAL EXPENSES. THE FACT THAT A CLAIMANT HAD A TREATMENT DOES NOT RENDER THAT REASONABLE, RELATED OR NECESSARY.

DOES IT CHANGE IT, IT IS NOT A LOSS, THEN, ALSO?

IT IS NOT A LOSS, YOU MEAN IT IS CLEAR THAT EITHER, A, THE INSURED IS OUT OF POCKET, HAS PAID IT, OR, B, IS BEING PURSUED FOR THAT PAYMENT.

COUNSEL, LET ME INTERRUPT. MR. MARSHAL, ARE YOU KEEPING THE 15-MINUTE TIME? OKAY. HOW MUCH TIME LEFT ON THE 15 MINUTES? SIX-TENTHS OF A MINUTE. YOU CAN SEE THAT THE BENCH HAS OCCUPIED A GREAT DEAL OF YOUR TIME, AND YOU HAVE LESS THAN A MINUTE LEFT, BEFORE THE 15 MINUTES EXPIRE.

OKAY. THE REAL POINT THAT IS PART AND PARCEL OF WHAT I HAVE BEEN RESPONDING WITH YOUR QUESTION, YOUR HONOR, IS THAT THE PIP PAYMENTS ARE MADE ON A CONTINUUM. A PROVIDER ISSUES A BILL. THE FACT THAT THE BILL IS IN THE AMOUNT OF $1,000 DOESN'T NECESSARILY MEAN THAT THAT IS THE APPROPRIATE AMOUNT UNDER THE PIP STATUTE NEEDS TO BE PAID. THE INSURANCE COMPANY REVIEWS THE BILL AND DETERMINES, BASED UPON ITS VARIOUS CRITERIA, WHAT IS THE REASONABLE AMOUNT. IS IT 1,000 OR IS IT LESS? IF IT DETERMINES THAT THAT AMOUNT IS $800 AND THERE IS NO FURTHER ACTION, THE PROVIDER DOES NOT BILL THE INSURED. DOES NOT COLLECT FROM THE INSURED. THE INSURED DOESN'T PAY ANYTHING. WHY WOULD THERE BE ANY REASON FOR AN ADDITIONAL $200 TO BE PAID?

CHIEF JUSTICE: OKAY. IF YOU WANT TO HAVE THE 5 MINUTES, YOU ARE OUT OF TIME. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM TONY GRIFFITH, AND I REPRESENT VERON CARAVAKIS AND WE HAVE SPLIT OUR TIME FOR REBUTTAL.

CHIEF JUSTICE: YOU HAVE A VERY SOFT VOICE. SPEAK UP INTO THE MICROPHONE.

SORRY.

WOULD YOU BEGIN WITH THE CERTIORARI ISSUE.

YES, SIR.

BECAUSE THIS COURT, IN IVEY, MADE A DETERMINATION IN A PIP CASE, THAT THE DISTRICT COURTS HAVE NEVER BEEN ALLOWED TO REVIEW DECISIONS UNDER THE GUISE OF CERTIORARI JURISDICTION, SIMPLY BECAUSE THEY ARE DISSATISFIED WITH THE RESULT OF THE DECISION OF A CIRCUIT COURT SETING IN AN APPELLATE CAPACITY.

YES, YOUR HONOR.

NOW, MY CONCERN HERE IS THAT, IF IF THIS IS ALLOWED TO PROCEED UNDER CERTIORARI, HOW IS WHAT THE FIRST DISTRICT DID, WHICH IS A CONFLICT CASE WITH THE SECOND DISTRICT, ANYTHING OTHER THAN THE DISTRICT COURT SUBSTITUTING ITS JUDGMENT ON A LEGAL ISSUE FOR THAT OF THE CIRCUIT COURT?

THIS IS NOT A CASE ABOUT COMING UP FOR A SECOND BITE OF THE APPLE, SECOND APPEAL, SECOND CHANCE. THE IVEY CASE WAS VERY, VERY CLEAR, IN NOT ONLY REFERRING TO HEGGS AND ALL OF THE CASES THAT PROCEED BEFORE COMBS AND EDD, ET CETERA. THE IVEY CASE WAS VERY CLEAR THAT WE CAN NOT DO THAT, AND WE ARE NOT HERE, YOUR HONOR, ON THAT

