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## **Blue Cross & Blue Shield of Florida, Inc. v. Angela Steck**

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALER IS BLUE CROSS & BLUE SHIELD OF FLORIDA VERSUS STECK. MR. GRIMES. MAY IT PLEASE THE COURT. MY NAME IS STEPHEN GRIMES JOINED BY MY CO-COUNSEL ROBERT LANE, REPRESENTING BLUE CROSS & BLUE SHIELD. THIS COURT HAS BEFORE IT A DISCUSSION THAT HOLDS THAT AN INSURANCE POLICY WHICH EXCLUDES COVERAGE FROM INJURIES RESULTING FROM BEING DRUNK, DOES NOT EXCLUDE COVERAGE FOR A WOMAN HAVING DRUNK FIVE TIMES THE LEGAL LIMIT, WHO WALKS IN FRONT OF A CAR, WHICH HOLDS, THEN, THAT THE EXCLUSION IS NOT PLIK ONLY. THERE IS -- IS NOT APPLICABLE. THERE S SHRIMP NO LOGIC IN THAT RESULT.

YOU LEFT OUT THE SENTENCE A PHRASE, THE CONDITION RESULTING FROM YOU BEING DRUNK.

ACCEPT THAT THE POLICY DEFINES CONDITION TO INCLUDE INJURY, SO, IN OTHER WORDS THE CONDITION IS DEFINED IN THE POLICY, TO INCLUDE INJURY, SO THAT IS WHY I USE THE TERM INJURY.

IS IT YOUR POSITION THAT FLORIDA STATUTE OTHER SCHEME IS DISPOSITIVE HERE, THAT YOU CAN'T PUT ANYTHING INTO POLICY THAT COMES BELOW FLORIDA STATUTE OTHER SCHEME?

I THINK, YES, SIR, I THINK THE FLORIDA STATUTE HAS SUPERSEDED WHATEVER EFFECT THE SECOND MASON DECISION HAS, BECAUSE THE RESULT OF THIS CASE CAN ONLY BETRAYED BACK TOHE SECOND MASON DECISION, WHICH WAS 52 YEARS AGO, AND THE LEGISLATION HAS COME IN SINCE THEN, COMPREHENSIVE LEGISLATION, CONCERNING HEALTHCARE COVERAGE.

BUT IT CODIFIES MASON, WOULDN'T YOU SAY?

NO. I SUBMIT THAT IT DOESN'T CODD MILE MASON. I SUBMIT THAT IT WAS COMPREHENSIVE HEALTHCARE COVERAGE TO SET FORTH ALL OF THE PARAMETERS RELATING TO HEALTHCARE COVERAGE. IT USES A TERM THAT, SECTION 627.629 PROVIDES THAT THE CONTRACT MAY INCLUDE THE FOLLOWING PROVISIONS. IN TOX CAN'TS AND -- IN COX WANTS AND NARCOTICS. THE INSURED WILL NOT -- INTOXICANTS OR NARCOTICS. OUR POLICY SAYS THE SAME THING. IT PRACTICALLY TRACKS THE LANGUAGE, AND --

HOW IS THE STATUTE DIFFERENT FROM THE SECOND MASON? I GUESS THAT IS WHAT I AM TRYING TO SEE.

I CANNOT DISTINGUISH THE SECOND -- IN OTHER WORDS I CAN'T -- IF MASON TWO IS STILL APPLICABLE AND IT IS NOT OVERRULED OR WHATEVER OR IGNORED OR WHATEVER, I CAN'T DISTINGUISH THE LANGUAGE OF SECOND MASON. I WOULDN'T TRY TO DO THAT, BECAUSE IT, THE SECOND MASON, I RESPECTFULLY SUBMIT, IS SIMPLY WRONG, BUT THE FACT OF THE MATTER IS THAT THERE HAS BEEN SOMETHING LIKE SEVEN OR EIGHT CASES THAT HAVE, SINCE SECOND MASON, AND AT LEAST THREE OF THEM HAD LANGUAGE EXACTLY LIKE OUR RESULTING-FROM LANGUAGE THAT THE STATUTE TALKS ABOUT, AND THEY HAVE ALL SAID THAT THERE SIMPLY HAS TO BE A CAUSE, YOU HAVE TO HAVE PROOF OF A CAUSAL RELATIONSHIP BETWEEN BEING DRUNK AND THE INJURIES SUSTAINED. SOME OF THEM THEY JUST IGNORE MASON OR THEY KIND OF FUDGE AROUND MASON, AND THE REASON IS THEY REACH THAT CONCLUSION BECAUSE IT IS THE LOGICAL CONCLUSION. WE, COUNSEL ARGUES THAT, WHILE BLUE CROSS COULD HAVE

GOTTEN AROUND THIS BY USING THE TERM "DIRECTLY OR INDIRECTLY" BEING CAUSED AS A RESULT OF DRUNKENNESS, THE FACT OF THE MATTER IS THE STATUTE PRESCRIBES WHAT THE EXCLUSION CAN BE, AND THERE IS ANOTHER STATUTE WE REFER TO IN THE BRIEF, THAT SAYS THAT, IF YOU ARE GOING TO USE ONE OF THESE EXCLUSIONS, YOU HAVE GOT TO USE THE LANGUAGE OF THE EXCLUSION OR COMPARABLE LANGUAGE APPROVED BY THE DEPARTMENT THAT IS NO LESS FAVORABLE TO THE BENEFICIARY THAN THE LANGUAGE OF THE EXCLUSION.

IS THE ONLY ANSWER, THEN, IN YOUR VIEW, FOR YOUR COMPANY TO PREVAIL, THAT WE RECEDE FROM MASON TWO? BECAUSE THE SECOND DISTRICT HAS PRETTY MUCH INDICATED THAT THEY ARE BOUND BY THAT.

YEAH.

THE WAY --

I THINK THEY HAD TO GO THAT. I AGREE.

IS THAT IT? THAT IS THAT WE WOULD RECEDE FROM MASON TWO?

I THINK IN THE COURSE OF A DECISION IN OUR FAVOR, YOU WOULD HAVE TO RECEDE FROM MASON TWO. NOW, I THINK YOU CAN JUSTIFY NOT ONLY BECAUSE IT DEFIES LOGIC BUT ALSO, BECAUSE OF THE INTERVENING STATUTE AND THE EFFECT OF THE STATUTE THAT I WAS TALKING ABOUT. WE COULD NOT HAVE INCLUDED LANGUAGE DIRECTLY OR INDIRECTLY, AS COUNSEL SUGGESTS, UNLESS IT MEANS THE SAME THING.

BUT COME BACK TO THIS ISSUE ABOUT WHETHER OR NOT, IN ORDER TO ACCEPT YOUR PROPOSITION, WHETHER WE WOULD STRO RECEDE FROM MASON TWO -- WHETHER WE WOULD HAVE TO RECEDE FROM MASON TWO.

I THINK YOU WOULD.

