Peter Johnson v. Nationwide Mutual Ins. Co.

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR ARE THE CONSOLIDATED CASES OF JOHNSON VERSUS NATIONWIDE, STATE FARM VERSUS GONZALEZ.

MAY IT PLEASE THE COURT. MY NAME IS RICHARD WARREN OF THE LAW FIRM OF HARD A MAN AND SWAR -- OF HARDEMAN AND SUAREZ, PA.

I UNDERSTAND HOW YOU ALL HAVE DIVIDED YOUR TIME. PLEASE AND WEAR OF YOUR TIME, SO THAT OTHER PARTIES WILL HAVE AN OPPORTUNITY TO ARGUE.

THE ISSUE IN THESE CONSOLIDATED CASES, IT IS SIMPLY AN ISSUE OF DETERMINING WHETHER THE PRAISER, IN A MATTER OF LAW UNDER A PROPERTY INSURANCE POLICY, CAN ALO DETERMINE WHAT CAUSED THE LOSS. WE BELIEVE THAT THIS COURT ANSWERED THE QUESTION ALREADY, IN THE CASE OF STATE FARM VERSUS LICEA.

ISN'T THE QUESTION OF LICEA REALLY THE QUESTION OF MUUALALITY?

YS. > WE HAVE A CLUSE ND WE, ALSO HAVE AN APPRAISAL CLAUSE, BUT WE ALSO HAVE ONE THAT SAYS WE CAN CHALLENGE THE COVERAGE, AND THAT IS REALLY WHAT THIS COURT IS ADDRESSING IS WHETHER THAT SUBSEQUENT COVERAGE CLAUSE SOMEHOW INVALIDATED HE APPRAISAL CLAUSE. THAT IS THE ONLY ISSUE THAT WAS DECIDED.

THAT'S CORRECT AD THAT IS DICTA AND --

WHERE WOULD YOU BE, IF YOU ACCEPT THAT THAT IS THE HOLDING OF THAT CASE, WHERE DO WE GO FROM THERE? WHAT IS THE SFLAU.

WE BELIEVE THAT THE COURT WAS RIGHT FOR THREE REASONS. WE HAVE TO LOOK, FIRST, AT THE PHRASE "THE AMOUNT OF LOSS".

THEDICTA, IN LIA, SAID THAT IN THE DETERMINATIVE CONCUSION OF THE CAUSE OF LOSS. WHY IS THAT RIGHT? FIRST OF ALL, I THINK WE HAVE TO LOOK AT THE CONTEXT OF THAT PHRASE, "AMOUNT OF LAW." IT COMAPPLIANCES TWO -- IT COMAPPLIANCES TWO PHRASES, COMAMOUNT AND LOSS. YOU GO OUT IN THESE CASES AND DETERMINE THE AMOUNT OF LOSS FOR THE INSURED. FOR INSTANCE YOU HAVE A HURRICANE LOSS. UNDER THEIR THEORY, THE APPRAISER WOULD GO OUT AND DETERMINE EVERYTHING THAT NEEDED REPAIR IN THE HOUSE.

BUT WHY COULDN'T THAT PHRASE JUST AS EASILY INDICATE THAT THEIR AMOUNT OF LOSS COULD, ALSO MEAN THAT WE HAVE ALREADY DETERMINED THERE IS A LOSS. ALL WE WANT YOU TO DO IS DETERMINE THE DOLLAR VALUE OF IT SO DOESN'T THAT PRESENT SOME AMBIGUITY, IN THIS PARTICULAR CONTRACT?

I DON'T BELIEVE IT PRESENTS AN AMBIGUITY, WHEN YOU LOOK AT IT IN THE CONTEXT OF A POLICY. HOW COULD IT MEAN ANYTHING OTHER THAN A LOSS INSURED BY THE POLICY? WHY WOULD THE PLAYERS DO ANYTHING ELSE? -- WHY WOULD THE APPRAISERS DO ANYTHING ELSE? IT WOULD BE SILLY FOR THEM TO DO IT.

ISN'T THAT TRUE, BUT THAT GETS US BACK TO WHY ISN'T IT JUST PLAIN LANGUAGE, AND THAT IS THE AMOUNT OF THE LOSS IS THE AMOUNT OF THE LOSS. IT HAS NOTHING TO DO WITH THE

CAUSATION. THAT IS, LIKE, IF YOU HAVE AN AUTOMOBILE COLLISION COVERAGE, YOU KNOW, THE CULTURE AT LEAST USED TO BE, I DON'T KNOW WHETHER IT STILL IS, ALL RIGHT, INSURED, YOU GO OUT AND GET THREE APPRAISALS OR THREE REPAIR ESTIMATES, AND WE WILL LOOK AT THEM, AND WE WILL DECIDE, YOU KNOW, WHAT WE ARE GOING TO DOBY THAT, AS FAR AS THE AMOUNT OF YOUR LOSS. OF COURSE THERE HAS BEEN A COLLISION OR WHATEVER, AND THERE IS AN ASSUMPTION, YOU KNOW, THAT WE ARE RESPONSIBLE FOR THAT, BUT OF COURSE, AS SOMEBODY NOW SAYS, WELL, WAIT A MINUTE, YOU KNOW, WE ARE NOT REALLY RESPONSIBLE FOR THIS, THE FACT THAT THEY HAD SOMEBODY GO OUT AND GET THREE APPRAISALS IS NOT GOING TO DETERMINE THE FACT OF WHETHER THEY ARE RESPONSIBLE FOR IT, SO I AM CONCERNED THAT THIS JUST APPEARS TO BE AMOUNT OF LOSS IS AMOUNT OF LOSS ONLY. IT HAS NOTHING TO DO WITH THE CAUSE OF THE LOSS, INSOFAR AS THE LANGUAGE IS WRITTEN, AND ISN'T THE ORDINARY USE OF THE WORD "APPRAISAL", INDEED AN APPRAISAL OF DAMAGE, AS OPPOSED TO A CAUSE OF THE DAMAGE, WHICH IS A WHOLE DISTINCT SEPARATE ISSUE?

WELL, I DISAGREE. I THINK AN APPRAISAL, UNDER AN INSURANCE POLICY, CANNOT POSSIBLY BE MADE INTELLIGENTLY, WITHOUT DECIDING THE SCOPE OF THE INSURANCE COVERAGE. MR. CHIEF JUSTICE

I THINK JUSTICE QUINCE HADN'T FINISHED HER QUESTION.

AS A FOLLOW-UP, IF WE ACCEPT YOUR DEFINITION OF WHAT "AMOUNT OF LOSS" MEANS, HAVEN'T WE GOTTEN TO THE POINT, AND YOU TAKE THAT TO ITS LOGICAL CONCLUSION, HAVEN'T WE GOTTEN TO A POINT, THEN, OF WHERE THE PARTIES WHO REQUEST THE APPRAISAL HAS, NOW, TAKEN OVER THE LAWSUIT, AND WHAT IS GOING TO BE LEFT FOR THE PLAINTIFF?

OUR INTERPRETATION OF THE APPRAISAL CLAUSE IS THAT THE APPRAISERS ARE VERY LIMITED, AND I BELEVE THAT IS THE CASE LAW IN FLORIDA, AS TO WHAT THEY CAN DO. IN OUR --

THEY ARE GOING TO DETERMINE THE CAUSE OF THE LOSS, WHAT IS LEFT IN THE ACTUAL LAWSUIT TO DETERMINE?

THERE MAY BE A NUMBER OF ISSUES WHICH HAVE BEEN DEFINED AS COVERAGE DEFENSES, TO INCLUDE IS THERE A POLICY, IS THIS PERSON INSURED, DOES THIS PERSON HAVE AN INSURABLE INTEREST. IS THE POLICY STILL IN EFFECT. THOSE ARE THE PRECONDITIONS TO THE POLICY. THEY ARE, ALSO, THE POST LOSS CONDITIONS OF FRAUD, CONCEALMENT COOPERATION, AND THERE ARE, ALSO EVERY ISSUE INVOLVING A LEGAL INTERPRETATION.

SO WE HAVE THE TRIAL OF THE SUBSIDIARY ISSUES, BUT THE MAIN FOCUS OF THE LAWSUIT IS GOING TO BE DETERMINED IN APPRAISAL.