BASIS, AND KAKLAMANOS IN THAT CASE, THAT CASE IS NOT BEFORE THIS COURT ON THAT BASIS, AND THE DCA'S DID NOT DO THAT. THE FIRST DISTRICT COURT OF APPEAL DID NOT DO THAT. THIS IS THE ESSENCE OF IVEY IN THIS CASE RIGHT NOW, WHEN YOU ARE TALKING ABOUT THE MANNER IN WHICH CERT REVIEW CAN BE APPLIED, AND THE LAW THAT YOUR HONORS HAVE ESPOUSED IN IVEY AND YOUR HONORS HAVE SET FORTH FOR YEARS NOW, FOR OVER 100 YEARS, REALLY, THE LAW HAS BEEN EVOLVING, AS HAS BEEN POINTED OUT BY YOUR HONOR, JUSTICE SHAW, I BELIEVE HAD, IN THE EXIT OPINION, THE POINT IS THE ONLY WAY DISTRICT COURTS OF APPEAL HAVE THE RIGHT TO REVIEW CIRCUIT COURTS OF REVIEW IN COUNTY COURT CASES IS IF THERE HAS BEEN A VIOLATION OF AN ESSENTIAL WELL-ESTABLISHED PRINCIPLE OF LAW NOT JUST ESSENTIAL BUT A MISCARRIAGE OF JUSTICE, AND THAT IS EXACTLY WHAT WE ARE DOING HERE. YOUR HONOR ASKED A VERY GOOD POINT FROM THAT, IF I COULD FLOW FROM YOUR HONOR, YOUR HONOR ASKED A VERY GOOD POINT OF HOW DO WE DEAL WITH THE DIFFERENCE OF WHETHER IT CAN BE A STATUTE, IT CAN BE A STATUTE THAT IS VIOLATED, VERSUS WHETHER OR NOT IT CAN BE CASE LAW THAT IS VIOLATED, AND THAT BRINGS US, YOUR HONORS, TO IVEY, AND IF YOU RECALL IN IVEY YOU QUOTED STILL SON AT GREAT LENGTH. WHERE I AM FROM, YOUR HONORS, AND JUDGE ALTENBURN SET FORTH IN VERY GREAT DEDEAL ABOUT THAT ISSUE IN A CASE DESPITE NOVAK, AND YOUR HONORS WILL RECALL THAT NOVAK DEALT WITH OWNERS OF A USED AUTOMOBILE DEALERSHIP AND YOUR HONORS WERE OUT THERE SETTING THE CIRCUIT COURTS AND GIVING THE COURTS SOME GUIDANCE, THE PROBLEM WITH AS HIS HONOR JUDGE ALTENBURN HAS INDICATED IS THAT THE COURTS, EVEN BEFORE AND SINCE NOVAK WERE HAVING A REAL HARD TIME WITH THAT RULE. IT WASN'T REAL CLEAR TO THEM AND THERE WASN'T A CLEARLY-ESTABLISHED PRINCIPLE OF LAW.

DO YOU AGREE THAT, IN BOTH THE SECOND DISTRICT CASE AND THE FIRST DISTRICT CASE THAT, WHAT THE CIRCUIT COURTS DID WAS MAKE A RULING OF LAW? WHAT YOU ARE ASKING THE DISTRICT COURT TO DO IS CORRECT A LEGAL ERROR.

YES, YOUR HONOR.

IS THAT RIGHT?

THAT IS CORRECT.

OKAY. NOW --

YES.

WHAT I WANT TO KNOW IS WHAT DISTINGUISHES THIS LEGAL ERROR THAT YOU ARE COMPLAINING ABOUT IN THE SECOND DISTRICT. WHAT DISTINGUISHES IT AND ALLOWS IT TO BE, NOW, REVIEWED AGAIN AT THE DISTRICT COURT LEVEL?

PERFECT. PERFECT. THE THING THAT DISTINGUISHES, THE FACTOR THAT DISTINGUISHES THIS LEGAL ERROR IS THAT THIS LEGAL ERROR IS SO EGREGIOUS, IT VIOLATES A CLEARLY-ESTABLISHED PRINCIPLE OF LAW, AND THAT BEING IN THIS CASE THE PIP STATUTE, AND THE REASON WE KNOW THAT THE PIP STATUTE IS A WELL-ESTABLISHED PRINCIPLE OF LAW IS YOUR HONORS --

ANY INTERPRETATION OF THE PIP STATUTE IS GOING TO BE SOMETHING THAT YOU NOT ONLY APPEAL TO THE CIRCUIT COURT. YOU APPEAL TO THE DISTRICT COURT.

NO, SIR. I DISAGREE WITH THAT COMPLETELY. I COMPLETELY DISAGREE WITH THAT, YOUR HONOR. IF THERE IS AN ISSUE LIKE WE HAD INSTILL SON, WHERE THE -- IN STILSON, THE LAW IS ALL OVER THE PLACE AND THEY COULDN'T ESTABLISH WHETHER IT WAS KOUFERD COVERED BY THE LEGISLATURE OR NOT. THEY COULDN'T FIGURE IT OUT. IT WAS UNCLEAR. THEN YOU ARE STUCK WITH AN ESTABLISHED LAW. THERE IS NOT A SECOND BITE OF THE APPLE. HOWEVER,

WHAT WE ARE DEALING WITH HERE IS THE STANDARD RUN-OF-THE-MILL CASE WHERE THE ISSUE EW IS NOT COVERED. THE ISSUE IS COVERED BY THE STATUTE, 762.334. THE BILL COMES IN. 30 DAYS PASSES, THE PLAINTIFF HAS STANDING TO SUE.

