

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> NEXT CASE ON THE COURT'S
AGENDA IS ATKINSON VERSUS
WAL-MART STORES.

>> GOOD MORNING, YOUR HONOR.

MY NAME IS MIKE MEYERS.

I'M HERE WITH MAJOR HARDING AND
JASON GONZALEZ AND RICK TIGLIO.

WE REPRESENT THE APPELLANTS.

THE HEART OF THE ISSUE IS
WHETHER THE ESTATES OF DECEASED
WAL-MART EMPLOYEES HAVE
STANDING TO BRING THEIR CASE,
OR WHETHER WAL-MART IS CORRECT,
ONLY INSURANCE COMPANIES HAVE
STANDING TO BRING A LAWSUIT ON
THE TOPIC OF INSURABLE
INTEREST.

>> OKAY. SO THE LAW, LET'S,
BEFORE THE
STATUTE, THE WAL-MART HAD THESE
POLICIES.

THEY WERE, INSUREDS WERE THE,
YOUR CLIENTS.

AND THEY WERE, THE INSURANCE
COMPANY WAS WHO?

>> AIG.

>> OKAY.

>> AND AT, THEY WROTE THESE
POLICIES KNOWING SOME OF THESE
PEOPLE WERE KEY PEOPLE BUT
OTHER, THEY WROTE THEM --

>> I WOULD DISAGREE WITH YOU

THERE.

>> I THOUGHT THERE WAS
SOMETHING ABOUT THAT.

BUT THE BOTTOM LINE IS, AT THE
POINT OF DEATH, WHEN THE MONEY
IS PAID OUT TO, TO WAL-MART,
WHO HAD, WHAT COULD HAVE
HAPPENED AT THE POINT THAT THE
INSURANCE COMPANY WAS GOING TO
PAY OUT THE MONEY?

>> I DON'T KNOW I FOLLOW YOUR
QUESTION BUT --

>> BENEFICIARY, WHICH IS
WAL-MART.

>> RIGHT.

>> AND THEY WOULD SAY WAL-MART
LACKS INSURABLE INTEREST.

>> RIGHT.

>> THEY WOULD THEN OFFER TO
RETURN THE PREMIUM AND VOID THE
POLICY.

UNDER WHAT THEORY BEFORE THIS
STATUTE COULD THE ACTUAL, THE
PERSON WHO SAYS, THAT THEY
SHOULD HAVE BEEN BENEFICIARY,
MAKE A CLAIM THAT, AGAINST THE
PERSON WHO IS RECEIVING THE
PROCEEDS.

>> PRIOR TO THE TIME OF DEATH?

>> NO. AT THE TIME OF DEATH
PRIOR TO THE STATUTE?

>> YOUR HONOR, THE ESTATE HAD A
CLAIM.

TRADITIONALLY IN COMMON LAW THE
WAY THIS IS RECOGNIZED IS THE
BENEFICIARY AT THE, THE NAMED

BENEFICIARY, IF IT LACKS
INSURABLE INTEREST IF THE LIFE
OF THE INSURED PERSON SUFFERS NO
LOSS WHEN THE PERSON DIES.

THE ESTATE THAT PERSON SUFFERS
THE LOSS BECAUSE THE PERSON
DIES.

THE NAMED BENEFICIARY SUFFERS
NO LOSS.

SO IT TAKES THE POLICY BENEFITS
AS A WINDFALL.

SO IN COMMON LAW --

>> BUT THEY'RE PAYING PREMIUMS.

>> OF COURSE THEY'RE PAYING
PREMIUMS.

EMPLOYEES WERE PAYING PREMIUMS
IT WOULD BE DIFFERENT CASE.

>> IN COMMON LAW ARE YOU SAYING
THE BENEFICIARY COULD SUE THE
INSURANCE COMPANY AND THE
POLICY OWNER FOR THE BENEFITS
THAT THEY SAY THEY SHOULD HAVE
GOTTEN OUT OF THIS POLICY THAT
THEY DIDN'T PAY THE PREMIUM FOR
AND DIDN'T ASSERT ANYTHING --

>> WE MAY BE MISUNDERSTANDING
EACH OTHER.

SO LET ME ANSWER IT THIS WAY.

AT COMMON LAW SINCE THE NAMED
BENEFICIARY HAS NO INSURABLE
INTEREST AND SUFFERS NO LOSS,
ESTATE OF INSURED PERSON GETS
POLICY BENEFITS.

THE NAMED BENEFICIARY, BECAUSE
IT IS PAID THE PREMIUM, GETS A
CLAIM IN EQUITY FOR A RETURN OF

ITS PREMIUM.

THE INSURANCE, WAL-MART MADE THAT CLAIM HERE IN THIS LITIGATION.

NOW THE INSURANCE COMPANY IS STILL OBLIGATED TO PAY BECAUSE IT ACCEPTED PREMIUM AND THE RISK.

NOW, YOUR QUESTION, WHAT COULD HAVE HAPPENED, WELL, AIG COULD HAVE PUT THE MONEY IN THE REGISTRY OF THE COURT AND SAID WE DOUBT THE INSURABLE INTEREST.