IF WE WOULD HAVE TO RECEDE FROM THAT, THEN WOULDN'T THAT BE A CHANGE IN THE LAW, THEN, THAT WOULD ONLY, REALLY, OPERATE PERSPECT I FEEL IN ANY CASE? -- PERSPECTIVELY IN ANY CASE? THAT IS THAT, SINCE EVERYBODY HAS BEEN AWARE OF MASON TWO, WHETHER IT WAS REASONABLE OR UNREASONABLE, AND I CAN CERTAINLY SYMPATHIZE WITH UR PITION, YOU KNOW, READING THE CASE THAT IS PRESENTED HERE AND HAS BEEN PRESENTED IN THOSE OTHER INSTANCES, BUT ISN'T THE SECOND DISTRICT, IN ESSENCE, SAYING THAT EVERYBODY HAS BEEN AWARE OF MASON TWO, AND THAT, REALLY, HAS CONTROLLED THE LEGISLATIVE ENACTMENT THERE, AND THAT THAT IS WHAT THE LAW IS, YOU KNOW, RIGHT NOW. OBVIOUSLY WE HAVE THE AUTHORITY TO DECIDE WHETHER TO RECEDE OR STAY OR DO -- BUT ISN'T THE LAW, UP TO THIS POINT, AND THERE IS NOTHING, REALLY, IN THE STATUTE, TO THE CONTRARY OF MASON TWO, ISN'T THAT, AS YOU SAID, YOU THOUGHT THE SECOND DISTRICT WAS STUCK WITH MACE ONE TWO, SO HOW DOES THIS DO -- WITH MACE ONE TWO -- WITH MASON TWO, SO HOW DOES THIS DO YOUR CLIENT ANY GOOD?

IF THE LAW HAS CHANGED OR IF MASON TWO IS OVER LULD RULED, THE CASE THAT DOES -- IS OVERRULED THE CASE THAT DOES IS PERSPECTIVE, ALSO. IT WOULD INCLUDE OUR CASE. ESSENTIALLY CASES THAT OVERRULE OTHER CASES, THAT IS A CASE THAT IT OVERRULES.

HOW COULD IT INCLUDE YOUR CASE, IF YOUR CASE WAS OPERATING UNDER THE RULES SET DOWN BY MASON TWO? THAT IS WHEN A POLICYHOLDER THAT GOT YOUR LANGUAGE, IF THEY ARE READING IT IN THE CONTEXT OF MASON TWO, THEY WOULD HAVE SAID, WELL, THIS ONLY MEANS IF WE GET A LIVE DISEASE AND DIE FROM IT. OR IF I AM PARAPHRASING MASON TWO AT THAT POINT.

YEAH. EXCEPT THAT THIS CASE IS NOT FINAL, UNTIL YOU ALL RULE, AND IF YOU ALL DETERMINE THAT THE LAW IS NOW THIS, THIS CASE WOULD BE CONTROLLED BY YOUR NEW RULING.

I AM HAVING TROUBLE WITH THAT IF BACK WHEN THIS PROVISION WAS WRITTEN INTO THE POLICY, IT WAS TO BE INTERPRETED, ACCORDING TO THE DECISION IN MASON ONE TWO, SO WOULDN'T WE HAVE POLICY HOLD -- DECISION IN MASON TWO, SO WOULDN'T WE HAVE POLICYHOLDERS THAT ESSENTIALLY WOULD HAVE BEEN DEFRAUDED, IF MASON TWO WAS THE INTERPRETATION WHEN THEY ENTERED INTO THEIR POLICY, AND YOU ARE SAYING THAT THEIR POLICY BE DETERMINED THE WAY MASON TWO DID.

I SUBMIT THAT, WHEN THE LEGISLATURE PASSED THIS STATUTE, THEY DID NOT INTENT INTEPD TO ADOPT -- THEY DID NOT INTEND TO ADOPT MASON TWO.

IS IT YOUR POSITION THAT THEY INTENDED TO OVERRULE MASON TWO?

MY THOUGHT IS THEY DIDN'T INTEND TO DO ANYTHING ABOUT MASON TWO. THAT WAS 30 YEARS AGO, BUT THE FACT OF THE MATTER IS THERE IS AN EXCLUSION HERE FOR DRUNKENNESS. WHY? WHAT IS THE PURPOSE OF HAVING THAT? OBVIOUSLY IT WAS A PUBLIC POLICY DECISION ON THE PART OF THE LEGISLATURE, TO DETERMINE THAT, WHEN SOMEBODY'S OWN ACTS LIKE THIS, YOU ARE NOT GOING TO SPREAD THE COST TO OTHER INSURORS.

THAT IS VERY APPEALING, AND I WANT TO HEAR YOUR ARGUMENT ABOUT THAT, BUT WHAT IS, OBVIOUSLY THE LEGISLATURE HAS THE RIGHT TO OVERTURN MASON TWO. AND WHERE IS THE EVIDENCE THAT THAT WAS DONE?

WE HAVE NOTHING IN THE LEGISLATIVE, THIS STATUTE WAS PASSED THAT ALLOWED THESE EXCLUSION INS '53, FIVE YEARS -- THESE EXCLUSIONS IN '53, FIFTH YEARS LATER I CAN'T --

IT YOUR POSITION, THEN, THAT IN OPPOSING MASON TWO, AS WE READ IT, THAT THAT BE DONE?

YES. IF WE LOOK AT THE STATUTE THAT AUTHORIZE THESE EXCLUSIONS AS WELL AS, SAY, FOR EXAMPLE, THE FELONY EXCLUSION, AND THAT YOU LOOK AND YOU INTERPRET THE LEGISLATIVE INTENT, WHEN THEY PASSED THAT LAW, TO EXCLUDE INJURIES CAUSED BY DRUNKENNESS. WHAT DID THEY MEAN? DID THEY MEAN SIMPLY TOX LOGICAL EFFECTS ON THE BODY OR DID THEY MEAN SOMEBODY THAT DRINKS FIVE TIMES THE LEGAL LIMIT AND GOES OUT AND GETS HURT OR GETS INTO A CAR DRUNK AND HITS A TREE?

SO THAT IS YOUR BOTTOM LINE, ISN'T IT? THE LEGISLATION OVERRULED MASON TWO, NOT THAT WE NEED -- WE DON'T NEED TO RECEDE FROM MASON TWO, IF THE LEGISLATURE OVERRODE IT.

THAT IS TRUE, EXCEPT THAT YOU WOULD SAY, YOU WOULD, IN THE EXPLANATION, YOU WOULD EXPLAIN THAT MASON TWO IS NO LONGER GOOD LAW BECAUSE OF THAT.

MR. GRIMES, COULD YOU HELP ME JUST A LITTLE BIT, TO GO, LET'S STEP BACK ONE STEP, IF WE MAY, TO THE CASE THAT WAS WITH THE FIFTH DISTRICT UPON WHICH YOU ARE BASING YOUR PREMISE FOR JURISDICTION EVEN BEING HERE, AND IT SEEMS TO ME THAT WE ARE LOOKING AT TOTALLY DIFFERENT CLAUSES, AND THE FIFTH DISTRICT CASE, IT TALKED IN TERMS OF INJURY SUSTAINED WHILE UNDER THE INFLUENCE, BUT TODAY WE ARE DEALING WITH, ARE WE NOT, CONDITIONS RESULTING FROM SOMETHING? AREN'T THOSE SIGNIFICANTLY DIFFERENT PHRASES AND CONCEPTS?