WHAT IS THE IMPLICATION OF JUSTICE WELLS'S QUESTION AND THEORY HERE THAT THIS DOESN'T TOUCH THAT MANY PEOPLE AND IT IS NOT THAT IMPORTANT AND THERE IS NO NOT GUIDANCE IN THE STATUTE. THERE IS NO INDICATION. IT IS JUST ANOTHER RUN-OF-THE-MILL, DOESN'T HAVE ANY IMPACT IN FLORIDA IS THE IMPLICATION OF THAT QUESTION.

I COMPLETELY MISUNDERSTOOD AND APOLOGY SIZE NO A -- AND APOLOGIZE FOR THAT, YOUR HONOR. I COMPLETELY MISUNDERSTOOD.

WHAT IS THE BIG DEAL WITH THIS CASE?

THE BIG DEAL WITH THIS -- ABOUT THIS CASE IS THIS IS THE WHOLE TRADE-OFF OF PIP, OF WE ARE GOING TO GIVE YOU PROMPT, SPEEDY PAYMENT, BUT YOU ARE GOING TO GIVE UP THE RIGHT TO COLLECT PAIN AND SUFFERING WITHOUT A THRESHOLD, SO THERE IS A TRADE-OFF THERE. NOW, IF WE GUT THE PIP STATUTE BY SAYING THE PLAINTIFF CAN'T PRESENT A CLAIM AGAINST THE DOCTOR, THE PLAINTIFF CAN'T PRESENT A CLAIM AGAINST THE DOCTOR, YOU HAVE COMPLETELY ELIMINATED, ELIMINATED THE PLAINTIFF'S RIGHT TO HAVE ACCESS TO THE PIP STATUTE THERE. IS NO BENEFIT TO THE PIP STATUTE FOR EVERY CITIZEN IN THE STATE OF FLORIDA.

I WOULD TAKE EXCEPTION TO THE CHARACTER OF THE MEANING OF MY QUESTION, BECAUSE WHAT I AM REALLY STRUGGLING WITH IS HOW WE ARE GOING TO MAKE A DETERMINATION AS TO WHEN THERE IS A LEGAL INTERPRETATION OF A STATUTE, REGARDLESS OF WHETHER IT IS A PIP STATUTE OR ANY STATUTE, BY A CIRCUIT COURT APPEAL, AND THE DISTRICT COURT COMES IN. WHAT MAKES ONE ERROR SERIOUS AND THE OTHER ERROR JUST LEGAL ERROR?

PERFECT. HEGGS ADDRESSES THAT, YOUR HONOR. YOU MENTIONED IN HEGGS THAT DID IT DEPRIVE THE PERSON OF THEIR DAY IN COURT. DID THEY HAVE THE ABILITY OTHERWISE TO REMEDY THE SITUATION. THIS SITUATION, WE DON'T HAVE THAT ABILITY. ALSO I WOULD TAKE IT A STEP FURTHER. ALSO HOW MANY PEEP SDEL IT AFFECT? HEGG. IS ONLY ONE EVICTION. -- IS ONLY ONE ACTION. THEY CAN BRING ANOTHER ACTION LATER.

ISN'T THIS A CASE THAT THE COUNTY CIRCUIT OUGHT TO BE CERTIFYING THESE QUESTIONS AND THEN IT CAN BE DEFINED, RATHER THAN TURN CERT INTO SOMETHING IT WASN'T MEANT TO BE?

EXACTLY. IF WE HAD TURNED IT AROUND AND DEALT WITH IT, WE WOULDN'T BE DEALING WITH THE PLAINTIFF'S ISSUE. IF WE COULD GET A COUNTY COURT TO BRING SOMETHING UP AS A MATTER OF GREAT PUBLIC IMPORTANCE BECAUSE WE SAY IT SHOULD BE, THEN GREAT, BUT WE ARE NOT GETTING THAT.

CHIEF JUSTICE: WITH YOUR COLLEAGUE, WE HAVE SPENT ALMOST ALL OF OUR TIME ON THIS ISSUE, SO YOUR COLLEAGUE IS --

I AM SORRY, YOUR HONOR. I APPRECIATE IT.

CHIEF JUSTICE: ALL RIGHT. THIS IS THE FIVE MINUTES NOW. NOW, I AM NOT SURE HOW MUCH TIME DID YOU INTEND TO TAKE?

ON REBUTTAL, JUDGE.

CHIEF JUSTICE: I AM AFRAID OUR SCHEDULE IS GOING AWRY HERE. IF I UNDERSTOOD IT, YOU WERE GOING GOING TO TAKE 15 AND 5.

WE ARE GOING TO TAKE 10 AND 10.

CHIEF JUSTICE: THE 10 MINUTES WASN'T USED YET, WAS IT? ALL RIGHT. BUT YOU WANT TO JUST, YOU CAN HAVE THAT ON THE OTHER TEN. YES. THAT IS WHAT I THOUGHT YOU WERE GOING -- I THOUGHT YOU WERE GOING TO ADDRESS THE MERITS OF THE STATUTORY ISSUE AND INTERPRETATION THAT WE HAVE HERE, AND MY QUESTION TO YOU WAS, YOU KNOW HAD, THAT WITH YOUR COLLEAGUE THERE, WE HAD SPENT 99 PERCENT OF OUR TIME TALKING ABOUT THE CERTIORARI ISSUE AND VERY LITTLE TIME ABOUT THE STATUTORY INTERPRETATION, SO YOU WANT TO HIT THAT A LICK AND THEN YOU CAN LEAVE IT WITH YOUR COLLEAGUE.