YOU GUYS FIGHT IT OUT.

AND IF THERE IS NO INSURABLE INTEREST, THEN THE ESTATE WILL PROBABLY WIN AND WAL-MART CAN EXERCISE EQUITABLE COUNTERCLAIM FOR --

>> YOU'RE SAYING THAT THE INSURANCE POLICY, THAT THE PROCEEDS COULD HAVE BEEN PAID BEFORE THIS STATUTE TO, TO THE INSURED?

>> TO WAL-MART?

OR TO THE INSURED PERSON?

>> THE INSURED PERSON.

>> I THINK IT WOULD BE UNLIKELY THAT AIG WOULD JUST PAY IT DIRECTLY BUT WHAT AIG COULD TENDER IT INTO THE REGISTRY OF THE COURT AND THEN -- HERE, AIG QUESTIONED EXISTENCE OF INSURABLE INTEREST BEFORE IT WROTE THE POLICIES.

WHAT AIG COULD HAVE DONE BUT DID NOT IS PUT THE MONEY INTO THE REGISTRY OF THE COURT AND IT IS DISCHARGED FROM ITS OBLIGATION UNDER THE CONTRACT.

>> WHY IS THE CAUSE OF ACTION AGAINST AIG?

I'M A LITTLE AT LOSS HERE.

BECAUSE WE'VE GOT STATUTES TELLING INSURANCE COMPANIES THAT YOU CAN NOT PROVIDE LIFE INSURANCE, EVEN BEFORE THE STATUTE, TO INDIVIDUALS WHO DO NOT HAVE AN INSURABLE INTEREST IN THE LIFE OF THE INSURED.

>> RIGHT.

>> AND SO IF THEY PAY, CONTRARY TO THAT WHY ARE THEY NOT SUSCEPTIBLE TO PAYMENT ACCORDING TO THE LAW?

IT SEEMS TO ME THIS IS A CLEAR CASE OF AN INSURANCE COMPANY MARKETING A PRODUCT, GETTING PEOPLE TO PAY THEM MONEY, AND THEN NO BIG DEAL.

>> YOUR HONOR, I GUESS THAT CASE COULD LIE BUT THERE ARE ALSO CASES SUCH AS A CASE CALLED DELEON VERSUS CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, TEXAS FIFTH CIRCUIT OPINION.

COURT SAID INSURANCE ONLY PAYS ONCE.

IT SATISFIED THE --

>> FLORIDA LAW MAY BE

DIFFERENT.

INSURANCE COMPANY PAYS
ACCORDING TO FLORIDA LAW THEY
MAY END UP PAYING TWICE.

>> THE SITUATION WAL-MART HAS
THE MONEY.

AIG PAID IT TO WAL-MART.

>> IF THEY PAID IT WRONGFULLY
WHY WOULDN'T YOU LOOK TO AIG?

>> PERHAPS A GOOD IDEA, YOUR
HONOR.

>> I'VE SEEN INSURANCE
COMPANIES IN FLORIDA PAY TWICE
WHEN THEY HAVE DONE SOMETHING
CONTRARY TO THE LAW.

COURTS HAVE SAID NO.

THIS IS WHO YOU SHOULD HAVE
PAID THE MONEY TO.

YOU DID NOT DO IT.

THEREFORE THEY HAVE A CAUSE OF
ACTION.

>> LIKE I SAID, HISTORICALLY
COMMON LAW, WE DO NOT HAVE
FLORIDA CAUSE DIRECTLY ON
POINT.

WE HAVE FLORIDA CASE WHERE
NON-INSURERS FILED SUIT AND
THERE IS EQUITABLE INTEREST.

AND POLICY --

>> ISN'T THERE LAW WHICH
SUPPORTS THE PROPOSITION THAT A
LIFE INSURANCE POLICY ISSUED TO
SOMEONE, TO A BENEFICIARY THAT
HAS NO INSURABLE INTEREST IN
THE LIFE OF THE INSURED, IS
VOID?

>> GOOD QUESTION, YOUR HONOR.

LET'S --

>> LET ME SPREAD THAT OUT.

>> OKAY.

>> IF IT IS NULL AND VOID,
THEN, WHY WOULDN'T WE GO BACK
TO WHERE JUSTICE PARIENTE
STARTED? THAT ALL BETS
ARE OFF.

THE PREMIUM, NO BENEFITS ARE
PAID.

THE PREMIUMS ARE RETURNED.

WE GO BACK, BECAUSE THE POLICY
NEVER SHOULD HAVE BEEN ISSUED.

IF IT IS ILLEGAL, HOW ARE YOU
GOING TO ACTUALLY REQUIRE THAT
THE POLICY BE PERFORMED BY
PAYING ANYBODY?

>> WELL, YOUR HONOR, THAT'S A
GOOD QUESTION.

ON THE FACTS OF THIS CASE, WHAT
WE'RE HERE ON, THE MONEY HAS
BEEN PAID.

SO WHEN YOU SAY, YOU WANT TO
VOID THE POLICY, A, I DON'T
UNDERSTAND HOW THAT CAN HAPPEN
AS A PRACTICAL MATTER.