WITH ALL DUE RESPECT, WE ARE TALKING ABOUT INJURY RESULTING FROM, BECAUSE THE POLICY DEFINES "CONDITION" AS "INJURY".

AREE STILL TALKING ABOUT RESULTING FROM AS OPPOSED TO SUSTAINED WHILE? AREN'T THOSE

DIFFERENT CONCEPTS?

I SUBMIT THAT THEY ARE NOT, BUT IF I MIGHT, THAT IS NOT THE CASE UPON WHICH A JURISDICTION OF THIS CASE WAS TAKEN.

AMERICAN HERITAGE WAS NOT THE CASE FOR JURISDICTION?

MING WAS THE CASE, BECAUSE AMERICAN HERITAGE CAME UP AFTER -- YOU HAD ALREADY TAKEN JURISDICTION FOR MING, WHICH WAS AN EARLIER CASE, AND THEN AMERICAN HERITAGE CAME UP AND WE SUPPLEMENTED AUTHORITY ON THAT BASIS.

YOU ARE SAYING THE MING CASE WOULD BE THE SAME LANGUAGE BUT THE AMERICAN HERITAGE WOULD BE DIFFERENT.

WHAT THE MING CASE SAYS, LET'S SEE, I HAVE IT RIGHT HERE. IN MING, IT SAYS THAT THIS, IT DID NOT QUOTE THE LANGUAGE OF THE POLICY, BUT IT SAYS THAT, AND I AM, I WROTE THIS DOWN, THE OPINION SAYS THAT MING, THE OPINION OR THE POLICY HERE EXPRESSLY EXCLUDEED INJURY FROM THE INSURED'S BEING DRUNK. AT THAT TIME, THEY COULDN'T HAVE A BROAD -- AT THAT TIME, THAT WAS A BLUE CROSS/BLUE SHIELD POLICY, INCIDENTALLY, IN 1991. I SUGGEST WE COULD IMPLY THAT IT WOULD HAVE THE SAME LANGUAGE, BUT IN ANY EVENT, THEY COULDN'T HAVE, BECAUSE THIS OTHER STATUTE WOULDN'T LET THEM HAVE ANY STRONGER LANGUAGE THAN THAT, AND THAT WAS THE CASE YOU ALREADY HAD TAKEN JURISDICTION ON IN MING. AND THEN THE AMERICAN HERITAGE CAME ALONG THEREAFTER, AND THEY REJECTED THE REASONING IN THE STECK CASE AND CERTIFIED CONFLICT.

WOULD YOU AGREE THAT THERE IS A DIFFERENCE, THOUGH, IN WHETHER IT IS A LIFE INSURANCE POLICY VERSUS WHO IS GOING TO BEAR THE COST OF INJURIES RESULTING, HEALTHCARE COSTS RELATED TO A CONDITION? IN OTHER WORDS THAT THE POLICY REASONS THAT THE STATE MAY WANT A RESTRICTIVE EXCLUSION IS BECAUSE IF THE INSURANCE COMPANY DOESN'T PAY, IT ENDS UP BEING A CHARGE AGAINST --

OTHER POLICYHOLDER? WELL, IT IS TRUE THAT ALL OF THE OTHER CASES WERE HELD, WERE LIFE INSURANCE CASES, AND THIS IS A HEALTH INSURANCE POLICY.

HOW, I JUST D I KNOW YOU ARE IN YOUR REBUTTAL, BUT I GUESS I AM HAVING TROUBLE, IF MASON SAYS "RESULTING FROM", THEN THE LEGISLATURE ENDS UP SAYING THAT THEY ARE GOING TO USE ONE THAT SAYS "IN CONSEQUENCE OF", BUT WHICH I THOUGHT YOU SAID THAT, IF YOU HAD USED LANGUAGE THAT SAID "DIRECTLY OR INDIRECTLY", YOU WOULD BE IN VIOLATION OF THE STATUTE.

IF THEIR ARGUMENT IS THAT WE SHOULD HAVE USED "DIRECTLY OR INDIRECTLY" AND WE WIN BUT WE DIDN'T USE THAT LANGUAGE, I AM SAYING THAT, IF WE COULD USE THAT, THAT IT NECESSARILY MEANS THE SAME AS "RESULTING FROM", BECAUSE THE LEGISLATURE PRECLUDES US FROM ADDING ANY TOUGHER LANGUAGE TO THE INSURED, IF YOU FOLLOW WHAT I AM SAYING. IN OTHER WORDS THERE IS ANOTHER STATUTE THAT SAYS WE CAN'T HAVE ANY LANGUAGE MORE UNFAVORABLE TO THE INSURED THAN THE LANGUAGE THAT THE RESULTING FROM OR EQUIVALENT, AND THEREFORE IF INDIRECTLY OR DIRECTLY, IF WE COULD HAVE USED IT, IT WOULD BE THE EQUIVALENT, AND THEREFORE WE WOULD WIN, ANYWAY. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

ALL RIGHT. I WANT TO MAKE ONE MORE POINT, WITHOUT SPENDING TOO MUCH TIME ON IT, THE, TO ADOPT THE APPELLEE'S POSITION, IT WOULD RESULT IN MAKING THAT FELONY EXCEPTION AS JUST IRRELEVANT, BECAUSE THERE ARE NO FELONIES OR APARTMENTED FELONIES THAT

DIRECTLY CAUSE HEALTHCARE EXPENSES FOR INSURED. INSURED MAY BE SHOT IN THEIR ROBBERY ATTEMPT AND HAVE HEALTHCARE EXPENSES, BUT THEY DON'T RESULT FROM THE EFFECT OF THE ROBBER AND DON'T RESULT IN AFFECTING THE BIOLOGICAL SYSTEM OF THE ROBBER. THAT JUST FURTHER ILLUSTRATES MY ARGUMENT THAT THE INTENT, IF YOU LOOK AT WHAT THE STATUTE, WHAT THE LEGISLATURE INTENDED WHEN THEY PASSED THIS STATUTE, AND SURELY, IF YOU ADOPT THE INTERPRETATION OF THE APPELLEE, THE FELONY EXCLUSION WOULD HAVE NO EFFECT WHATSOEVER AND BOTH FELONY EXCLUSION AND THE DRUNKENNESS EXCLUSION HAS THE SAME RESULTING FIRM LANGUAGE. I WILL RESERVE THE BALANCE. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS CHARLES SCH, WITH SCHROPP, BUELL AND ELLIGETT IN TAMPA, REPRESENTING ANGELA STECK. THERE ARE TWO POSSIBILITIES, 9 FIRST IS THAT THE STATUTE CODIFIED MASON, WHICH IS ACTUALLY WHAT I BELIEVE THE LAW WOULD HAVE PROVIDED, WHEN YOU CONSIDER THE HIGHEST LANGUAGE. BUT LET'S FIRST TALK ABOUT THE ALTERNATIVE, WHICH IS THAT THE LEGISLATURE INTENDED TO CHANGE THIS AND WHAT IT REALLY WANTED TO DO WAS TO ALLOW ACCIDENTAL IN DIRECT INJURIES, ALSO, TO BE EXCLUDED BY THE POLICY. STILL DOESN'T ANSWER THE QUESTION, BECAUSE YOU STILL HAVE THE MASON CASE SAYING THAT THAT LANGUAGE IS AMBIGUOUS, AND THEREFORE BECAUSE ARE TRYING TO DO, IF YOU JUST APPLY IT, IS APPLY A.M. BIG BIGUOUS POLL -- IS APPLY AMBIGUOUS POLICY LANGUAGE, WHICH IS INTERPRETED CONTRARY TO A LINE OF CASES LONGER THAN MY ARM, OUT OF THIS COURT. NOW, THEIR ARGUMENT TO THAT IS OUR HANDS WERE TIED. THERE WAS NOTHING TO DO BECAUSE THERE IS ANOTHER STATUTE THAT SAYS WE CAN'T PROVIDE ANY LANGUAGE LESS FAVORABLE TO THE INSURED. NOT SO. IF IT IS THE SITUATION THAT YOU CAUSE IT, WHICH IS THAT IT IS INTENDED TO APPLY TO IN DIRECT INJURIES, THERE IS NOTHING IN THE WORLD THAT PREVENTS YOU FROM PUTTING THE WORDS "DIRECTLY OR INDIRECTLY "-INTO YOUR POLICY. YOU KNOW, SO TO CLARIFY THE AMBIGUITY, BECAUSE YOU ARE ENTITLED TO USE ANY LANGUAGE YOU WANT, PROVIDED IT IS NOT LESS FAVORABLE TO THE INSURED.