THANK YOU VERY MUCH, YOUR HONOR, AND I APPRECIATE. THAT THE STATUTORY ISSUE IS VERY CLEAR F YOU LOOK AT THE RODRIGUEZ CASE AND TO QUOTE THE CONCURRENCE, JUSTICE PARIENTE, YOU HAD MENTIONED IN THE CONCURRENCE ABOUT YOU CAN'T ADD LANGUAGE. YOU CAN'T ADD LANGUAGE TO SOMETHING IF IT IS THERE. WE CAN'T ADD LANGUAGE TO THIS PIP STATUTE. THE STATUTE IS WHAT IT IS, AND ALL YOU CAN DO IS USE SOME STATUTORY CONSTRUCTION TO APPLY IT TO THESE FACTS. THIS ISN'T STATUTORY INTERPRETATION WHERE WE DON'T KNOW WHAT IT IS. WE KNOW WHAT IT IS, BUT WE ARE JUST APPLYING IT TO THESE FACTS.

ARE THE RECORDS IN BOTH CASES CLEAR,? WERE THE INSUREDS BILLED? DID THEY EVER RECEIVE A BILL FOR THE SERVICES?

I AM SORRY, YES. IN THE CARAVAKIS CASE THE BILLS WERE SENT OUT. THE BILLS REMAINED UNPAID, AND THERE WAS NO SUIT BROUGHT BY THE PHYSICIAN.

NOW, IS THERE AN ACTUAL PROVISION IN THE ALLSTATE POLICIES IN BOTH CASES THAT ARE IDENTICAL, THAT --

YES.

> -- WOULD ACTUALLY PREVENT THE INSURED, AFTER RECEIVING A BILL THAT WAS UNPAID, FROM SUING ALLSTATE?

NO. THAT IS WHAT IS AMAZING ABOUT THIS CASE, YOUR HONOR. FROM THE COUNTY COURT TO THE CIRCUIT COURT, IT IS AMAZING. IF YOU READ THE POLICY, IT IS ONLY ONE LITTLE SECTION ON THE MANDATORY ENDORSEMENT. ALL IT SAYS IN THE MANDATORY ENDORSEMENT OF THE ALLSTATE POLICY, AND THEY ARE IDENTICAL, ALSO IDENTICAL TO THE BURGESS CASE, WHICH THE THIRD DCA RULED ON THE MERITS, IT SAYS THAT IF THE INSURED PERSON IS SUED BECAUSE WE REFUSE TO PAY, THEN WE WILL DEFEND YOU. IT NEVER SAYS, THE POLICY NEVER SAYS THAT YOU CAN'T BRING A CLAIM, THAT YOU CAN'T FILE A LAWSUIT, AND THAT MAKES SENSE, BECAUSE THE INSURANCE COMMISSIONER WOULDN'T HAVE ALLOWED THAT POLICY TO GO THROUGH, BECAUSE IT WOULD HAVE BEEN MORE ONEROUS THAN THE STATUTE.

CHIEF JUSTICE: NOW YOU CAN PAUSE. OKAY. COUNSEL. COUNSEL HAS FIVE MINUTES. IS THAT CORRECT, MARSHAL?

FOUR AND-A-HALF. YES.

I LOST A HALF MINUTE.

WOULD YOU ADDRESS THAT LAST ISSUE, WHICH IS THAT IF THERE IS NOT AN EXPRESS PROVISION IN THE INSURANCE POLICY THAT PREVENTS THE INSURED FROM FILING SUIT, AND IF THERE IS ONLY THE PROVISION THAT SAYS THAT, IF THE INSURED IS SUED BY THE MEDICAL PROVIDER, THAT ALLSTATE IS GOING TO COME IN AND THEY WILL PICK THEIR ATTORNEY AND PAY THE DEFENSE COSTS, AND THERE IS NO PROHIBITION IN THE PIP STATUTE TO THE INSURED SUING,

THEN WHAT IS THE, WHAT IS ALLSTATE RELYING ON, TO CLAIM THAT THE INSURED CAN'T BRING THE LAWSUIT, UNDER THE PIP STATUTE? I GUESS I AM HAVING TROUBLE WITH THAT.

WE ARE NOT RELYING ON A POLICY PROVISION, YOUR HONOR. WE ARE RELYING UPON THE GENERAL COMMON LAW PRINCIPLE OF STANDING. AN INSURED, TO BRICK THAT SUIT -- TO BRING THAT SUIT, NEEDS TO HAVE SOME ACTUAL DAMAGE THEY ARE SUING OVER.