THE APPRAISAL WILL DETERMINE THE CAUSE AND THE AMOUNT. SOMETIMES THAT IS THE ONLY ISSUE.

AS I UNDERSTAND, THIS IS A CASE IN WHICH THERE WAS A QUESTION AS TO WHETHER A SINKHOLE COVER CAUSED THE DAMAGE.

THAT IS THE CASE. IN OUR CASE, WE HAVE CRACKS IN THE FLOOR.

OKAY. AND THE QUESTION THERE IS WHETHER THE CRACKS WERE SETTLING.

SETTLING OR WEAR AND TEAR OR DEFECTIVE WORKMANSHIP.

AND THERE WAS A DENIAL OF COVERAGE.

YES.

AND SO IN THAT SITUATION, YOUR CONTENTION IS THAT YOU SHOULD BE ABLE TO GO RIGHT INTO COURT BECAUSE THERE IS A DENIAL OF COVERAGE.

NO. YOU CAN REQUEST AN APPRAISAL IN OUR SITUATION, AND AS STATE FARM DID, THE APPRAISERS WENT OUT AND LOOKED AT THE CRACKS, AND THEY AGREED WITH THE CONTENTION THAT THESE CRACKS WERE CAUSED BY WEAR AND TEAR OR SETTLING, AND NOT BY BLASTING.

IN THESE CASES, IS IT THE INSURANCE COMPANY THAT WENT THE APPRAISAL ROUTE?

IN THESE CASES BUT NOT IN ALL CASES. IN OFAR, FOR INSTANCE, THE INSUROR REQUESTED IT.

SO EITHER WAY, IF THIS IS, LET'S SAY, A TERRIBLE DISASTER IN NEW YORK WITH THE WORLD TRADE CENTER, AND THE ISSUE WAS WHETHER THE, THOSE LOSSES WERE COVERED UNDER A PARTICULAR INSURANCE POLICY. THE, AND THERE WAS AN APPRAISAL CLAUSE. THE INSURED WOULD HAVE THE OPTION OF, RATHER THAN GOING THROUGH A LAWSUIT, AND THE TRIAL COURT WOULD HAVE A RIGHT, UNDER THEIR POLICY, IF THEY HAD TO DEMAND AN APPRAISAL AND GO THE APPRAISAL ROUTE?

THEY WOULD HAVE THE RIGHT TO DEMAND AN APPRAISAL OF TWO VERY LIMITED ISSUES, CAUSE OF LOSS AND AMOUNT.

SO WHETHER IT IS COVERED OR NOT, SO THE ISSUE, BUT COVERAGE IS WHAT, AND MAYBE THIS IS WHY WE ARE HAVING TROUBLE. TO ME, THIS IS A SITUATION WHERE THEY, THE INSURANCE COMPANY DENIED COVERAGE, BECAUSE THEY SAID IT WAS ONE CAUSE VERSUS ANOTHER. HOW -- THAT -- WHY ISN'T THAT COVERAGE THEN?

COVERAGE IS NOT NO COVERAGE, AND THIS COURT, IN AIU, MADE THAT POINT IN THE CONTEXT OF A LIABILITY POLICY, IN WHICH THE LOSS IN THAT CASE WAS NOT, WAS EXCLUDED FROM COVERAGE, AND THIS COURT SAID THAT IS NOT A COVERAGE QUESTION. THAT IS NO COVERAGE. NOW, I KNOW IT IS CONFUSING, BECAUSE COVERAGE HAS GOTTEN ALL THESE MEANINGS THAT ARE VERY LIMITED.

WELL, ISN'T THE POINT HERE THAT, IF YOU HAVE GOT -- THIS USUALLY VERY OFTEN COMES UP IN A ROOFING SITUATION. AND IF YOU HAVE GOT PART OF IT THAT IS WEAR AND TEAR AND PART OF IT CAUSED BY HAIL DAMAGE, THEN WHAT YOU ARE TRYING TO FIGURE OUT IS WHAT THE INSURANCE COMPANY IS GOING TO PAY, AND THAT IS THE WAY THAT IT OFTEN COMES UP, AND THAT -- AND SO THE AMOUNT OF THE LOSS THAT THE INSURANCE COMPANY IS GOING TO PAY IS DIFFERENTIAL YEAING BETWEEN NORMAL WEAR AND TEAR AND HAIL DAMAGE. IS THAT --

THAT IS ABSOLUTELY TRUE, AND IF THE APPRAISERS DON'T DO THAT, YOU ARE GOING TO CREATE A VERY CONFUSING AND TIME-CONSUMING SITUATION FOR THE INSURED, WHO GOES OUT AND GETS APPRAISERS TO APPRAISE THE DAMAGE THEN GOES TO COURT, TO LITIGATE OVER WHAT DAMAGE WAS CAUSED BY A COVERED PERIL OR NOT.

WHY SHOULD WE ALLOW ONE PARTICULAR FACTUAL SITUATION, i.e. THE ROOF THING, WHERE WE ARE TALKING ABOUT RARE, WEAR AND TEAR AS OPPOSED TO HAIL DAMAGE OR SOMETHING, WHERE IT APPEARS TO JUST BE PARTICULARLY VENT TO HAVE THE SAME PEOPLE THAT -- PARTICULARLY CONVENIENT TO HAVE SOME PEOPLE WITH EXPERTISE TO ROOFING MAKE THAT EVALUATION, THEN CONTROL THE OUTCOME OF ALL OF THE OTHER MYRIAD OF SITUATIONS THAT COME UP, WHEN YOU HAVE MUCH CLEARER EXAMPLES OF, YOU KNOW, A CLAIM THAT THIS IS THE ONE CAUSE THAT AN APLANE FELOUT OTHE SKY, AS OPPOSED TO, NO, THAT WAS CAUSED FROM TERMITE DAMAGE, AND IT COLORADO A POSITIONED -- AND IT COLLAPSED KIND OF THING, BECAUSE HERE YOU END UP WITH THE APPRAISERS, REALLY, DECIDING, THEN, NOT JUST AMOUNT BUT, AS YOU SAY, THE CAUSE, AND DOESN'T THAT CONFLICT WITH THE ACTUAL WORDS

"AMOUNTOF THE LOSS"?

IF I CAN ONLY GO BACK AND SAY THAT IS NECESSARILY IMPLICATED IN DETERMINING THE AMOUNT OF LOSS, AND I THINK YOUR DISTINCTION IS TALKING ABOUT WHAT GONZALEZ WAS TALKING ABOUT, THE LOSS OF THE WHOLE AS OPPOSED TO, WELL, WE HAVE GOT TO SORT OUT IN A HURRICANE LOSS WHAT WAS CAUSED -- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

I DON'T WANT TO TAKE, BUT THIS ONE LAST QUESTION. WHAT IS THE DIFFERENCE BETWEEN PROVIDING FOR AN ARBITRATOR AND PROVIDING FOR AN APPRAISER?

THE APPRAISAL SHOULD WORK THE WAY IT WORKED IN THIS CASE. THERE ARE NO ATTORNEYS INVOLVED. THE APPRAISERS ARE APPOINTED. THEY ACT TOGETHER, TO GO OUT AND EXAMINE THE LOSS. THEY COME BACK WITH THEIR AWARD. ARBITRATION IS A FORMAL PROCEEDING INVOLVING EVIDENCE. MR. CHIEF JUSTICE

MS. WHITE, ARE YOU GOING -- YOU ARE GOING TO FOLLOW HERE. THANK YOU.

GOOD MORNING. LINDA SPALDING WHITE,CNRD AND SHERER, ON BEHALF OF THE RESPONDENTS, MARIANO AND RENE GONZALEZ. JUDGE LEWIS, YOU ASKED WHERE DO WE GO AFTER LICEA. ALL OF THE INSURANCE COMPANIES SEIZED UPON THE DICTA IN LICEA. BEFORE LICEA, IT WAS UNDISPUTED, AND IT WAS WELL-SETTLED, SINCE AT LEAST 1891, WHEN IT CHOURT -- WHEN THIS COURT DECIDED HANOVER, THAT AN ISSUE OF COVERAGE, WHETHER YOU CALL IT COVERAGE, INSUROR LIABILITY, OR CAUSATION, THAT IS A MATTER FOR THE COURT. IT IS NOT A MATTER FOR THE APPRAISERS. THE COURT GETS TO DECIDE THE LIABILITY OF THE INSURANCE COMPANY. THE APPRAISERS ONLY GET TO DECIDE THE QUESTION. IT WAS A NARROW SCOPE.