HERE THE MONEY WAS PAID A LONG
TIME AGO.

>> SEEMS THERE'S AN ISSUE ABOUT
TIME. NO ONE'S RAISED THAT
BECAUSE WE'RE TALKING ABOUT
WHETHER THE STATUTE IS
RETROACTIVE.

WOULDN'T THE TIME HAVE BEEN TO
RAISE ANY CONCERNS ABOUT WHO

GOT THE POLICY PROCEEDS BE AT
THE TIME OF DEATH?

>> YOUR HONOR, TWO THINGS.

FIRST, THAT ISSUE WILL COME UP
BECAUSE WAL-MART HAS RAISED A
LIMITATIONS DEFENSE.

SECOND, IF THIS CASE IS
REMANDED WE'LL GO OVER THAT.
OUR ARGUMENT WILL BE THIS WAS
FRAUDULENTLY CONCEALED BECAUSE
WAL-MART SAID TO ITS EMPLOYEES
WHEN IT SENT OUT THE FLYER, THE
MONEY WOULD GO TO THE
PROFIT-SHARING PLAN. IT DIDN'T.
WAL-MART DECIDED TO KEEP THE
MONEY.

SO, WHEN WE, IF THIS CASE GOES
BACK DOWN TO THE DISTRICT COURT
WE MAY HAVE A FIGHT OVER
STATUTE OF LIMITATIONS.

IT IS NOT BEFORE THIS COURT
TODAY BUT THAT IS GOING TO BE
OUR POSITION.

THE ESTATE SUFFERED TWO LOSSES
HERE.

NUMBER ONE, THE PERSON DIED.
LIFE INSURANCE IS TO INDEMNIFY
AGAINST THE LOSS.

SECOND, THE MONEY WAS SUPPOSED
TO GO TO THE PROFIT-SHARING
PLAN AND DIDN'T.

>> IF THERE IS CLAIM FOR FRAUD
AND MISREPRESENTATION THAT'S
DIFFERENT THAN WHAT WE'RE
TALKING ABOUT.

WE'RE TALKING ABOUT WHETHER

THIS STATUTE WHICH CAME INTO EFFECT AFTER THE DEATH OF THE PLAINTIFFS IN THIS CASE CAN BE APPLIED RETROACTIVELY.

>> RIGHT, YOUR HONOR, SO I AGREE.

WE'RE NOT TALKING ABOUT A FRAUD CASE.

WE'RE TALKING FRAUDULENT CONCEALMENT AS DEFENSE TO LIMITATIONS.

GET TO YOUR POINT.

CAN THIS BE APPLIED RETROACTIVELY.

>> NO.

MAYBE WE STAY TO THE POINT WHAT WAS LAW BEFORE --

>> IF YOU SAY THAT THE, IF YOU SAY THAT THE REMEDY IS TO VOID THE POLICY, IT DOESN'T WORK HERE BECAUSE THE CONTRACT ALREADY BEEN FULLY PERFORMED. AND IF YOU SAY THAT THE REMEDY IS TO VOID THE POLICY, IT IS GOING TO TAKE AN ACTIVE PARTICIPATING BY AIG OR WAL-MART.

THAT DEMONSTRATES HOW BAD THE RULE WOULD BE.

BECAUSE HERE AIG AND WAL-MART ENTERED INTO THIS AGREEMENT WITH AIG QUESTIONING THE EXISTENCE OF AN INSURABLE INTEREST FROM THE OUTSET.

>> WHAT WAS THE RULE AT THAT POINT IN TIME?

NOT WHETHER IT IS GOOD OR BAD
RULE BUT WHAT WAS IT?
>> AT THAT TIME, YOUR HONOR,
THERE HAVE BEEN SEVERAL
NON-INSURERS FILED SUITS IN
FLORIDA COURTS.
FLORIDA COURTS AJUDICATED THEM
ALL THE WAY TO DECISION ON
MERITS INCLUDING THIS COURT.
NO FLORIDA COURT NEVER SAID
STOP, GO AWAY, COURTHOUSE IS
CLOSED BECAUSE YOU'RE NOT AN
INSURANCE COMPANY.
SEVERAL FLORIDA COURTS
SELF-IDENTIFIED A DUTY TO TAKE
AWAY BENEFITS FROM WAL-MART.
>> SOME TALK ABOUT KEY MAN
INSURANCE.
>> YES.
>> WE ALL KNOW IT IS GOOD.
WE TALKED ABOUT WHETHER OR NOT
A WIFE COULD INSURE THE
DIVORCED HUSBAND UP TO, BUT HE
WAS STILL ALIVE.
SO HE COULD HAVE ASSERT
WHATEVER, I MEAN BUT THAT HAD
REALLY NOTHING TO DO WITH
WHETHER THIS 9th, 2008 LAW WAS,
RETROACTIVE TO 2000.
>> WELL, YOUR HONOR, THE
QUESTION I BELIEVE IS, IF THIS
IS REMEDIAL LEGISLATION, CAN IT
BE APPLIED TO EXISTING SUIT?
THIS COURT IN SMILEY VERSUS
STATE IN 2007 HELD, YES.
SO THE QUESTION BECOMES, IS