MAYBE I WANT TO GO BACK TO THE INITIAL QUESTION, WHERE WE ARE REALLY TALKING ABOUT THE CONCEPT THAT THE COUNTY COURTS, IN THIS CASE, DISMISSED THE ACTION BECAUSE THEY SAID THAT RECEIVING A BILL FOR SERVICES THAT ALLSTATE DIDN'T PAY WAS NOT ENOUGH TO GIVE THEM STANDING TO FILE THE LAWSUIT? THAT IS WHAT --

WELL --

FORGIVE ME, BECAUSE I THINK I ASSUMED THAT THERE WAS A PROVISION IN THE ALLSTATE POLICY THAT WOULD BE, WOULD PREVENT THIS.

THERE IS NO PROVISION IN THE POLICY. WHAT OUR POSITION IS THAT, BECAUSE THESE ARE BILLS UNDER THE PIP STATUTE, THE FACT THAT THE BILL BEING MAILED TO A CLAIMANT DOESN'T CONSTITUTE A DETERMINATION THAT THAT IS AN AMOUNT THAT IS DUE UNDER THE PIP STATUTE. BECAUSE UNDER THE PIP STATUTE, THE ONLY AMOUNTS THAT A PROVIDER CAN CHARGE MUST BE REASONABLE, RELATED AND NECESSARY. THAT BILL GOES OUT. ALLSTATE RECEIVES IT. IN FACT, MOST OF THE TIME THESE BILLS COME DIRECTLY TO THE INSURED. ALLSTATE RECEIVES IT. HE EITHER PAYS IT IN FULL OR DETERMINES THAT PART OR ALL OF IT IS NOT REASONABLE, RELATED AND NECESSARY, AND ISSUES A DETERMINATION AND A CHECK IN WHATEVER AMOUNT THAT THE PROVIDER RECEIVES. NOW, THAT IS THE SITUATION THAT BOTH OF THESE CASES ARE IN. ALLSTATE RESPONDED TO THE BILLS THAT WERE SUBMITTED, AND NO ONE HAS ASSERTED, ALLSTATE, YOU DIDN'T PAY ENOUGH ON IT FROM THE PROVIDER. SEE, THE PROVIDER IS THE ONE WHO SENT OUT THE INITIAL BILL. HE HASN'T COMPLAINED IN EITHER CASE.

IF THE INSURED HAS TO, LIKE, PUT OUT A CREDIT STATEMENT AT A GIVEN TIME, AND IS ASKED WHAT OUTSTANDING CHARGES THEY HAVE, WOULD IT BE YOUR POSITION THAT THE INSURED WOULD NOT HAVE TO LIST THE OUTSTANDING BILL FROM THE MEDICAL PROVIDER AS THEIR UNPAID EXPENSES?

IT WOULD BE MY POSITION, BECAUSE THE INSURANCE COMPANY HAS RESPONDED TO THAT BILL, AND THE PROVIDER HAS ACCEPTED THAT PAYMENT. IF THEY ARE ACCEPTING THAT WITHOUT ANY FURTHER DISPUTE THERE, IS NO FURTHER AMOUNT DUE AND OWING TO THE INSURED.

SO IN THIS THESE CASES, THERE WAS BILLS THAT, AND ALLSTATE PROVIDED PARTIAL PAYMENT. IS THAT --

THERE WERE SOME PARTIAL BILLS PAID IN THE CARAVAKIS CASE AND SOME BILLS WERE NOT PAID IN THE KAKLAMANOS CASE. THERE WAS ONE BILL THAT WAS DEEMED NOT REASONABLE OR NECESSARY.

WOULD YOU DRAW A DISTINCTION BETWEEN WHERE ALLSTATE SAYS, THE BILL WAS FOR $1,000. THE MEDICAL PROVIDER, WE WORKED IT OUT. THEY ARE GOING TO ACCEPT $800 IN FULL SATISFACTION FAX. -SATISFACTION. THAT IS THE CASE THAT THERE MIGHT BE NO STANDING, IF THE BILL IS SATISFIED, BUT IF THEY PAID NOTHING, HOW CAN THAT BE A SITUATION WHERE THE INSURED WOULDN'T BE ABLE TO SUE IN A COURT OF LAW AFTER 30 DAYS?

THIS IS BECAUSE THE INSURANCE COMPANY HAS SENT A STATEMENT, TO THE PROVIDER AND TO THE INSURED, SAYING THIS BILL WAS NOT REASONABLE, RELATED OR NECESSARY, SAYING WE ARE NOT PAYING IT AND THE PROVIDER HAS NOT TAKEN ANY ACTION. THEY ARE NOT SEEKING

COLLECTION. YOUR HONORS, THE KEY HERE AND THE COMMON SENSE THAT I THINK WE NEED TO GET TO --

THAT BRINGS UP THE POINT IN MY MIND AS TO WHAT, YOU HAVE TO WAIT? AN INSURED, THEN, WOULD HAVE TO WAIT UNTIL A PROVIDER, WHO MAY ONLY HAVE $50 THAT IS OUTSTANDING, SENDS ANOTHER BILL OR DECIDES TO INCLUDE THIS PARTICULAR PERSON IN THE LIST OF OTHER PEOPLE, TO GET SOME KIND OF COLLECTION ACTION GOING, SO AN INSURED CAN ONLY DO, YOUR POSITION SEEMS TO BE THAT THE INSURED CAN ONLY GO AGAINST THE INSURANCE COMPANY, IF THERE IS SOME KIND OF ACTION TAKING PLACE, SO YOU HAVE GOT TO WAIT UNTIL YOU ARE SUED BY SOMEONE, HAVE YOUR CREDIT POSSIBLY GO TO THE CREDIT BUREAU, THAT YOU HAVE OUTSTANDING DEBTS, ET CETERA, BEFORE YOU CAN DO ANYTHING UNDER THE PIP STATUTE. THAT IS YOUR POSITION.