WHAT IS YOUR RESPONSE TO JUST SORT OF THE OVERALL AURA AROUND THIS CASE OF THE SPECTOR OF -- THE SPECTOR OF THE LEGISLATURE BARRING AN INSURANCE COMPANY THAT PROVIDES THESE KINDS OF MEDICAL BENEFITS FROM EXCLUDING DRUNKEN DRIVERS, FOR INSTANCE, THAT, IN ESSENCE, CAUSE THEIR OWN INJURIES? AND SEEMINGLY THE OUTCOME OF THIS CASE OR THE RESULT IN THE SECOND DISTRICT APPEARS TO BE THAT, NO, THE STATE OF FLORIDA, AND THAT LEGISLATURE ACROSS THE STREET, SAYS YOU CAN'T WRITE A PROVISION IN YOUR POLICY THAT SAYS MR. DRUNKEN DRIVER, IF YOU DRINK AND DRIVE OR ARE DRUNK AND YOU CAUSE INJURY TO YOURSELF, THAT THE INSURANCE COMPANY'S HANDS ARE TIED. THEY HAVE TO PROVIDE YOU COVERAGE. THEY CAN'T EXCLUDE YOUR COVERAGE FOR THAT. YOU KNOW, NOW WE ARE INTO THE REALM OF JUST SORT OF A GOOD SENSE. HOW DOES THAT SQUARE WITH WHAT THE LEGISLATURE HAS DONE, AND DOES THAT MAKE ANY GOOD SENSE IN INTERPRETING THIS LEGISLATION?

WELL, LET ME SAY ONE THING IS THAT YOUR ANALOGY IS INTERESTING BECAUSE JUDGE ALTENBURN WROTE A CONCURRING OPINION IN THE SECOND DISCT.

I KNOW.

WHAT HE SAID IS THAT, IF YOU WERE DRIVING DRUNK DRUNK, YOU WOULD GET YOUR MEDICAL BILLS PAID, BECAUSE AN EXCLUSION FOR DRUNKENNESS IS NOT AUTHORIZED IN A PIP POLICY. IT WAS, UNTIL 1982, WHEN THE LEGISLATURE WITHDREW IT. SO WHAT YOU ARE IN A SITUATION, YOU ARE SAYING IS THAT THEY SAY THAT YOU CAN PUT THEM IN HEALTH POLICIES BUT YOU CAN'T PUT THEM IN AUTO POLICIES, WHEN PEOPLE ARE VIOLATING THE LAW BY BEING DRUNK, AS OPPOSED TO SOMEBODY YOU KNOW, WHO, WHILE CERTAINLY WASN'T WEISS TO BE DRUNK, WASN'T VIOLATING THE -- WASN'T WISE TO BE DRUNK, WASN'T VIOLATING THE LAW, AND I THINK THAT GOES TO JUSTICE PARIENTE'S POINT IS THAT HERE YOU HAVE A SITUATION THAT, IF BLUE

CROSS DOESN'T PAY THESE BILLS, ESSENTIALLY THE STATE IS GOING TO BE PAYING THESE BILLS.

ARE WE RESPONSIBLE FOR MAKING SOCIAL POLICY HERE IN THAT REALM? AND I AM REALLY SETTING ASIDE, NOW, THOSE CASES WHERE SOMEBODY WOULD BE A PASSIVE, YOU KNOW, LIKE A PASSENGER IN AN AUTOMOBILE THAT MAYBE THEY WERE DRUNK AND THE CAR WAS IN AN ACCIDENT AND WHATEVER, AND THERE IS, IF THERE WAS AN EXCLUSION THAT BROADLY WOULD INCLUDE PEOPLE PASSIVELY, BUT THAT THAT DIDN'T HAVE ANYTHING TO DO WITH THE INJURIES THEY INCURRED. LET'S PUT THOSE IN A SEPARATE CATEGORY FOR NOW.

I WAS TALKING ABOUT SOMEBODY WHO WAS DRIVING DRUNK. IN OTHER WORDS SOMEBODY WHO IS DRIVING DRUNK CAN'T BE EXCLUDED FROM MEDICAL BENEFITS UNDER PIP. THAT IS WHAT I SAY THAT THAT IS WHY JUDGE ALTENBURN SAYS THAT IS WHY HE THINKS THESE THINGS ARE VERY BAD IDEAS IS THAT IT ISN'T VERY GOOD SOCIAL POLICY. I GUESS WHAT I AM SAYING, JUSTICE ANSTEAD, IS I AM SAYING THAT I DON'T THINK YOU NEED TO GET TO THAT, REGARDLESS OF WHAT THE LEGISLATURE WAS DOING, YOU HAVE THE NEXT QUESTION OF WHAT DO YOU DO IN AN INSURANCE POLICY AND HERE, AN UNANIMOUS PANEL OF THIS COURT FOUND THAT THAT LANGUAGE WAS AMBIGUOUS. IT CAN HAVE MORE THAN ONE MEANING, AND IT IS, BECAUSE THE REASON ROEN I PREPARED THAT POSTER -- THE REASON I PREPARED THAT POSTER ABOUT ALL OF THE EXCLUSIONS AFTER THAT, IS THAT EVERY ONE OF THEM BROADENED THE EXCLUSION TO TAKE HEED OF WHAT MASON SAID, AND IF YOU LOOK AT THE THREE, THE FIRST THREE THAT USE THE WORD "RESULTING", THEY ALL USE THE WORD "DITLY OR INDIRECTLY" RIGHT AFTER T.

WHAT DOES THE STATUTE MEAN?

WHAT I AM SAYING IS I DON'T NEED TO ADDRESS IT. I THINK THAT IT IS PROBABLY A BAD PUBLIC POLICY.