THIS REMEDIAL LEGISLATION?
DID IT ADD ANYTHING NEW TO WHAT
EXISTED PRIOR TO 2008?
AND THE ANSWER TO THAT IS NO.
SEVERAL FLORIDA COURTS HAD
ENTERTAINED INSURABLE INTEREST
CASES, IN ONE INSTANCE THE
PERSON WAS STILL ALIVE.
AND IN OTHER INSTANCES THIS
COURT RULED ON, WHAT YOU'RE
CALLING KEY MAN POLICIES.
THE QUESTION THERE IS --
>> BUT THE QUESTION REALLY IS,
NOT WHETHER THEY ENTERTAINED
THEM BUT WHETHER OR NOT, YOU
ARE BASICALLY ARGUING, AS I
UNDERSTAND IT, THAT THIS
STATUTE REALLY JUST CODIFIED
EXISTING LAW?
>> YES, YOUR HONOR.
>> SO, WHAT ARE THE CASES PRIOR
TO THIS ONE THAT SAID THAT THE
ESTATE OR OF THE PERSON WHO WAS
THE NAMED PERSON ON THE POLICY,
COULD RECOVER THE PROCEEDS?
>> YOUR HONOR, WE DON'T HAVE
THIS EXACT FACTUAL SITUATION
BECAUSE THE FLORIDA SUPREME
COURT CASES WERE KEY MAN
POLICIES.
BUT I WOULD ASK YOU, WHAT WOULD
HAPPEN, LET'S SAY IN McMULLEN
IN ST. LUCIE BANK WHERE THE
BANK WAS ALLOWED TO KEEP THE
MONEY BECAUSE INSURED PERSON
WAS IMPORTANT BANKING

PRESIDENT?

WHAT WOULD BE RESULT IF A
JANITOR, I KNOW YOU HAVE BEEN
THROUGH SEVERAL YEARS OF
LITIGATION, HA, HA, JOKE IS ON
YOU BECAUSE WE CAN'T GIVE YOU A
JUDGEMENT TO ENFORCE --

>> THIS WAS CLEAR LAW PRIOR TO
THAT STATUTE.

MY QUESTION BECOMES, WHY, THE
DEATHS IN THIS CASE OCCURRED IN
'96 AND '97?

>> YES, YOUR HONOR.

>> WE HEAR THIS FILED IN 2008.

>> YES, YOUR HONOR.

>> CORRECT?

SO IF IT WAS SO CLEAR, WHY
WASN'T SOMETHING FILED AT THE
TIME THAT THE MONIES WERE
ACTUALLY PAID?

>> WAL-MART WAS TELLING PEOPLE
IT WAS BEING CONTRIBUTED TO THE
PROFIT-SHARING PLAN.

IT WASN'T.

WAL-MART KEPT THE MONEY.
WHEN THESE PEOPLE FOUND OUT
WAL-MART KEPT THE MONEY, THEY
FILED THE SUIT.

>> NOW THE WHOLE ISSUE HERE OF
WHETHER WAL-MART DID SOMETHING
WRONG IN NOT CONTRIBUTING TO
THE PROFIT-SHARING PLAN IS
RATHER DIFFERENT ISSUE.

ON OBVIOUSLY HARM THAT WOULD
HAVE COME TO YOUR CLIENTS FROM
THAT WOULD BE A VERY DIFFERENT

SORT OF HARM THAN WHAT YOU'RE
ALING HERE, WOULDN'T ISN'T.

>> I DON'T KNOW, YOUR HONOR.

THE ARGUMENT WOULD BE --

>> MEASURE OF DAMAGES WOULD
CERTAINLY BE DIFFERENT,
WOULDN'T IT?

>> I THINK THE QUESTION IN THIS
CONTEXT, DOES WAL-MART STORES,
INC. CORPORATION PROFIT SHARING
PLAN HAVE AN INSURABLE INTEREST
UNDER THESE CIRCUMSTANCES.

I DON'T KNOW, DOES WAL-MART
STORES, INC., HAVE AN INSURABLE
INTEREST IN THE LIFE OF ITS
RANK AND FILE EMPLOYEES?

NO.

>> BUT THIS WHOLE PENSION THING
IS NOT PART OF THIS CASE, IS
IT?

>> YOU'RE RESPONSE TO THEIR
DEFENSIVE ARGUMENT OF
LIMITATIONS.

>> I MEAN AS FAR AS WHAT THE
FEDERAL COURT TRYING TO GET US
TO ANSWER.

WE'RE TALKING ABOUT TWO
DIFFERENT THINGS.

SEEMS TO ME YOU HAVE VERY
APPEALING ARGUMENT
MISREPRESENTATION WHAT IS TO GO
INTO PENSION PLAN, IT DOESN'T
GO AND THOSE KINDS OF THINGS.
WHAT I UNDERSTOOD THE QUESTION
BEFORE US IS REALLY LOOK AT
THIS STATUTE.

>> I AGREE.

I'M HEARING A LOT OF QUESTIONS ABOUT THE TIMELINESS. PEOPLE BROUGHT THE SUIT WHEN THEY FOUND OUT WHERE THE MONEY WENT.