THE INSURED, WHO HAS SUFFERED NO IN DISYEAH OF DAMAGE AS OF TODAY, HAS NO CONTROVERSY, BECAUSE THE PROVIDER IS NOT CONTESTING THE BILL. THEREFORE, NO, THAT IS --

HOW LONG --

THE COURTS DO NOT HEAR HYPOTHETICAL, SPECULATIVE CLAIMS. YOUR HONOR'S OWN QUESTION, YOU SAID YOU MIGHT SUFFER THIS DOWN THE ROAD. THAT IS NOT -- THAT IS NOT A REAL HARM THAT HAS OCCURRED TODAY. IF IT HAPPENS, THEN THERE IS A HARM THAT CAN BE ALLEGED, AND THAT IS A DIFFERENT CASE BEFORE THIS MR. CHIEF JUSTICE

WE HAVE TO END ON THAT NOTE. COUNSEL, YOU HAVE THE REMAINING TIME.

MAY IT PLEASE THE COURT. TIM I THINK BRAHM -- TIM I THINK GRAHAM ON WHAT -- TIM INGRAM ON BEHALF OF THE PETITIONER, DINO KAKLAMANOS, AND THE PETITIONER HAS GIVEN US HIS TIME. THIS CASE IN NO UNCERTAIN TERMS IS RODRIGUEZ.

YOU HAVE TO SPEAK UP.

GET NEAR THE MICROPHONE, TOO.

THIS CASE IN NO UNCERTAIN TERMS IS RODRIGUEZ. IN RODRIGUEZ, ALLSTATE ACCUSED THE INSURORS, THE PLAINTIFFS, OF PUTTING IN A PROVISION THAT DIDN'T EXIST IN THE PIP STATUTE. THAT PROVISION WAS THAT THERE HAD TO BE A MEDICAL REPORT OR AN IME CUT OFF OR SOMETHING LIKE THAT, BEFORE THEY COULD CONTEST THE BILLS, AND THIS COURT, JUSTICE SHAW WRITING AN OPINION, SAID THAT, AND JUSTICE PARIENTE CONCURING, SAYS THAT, WAIT A SECOND. TO THE ALLSTATE INSURED. THAT LANGUAGE ISN'T IN SECTION 627.7364-B, AND HIS HONOR JUSTICE SHAW SAID UNDER SECTION 627.7364-B, THAT ALL THERE NEEDS TO BE, THE BILL, PIP HAS BECOME OVERDUE, IF NOT PAID WITHIN 30 DAYS. NOW, ALLSTATE WOULD HAVE THIS COURT SAY THAT THEY HAVE THE RIGHT TO CONTEST, AND WE DON'T DISPUTE THAT THEY HAVE THE RIGHT TO CONTEST, AND, BUT THAT DOESN'T MEAN THAT THEY HAVE THE RIGHT TO AUTOMATICALLY WIN. THAT DOESN'T MEAN THAT THEIR DECISION OF PAYING $800 ON A $1,000 BILL, IS RIGHT. SECTION 627.7364-B IS THE STATUTE THAT CONFERS STANDING. THAT IS THE ONE, BECAUSE IT SAYS PERSONAL INJURY PROTECTION BENEFITS PAID, PURSUANT TO THIS SECTION, SHALL BE OVERDUE, IF NOT PAID WITHIN 30 DAYS AFTER THE INSURED INSUROR IS FURNISHED WRITTEN NOTICE OF THE FACT IN A COVERED LOSS. NOW, JUSTICE LEWIS COMMENTED, IN HIS DISSENT IN RODRIGUEZ, IS, HE SAID, WELL, IT SAYS HOWEVER, THE 30-DAY PERIOD IS EXTENDED, IF THEY HAVE REASONABLE PROOF, AND THE POLICY SAYS "HAS REASONABLE PROOF", JUSTICE LEWIS SAID WAIT A SECOND HERE. WE HAVE, HE SAID THAT THE MAJORITY IS ADDING LANGUAGE TO IT, EVER HAVE REASONABLE PROOF, IF THEY CAN EVER OBTAIN IT, AND SO JUSTICE LEWIS WAS CONCERNED THAT ALLSTATE, IN RODRIGUEZ AND THIS COURT, WAS WHITTLING AWAY THE NOTICE PROVISION. WELL, NOW IF THIS STATUTE, IF THIS SECTION DOESN'T GRANT STANDING TO