ISN'T THAT WHAT JUDGE COPE SAID, IN HIS OPINION IN GONZALEZ GONZALEZ? I MEAN, HE SAYS VERY SIMPLY, THE LYCEA COURT WAS SAYING WHEN THE INSUROR ADMITS THERE IS A COVERED LOSS BUT THERE IS A DISAGREEMENT IN THE AMOUNT OF LOSS, IT IS FOR THE APPRAISERS TO ARRIVE AT THE AMOUNT TO BE PAID. IN THAT CIRCUMSTANCE, THE APPRAISERS TO INSPECT THE PROPERTY AND SORT OUT HOW MUCH IS TO BE PAID ON ACCOUNT OF THE COVERED PERIL. ISN'T THAT RIGHT?

THAT IS A CORRECT STATEMENT, BUT THE PROBLEM THAT WE HAVE IS, WHEN YOU START SPEAKING OF A COVERED PERIL, THAT IS THE REAL QUESTION. IN ALL OF THESE CASES, THE INSURANCE COMPANY IS DENYING COVERAGE. THEY ARE SAYING THAT THE LOSS, EVEN THOUGH IT IS THE OCCURRENCE IS ADMITTED AND THE OCCURRENCE MAY BE A STATEMENT OF FACT, IT WAS A HURRICANE, FIRE, TORNADO, WIND STORM. THEY ARE ADMITTING THAT THERE WAS AN OCCURRENCE. WAS THERE A -- WHAT THEY ARE DISPUTING IS WHETHER THE LAW, SUFFERED AS A RESULT OF THAT OCCURRENCE, IS -- THE LOSS SUFFERED AS A RESULT OF THAT OCCURRENCE IS A COVERED PERIL OR AN EXCLUDED PERIL, AND THAT IS WHAT IS FOR THE COURT TO DETERMINE, NOT THE APPRAISERS. AND THAT WAS -- I AM SO SORRY.

SHOULDN'T THERE BEEN SOME KIND OF RULE ABOUT WHETHER THIS APPRAISAL TAKES PLACE? I MEAN, THIS IS A REQUEST FOR APPRAISAL, PRIOR TO ANY TRIAL ON THE MERITS OF THE --

CORRECT.

SO IF THE INSURANCE COMPANY IS GOING TO DENY LIABILITY TOTALLY, SHOULD YOU EVEN HAVE AN APPRAISAL PROCEEDING?

UNFORTUNATELY THAT IS WHAT THE COURTS, REALLY, HAVE NOT ADDRESSED, AND THAT IS WHERE THE COURTS HAVE TRIED TO ANALOGYIZE IT TO ARBITRATION. BUT THERE IS NOTHING IN

THE POLICY OR ACTUALLY IN THE CASES THAT I HAVE SEEN, THAT SAYS WHICH COMES FIRST. NOW, THERE HAVE BEEN DECISION THAT IS SAY IT IS A MATTER OF DISCRETION OF THE COURT, WHETHER THE COURT DETERMINES COVERAGE FIRST, AND THEN, ONCE THE COURT DETERMINES WHAT IS OR IS NOT A COVERED PERIL, THEN YOU PARTICIPATE IN THE APPRAISAL PROCESS.

BUT DOES IT SEEM -- HOW CAN YOU ACTUALLY, IF APPRAISAL SIMPLY MEANS DETERMINING THE AMOUNT OF LOSS, THE DOLLAR VALUE OF THE LOSS, THEN HOW CAN YOU DO THAT, IF THE INSURANCE COMPANY MAY ULTIMATELY NOT BE LIABLE?

I THINK IT IS BACKWRD. I THINK IT IS PUTTING THE CART BEFORE THE HORSE. SOME OF THE COURTS OUTSIDE OF FLORIDA, HAVE SUGGESTED THAT, AND STATE FARM RELIES UPON. IT IS A MASSACHUSETTS COURT. THERE ARE THREE CASES THAT SAY THAT OBVIOUSLY AN APPRAISER HAS TO LOOK AT THE POLICY, AND INTERPRET THE POLICY, TO COME UP WITH AN AMOUNT OF LOSS. BUT ANY QUESTION AS TO WHETHER THERE IS A COVERED PERIL OR AN EXCLUDED PERIL, CAUSATION COVERAGE, LIABILITY, HOWEVER YOU WANT TO CALL IT, IS NOT FINAL, AND IS SUBJECT TO EXAMINATION BY THE COURT. I MEAN, THAT IS THE PROBLEM. I THINK YOU SHOULD HAVE THE COVERAGE QUESTION FIRST, BEFORE APPRAISAL, BUT THERE IS NOTHING IN THE POLICY THAT SAYS YOU HAVE TO DO IT THAT WAY, AND THIS COURT HASN'T RENDERED A DECISION DETERMINING THAT YOU SHOULD HAVE THE COVERAGE ISSUE DECIDED FIRST BEFORE THE INSUROR, AND THAT IS PART OF THE PROBLEM, IS THE INSURANCE POLICY, THE APPRAISAL PROVISION REQUIRES THE COST OF THE APPRAISERS TO BE SPLIT, SO YOU CAN HAVE AN INSURED SPEND THOUSANDS OF DOLLARS, PARTICIPATING IN AN APPRAISAL PROCESS, ONLY THEN TO HAVE THE INSURANCE COMPANY DENY COVERAGE, AND THEY SPEND ALL THAT MONEY. THEY HAVE A LOSS TO THEIR HOME, WHICH IS THEIR BIGGEST INVESTMENT, AND NOW NOT ONLY HAVE THEY SUSTAINED A LOSS AND INCURRED THOUSANDS OF DOLLARS ON AN APPRAISAL, BUT NOW THEY ARE REFERRING-- ARE RECOVERING NOTHING.

WITH REGARD TO THIS CONCEPT, YEARS AGO THE LAW WAS VERY WELL ESTABLISHED, THAT, ONCE A COURT WOULD ACCEPT JURISDICTION OF THE CASE OF A COVERAGE DISPUTE, THAT THE COURT WOULD RETAIN JURISDICTION AND DECIDE ALL ISSUES, AND THEY WOULD NOT SEND IT BACK TO ARBITRATION. THEY WOULD RETAIN JURISDICTION TO DO THAT. WHAT HAS DEVELOPED, OVER THE YEARS, WITH REGARD TO THAT? HAVE WE GONE AWAY FROM THAT PRINCIPLE, SO THAT NOW ALL OF THE COURTS, THEN, ONCE THE COVERAGE IS DETERMINED, YOU SEND IT BACK TO EITHER THE ARBITRATORS OR THE APPRAISERS?

THAT HAS OCCURRED IN COURTS. IT HAS GONE -- WHAT GENERALLY HAPPENS AND WHAT HAPPENED IN OUR CASE IS THE INSURANCE COMPANY DENIED COVERAGE, OUTRIGHT DENIED COVERAGE, EVEN THOUGH THERE WAS A CLAIM IT WAS A COVERED LOSS, BLASTING, BUT THEY SAID IT IS NOT BLASTING. WE ARE DENYING COVERAGE. THE GONZALEZES FILED SUIT FOR AN INTERPRETATION, DECLARATORY RELIEF, BREACH OF THE POLICY, AND ONLY AFTER THE INSUROR FILED SUIT, I AM SORRY, THE INSURED FILED SUIT, DOES THE INSURANCE COMPANY DEMAND APPRAISAL. YOU KNOW, IF YOU LOOK AT THIS COURT'S DECISION IN BLACKSHEAR, THEY SHOULDN'T BE ALLOWED TO DO. THAT UNDER BLACKSHEAR, THE INSURANCE COMPANY HAS A GOOD FAITH OBLIGATION TO ONLY INVOKE THE APPRAISAL CLAUSE WHEN THEY ADMIT THERE IS LIABILITY UNDER THE POLICY. THAT DIDN'T OCCUR HERE. THEY HAVE TO ADMIT LIABILITY, UNDER THE POLICY, IN ORDER TO INVOKE THAT CLAUSE, AND THEN THERE IT IS ONLY THE AMOUNT OF DAMAGE. I MEAN, THAT IS PART OF THE PROBLEM HERE, IS THE INSURANCE COMPANIES, NOW, ARE NOT INVOKING IT IN GOOD FAITH. THEY ARE DENYING COVERAGE AND THEN INVOKING THE POLICY, ALL THE WHILE SAYING THAT IT IS NOT A COVERED LOSS. WELL, WHETHER IT IS A COVERED LOSS OR NOT, THAT IS A COVERAGE QUESTION. THAT REQUIRES THE INTERPRETATION OF THE POLICY. THOSE HAVE ALWAYS BEEN EXCLUSIVELY JUDICIAL QUESTIONS, NOT A QUESTION --

WHERE DOES YOUR CASE STAND, AFTER THE THIRD DISTRICT'S OPINION?