I AM ASKING TO YOU ADDRESS IT. WHAT DOES THE STATUTE MEAN, WHEN IT SAYS YOU ARE HERE BY AUTHORIZED TO HAVE THIS EXCLUSION IN YOUR POLICY AND THE FOLLOWING LANGUAGE, AND THE INSURANCE COMPANY USES EXACTLY THAT LANGUAGE. WHAT DOES THAT MEAN?

JUSTICE ANSTEAD, WHAT I AM SAYING IS THAT I DON'T NECESSARILY KNOW. THERE ARE THREE POSSIBILITIES THERE. IS WHAT JUSTICE SHAW SAID, WHICH I THINK, FRANKLY, IS THE ONE THAT, IF YOU APPLIED THE LAW, THE STRICT LAW, THAT WHERE YOU HAVE INTERPRETED LANGUAGE AND THE LEGISLATURE PASSES A LAW USING THAT EXACT LANGUAGE THAT, THEY ARE INTEND TO DETERMINE TO TAKE HEED OF WHAT YOU DID. THE SECOND IS WHAT YOU POSTED, IS THAT THEY INTENDED TO AW ACCIDENTAL INJURIES TO BE INCLUDED, AND THE THIRD, QUITE INTERESTINGLY, IS THAT THEY ALLOWED IT BUT ONLY WHEN IT WAS THE ONLY CAUSE. IT IS INTERESTING THAT THE ONLY CASE THAT ANYBODY HAS FOUND THAT REALLY, SPECIFICALLY INTERPRETED ONE OF THESE CLAUSES, AND IT WAS THE 1953 VERSION RATHER THAN THE '82, THAT INTERSTATE LIFE VERSUS GAMMONS CASE, HELD THAT THE INTOXICATION EXCLUSION ONLY EXCLUDED ACCIDENTAL INJURIES WHEN THEY WERE THE ONLY CAUSE OF THE INJURY. IN OTHER WORDS IF THERE WERE OTHER CONTRIBUTING CAUSES, IT DIDN'T HAPPEN. HERE, OF COURSE, WE HAVE A LADY WITH 2400 VISION AND --

DO YOU KNOW WHAT HAS OCCURRED IN OTHER STATES WHERE BLUE CROSS/BLUE SHIELD HAS THIS SAME PROVISION IN THEIR POLICY?

E HAVEN'T FOUND ANY BLUE CROSS/BLUE SHIELD ONES THAT SAID THAT. IN FACT, WE KNOW THE MING CASE WAS PROBABLY SOMEWHAT DIFFERENT IN THE WAY IT DESCRIBES FELONY AND DRUNK EXCLUSION.

THERE ARE OTHER CASES THAT ARE VOIDED?

INTERESTINGLY ENOUGH, CASES ACROSS THE COUNTRY ARE ALL OVER THE LOT, JUST LIKE FLORIDA. IN FACT, THEY RANGE FROM THE SITUATION YOU TALKED ABOUT, THE PASSIVE SITUATION WHERE THE PASSENGER DOESN'T HAVE ANYTHING TO DO WITH IT. SOME STATES WOULD HOLD THAT YOU ARE STILL EXCLUDED AND OTHERS DO WHAT MASON DOES AND SOME DO WHAT I SOUGHT THE INTERMEDIATE UNIT HAS TO BE THE ONLY PROXIMATE CAUSE.

SO WE DON'T KNOW OR HAVE TO DECIDE IN THIS CASE WHETHER THE STATUTE WOULD ALLOW BLUE CROSS TO HAVE THE EXCLUSION THAT SAID "DIRECTLY OR INDIRECTLY" BASED ON THE STATUTORY LANGUAGE? YOUR CONTENTION IS WE SHOULD LOOK AT SEE WHETHER THIS CLAUSE IS AMBIGUOUS?

WHAT I AM SAYING IS MASON SAID IT WAS AMBIGUOUS.

WELL, BUT, MASON, AND MAYBE I AM READING THIS AND MAYBE IT IS A DIFFERENCE AND MAYBE IT IS NOT. MASON POLICY SAID "LOSS OR INJURY RESULTING FROM THE USE OF INTOXICATING LIQUORS", MEANING THAT YOU WERE INGESTING SOMETHING AND THEN THERE FOR THERE IS THE USE OF LIQUOR. HERE IT SAYS "RESULTING FROM YOU BEING DRUNK". NOW, NO CONDITION HAS TO RESULT FROM YOU BEING DRUNK, AS OPPOSED TO THE USE OF LIQUOR. YOU JUST BEING DRUNK JUST MEANS THAT SOMETHING HAPPENED AS A RESULT OF IT, SUCH AS WALKING INTO A CAR. WHY ISN'T IT LOGICAL THAT, BY USING THE WORD "YOU BEING DRUNK" AS OPPOSED TO THE USE OF LIQUOR OR NARCOTICS, THAT THAT WAS EXACTLY COVERING A SITUATION LIKE THIS?

WELL, I THINK WHEN YOU TALK ABOUT INTOXICATING LIQUORS, WHAT DOES INTOXICATING MEAN? THAT, TO MEAN, MEANS GETTING DRUNK. IN OTHER WORDS THAT IS THE CLEAR MEANING AN OF THAT. IT JUST DOESN'T -- THE MEANING OF THAT. IT JUST DOESN'T TALK ABOUT THE USEFUL LIQUORS. IT REFERS VERY SPECIFICALLY, TO THE VERY ATTRIBUTE THAT YOU ARE TALKING ABOUT WHEN WE USE THE WORD "BEING DRUNK" AND ALSO I WOULD CONCLUDE THAT BLUE CROSS NEVER INTENDED, AS WITH THAT LANGUAGE OF JUSTICE GRIMES, THAT THAT DOESN'T -- JUSTICE GRIMES, THAT THAT DOESN'T CONTROL. IF YOU WANT TO CHANGE THE LAW, YOU WOULD HAVE TO RECEDE WITH MACE ONE, AND I TAKE IT IF THAT IS THE CASE --

YOU WOULD AGREE WITH MR. GRIMES THAT THAT DOES INCLUDE INJURY? THE POLICY?

NO. ONE OF THE THINGS I WANTED TO TALK ABOUT IS IT IS IMPORTANT HERE THAT THE COURT BE AWARE THAT IT IS OUR POSITION THAT, REGARDLESS OF WHAT YOU DO WITH MASON, THAT YOU SHOULDN'T DEPRIVE MISS STECK OF HER BENEFITS, AND THE REASON FOR THAT IS BECAUSE OF THE DIFFERENCE IN LANGUAGE. IN OTHER WORDS, UNLIKE THE WORD "LOSS" AS USED IN THE STATUTE, THEY USE THE WORD "CONDITION". NOBODY REFERS TO SOMEBODY HAVING THEIR LEG TRAUM ATCALLY AMPUTATED IN AN ACCIDENT AS AVIANDITION.

DOES THE POLICY DEFINE CONDITION?