AND, SO WE'VE, WAL-MART HAS DEFENSE OF LIMITATIONS.

WE'VE GOT A RESPONSE.

BUT THE QUESTION WE'RE HERE ON TODAY IS, CAN THIS STATUTE BE APPLIED TO THIS CASE?

IS IT EVEN NECESSARY TO APPLY THE STATUTE TO THE CASE?

>> TALKING ABOUT PENSION PLANS DOESN'T SEEM LIKE THE STATUTE NECESSARILY HAS ANYTHING TO DO WITH IT.

>> IT DOES NOT.

THAT IS ONLY IN RESPONSE TO THE DEFENSIVE ARGUMENT OF LIMITATIONS.

THE ISSUE IS WHETHER THE ESTATES COULD HAVE SUED WAL-MART FOR THIS MONEY PRIOR TO 2008.

YES OR NO?

I BELIEVE, OR WHETHER ONLY INSURANCE COMPANIES HAVE THE RIGHT TO GO TO A FLORIDA COURT AND SAY, NO INSURABLE INTEREST. HERE, THE MONEY WAS PAID. THE PARTIES FULLY, WAL-MART AND AIG PERFORMED THEIR ILLEGAL CONTRACT.

>> THE FACT THAT THE INSURANCE

COMPANY HAS A DUTY NOW
RECOGNIZED BUT BEFORE, NOT TO
PAY OUT INSURANCE PROCEEDS IF
SOMEONE LACKS AN INSURABLE
INTEREST.
BECAUSE THE REASON FOR THE
WHOLE POLICY OF WHY THERE WOULD
BE, NEEDS TO BE INSURABLE
INTEREST IS TO PREVENT
POSSIBILITY OF HARM COMING
FROM, YOU KNOW, BECAUSE
SOMEBODY HAS AN INTEREST IN THE
INSURED'S DEMISE.
SOMEONE WHO DOESN'T HAVE AN
INSURABLE INTEREST, CORRECT?
I MEAN THAT'S THE --
>> THAT IS THE PUBLIC POLICY
AND TO AVOID GAMBLING ILLEGAL
WAGERING AGREEMENTS.
>> SO WHAT I'M STILL I GUESS
STRUGGLING WHERE IS THIS IDEA
THAT THE POLICY SHOULD HAVE
BEEN VOID AT THE POINT THAT AIG
MADE A DECISION TO PAY OUT
MONEY.
>> CORRECT.
>> AND IF THE OBJECTION REALLY
SHOULD HAVE BEEN, THAT AIG
SHOULD HAVE RETURNED PREMIUM
THAT WOULD HAVE BEEN THE
APPROPRIATE WAY FOR AIG TO HAVE
GONE.
>> WELL, YOUR HONOR, AIG DIDN'T
GO THAT WAY.
AIG AND WAL-MART HAD AN
AGREEMENT TO DO AN ILLEGAL ACT

IN THE STATE OF FLORIDA.

AND, JUSTICE CANADY, I'M SORRY,
I KEEP GETTING OFF THE ANSWER
TO YOUR QUESTION.

IF THE POLICY IS VOID, IT CAN'T
HAPPEN.

THEY HAVE ALREADY PERFORMED THE
CONTRACT.

IF VOIDING THE POLICY MEANS
LEAVING THE PARTIES WHERE THEY
LIE, THEY HAVE SUCCESSFULLY
THWARTED FLORIDA PUBLIC POLICY
AND VOIDED ITS LAW.

IF VOIDING THE POLICY MEANS
RETURNING PREMIUMS, THAT'S NOT,
THAT IS REALLY AN ACTION FOR
CONTRACT RESCISSION.

AND WHO IS GOING TO FILE THAT
SUIT?

HERE IF YOU HAVE PARTIES
SATISFIED WITH THEIR ILLEGAL
AGREEMENT LIKE YOU HAVE WITH
WAL-MART AND AIG, THIS NOTION
OF VOIDING THE POLICY DOESN'T
WORK AS A PRACTICAL MECHANISM.

>> THAT'S WHY THE, I GUESS THE
STATUTE WAS PUT INTO EFFECT
BECAUSE THEY REALIZED THIS
LEGISLATURE REALIZED THIS COULD
CREATE A PROBLEM.

AND NOW THERE IS, PROSPECTIVELY
A SUBSTANTIVE RIGHT BOTH FOR,
TO GIVE YOUR CLIENTS STANDING
AND, TO, TO BE ABLE TO SUE
WAL-MART.

I THINK WE'RE JUST REALLY

DEALING WITH THE FACT WHETHER
THAT STATUTE CAN BE APPLIED
RETROACTIVELY.

>> RIGHT.

>> AND NOT QUESTIONING, SEEMS
LIKE A VERY GOOD POLICY, PUBLIC
POLICY THE LEGISLATURE HAS
ENACTED BUT I'M STILL, AND I
UNDERSTAND HOW YOU'RE
EXTRAPOLATING THAT FLORIDA LAW
MIGHT HAVE BEEN THERE BUT I'M
STILL HAVING TROUBLE TO SEE
THAT IT ACTUALLY WAS THERE.