WHAT HAPPENED AFTER THE THIRD DISTRICT IS IT WAS --

I UNDERSTAND THAT YOU ARE HERE, BUT FROM THE STANDPOINT THE THIRD DISTRICT REVERSED THE TRIAL COURT'S DETERMINATION --

RIGHT AND SAID THAT THE COURT HAD TO DETERMINE THE COVERAGE.

COVERAGE. AND SO THE, YOU ARE SATISFIED WITH THAT, CORRECT?

ONCE THERE IS A COVERAGE DETERMINATION, THEN YOU CAN APPRAISE THE AMOUNT OF LOSS, BECAUSE THEN YOU KNOW WHAT IS COVERED, WHAT IS NOT COVERED, AND WHAT THE APPARARETO GOUT AND EVALUATE. WHAT IS THE CASH VALUE OF THE LOSS? THE DAMAGE TO HEPPERTY THAT IS COVERED. THAT IS, YOU KOW, THEY ARONLY TO DETERMINE THE AMOUNT OF THE DAMAGE. THEY ARE NOT SUPPOSED TO DECIDE, WELL, BECAUSE THEY CAN ALWAYS COME P WITH A ZERO. BUT WE ARE GOING TO DECIDE THAT TAT IS WEAR AND TEAR. THAT IS THEIR USUAL MOTTO IS WEAR AND TEAR, NOT BLASTING R NOT A HURRICANE.

DOESN'T A FAIR INTERPRETATION OF WHAT "AMOUNT OF LOSS" IS INTENDED TO MEAN IN THESE POLICIES, THE AMOUNT INSURANCE COMPANIES ARE GOING TO PAY?

IS THE AMOUNT, I AM SORRY?

THE INSURANCE COMPANY IS REQUIRED TO PAY.

ONLY AFTER IT IS DETERMINED THE LIABILITY. WHAT THE COURTS SAY, AND THIS COURT HAS SAID IN HANOVER AND SANTATISTOBOND AND IN BLACKSHEAR IS THAT ONCE THE COURT DERS LIABILITY, IT THAT COMPORTS WITH THE AMOUNT -- DETERMINES THE LIABILITY, IF THAT COMPORTS WITH THE AMOUNT THAT THE APPRAISERS SAY IS FINAL, THEN THAT IS DETERMINED. BUT IF THE COURTS DETERMINE THAT THERE IS LIABILITY AND THERE IS COVERAGE OR THERE IS NOT COVERAGE, ONLY THAT WOULD BE BINDING, ONCE THE LIABILITY IS DETERMINED UNDER THE POLICY, BY THE COURT. THEN THE AMOUNT FIXED BY THE APPRAISERS CAN BE BINDING BUT NOT UNTIL. AND I WOULD LIKE TO DRAW THE COURT'S ATTENTION. THE STATES THAT HAVE ADDRESSED THIS OUTSIDE FLORIDA, SEVERAL SUPREME COURTS, SEVERAL DISTRICT COURTS, HAVE ALL FOUND THAT THE ISSUE OF CAUSATION, LIABILITY, AND COVERAGE, IS FORTH COURTS. IT IS NOT FOR THE APPRAISERS. BECAUSE THE FACT OFTHE LEGL CAUSATION OF THE AMAGE, NOT THE FACT THAT AN OCCURRENCE OCCURRED BUT THE LEGAL CAUSATION OF THE LOSS IS A QUESTION FOR THE COURT. IIS A MATTER OF CONTRACT, INTERPRETATI. IT IS A COVERAGE QUESTION. IT IS NOT SIMPLY AN AMOUNT OF LOSS THAT IS FOR THE APPRAISERS, AND I WOULD REQUEST THAT YOU AFFIRM BOTH THE FIRST DISTRICT AND THIRD DISTRICT'S DECISIONS. YOU REVERSE THE SECOND DISTRICT DECISION, AND RECEDE, I WOULD RESPECTFULLY REQUEST THAT YOU RECEDE FROM THAT COMMENT THAT WAS INCLUDED IN LYCEA, BECAUSE THAT ONE SENTENCE IS WHAT ALL OF THE INSURANCE COMPANIES HE SEIZED UPON, TO NOW CREATE THE ACT THAT, OH, NOW WE HAVE AN ISSUE. NOW WE CANY THE APPRAISERS CAN DETERMINE COVERAGE. THIS SIMY NOT THE STATE OF THE LAW. MR. CHEF USICE

THANK YOU, MS. WITE.

GOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS GEORGE VAKA. I REPRESENT THE JOHNSONS, WITH THE LAW FIRM OF VAA, LARSO AND JHNSN IN TMPA. YOU SAID WHY GO THROUH THE PPRAIL OESS, IF THE INURANCE COMANIES CAN TKE THE POSITIN THAT TERE IS NO COVERAGE, AND ARE THERE SOME CASES OUT THERE THAT ANSWER TT I BELIEE IS WHAT THE QUESTION TO BE, AND I BELIEVE THE BLACKSHEAR CASE IN 1984 DOES ANSWER THE QUESTIN, AND IF YOU READ THAT IN THE CONTEXT OF LYCEA AND OTHERS IN ALL OF THE CASES, I BELIEVE THAT YOU WILL COME TO THE CONCLUSION THAT, IF IT IS THE INSURANCE COMPANY THAT

REQUESTS THE APPRAISAL, BLACKSHEAR SAYS THAT THEY HAVE GOT TO ADMIT THAT ALL WE ARE TALKING ABOUT IS THE AMOUNT OF LOSS, NOT THAT THERE IS NO COVERAGE, BECAUSE IF WE ARE TALKING ABOUT THAT THERE IS NO COVERAGE, THEN WHAT YOU ARE SUBJECTING THE INSURED TO IS A SPECULATIVE APPRAISAL, AND WE ARE NOT GOING TO SUBJECT THE INSURED TO A PURELY SPECULATIVE APPRAISAL. IF YOU LOOK AT LYCEA, THE COURT WAS LOOKING AT A RETAINED RIGHTS PROVISION.

WHAT WOULD BE THE RESULT, IF THE APPRAISAL PROCESS GOES FORWARD, THE APPRAISAL DECIDES THAT THIS WAS NOT A COVERED LOSS. IN THIS CASE, I BELIEVE IT WAS EARTH MOVEMENT VERSUS BLASTING.

SINKHOLE. IN THE GONZALEZ CASE, IT WAS EARTH MOVEMENT VERSUS BLASTING. IN MY CASE IT WAS SINKHOLE VERSUS EARTH MOVEMENT.

OKAY. AND THE ONE THAT IS NOT THE COVERED LOSS IS THE CAUSE OF THIS, AND SO THE APPRAISAL AMOUNT IS ZERO. THEN WHAT HAPPENS TO THE PLAINTIFF'S CASE?