SURE DOES, BUT THEY NEVER GAVE HER THE POLICY. I THER WORDS THE ONHIG THAT E GOT WAS A NINE-PAGE SUMMARY THAT INCLUDED THE EXCLUSION BUT DOESN'T DEFINE THE WORD "CONDITION" AND DOESN'T GIVE ANY INDICATION THAT IT IS DEFINED IN THE POLICY, AND I CITED TO YOU TWO CASES, THE RUCSS AND THE DAVIS CASE THAT SAYS THAT WHAT I HOPE WOULD BE AN OBVIOUS POSITION THAT YOU CAN'T ENFORCE POLICY PROVISIONS AGAINST AN INSURED THAT YOU DON'T DISCLOSE TO THEM IN THE MATERIALS YOU PROVIDE.

THE SECOND DISTRICT DIDN'T TREAT THAT ISSUE.

IT DIDN'T HAVE TO. IT FOLLOWED MASON, SO IT NEVER HAD TO REACH THAT ISSUE, BUT IF YOU DECIDE TO OVERRULE MASON, YOU NEED TO REACH THAT ISSUE.

HAS THIS COURT EVER SAID, IN RESPECT TO ONE OF THESE HEALTH INSURANCE POLICIES, THAT

THE ONLY WAY THAT AN INSURED IS ON NOTICE OF THE PROVISIONS OF THE POLICY IS THAT THE POLICY, ITSELF, BE PROVIDED TO THE INSURED? I MEAN, THAT IS NOT REGULARLY WHAT IS DONE.

WELL, I MEAN, WHAT THEY HAVE SAID IS, YOU KNOW, IF YOU DON'T SEND THEM THE POLICY, YOU CAN'T RELY ON SOMETHING THAT IS IN THE POLICY AND NOT IN WHAT YOU SEND THEM.

SO NORMALLY THE INSURANCE COMPANIES CANNOT RELY UPON THE POLICY. THEY CAN ONLY RELY ON UPON WHAT IS IN THE PRO ASSURE.

WHAT BOTH KRUPPS AND DAVIS SAID IS THIS IS ESSENTIALLY IN THE HANDS OF THE INSURED. THEY CAN PROVIDE THE POLICY OR MAKE A CERTIFICATE, WHICH IS USUALLY WHAT IS INVOLVED, SPECIFICALLY SPECIFIC SO THAT THE INSURED KNOWS WHAT COVERAGE THEY ARE GETTING. IN OTHER WORDS OTHERWISE YOU HAVE A SITUATION WHERE YOU LOOK UP YOUR POLICY AND SAY THAT IS COVERED, AND THEN YOU SUBMIT A CLAIM AND OH, I AM SORRY, THERE IS A PROVISION IN THE MASTER POLICY THAT WE NEVER GAVE YOU THAT SAYS THERE IS NO COVERAGE FOR THAT. THAT IS THE POINT THAT I THINK JUSTICE ANSTEAD WAS MAKING, MAKES IT ABSOLUTELY UNPREDICT ONLY, AND AS I -- UNPREDICTABLE, AND AS I SAY, BOTH RUCKS AND DAVIS REFER TO. THAT IN VENCOEUR SOUTH VERSUS RHODE ISLAND, WHERE THEY ESTABLISH THAT IS NOT PART OF THE POLICY AND THEY ESTABLISH THAT COVERAGE WASN'T PART OF THE POLICY, THE ONLY THING IN THE POLICY AND CONDITION IS DEFINED. THE ANSWER TO THAT IS TWOFOLD. FIRST OF ALL, REDUCTION AND DAVIS DON'T TURN ON -- FIRST OF ALL, RUCKS AND DAVIS DON'T TURN ON THAT. IF YOU CAN'T SUPPORT IT IN THE POLICY, THEN YOU CAN'T SUPPORT IT, WHICH I THINK IS A PRETTY FUNDAMENTAL POSITION. SECONDLY, IF YOU TALK ABOUT THE OUTLINES OF COVERAGE, IT DOES CONTEMPLATE THAT YOU WILL PROVIDE THE POLICY AS WELL AS THE OUTLINE. IN FACT, THE PURPOSE IS TO GIVE SOMETHING THAT THE PERSON CAN READ RATHER THAN HAVING TO SORT THROUGH THE ENTIRE POLICY. IN FACT, UNDER MOST CIRCUMSTANCES, IT REQUIRES THAT AT OUTLINE OF COVERAGE ACCOMPANY THE POLICY WHEN IT IS DELIVERED, SO TO ARGUE --

DID THIS EXCLUSION THAT THE SECOND DISTRICT RELIES UPON IN ITS OPINION, DID IT, WAS IT IN A BROCHURE OR WAS IT IN THE POLICY ITSELF?

IT WAS IN BOTH, BUT THE POINT IS WHAT JUSTICE GRIMES HAS SAID IS WHAT HE USES TO MAKE IT APPLICABLE TO -- APPLICABLE TO MISS STECK IS THE DEFINITION TO INCLUDE INJURY. THAT WASN'T IN THE SUMMARY, AND THERE WASN'T EVEN ANY INDICATION THAT IT WAS A DEFINED TERM, SO THAT SHE WOULD SAY, HEY, I NEED TO GO AND LOOK AND SEE WHAT THAT MEANS. IN OTHER WORDS IT IMPLIED THAT IT WAS ITS PLAIN AND ORDINARY MEANING, WHICH DOESN'T INCLUDE TRAUMATIC INJURIES.

WAS THE POLICY, ITSELF, IN THE RECORD BELOW?

IT WAS, BUT ONLY BECAUSE YOU KNOW, THEY PUT IT IN, IN AN AFFIDAVIT, AFTER THE LAWSUIT WAS FILED. THE POINT IS THAT, YOU KNOW, WHEN THE POLICY WAS ISSUED, AND WHEN THE ACCIDENT OCCURRED, IS THE INSURED DIDN'T HAVE IT.

IN THE MING CASE, YOU ARE SAYING THAT YOU DON'T KNOW, FROM READING THAT OPINION, AS TO WHAT POLICY LANGUAGE WAS, BUT IT WAS BLUE CROSS & BLUE SHIELD. ARE WE, IN ORDER TO GET CONFLICT DO WE HAVE TO ASSUME THAT IT IS THE SAME LANGUAGE BECAUSE IT IS THE SAME INSUROR, EVEN THOUGH --

ONE OF THE THINGS I SAID IN MY BRIEF IS THE SITUATION HERE, YOUR JURISDICTION DEPENDS ON THE ASSERTION THAT A DECISION THAT RELIED ON A VERY SPECIFIC POLICY LANGUAGE, IN OTHER WORDS INTERPRETED SPECIFIC POLICY LANGUAGE, EXPRESSION PRESLEY AND DIRECTLY -- EXPRESSLY AND DIRECTLY CONFLICTS WITH AN EXCLUSION THAT WE DON'T KNOW WHAT IT SAID, AND JUSTICE GRIMES ADMITTED WE DON'T KNOW WHAT IT SAID, SO BASICALLY, AND IF

YOU, QUOTE, IMPLY, YOU KNOW, THAT IT WAS THE SAME, WHICH I DON'T THINK THAT YOU CAN, ACTUALLY, WHEN YOU READ THE OPINION. IT TALKS ABOUT, I THINK, A COMBINED FELONY AND DRUNKENNESS EXCLUSION, THAT IS STILL ONLY AN IMPLIED CONFLICT, WHICH YOUR CASE LAW SAYS IS NOT A BASIS FOR TAKING JURISDICTION.