A PLAINTIFF INSURED, TO BRING A CAUSE OF ACTION, IF IT DOESN'T, THE PIP STATUTE HAS BEEN GUTTED, AND THERE CAN BE NO PIP SUIT BROUGHT BY AN INSURED AGAINST HIS INSUROR, WHEN HE HASN'T BEEN SUED AND HE HASN'T PAID THE BILL. THAT IS WHAT RODRIGUEZ IS ALL ABOUT. ALLSTATE WANTS YOU TO PUT IN THERE, WELL, THE INSURED HASN'T BEEN SUED. THE INSURED HASN'T PAID THE BILL. IT DOESN'T SAY THAT. AND, I MIGHT ADD, THAT JUSTICE SHAW, IN RODRIGUEZ, JUSTICE WELLS, IN IVEY, SAID THAT THERE HAS BEEN 30 YEARS, 30 YEARS OF THE PIP STATUTE IN THIS STATE, BEING CLEAR, UNAMBIGUOUS, REGARDING THAT ISSUE, REGARDING THE ISSUE OF AN INSURED BRINGING, HAVING THE RIGHT TO BRING A CLAIM. ONE OF THE CASES HAS TO DO WITH --

DOESN'T THIS WHOLE MATTER, THOUGH, REVOLVE AROUND THAT ALLSTATE IS RAISING A STANDING ISSUE, AND I AM CONCERNED THAT WE ARE KIND OF DANCING AROUND HERE, THAT THE QUESTION, REALLY, IS WHETHER THIS CAUSE OF ACTION AGAINST THE, THAT THE PHYSICIAN FOR THE BILL, AND THE REASON IT SHOULD BE PAID BY THE INSURED, IS WHAT JUSTICE QUINCE SAYS, THAT COULD AFFECT THEIR CREDIT RATING, BUT, REALLY, THE FACT IS THEY PROBABLY HAVE ASSIGNED THIS AND THIS STRING OF CASES OUT OF THE FOURTH AND OUT OF THE FIFTH, OR THE SECOND AND THE FIFTH, SAY THAT IF IT IS ASSIGNED, THEN THE INSURED DOESN'T HAVE STANDING.

WHY SHOULD THIS COURT HERE, TODAY, ON THIS CASE IN VERON CARAVAKIS, MAKE THE ASSUMPTION THAT IT WAS PROBABLY ASSIGNED AWAY. I WILL TELL NEW THE CARAVAKIS CASE, IT WAS A DIRECT PAYMENT AUTHORIZATION WITHOUT ASSIGNMENT OF BENEFIT, AND IN THE CARAVAKIS CASE, THE PLAINTIFF INSURED RECEIVED A BILL FOR A BALANCE, AND SAYS YOU KNOW, I HAVE GOT PIP COVERAGE HERE, AND JUSTICE QUINCE PICKED UP THE ISSUE THAT CAN A STATUTE, IN AND OF ITSELF, BE CLEAR, SO AS NOT TO BE SUBJECT TO STATUTORY INTERPRETATION? REMEMBER, STIHLSON IS STATUTORY INTERPRETATION, BUT JUSTICE SHAW CLEARLY SAID IN RODRIGUEZ THAT THERE IS NOTHING TO INTERPRET, IF THE LANGUAGE IS PLAIN. HER HONOR PARIENTE SAID, WELL, IT MIGHT NOT BE THE PERFECT MODEL OF CLARITY IN HER CONCURRING OPINION, BUT AS LONG AS IT IS PLAIN AND SIMPLE AND IT DOESN'T SAY IN THERE THAT YOU HAVE TO PAY THE BILL OR THAT YOU HAVE TO BE SUED, THEN HOW CAN ALLSTATE TAKE AWAY OUR STANDING TO DO IT? NOWHERE IN THERE DOES IT SAY, JUST LIKE IN RODRIGUEZ, NOWHERE IN THERE DOES IT SAY THAT THE PLAINTIFF THAT THE PLAINTIFF HAD TO HAVE AN IME REPORT OR HAD TO HAVE A MEDICAL RECORD. WE STIBT AND ACKNOWLEDGE THAT ALLSTATE HAS THE RIGHT TO -- WE STIPULATE AND ACKNOWLEDGE THAT ALLSTATE HAS THE RIGHT TO CONTEST THE BILL. IT IS A VIOLATION OF PROCEDURAL DUE PROCESS, IF THE CIRCUIT COURT JUST SAYS ALL RIGHT. YOU WIN. PLAINTIFF HASN'T PAID THE BILL AND HASN'T BEEN SUED. NO CIRCUIT COURT CAN POINT TO ANY PROVISION IN THE NO-FAULT STATUTE, THAT SAYS THAT WE NEED THAT, THAT WE NEED TO BE SUED OR WE NEED TO PAY IT, AND YOU KNOW WHAT IS SO BIZARRE ABOUT THIS WHOLE THING? ALLSTATE'S PROVISION, THEIR ENDORSEMENT IN THE POLICY. THEY DON'T EVEN REQUIRE IT! YET THEY RELIED ON IT, AND IF YOU READ VERY CAREFULLY THE BURGESS OPINION, THE BURGESS OPINION SAYS THAT THE ALLSTATE ENDORSEMENT PROVISION DOESN'T SAY THAT THE PLAINTIFF CAN'T SUE. IT SAYS THAT WE HAVE THE RIGHT TO CONTEST THE AMOUNT OF THE BILL, THAT IS THE FIRST PARAGRAPH, AND THE SECOND PARAGRAPH SAYS, IF YOU GET SUED, WE WILL DEFEND AND INDEMNIFY YOU, BUT THE ENDORSEMENT IN THE ENDORSEMENT PROVISION DOESN'T SAY YOU CAN'T SUE. IT DOESN'T SAY THAT. SO THE BURGESS COURT, AND THIS IS AN AMAZING THING, BECAUSE IT GOES BACK TO THE ISSUE OF WHAT CONSTITUTES AN EGREGIOUS ENOUGH DECISION THAT THIS COURT NEEDS TO ADDRESS IT? IN THE CARAVAKIS COURT SECOND DCA, MADE UP OF THREE DIFFERENT JUSTICES, THEY FELT HAM STRUNG. THEY FELT TIED, SAYING THAT THERE ISN'T A CLEARLY-ESTABLISHED PRINCIPLE OF LAW, AND THEY BASE THAT ON THERE NOT BEING A CONTROLLING PRECEDENT. WELL, JUSTICE QUINCE IS RIGHT ON THE MONEY, AND I BELIEVE, I BELIEVE IN DIRECTION, IN ANSWER TO THE QUESTION, IN DIRECT, THAT -- IN DIRECT EXAMINATION, IN ANSWER TO THE QUESTION, IN DIRECT, THAT PETER VALETA SAID, NO, ONE OF THE POINTS WE MAKE IS IT CAN BE CLEAR. THE STATUTE CAN BE CLEAR AND PLAIN, LIKE JUSTICE SHAW SAID IN RODRIGUEZ, AND IT