>> YOUR HONOR, I'M GOING TO
RESERVE MY TIME FOR REBUTTAL.
AND TO ANSWER YOUR QUESTION.
THE ESTATES HAD STANDING TO SUE
JUST LIKE THESE OTHER ESTATES
DID IN THE OTHER CASES.

WHETHER THEY WERE EXECUTIVE
OFFICERS SHOULDN'T CHANGE THAT
OUTCOME.

THE DIFFERENCE IN ST. LUCIE,
McMULLEN VERSUS ST. LUCIE BANK
SHOULDN'T BE DIFFERENT BECAUSE
A JANITOR SUED INSTEAD OF BANK
EXECUTIVE.

THE ANSWER SHOULD BE NO, THE
COURTHOUSE IS CLOSED TO YOU
JANITOR BUT OPEN TO BANK
EXECUTIVE AND WE'LL ADJUDICATE
THAT ESTATE'S CLAIMS ALL THE
WAY TO THE SUPREME COURT.
MY RESPONSE WOULD BE ESTATES
ALWAYS HAD STANDING TO SUE JUST
LIKE OTHERS DID.

I'LL SAVE MY LAST TWO MINUTES
AND 46 SECONDS FOR REBUTTAL.
>> GOOD MORNING, YOUR HONORS,
MAY IT PLEASE THE COURT.
MY NAME IS EILEEN MOSS.
WITH ME IS DAN ROGERS.
WE'RE HERE ON BEHALF OF
APPELLEE, WAL-MART.
WANTED TO JUST FIRST GO BACK
AND ADDRESS MR. ^MEYERS'S LAST
STATEMENTS.
IT IS CLEAR UNDER FLORIDA LAW
THAT THE ESTATES HAD NO
STANDING PRIOR TO THE JULY 1st,
2008 LEGISLATIVE AMENDMENTS TO
SUE.
THERE IS NO LEGALLY COGNIZABLE
CAUSE OF ACTION THAT EXISTED
FOR INSUREDS OR INSURANCE
REPRESENTATIVES TO SUE A
BENEFICIARY WHO HAD OBTAINED
INSURANCE PROCEEDS.
>> SO WHAT ARE THE CASES THAT
HE RELIES ON THAT SAY THAT THE
THERE HAS BEEN ADJUDICATION OF
THOSE DISPUTES?
>> MR. ^MEYERS RELIES ON?
>> YES.
>> NONE OF THOSE CASES AT ALL
HOLD THERE IS COMMON LAW CAUSE
OF ACTION TO RECOVER.
THEY ARE ISSUES COMPLETELY
OPPOSITE TO THIS.
THE CASES THEY RELY ON DO NOT
DIRECTLY CREATE A CAUTION AND
CAUSE OF ACTION AND COURT KNOWS

THE LANGUAGE THAT NEEDS TO BE
STATED IN THOSE CASES.

I CAN GO THROUGH.

WE DID DISTINGUISH THOSE CASES
FOR YOUR HONORS IN OUR BRIEF.
WOULD YOU LIKE TO ME TO ADDRESS
EACH ONE OF THOSE?

>> NO TAKE THE ONE THAT WENT UP
TO THE SUPREME COURT.
TO OUR COURT.

>> THE ONE CASE THAT DOES
ADDRESS THE REMEDY IS THE KNOT
VERSUS STATE ON BEHALF OF
GUARANTY LIFE INSURANCE
COMPANY.

THAT WAS A CASE THAT, IT WAS
ACTUALLY WITH AN INSURANCE,
DEPARTMENT OF INSURANCE
COMMISSIONER WHERE THERE WAS A
CERTIFICATE OF INSURANCE THAT
HAD BEEN ISSUED AND, THE COURT
WANTED THE INSURANCE
COMMISSIONER WANTED TO STRIKE
THE PARAGRAPH THAT SAID THAT,
YOU KNOW, YOU HAVE TO HAVE AN
INSURABLE INTEREST.

THIS COURT RECOGNIZED AND
RELIED UPON THE STATUTE THAT IS
ON THE BOOKS, PRIOR TO JULY
1st, WHICH WE AS A STATE OF
FLORIDA INCORPORATED THROUGH
SECTION 2.01 WHICH IS OLD
ENGLISH COMMON LAW STATUTE,
CALLED 14 GEORGE III.

THAT STATUTE WHICH IS STATUTE
THAT WAS EFFECT I HAVE ON THE

BOOKS ALONG WITH SECTION
627.404 HAD ONLY TWO OTHER
PROVISIONS THOSE WERE, THAT WAS
THE CONTROLLING LAW.

IN FORT VERSUS STATE, ON BEHALF
OF GUARANTY LIFE INSURANCE
COMPANY.

THIS COURT WAS TO RECOGNIZE THE
REMEDY WAS TO NULL AND VOID
POLICIES.

NOT UNTIL JULY 1st INDICATED A
CAUSE OF ACTION OR THAT THE
INSURED OR REPRESENTATIVES
COULD CREATE A CAUSE OF ACTION.