NOW, ON THE AMERICAN HERITAGE WHICH CAME ALONG AFTER, NATURALLY, A CERTIFIED CONFLICT, FIRST OF ALL THAT WAS A LIFE INSURANCE POLICY.

YES.

WOULD YOU AGREE THE LANGUAGE THERE, WHICH SAYS LOSS OCCURRED AS RESULT OF INJURIES SUSTAINED WHILE UNDER THE INFLUENCE, THAT THAT IS, AT LEAST IS FAR MORE SPECIFIC LANGUAGE THAT WOULD SEEM TO --

ACTUALLY WHAT ENGLISH DOES IS IT PRESENTS THE SAME SITUATION THAT WAS INVOLVED IN HARRIS. IN OTHER WORDS IT PURPORTS TO STATE PASSENGER SITUATION. IN OTHER WORDS, IF YOU ARE JUST A PASSENGER IN A CAR, IF YOU HAPPEN TO BE DRUNK, OR IF A METORITE FLS ON YOU WHEN YOU HAPPEN TO BE DRUNK, YOU ARE EXCLUDED, AND WHAT HARRIS SAID IS REGARDLESS OF HOW BROAD THE EXCLUSION IS, IN OTHER WORDS WHETHER IT REQUIRES CAUSAL CONNECTION OR NOT, WE ALWAYS INTERPRET THEM AS THOUGH IT REQUIRED A CAUSAL CONNECTION, SO IT REALLY DOESN'T, I THINK, AT ALL INVOLVE THE LANGUAGE THAT IS INVOLVED IN THE MASON CASE.

WELL, IF WE ASSUME THAT EVEN THIS CASE REQUIRES A CAUSAL RELATIONSHIP, THAT SHE STEPPED INTO THE PATH OF THE VEHICLE AS A RESULT OF HER INTOXICATION, WHAT I AM ASKING IS DO YOU SEE THAT THAT LANGUAGE COULD POSSIBLY HAVE BEEN INTERPRETED BY THE FIFTH DISTRICT WAY THAT THEY INTERPRETED IT, WHICH WOULD COVER SOMEBODY WHO WAS DRUNK AND SUSTAINED AN INJURY, WHEREAS THIS LANGUAGE IS DIFFERENT, THE LANGUAGE IN THIS CASE.

ONCE AGAIN, YOU HAVE GOT TO REMEMBER THAT THE STATUTE WOULDN'T APPLY TO THAT BECAUSE THAT IS A LIFE INSURANCE POLICY, AND THE STATUTE APPLIES TO HEALTH INSURANCE POLICIES, SO I DON'T THINK THAT THAT WOULD EVEN E AALID INQUIRY.

LET'S ASSUME THAT THAT LANGUAGE WAS IN THIS POLICY.

NO. THE ANSWER IS THAT THAT LANGUAGE AS I SAY, PURPORTS TO SAY THAT, IF THE METEORITE FALLS ON YOU WHILE YOU ARE DRUNK, YOU DON'T HAVE ANY COVERAGE.

FAR LESS AMBIGUOUS OR IT IS PLAIN THAT COVERS THE SITUATION.

YES. EXACTLY. WHAT HAPPENS -- IS HARRIS AND OTHER CASES CUT THAT BACK TO THE CAUSAL CONNECTION, BUT AS YOU SAY, IT IS FAR LESS AMBIGUOUS THAN THE MASON CASE, AND IN ADDITION AS I SAY, THE MASON, I THINK, CLEARLY WAS CORRECT IN HOLDING THAT LANGUAGE AS AMBIGUOUS. NOT ONLY WAS IT COMPLETE COURT BUT AS I SAY EVERY OTHER COURT THAT HAS USED THE WORD "RESULTING" HAS USED THE WORDS "DIRECTLY OR INDIRECTLY", IN OTHER WORDS TO PICK UP WHETHER IT WAS DIRECTOR IN DIRECT INJURIES, AND THE OTHER THING TO SAY IS TO USE COMMON SENSE. IF SMON ASKED ANGELA STECK HOW DID YOU LOSE YOUR LEG -- IF SOMEONE ASKED ANGLE STECK HOW DID YOU LOSE YOUR LEG, THE ANSWER WOULD BE AS A RESULT OF AN AUTOMOBILE ACCIDENT, NOT AS A RESULT THAT I HAD 2400 VISION.

BUT HER INJURIES MAY HAVE BEEN CAUSED BY HER HAVING BEEN DRUNK.

OH, YES, BUT WHAT WE ARE TALKING ABOUT HERE, WE ARE TALKING ABOUT AN INSURED --

IN LIABILITY TERMS, A THAT IS AS DIRECT ASSURE GOING TO GET, SOMEBODY BEING DRUNK AND WALKING IN THE PATH OF A VEHICLE.

ACCEPT AS I SAY, HERE I THINK THAT IT ALMOST CERTAINLY WOULD BE LIKELY, IF THIS WENT BACK TO A JURY TRIAL THAT, IT WOULD PROBABLY HAVE BEEN APPORTIONED AMONG DIFFERENT THING, TONLY HER DRUNKENNESS BUT SOMEBODY THAT WAS BASICALLYLMOST LEGALLY BLIND AND COULDN'T SEE TO THE SIDE WITHOUT TURNING HER HEAD,S ELL AS BEING INTOXICATED, SO THERE WERE A NUMBER OF CONTRIBUTING CAUSES, AND THAT IS WHY I MENTIONED THE GAMMONS CASE, BECAUSE IF YOU USE THAT, YOU WOULD HAVE A SITUATIN WHERE IT STILL WOULDN'T PRECLUDE COVERAGE.

YOU AGREE THAT WALKING IN FRONT AFTER AUTOMOBILE WOULD BE A DIRECT CAUSE?

THAT IS THE DIRECT CAUSE OF HER INJURY IS WHAT I AM SAYING. IN OTHER WORDS THAT --

HOW DO YOU DIFFERENTIATE THAT FROM LIVE DAMAGE THEN? IS THAT IN DIRECT?