WELL, IN GONZALEZ, WHAT HAPPENED WAS THEY APPLIED TO THE COURT AND SAID THAT WAS AN INAPPROPRIATE DETERMINATION FOR THE APPRAISERS TO MAKE. THAT IS REALLY AN ISSUE OF COVERAGE, AND THE THIRD DISTRICT AGREED. IN MY CASE, THE JUDGE SAID DETERMINING WHETHER THERE IS A COVERED CAUSE OF LOSS OR EXCLUDE EXCLUDED CAUSE OF LOSS IS AN EXCLUDED COVERAGE THAT I HAVE JURISDICTION TO MAKE. THE THIRD DISTRICT DISAGREED WITH HIM AND SAID, NO, THAT IS SOMETHING FOR THE APPRAISERS TO DO, SO IT ACTUALLY DEPENDS ON WHICH DISTRICT YOU ARE IN.

SO THE LOWER COURT WOULD HAVE ENTERED A JUDGMENT, BASED ON UPON WHAT WENT ON IN THE APPRAISAL PROCESS? YOUR CASE?

IN MY CASE, WHAT THE JUDGE WAS GOING TO DO WAS DETERMINE WHETHER OR NOT THE DAMAGE WAS CAUSED BY A SINKHOLE. AND IF THE DAMAGE WAS CAUSED BY SINKHOLE, THE JUDGE SAID THAT HE WOULD, THEN,, SEND THE ISSUE OF HOW MUCH DOES THE INSURANCE COMPANY HAVE TO PAY, TO AN APPRAISAL PANEL, AND WE WOULD SUBMIT TO YOU THAT THE WHOLE REASON WHY THERE IS A RETAINED RIGHTS PROVISIN TE POLICY, IS SO THAT THE INSURANCE COMPANY DOESN'T GET STUCK IN THE POSITION OF SAYING WE WAIVED OUR RIGHTS TO DENY COVERAGE WHEN THE INSURED FIRST DEMANDS APPRAISAL. THAT IS WHY THIS COURT WROTE LYCEA, IN TERMS OF THE DEFENSE THAT THE INSURANCE COMPANY CAN MAKE WHEN THE INSURED DEMANDS APPRAISAL. AND THAT CASE SAID WAIT A MINUTE YOU CAN'T DEMAND APPRAISAL, INSURED, AND THEN SAY THERE IS A RIGHT TO COVERAGE OR NO RIGHT TO COVERAGE, BECAUSE IF YOU DOING THAT, YOU ARE FORCING THE INSURED INTO A SPECULATIVE APPRAISAL.

IF YOU EXPAND THAT, AND IT LOOKS LIKE IT WOULD BE THE LAW, THAT IF THERE IS A WAY THAT THE INSURED HAS TO PAY FOR THE, OR SPLIT THE COST OF THE APPRAISAL, AND THERE IS A COVERAGE ISSUE THAT CAN'T BE RESOLVED IN THE COURT, AND YET HOW DO THEY, DOES THAT EVER GET RESOLVED IN THE COURT, THEN, IF THE APPRAISERS SAY, NO, THIS IS NOT COVERED AT ALL, THE WAY THE LAW, IN THE SECOND DISTRICT IS, THAT WOULD STAY?

YOU ARE DONE. YOU ARE TOAST, FOR THE INSURED.

SOUGHT ISSUE OF GETTING ATTORNEYS FEES, IF YOU LITIGATE SUCCESSFULLY ON COVERAGE, IF THE APPRAISERS FOUND THERE WAS COVERAGE, THERE WOULD BE NO ATTORNEYS FEES. YOU WOULD STILL -- I MEAN FOUND THAT IT WAS COVERED, THEY WOULD STILL, THE INSURED WOULD BE IN A POSITION OF STILLSPTTING THE COSTS AND NOT GETTING ATTORNEYS FEES.

I AM GLAD YOU ADDRESSED THAT, JUSTICE PARIENTE, BECAUSE THAT WAS ONE OF THE THINGS

THAT I WAS GOING TO GET TO, WHICH WAS THE PUBLIC POLICY CONCERNS THAT I THINK THIS COURT NEEDS TO CONSIDER, IN DETERMINING WHETHER TO EXCEPT THE INDUSTRY'S POSITION OR TO EXCEPT THE POSITION THAT WE HAVE ADVOCATED. I THINK IT IS IMPORTANT TO REMEMBER THESE ARE HOMEOWNERS POLICIES, AND FOR THE VAST MAJORITY OF CITIZENS NOT ONLY IN THIS STATE BUT THROUGHOUT THIS COUNTRY, THE BIGGEST SINGLE PURCHASE THEY ARE EVER GOING TO MAKE AND THE MOST SIGNIFICANT ASSET THEY WILL EVER OWN IS THEIR HOME. NOW, A MAJORITY OF THE PEOPLE CAN'T JUST AFFORD TO STROKE A CHECK FOR THAT. THEY HAVE TO GO TO A LENDER AND OBTAIN A MORTGAGE AND SIGN A NOTE, AGREEING TO PAY, OVER TIME THE COST OF THIS. AND THAT LENDER, AS PART OF THE TRANSACTION, IS GOING TO REQUIRE THAT THERE BE SOME HAZARD INSURANCE ON THE PROPERTY, AND ALMOST, TO ME, I HAVE NEVER SEEN AN INSTANCE WHERE THE HOMEOWNER GETS TO NEGOTIATE THE TERMS OF THE CONTRACT. IT IS THIS FORM OF POLICY, AND THIS AMOUNT OF PREMIUM. THE INSURED, LET'S SAY, SUSTAINS A LOSS LIKE MY CLIENTS DID. THEY HAVE A SINKHOLE, AND PART OF THAT HOME, EVEN THOUGH THIS WAS A RENTAL HOME FOR THEM, BUT PART OF THAT HOME IS DAMAGED. THEIR POLICY WOULD SUGGEST, MANY DO, THAT IT IS AN ALL-RISK POLICY, OR IT IS A SPECIFIED CAUSE OF LOSS, LIKE NATIONWIDE'S POLICY IN THIS CASE, AND THEY LIST ALL THE SPECIFIED CAUSES OF LOSS THAT ARE COVERED UNDER THE POLICY. UNDER THE POSITION THAT THE URANCE COMPANIES ARE ADVOCATING, THEY CAN COME IN. THEY CAN MAKE A LOW BALL OFFER ON HOW MUCH IT IS TO SETTLE THIS TO SETTLE THE CLAIM. IF THE INSURED SAYS WAIT A MINUTE. THAT IS NOT FAIR. LET'S SAY THAT IS HALF OF WHAT MY GUY TELLS ME IT IS GOING TO COST TO FIX THIS STRUCTURE. WELL, AT THAT POINT, THE INSURED FACES A CHOICE. DO I GO THROUGH APPRAISAL OR DO I ACCEPT THE OFFER? IF THE INSURED CHOOSES THE APPRAISAL, THEY NOW HAVE ATTORNEYS FEES AND COSTS, NO MATTER WHAT. THEY, THEN, GET TO GO IN FRONT OF AN APPRAISAL PANEL THAT MAY OR MAY NOT EXCEPT EVIDENCE. THEY MAY NEVER EVER GET A CHANCE TO HAVE THEIR SIDE EXPLAINED OR THEIR EXPERT COME TESTIFY. THERE IS NO RUIRETS CONCERNING NEUTRALITY OF THE APPRAISERS, AND IN FACT MANY APPRAISERS HAVE A FINANCIAL BIAS BECAUSE THEY ARE HOPING TO GET THE INSURANCE WORK THAT THEY ARE PRAISING FOR. IF THE INSUREDS LOSE, THERE -- THAT THEY ARE APPRAISING FOR. IF THEINSUREDSLOSE, HEY ARE OUT THE COST OF THE ASSET, WHICH IS THE MAJOR DAMAGE.

BECAUSE ARE ADVOCATING IS TO WRE THESE APPRAISAL CLAUSES OUT OF THESE POLICIES.