>> WE ASSUMED IT WOULD BE
RESPONSIBILITY OF THE INSURANCE
COMPANY, THEY DO UNDERWRITING
BEFORE AND AFTER TO LOOK AFTER
AND WHEN THEY FINALLY HAVE
TO PAY AND DETERMINE BEFORE
THEY PAY IF THERE IS AN
INSURABLE INTEREST.

IF IN FACT THERE WAS A
SITUATION WHERE THEY HAVE
ALLEGED HERE, ALMOST, A
CONSPIRACY TO ENTER INTO AN
ILLEGAL CONTRACT, WHY WITH
THOSE UNIQUE FACTS WHERE THERE
IS NO MOTIVATION FOR THE AIG TO
ACTUALLY REFUSE TO PAY BECAUSE
THEY'RE GETTING SO MUCH
BUSINESS FROM WAL-MART, WHY
WOULDN'T THERE BE STANDING ON
THE PART OF THE BENEFICIARY TO
SUE BECAUSE IT'S WAL-MART THAT
LACKS INSURABLE INTEREST?

>> I THINK THE ANSWER TO THAT QUESTION IS THERE IS MULTIPARTS TO THAT. FIRST OF ALL FROM A FACTUAL STANDPOINT, FACTUALLY IN THE RECORD WHAT OCCURRED HERE IS WAL-MART AND AIG THEY ESTABLISHED THE TRUST FOR THE INSURANCE TRUST IN THE STATE OF GEORGIA.

GEORGIA PERMITS THIS, EXACTLY THE AGREEMENT THAT WAS REACHED. SO IF YOU GO BACK FACTUALLY IN THEIR MINDS THIS WAS NOT AN ILLEGAL CONTRACT.

THIS WAS LEGAL ACCORDING TO THE LAWS OF GEORGIA. NOW FOR PURPOSES OF THE CLASS CERTIFICATION MOTION BEFORE THE CIRCUIT COURT IN THE MIDDLE DISTRICT OF FLORIDA.

FOR PURPOSES ADDRESSING WHETHER OR NOT FLORIDA DOES IN FACT HAVE A LEGALLY COGNIZABLE CAUSE OF ACTION FOR THEM, WE WENT AHEAD AND CONCEDED FOR THAT PURPOSE ONLY THAT FLORIDA LAW WOULD APPLY.

SO FACTUALLY, YOUR HONOR, THERE REALLY WASN'T IN THEIR MIND, THE MINDSET THAT THEY WERE ENTERING INTENTIONLY VIOLATING FLORIDA LAW UNDER REAL EVENTS THAT OCCURRED.

SECONDLY WITH RESPECT TO YOUR QUESTION AS TO WHY CAN'T INSUREDS GO AFTER WAL-MART,

THAT SIMPLY WASN'T THE LAW.
THE LAW ON BOOKS, AGAIN, GEORGE
III STATUTE IN CONJUNCTION
WITH 627.40 HAD TWO PROVISIONS.
ONE PROVISION AN INSURANCE
COMPANY IS ENTITLED TO RELY ON
REPRESENTATIONS MADE THAT ONE
DOES HAVE INSURABLE INTEREST.
THE SECOND PROVISION AND ONLY
PROVISION THAT EXISTED UNTIL
JULY 1st, 2008, WAS THAT A
CHARITABLE ORGANIZATION THAT
COMPLIED AND MET REQUIREMENTS
OF TAX CODE COULD ALSO SET UP
AND INSURE, WITHOUT
INSURABLE INTEREST THE LIVES OF
ANOTHER.

SO I HOPE THAT ADDRESSES THE
QUESTIONS THAT YOU --

>> THIS WHOLE THING ABOUT THE
TRUST AND PENSION AND ALL THAT,
THAT DOESN'T SEEM TO REALLY,
WHAT WE'VE BEEN PRESENTED IN
BRIEFING AND ARGUMENTS, TO BE
REALLY PART OF THIS DISCUSSION
WHEN WHY IS IT NOT?

>> IT SHOULD NOT BE PART OF THE
DISCUSSION.

>> WHY NOT.

>> THE QUESTION BEFORE YOUR
HONOR --

>> I UNDERSTAND WHAT THE
QUESTION IS.

TO ME SEEMS LIKE WE'RE
ANSWERING SOME QUESTIONS IF
THERE IS VALID TRUST, THERE IS

SOME KIND OF VALID AGREEMENT
THAT I HAVEN'T SEEN, IS THERE
AN AGREEMENT THAT'S BEEN GIVEN
TO US, THAT I HAVEN'T SEEN?

>> NOT FARTHER PART OF THIS
RECORD.

>> RIGHT.

I'M HEARING THINGS THIS MORNING
SEEM RELATED TO WHAT WE'RE
TALKING ABOUT AND WHETHER
SOMEONE HAS VIOLATED THE TERMS
OF A PENSION TRUST AGREEMENT OR
SOMETHING LIKE THAT, IS A
TOTALLY DIFFERENT ISSUE THAN
JUST A BENEFICIARY HAVING A
CAUSE OF ACTION.