DOESN'T NEED INTERPRETATION, BUT YET CARAVAKIS THOUGHT THAT IT WAS HAM STRUNG BY STIHLSON TO HAVE A PRECEDENT. IT DIDN'T NEED A PRECEDENT, AND THEN IN BURGESS, WHICH CAME OUT AFTER WE HAD BRIEFED HERE AND I FILED THE NOTICE OF SUPPLEMENTAL AUTHORITY ATTACHING BURGESS, WHICH INCIDENTALLY ALLSTATE NEVER ADDRESSED IN THEIR REPLY BRIEF --

BURGESS WAS A DIRECT APPEAL CASE, WASN'T IT? IT WASN'T A CERT CASE.

YEAH, BUT HERE IS, BUT HERE IS THE ISSUE ON THAT. TWO POINTS ON THAT COMMENT. THE ONLY REASON IT GOT, THE ONLY REASON THE LAWSUIT WAS FILED IN THE CIRCUIT COURT IS BECAUSE THERE WERE OTHER ALLEGATIONS OF FRAUD AND BAD FAITH AND ALL OF THESE OTHER THINGS THAT GOT THEM TO BE ABOVE THE STATUTORY, I MEAN THE JURISDICTIONAL LIMIT OF THE COURT. SO WHAT HAPPENED WAS, WHEN THE SECOND DCA SAID HOW IS IT THAT YOU ARE HERE, WE MADE THESE OTHER ALLEGATIONS, THAT IS WHAT GOT THEM THERE. BURNLES SAID OKAY, NOW IT IS ON DIRECT APPEAL TO US. WE ARE GOING TO ANSWER THE OPINION. WE ARE GOING TO ANSWER THE QUESTION, AND LOOK WHAT THEY SAY. THEY DON'T SAY, THIS IS WHAT IS AMAZING. THEY DON'T SAY THAT THEY NEED A CASE LAW LIKE STIHLSON SAID, A PRECEDENT. HERE IS WHAT THEY SAY, THE LAST THING THAT THEY SAY. THEY SAY THUS AN INSURED'S RIGHT OF ACTION AGAINST HIS PIP AND MEDICAL PAYMENTS INSURE ARISES 30 DAYS AFTER WRITTEN NOTICE OF THE INSUROR THAT REASONABLE AND NECESSARY MEDICAL TREATMENT COVERED BY THE INSUROR HAS RESULTED IN A DEBT. DID THE BURGESS OPINION CITE ONE CASE? NO. WHAT THEY SAY IS THEY SAY "SEE SECTION 627.7364-B, 1997". THAT IS THE PIP STATUTE THAT. IS THE PIP STATUTE.

CHIEF JUSTICE: OKAY. THANK YOU ALL.

THANK YOU, YOUR HONORS. IT WAS A PLEASURE.

CHIEF JUSTICE: WE ARE GOING TO TAKE JUST A BRIEF FIVE-MINUTE RECESS. JUSTICE CANTERO RETURNS TO THE BENCH TO HEAR THE NEXT CASE. THE COURT WILL BE IN RECESS FOR FIVE MINUTES.