NOT AT ALL, YOUR HONOR. WHAT I AM SUGGESTING AND WHAT I WANT TO MAKE SURE I FOCUS IN ON, IS THAT, IF THE INSURED GOES THROUGH AND COMPLIES WITH ALL OF THOSE POLICY CONDITIONS, AND LET'S ASSUME, ON A POSITIVE NOTE THE INSURED WINS. THE APPRAISERS SAY, YES, YOU ARE RIGHT. THE AMOUNT OF THE DAMAGE IS WHAT YOUR GUY SAID IT WAS. THE INSURED HAS STILL LOST. IT IS A LOSE/LOSE SITUATION. THE INSURED HAS STILL LOST ATTORNEYS FEES AND COSTS. UNDER THE FIFTH DISTRICT DECISION IN L.A. BINSKY, THERE IS NO ATTORNEYS FEES FOR THE COST OF APPRAISAL, SO THE INSURED, NOW, IS IN THE HOLE, NO MATTER WHAT, AND WHERE THEY FIND THEMSELVES, IF WE GO BACK TO WHAT IS THE INSURED GOING TO DO, WHEN FACED WITH THAT LOW BALL OFFER, WHERE THEY FIND THEMSELVES IS WITH THE HEEL OF THE INSURANCE COMPANY BOOT PLACED SQUARELY ON THEIR ADAMS APPLE. THEY ARE AT SUCH A FINANCIAL DISADVANTAGE AND THERE IS SUCH A GREAT OPPORTUNITY FOR ABUSE OF THAT PROCESS, BY THE INDUSTRY, BECAUSE IT SHIFTS THE ENTIRE AMOUNT OF THE ECONOMIC LOSS AND THE RISK OF THAT LOSS, TO THE INSURED. MR. CHIEF JUSTICE

YOU ARE IN YOUR BRITTLE TIME.

THANK YOU. I WILL SAVE WHATEVER TIME I HAVE. MR. CHIEF JUSTICE

THANK YOU. MR. PAR US-.

-- MR. RUSS ON O.

-- MR. RUSSO.

MAY IT PLEASE THE COURT. I AM ANTHONY RUSSO FOR NATIONWIDE. I WOULD LIKE TO RESPOND TO THE REMARKS OF MY PONENT AND SOME -- OPPONENT AND SOME QUESTIONS THAT WERE RAISED.

WHEN YOU SAY ARBITRATION FOR APPRAISAL, IS THAT THE SAME D OF PROCEEDINGS?

THEY ARE NOT THE SAME KIND OF PROCEEDINGS, ALTHOUGH THE LAW OF FLORIDA HAS EQUATED THEM, AND THAT CREATES PROBLEMS, YOUR HONOR. AS RESPONDENT IN THIS PROCEEDINGS, WE ARE TASKED IN THE ROLE OF DEFENDING THE SECOND DISTRICT'S APPLICATION OF THE RULE OF LYCEA TO THE FACTS OF THIS PARTICULAR CASE, SO OUR POSITION, AS LITIGANTS, IS THE SECOND DISTRICT WAS CORRECT. LYCEA ENUNCIATEED A CLEAR RULE. THE PLAIN LANGUAGE OF THAT CASE SAID CAUSATION IS A DETERMINATION MADE BY APPRAISERS.

ARE YOU ASSERTING THAT CAUSATION WAS THE ISSUE THAT THIS COURT ADDRESSED IN LYCEA?

NO.

THE ISSUE IS, REALLY, DOES AN INSURANCE COMPANY WAIVE RIGHTS IN A LEGAL ACTION, IF THEY GO THROUGH WITH AN APPRAISAL THAT HAS BEEN DEMAND BY AN INSURED. WASN'T THAT REALLY THE ISSUE?

YES. WE ARE NOT IN THE POSITION, THOUGH, AS LITIGANTS, TO QUESTION THE PLAIN STATEMENT FOUND IN A SUPREME COURT COURT -- IN A SUPREME COURT CASE, WHEN WE APPLY A POLICY AND GO INTO COURT, AND THE DCA --

YOU ARE CLEAR THAT IS NOT THE CASE IN THIS CASE. IS YOUR UNDERSTANDING THAT WAS OR WAS NOT THE ISSUE?

NO. ITS IS -- IT IS NOT PLAIN ADDRESSED BUT IT IS CLEARLY STATED IN THE FACTS OF THE OPINION. THAT BEING SAID --

WHAT IS WRONG WITH THE PROPOSITION THAT IS THE RULE OF LAW THAT APPLIES, IS IF THE INSURED DEMANN MANDZ AN APPRAISAL, THAT INSURANCE -- DEMANDS AN APPRAISAL, AND THE INSURANCE COMPANY CAN GO INTO COURT AND SAY AND THAT IS OF THE EARLIER CASE THAT SAYS, THAT ONCE YOU DEMAND IT, THAT YOU ARE CONCEDING THAT THERE IS A COVERED LOSS. WHAT IS WRONG WITH APPROACHING THE SITUATION, WHICH THE LAW SEEMS TO BE, AND WHY, IF THAT IS NOT THE LAW, WHY IS IT NOT THE LAW, AND WHAT IS WRONG WITH IT, IF YOU SAY THAT IS THE LAW AND THERE IS SOMETHING WRONG WITH IT.

COVERAGE ISSUES SHOULD BE DECIDED IN COURT, YOUR HONOR. NATIONWIDE DESIRES TO HAVE COVERAGE ISSUES DECIDEDED IN COURT. AND, IN FACT, ASIDE FROM OUR POSITION OF, IN LITIGATION, THAT RATHER AS A PRINCIPLE INSUROR OF PROPERTY IN THE STATE OF FLORIDA WE WOULD RATHER HAVE CAUSATION ISSUES DECIDEDED IN COURT. WE DON'T HAVE THAT OPTION, WHEN THERE IS A LINE IN LYCEA THAT SAYS CAUSATION IS FOR APPRAISERS TO DETERMINE.

YOUR COLE EAG, I THINK, CANDIDLY -- YOUR COLLEAGUE, I THINK, CANDIDLY SAID THAT THAT WAS A DIFFERENT SET OF QUESTIONS EVEN THOUGH YOU SEEM TO BE TAKING A DIFFERENT TACT THAT THE ISSUES IN THAT CASE WERE NOT THE ISSUES THAT WE ARE ADDRESSING NOW. WOULD YOU ANSWER JUDGE LEWIS'S QUESTION HEAD O HE HAS ASKED YOU WHETHER OR NOT THIS PROPOSITION THAT, IF THE INSURANCE COMPANY IS GOING TO DEMAND, OKAY, THE APPRAISAL PROCESS, THEN WHY CAN'T WE TAKE THAT AS A CONCESSION THAT THERE IS RESPONSIBILITY BY THAT INSURANCE COMPANY FOR WHATEVER THAT LOSS IS AS DETERMINED BY THE APPRAISERS,

AS FAR AS THE AMOUNT OF IT. WOULD YOU ANSWER THAT QUESTION.

TWO THINGS NEED TO BE DONE.

IN OTHER WORDS YOUR ANSWER, TO BEGIN WITH IS, NO, THAT THAT SHOULD NOT BE THE RULE.

CORRECT.

AND WHY NOT?

BECAUSE THAT IS NOT WHAT THE APPRAISAL CLAUSE SAYS. THE APPRAISAL CLAUSE SAYS THAT THE AMOUNT OF LOSS IS DETERMINED IN APPRAISAL, AND WHEN YOU TRY TO DETERMINE, I AM TRYING TO UNDERSTAND YOUR QUESTION, YOUR HONOR.

WHAT RELEVANCY IS THERE, IF, TO HAVING AN APPRAISAL, IF, IN THE MEANTIME, THE INSURANCE COMPANY IS SAYING, NOW, WE DON'T ADMIT THAT WE ARE RESPONSIBLE FOR THE LOSS THAT THE APPRAISERS ARE GOING TO DETERMINE THE AMOUNT OF, BUT WE JUST WANT TO HAVE YOU GO THROUGH THAT ANYWAY. AND SO --

IT CAUSES THE INSURANCE COMPANIES TO GO TO APPRAISAL, TOO, YOUR HONOR.