THAT IS EXACTLY THE WY EXPECTED. IN OTHER WORDS, YOU HAVE GOT TO REMEMBER, AND THIS ACTUALLY GOES TO THE FELONY EXCLUSION THAT JUSTICE GRIMES WAS TALKING ABOUT IS IF I GET SHOT DURING A ROBBERY THAT, IS A IMMEDIATE CONSEQUENCE OF THE EXACT ACT THAT IT IS EXCLUDED. IF HAVE AN INTOXICATION EXCLUSION, THOUGH, I HAVE GOT TO COMMIT TWO DIFFERENT ACTS AT TWO DIFFERENT TIMES, IN ORDER TO THAT TO APPLY. I HAVE GOT TO INGEST ALCOHOL OR DRUGS AND AT SOME OTHER TIME DO SOME SPECIFIC ACT THAT RESULTED IN IMPAIRMENT AND RESULTS IN AN INJURY. A FELONY SITUATION, THAT CLEARLY IS A DIRECT EFFECT. IN THE INTOXICATION EXCLUSION THAT, IS AN INDIRECT EFFECT. THE DIRECT EFFECT IS FALLING DOWN OR WALKING IN FRONT OF A CAR IS THE IN DIRECT EFFECT OF DRUGS OR ALCOHOL AT SOME PREVIOUS TIME, SO I WOULD SAY THE SITUATION THAT JUSTICE PARIENTE POSTED IS THE DIRECT RESULT OF WALKING IN FRONT OF A CAR. WE ARE TALKING ABOUT IN DIRECT CONTRIBUTING CAUSES, HER VERY POOR EYESIGHT, THE FACT THAT SHE WAS INTOXICATED, YOU KNOW, AND SO ON DOWN THE LINE, BUT MY POINT IS THAT FOR PURPOSES OF THE EXCLUSION,ISTHERE NOT CONSTRAINT? YOU KNOW, THAT THEY COULDN'T USE DIRECTLY OR INDIRECTLY? BECAUSE IF THEY ARE CORRECT, YOU KNOW THAT, THAT IS WHAT THE LEGISLATURE INTENDED, YOU KNOW, WAS TO BROADEN THIS, IS THEY HAD THE ABSOLUTE RIGHT TO PUT IN THE LANGUAGE THAT EVERYBODY ELSE HAD PUT IN THAT WOULD HAVE CLEARED UP THIS PROBLEM, WOULD NOT HAVE -- MR. CHIEF JUSTICE

THANK YOU, COUNSEL.

THANK YOU VERY MUCH. MR. CHIEF JUSTICE

MR. GRIMES.

I MIGHT POINT OUT THAT IN AMERICAN HERITAGE, THE LANGUAGE WAS "THIS POLICY DOES NOT COVER ANY LOSS INCURRED AS A RESULT OF", WHICH IS THE SAME LANGUAGE.

WHAT ABOUT THIS CONFLICT ISSUE, THAT IS DO WE HAVE JURISDICTION? IS THERE --

YES, SIR, I BELIEVE IF YOU READ THE MING CASE.

WE DON'T KNOW WHAT THE LANGUAGE WAS IN MING.

THEY EXPLAINED THE LANGUAGE IN THE WORDS THAT THE CASE SAID IT EXCLUDEED INJURIES RESULTING FROM DRUNKENNESS. IT DID NOT QUOTE THE POLICY, BUT I SUBMIT THAT IS SUFFICIENT FOR IT, PLUS YOU HAVE NOW GOT A CERTIFIED CONFLICT, WHICH IF TOURP DISMISS THIS ONE, UNLESS YOU DECLINE THAT CERTIFIED CONFLICT, YOU WOULD HAVE IT AGAIN, BUT I

SUBMIT YOU CLEARLY HAVE JURISDICTION, IF YOU MIGHT. IF I COULD RESPOND QUICKLY TO THAT, THIS BUSINESS THAT WAS NOT THE ISSUE IN THE CASE. THAT WAS, THAT REQUIRES AN OUTLINE OF COVERAGE WHICH JUST EXPLAINS CLEARLY WHAT THE COVERAGE IS, BUT IT DOES NOT REQUIRE, IT SAYS LOOK TO THE POLICY, IF YOU ARE GOING TO HAVE A --

WAS THIS PLAINTIFF, IN FACT, SENT A COPY OF THE POLICY, AND DOES IT MATTER? WAS IT UP TO HER TO HAVE TO ASK FOR A COPY OF THE POLICY?

I DON'T KNOW THE ANSWER TO THAT, YOUR HONOR. THAT WAS NOT THE ISSUE. IF SHE SAYS SHE DID NOT RECEIVE THE POLICY, THAT REALLY HAS NOT BEEN EXPLORED AT THE TRIAL COURT LEVEL, BUT THE RUCKS CASE AND THOSE OTHER CASES WERE POLICIES UNDER STATUTES THAT REQUIRED A CERTIFICATE OF INSURANCE WHICH REQUIRED AN EXPLICIT EXPLANATION OF TERMS OF THE POLICY. LOOK TO THE STATUTE THAT REQUIRED THOSE CERTIFICATES. THAT IS DIFFERENT THAN THE STATUTE UNDER THE HEALTHCARE POLICIES, WHICH REQUIRE SIMPLY AN OUTLINE OF THE POLICY.

ARE YOU SUGGESTING THAT THE LAW IS DIFFERENT, THAT IF YOU HAVE A CERTIFICATE OR AN OUTLINE OF COVERAGE, THAT IT NEED NOT COMPLY WITH WHAT IS IN A CONSIDERATE, AND THAT YOU ARE SUPPOSE -- IN A CONTRACT, AND THAT YOU ARE SUPPOSED TO GO TO THE CONTRACT, AND WHAT IS SENT TO THE INSURED IS NOT CONTROLLING? ARE YOU SUGGESTING THAT IS THE FLORIDA LAW?

THAT IS TRUE, WITH RESPECT TO THE OUTLINE OF COVERAGE. IT IS SUPPOSED TO BE A SUMMARY OF THE COVERAGE. IT SAYS RIGHT IN THERE --

WHAT IS THE CASE LAW THAT SAYS THAT IN FLORIDA? BECAUSE I AM NOT AWARE OF THAT.

IF YOU LOOK TO THE TWO STATUTES, IF YOU LOOK AT SECTION 627.565, THOSE ARE THE INSURANCE POLICIES, GROUP POLICIES, IN WHICH RUCKS AND DAVIS WERE INVOLVED. THOSE WERE GROUP POLICIES. 627.565. THEY REQUIRE CERTIFICATES OF INSURANCE WHICH HAVE TO INCLUDE AN EXPLICIT EXPLANATION OF COVERAGE. WHAT MISS STECK HAS IS A POLICY UNDER 627.642, WHICH REQUIRES SIMPLY AN OUTLINE OF THE COVERAGE AND WHICH HAS TO SAY, RIGHT IN THE OUTLINE, THAT THIS IS NOT POLICY LANGUAGE, AND IF YOU, THIS IS ONLY A SUMMARY, AND IF YOU HAVE ANY SPECIFIC QUESTIONS, LOOK TO THE POLICY. I KNOW MY TIME IS UP. IS THERE CASE LAW THAT INTERPRETS THAT SECTION?

THERE HIS CASE LAW THAT INTERPRETS OUTLINE. IT IS THE DISTRICT COURT CASE THAT IS CITED IN OUR BRIEF, FEDERAL DISTRICT COURT CASE, YES, SIR.

BUT NOT A FLORIDA DECISION THEN.

IT IS A FLORIDA DECISION IN FEDERAL COURT.

FEDERAL COURT. NOT A FLORIDA COURT OPINION. > N A FLORIDA COURT DECISION. FEDERAL COURT INTERPRETING FLORIDA LAW. I SUBMIT THAT MASON DIDN'T SAY THE STATUTE WAS AMBIGUOUS, BUT IF IT IS, IT IS THE POLLSTER STAR -- IT IS THE POLL STAR INTERPRETING LEGISLATIVE INTENT, AND I WOULD ASK RHETORICALLY CAN ANYONE REASONABLY BELIEVE THAT WHEN THE LEGISLATURE PUT IN A DRUNKENNESS PROVISION THAT THEY DIDN'T ANTICIPATE OR INTEND THAT IT WOULD NOT APPLY IN A CIRCUMSTANCE LIKE THIS CASE. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.