SO WHY WOULD THE INSURANCE COMPANY NOT BE BOUND TO INVOKE THAT, ONLY WHEN THEY ARE AGREE AGREEING THAT THERE IS A LOSS THAT THEY ARE RESPONSIBLE FOR. WHY GO THROUGH THIS EXPENSIVE --

THEY ARE BOUND, AS TO THE AMOUNT OF LOSS, AND THE QUESTION IS WHAT IS ENCOMPASSED IN THAT DETERMINATION. THEY HAVE AGREED TO BE BOUND. THAT PROVISION IS IN THERE, TO REDUCE LITIGATION AND TO AVOID EXPENSES, AND THEY HAVE AGREED TO BE BOUND, BUT THEY DON'T, WHY YOU FIRST HAVE TO GO THROUGH, THEN, A DETERMINE NATION AS TO ALL THESE OTHER COVERAGE ISSUES, BEFORE YOU GET TO APPRAISAL, SO YOU WILL RUIN THE EFFECTIVENESS --

LIKE TALKING ABOUT THE ORDERLY PROCESSING OF A CLAIM IN COURT. ORDINARILY YOU HAVE THE JURY INSTRUCTED, YOU KNOW, FIRST YOU SHOULD DETERMINE THE LIABILITY, AND OBVIOUSLY IF YOU DETERMINE THE LIABILITY ONE WAY, YOU ARE NOT EVEN GOING TO GO ON AND GO THROUGH THIS OTHER PROCESS.

IT IS DIFFERENT IN DIFFERENT CASES, YOUR HONOR. SOME CASES IT MAKES SENSE TO GO DIRECTLY TO THE COVERAGE ISSUE, THE CONTRACTUAL ISSUE, THE ONE THAT HAS NOTHING TO DO WITH THE FACTS OF THE LOSS. OTHER TIMES, IT MAKES SENSE TO GO TO APPRAISAL FIRST, ESPECIALLY WHEN THE DAMAGES ARE LOW AND THE PARTIES MAY BE ABLE TO BEND ONE WAY OR ANOTHER ON COVERAGE, IF THEY KNOW WHERE THEY STAND ON THE AMOUNT OF LOSS AND I WILL TELL YOU I HAVE BEEN DOING IT FOR TEN YEARSMENT EVERY CASE IS DIF-- YEARS. EVERY CASE IS DIFFERENT -- FOR TEN YEARS. EVERY CASE IS DIFFERENT, AND I WOULD SUGGEST A HARD AND FAST RULE, AS CAME OUT IN THE BLACKSHEAR CASE, THAT WOULD NOT BE A RULE NOT CONTRARY TO THE APPRAISAL CLAUSE.

WHY?

BECAUSE CARRIERS WOULD NOT GO TO APPRAISAL, IF IT MEANT THAT THEY HAVE TO WAIVE ALL COVERAGE DEFENSES. AND WHAT HAPPENS IS IT PUTS TOO MUCH INTO THE APPRAISAL, AND THAT IS THE PROBLEM WITH THE STATE OF THE LAW RIGHT NOW.

IT IS NOT A QUESTION OF GOING. IT IS A QUESTION OF WHO INSISTS OR DEMANDS THAT IT TAKE PLACE. IT SEEMS TO WE ARE GETTING TO THAT, IF AN INSURED FORCES YOU INTO THAT POSTURE,

THATU STILL ARE FULLY PROTECTED, BUT IF YOU FORCE AND DEMAND AND SAY I AM NOT GOING TO PAY YOU A THING. THIS IS NOT COVERED. BUT I AM GOING TO FORCE YOU INTO THE APPRAISAL, THAT IS WHAT I AM MISSING, AND PLEASE HELP ME UNDERSTAND THAT, BECAUSE I WANT TO UNDERSTAND BECAUSE ARE SUGGESTING.

IT WOULD NOT HELP THE JOHNSONS IN THIS CASE, IF THEY DEMANDED APPRAISAL, BECAUSE THERE STILL WOULD BE COVERAGE ISSUES, AND THEY WOULD HAVE TWO PROCEEDINGS THAT THEY WOULD NEED TO ATTEND, AND IB LEAVE THAT WOULD BE THE CASE IN THE GONZALEZ CASE AS WELL.

BUT YOU ARE ADVOCATING TWO PROCEEDINGS. I WANT TO MAKE SURE I UNDERSTAND NATIONWIDE'S POSITION, AS A LARGE CARRIER OF PROPERTY.

THANK YOU.

INSURANCE IN THIS STATE. WHAT ARE YOU SAYING YOUR POLICY PROVIDED, REGARDLESS OF WHETHER WE SAID SOMETHING IN DICTA AND LYCE A OR WHATEVER WE SAID 50 YEARS AGO? WHAT IS, DOES THE POLICY PROVIDE?

ASIDE FROM OUR POSITION OF LITIGANT, YOUR HONOR, WHICH IS THAT LYCEA RULE WAS CLEAR AND WOULD APPLY, CAUSATION IS A COVERAGE ISSUE. CAUSATION REQUIRES THE APPLICATION OF LANGUAGE FROM A CONTRACT TO THE FACTS OF A CASE.

SO YOU JUST, YOU THINK THAT, IN ANY CASE, IT IS COVERAGE IS AN ISSUE, WE SHOULDN'T HAVE TO DECIDE IN THIS CASE WHETHER, WHO IT IS THAT DEMANDS THE APPRAISAL OR NOT, COVERAGE, AS AN ISSUE, SHOULD BE IN COURT, AND IF THE INSURANCE COMPANY LOSES, THEY PAY THE ATTORNEYS FEES. CORRECT?

CORRECT. AND THE CAUSATION IS A COVERAGE ISSUE. > ANTHAT IS HOW NATIONWIDE HAS ALWAYS ASSUMED THEIR APPRAISAL CLAUSE?

THEY CANNOT ASSUME THAT, IN LIGHT OF THE LANGUAGE IN LYCEA, WHICH IS CAUSATION.

REGARDLESS OF LYCEA, THEY ARE THE ONES WRITING THE CONTRACT, TO DISCUSS WHETHER THE APPRAISAL WAS THE AMOUNT OF THE LOSS, NOT WHETHER IT WAS CAUSED BY ONE THING OR ANOTHER.

RESPECTFULLY, YOUR HONOR, THE APPRAISAL CLAUSE WAS WRITTEN 150 YEARS AGO, AND IT IS USED BY HUNDREDS OF CARRIERS IN 50 STATES. THAT APPRAISAL CLAUSE HAS LITERALLY ENTERED THE PUBLIC DOMAIN. WE DIDN'T WRITE IT, AND IT MEANS WHAT THE COURTS ACROSS THIS COUNTRY SAY IT MEANS.

WHICH IS?

IN THIS COURT, CAUSATION --

THE SAME CLAUSE INTERPRETED IN MOST OTHER STATES DO NOT INTERPRET IT TO INCLUDE CAUSATION?

I BELIEVE THAT'S CORRECT. THERE ARE, AND THEY FALL ON BOTH SIDES. AND THE PROBLEM WITH PUTTING CAUSATION INTO APPRAISAL, YOUR HONOR, IS THIS. IT PUTS TOO MUCH ON THAT PROCESS. IT OVERLOADS THE CART, AND YOU ARE RIGHT, JUSTICE QUINCE, IT MAKES ALL OF THE IMPORTANT DECISIONS, THE SUBJECT OF THE APPRAISERS' INQUIRY, AND THEN YOU HAVE PEOPLE WHO ARE NOT TRAINED IN THE LAW, MAKING DECISIONS ABOUT WHAT A POLICY MEANS, WHICH IS TYPICALLY THE JOB OF A JUDGE AND A JURY, AND SO ASIDE FROM OUR POSITION AS

LITIGANTS, WE THINK THAT THIS COURT, THIS PRESENTS A GOOD OPPORTUNITY FOR THE COURT TO REWORK THE LAW OF APPRAISAL, AND THAT MEANS TAKE CAUSATION AWAY FROM --

HOW DO YOU DEAL WIH THE ROOFING CASE?

THE ROOFING CASE WERE THERE IS A STORM LAST NIGHT. SOME UTTERS COME DOWN. ANOTHER ROOF HAS BEEN UP THERE FOR TEN YEARS, AND SO THEREIS SOME WEAR AND TEAR, AND THERE IS SOME HAIL DAMAGE.

AND THE OWNER CALLS UP THE INSURANCE COMPANY AFTER THE STORM AND SAYS I HAVE GOT LKS. COME ON OUT. THE APPRAISER, THE ADJUSTOR COMES OUT AND SAYS I SEE $350' WORTH OF GUTTER DAMAGE AND THE REST OF YOUR LEAKS ARE WEAR AND TEAR.

RIGHT.

DISPUTE. IS IT THE WHOLE ROOF OR IS IT JUST GUTTERS? IN THAT CASE, UNDER THE CURRENT LAW, AT LEAST IN THE SECOND DISTRICT, ALL OF THAT GOES TO APPRAISAL, WHETHER IT WAS CAUSED BY WEAR AND TEAR OR THE STORM. THE APPRAISERS DECIDE. THAT PUTS CAUSATION INTO THE APPRAISERS' POCKET. CAUSEATION SHOULD BE TAKEN OUT OF THE APPRAISERS' POCKET, WE THINK, AND PLACED IN FRONT OF THE COURT, SO THE COURTS CAN DECIDE THAT ISSUE.

SO THAT CASE SHOULDN'T GO TO APPRAISAL AT ALL.

AS TO THE $350 DAMAGE, WHERE BOTH PARTIES AGREE THAT CAUSATION WAS A COVERED PERIL, SURE. LET THE ADJUSTOR, LET THE APPRAISER, LET THE CONTRACTORS GET OUT THEIR CONTRACT AND SAY $350, $450, LET THAT CAUSATION GO TO THE COURT. MR. CHIEF JUSTICE

THANK YOU. I WILL GIVE YOU ONE MINUTE IF THERE IS SOMETHING THAT YOU SAY YOU HAVE GOT IN ONE MINUTE.

IN THIS CASE, BECAUSE IT IS CHEAP AND EXPENSIVE AND FAST. IT AVOIDS LITIGATION. THIS CASE WOULD HAVE BEEN OVER, AFTER APPRAISAL, AND IF THE INSURED HAD WON, THE INSUROR WOULD PAY. THERE ARE NO ATTORNEYS FEES. I DON'T SEE THE CONCERNS. THIS IS A PROVISION THAT, REALLY SHOULD BE IN FAVOR OF THE INSURED. I AM SURPRISED THAT THE INSUREDS AREN'T ADVOCATING FOR IT.

BUT DOES YOUR CLAUSE HAVE A, YOUR POLICY HAVE A CLAUSE THAT, OF NONWAIVER OF PRESERVATION OF RIGHTS, SO THAT IF YOU NOT HAPPY WITH THE APPRAISAL, YOU COULD HAVE GONE INTO COURT AND SAID, NO, WE ARE NOT GOING TO PAY?

WE CAN'T CHALLENGE ANYTHING THAT HAPPENED IN THE APPRAISAL.

YOU CAN GO INTO COURT AND CLLENGE COVERAGE, CAN YOU NOT?

YES. BUT COVERAGE IS NOT THE FACT OF THE LOSS OR THE CAUSE OF THE LOSS. THOSE THINGS WE HAVE WAIVED WHEN WE DEMAND APPRAISALS. WE CANNOT LITIGATE THOSE AGAIN, BUT I DON'T SEE HOW DEMANDING APPRAISAL WOULD WAIVE ANYTHING ELSE, AND BLACKSHEAR, BY THE WAY OF COURSE, WAS DISPELLED AFTER LYCEA AND HAS NOT BEEN DISPELLED AND IN FACT HAS BEEN REJECTED BY EVERY COURT SINCE. MR. CHIEF JUSTICE

THANK YOU. THE COURT WILL NOW TAKE ITS MORNING RECESS. I AM SORY. I AM TOTALLY TRYING TO STAY UP WITH THIS PROGRAM. MR. VAKA, YOU DO HAVE TWO MINUTES.

THANK YOU. FIRST, I AM NOT SURE WHAT HAS LED TO NATIONWIDE'S APPARENT EPIPHANY THAT

CAUSATION IS A COVERAGE ISSUE.

MAYBE IT WAS THE BOOT ON THE ADAMS APPLE.

I JUST WONDERED HOW WE GOT HERE, IF CAUSATION IS A COVERAGE ISSUE.

THAT IS WHY ORAL ARGUMENT IS SO SPECIAL IN APPELLATE PROCEEDINGS.

WITH RESPECT TO THE REALIZATION MADE BY STATE FARM THAT THEY DON'T UNDERSTAND WHY INSURORS ARE NOT RUNNING TO APPRAISAL, I WOULD COMMEND STATE FARM TO READ THE LEGISLATIVE FINDINGS IN 627.015, WHERE THE LEGISLATURE FOUND THAT THE MEDIATION FOR PROPERTY LOSSES WAS NECESSARY TO PROVIDE AN INFORMAL, NONTHREATENING FORUM FOR HELPING PARTIES WHO ELECT THE PROCEDURE TO RESOLVE THEIR CLAIMS AND AVOID POTENTIALLY EXPENSIVE, TIME-CONSUMING, ADVERSARIAL APPRAISAL PROCESSES, PRIOR TO LITIGATION.

LET ME ASK YOU, WHY DID JUDGE COPES, I REALIZE IT IS IN THE GONZALEZ CASE, BUT WHY ISN'T HIS ANALYSIS CORRECT?

WHY IN JUDGE COPE'S ANALYSIS?

WHY ISN'T IT NECESSARY IN YOUR REVIEW OF WHAT LYCEA WAS DOING?

I AM, WHETHER TO SAY A JUDGE IS CORRECT OR INCORRECT, WHAT I WILL TELL YOU, YOUR HONOR, I BELIEVE THE CORRECT VIEW WAS BASED UPON WHAT THE QUESTIONS THAT JUDGE LEWIS WAS JUST ASKING. ALL LYCEA WAS TALKING ABOUT WAS A RETAINED RIGHTS PROVISION AND A MUTUALITY, WHEN THE INSURANCE COMPANY SAID --

HELP ME WITH MY ROOFING SITUATION. ISN'T, UNLESS YOU ARE GOING TO STRIKE THIS APPRAISAL THING TOTALLY OUT OF THE POLICY, ISN'T IN A ROOFING SITUATION, THEY ARE GOING TO HAVE TO BE A DETERMINE NATION AS TO WHAT IS GOING TO BE A COVERED LOSS, IN TERMS OF WHAT THE AMOUNT THE INSURANCE COMPANY IS GOING TO PAY FOR THE ROOF AND WHAT WAS CAUSED BY NORMAL WEAR AND TEAR?

I AM GLAD YOU ASKED THAT, BECAUSE IT IS A QUESTION I STRUGGLED WITH. IN THE WAY THAT I RESOLVED THAT IN MY MIND, IS THAT, IF WE ARE GOING TO TALK ABOUT CAUSATION, NATIONWIDE HAS JUST CONCEDED CAUSATION IS A COVERAGE ISSUE, THAT IS AN ISSUE THAT IS BEST LEFT TO THE COURT, IF IT HAS TO BE. JUSTICE LEWIS ASKED A QUESTION BEFORE, ABOUT RETAINED JURISDICTION, AND I THINK THAT, IF YOU READ THE DECISIONS OUT OF THE THIRD DISTRICT, BEGINNING IN 1995, AND SEE HOW THEY PROGRESSED, I THINK WHAT YOU ARE GOING TO SEE IS THAT THERE ARE REPEATED REFERENCES AND COMMENTS TO WHY ADR, IN ARBITRATION AND APPRAISAL, ARE FAVORED, AND GIVEN THE CASELOADS OF OUR STATE'S JUDICIARY, IT IS UNDERSTANDABLE WHY THERE ARE SOME APPELLATE DECISIONS BEING WRITTEN THAT WOULD SUGGEST THAT MAYBE IT IS BETTER TO SHIFT THE BURDEN OVER TO APPRAISAL OF ADR, BUT I WOULD SUGGEST THAT, IN A PURE KIND OF ANALYTICAL, LOGICAL LEGAL ANALYTICAL WAY, ANY ISSUE OF CAUSATION IS AN ISSUE OF COVERAGE, EVEN IN THE INSTANCE OF THE ROOFER. THANK YOU VERY MUCH. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. NOW WE WILL TAKE OUR MORNING RECESS. THE COURT WILL BE IN RECESS FOR 15 MINUTES. THANK YOU, COUNSEL.