BUT AT THE SAME TIME, I DON'T
KNOW WHETHER ANY RULES OR
REGULATIONS OR LAWS THAT WOULD
PERMIT A PENSION TRUST FROM
PURCHASING OR DOING SOMETHING
DIFFERENT THAN JUST A STRAIGHT
EMPLOYER -- YOU UNDERSTAND WHAT
I'M SAYING?

>> I DO, YOUR HONOR.

>> SO THIS IS MUDDLING
EVERYTHING IN MY MIND WHAT
WE'RE TALKING ABOUT TODAY.

>> I'LL REDIRECT OUR FOCUS SO
WHAT THE QUESTION IS.

WHETHER OR NOT THE QUESTION
THAT WAS CERTIFIED, MAY,

627.404 EFFECTIVE

JULY 1st, 2008, BE AFFECTED

RETROACTIVELY TO THE PENDING

CASE AND ANSWER WITHOUT A

DOUBT, AS ABSOLUTELY NOT.
THE REASON, FIRST OF ALL THERE
IS PRESUMPTION AGAINST
RETROACTIVITY WHEN A STATUTE
CREATES NEW SUBSTANTIVE RIGHTS
OR IMPOSES NEW BURDENS.

THAT IS THE CASE IN CHASE.
YOU ADDRESSED THAT TOPIC IN
MENENDEZ RECENTLY AS LAST
MONTH.

THIS STATUTE IS ABSOLUTELY
SUBSTANTIVE STATUTE.

IT CREATES A NEW CAUSE OF
ACTION, JUST LIKE THE ARROW
VERSUS WALSH CASE DID.

MY OPPONENTS SAY THIS IS
REMEDIAL STATUTE.

>> THE LEGISLATURE SAID IT WAS
CLARIFYING THE LAW.

WE CAN'T RELY ON THAT STATEMENT
UNLESS THERE WAS LAW THAT
NEEDED TO BE, THAT PARTIALLY --

>> THAT IS CORRECT, YOUR HONOR.
I AGREE WITH YOU.

>> JUST, YOU'RE MAKING, YOU
KNOW, VERY KNOWLEDGEABLE ABOUT
THE CASE.

IN, OUR CERTIFIED QUESTIONS, IT
PRESUMES THAT THE PARTY,
RECEIVING THE BENEFIT LACKED AN
INSURABLE INTEREST?

>> CORRECT.

>> HAS THAT ALREADY BEEN
CONCEDED THAT THESE WERE NOT,
SOME OF THESE WEREN'T KEY MAN
POLICIES?

>> FOR PURPOSE OF THE BRIEFING,
YES, YOUR HONOR, IT WAS
CONCEDED.

>> SO TO GO BACK TO WHETHER
THIS IS A SUBSTANTIVE OR
PROCEDURAL STATUTE, IT SEEMS TO
ME THEIR ARGUMENT IS THAT THIS,
AND I GUESS THAT STATEMENT BY
THE LEGISLATURE REALLY IS THAT,
THIS SORT OF EXISTED PRIOR TO
THIS, THIS CAUSE OF ACTION.
AND SO, IF THAT IS THE CASE,
THEN, WHY ISN'T IT REALLY JUST
A PROCEDURAL STATUTE?

>> FIRST, TO GO BACK ON A
COUPLE OF PRINCIPLES, NUMBER
ONE THIS COURT ITSELF HAS
RECOGNIZED EVEN IF ONE COULD
SOMEHOW CLASSIFY THE STATUTE AS
REMEDIAL, THIS COURT ITSELF HAS
RECOGNIZED THAT IN ITS, SAID
THIS EXPLICITLY IN ARROW, THAT
IT NEVER INTENDED, THE COURT
HAS NEVER CLASSIFIED A STATUTE
THAT ACCOMPLISHED OR REMEDIAL
PURPOSE BY CREATING NEW SUB
STAND LIVE RIGHTS OR IMPOSING
NEW LEGAL BURDENS AS A TYPE OF
REMEDIAL LEGISLATION THAT
SHOULD BE PRESUMPTIVELY APPLIED
IN PENDING CASES.

THIS REMEDIAL SUBSTANTIVE
DISTINCTION, IF IT IS A
CREATING NEW SUBSTANTIVE RIGHTS
AS IT IS HERE, NEW CAUSE OF
ACTION, THE PRESUMPTION AGAINST

RETRO ACTIVITY APPLIES AND WE MUST GO TO CLEAR LEGISLATIVE INTENT.

THERE MUST BE CLEAR EVIDENCE OF LEGISLATIVE INTENT.

WHICH LEADS TO THE POINT OF THE LAW JUSTICE QUINCE, THAT THEY ARE RELYING ON.

YOU LOOK TO THE TERMS OF THE STATUTE AND YOU LOOK TO THE PURPOSE.

THE TERMS THEY'RE HANGING ON IS CLARIFIED EXISTING LAW.

IN NO WAY DOES THAT IN ANY SENSE PROVIDE THE KIND OF CLEAR EVIDENCE OF INTENT THAT A STATUTE SHOULD BE APPLIED RETROACTIVELY.

BEYOND THAT, AND, IN THIS STATUTE BY ITS TERMS, DID NOT SAY THIS ACT SHALL APPLY RETROACTIVELY TO CASES PENDING BEFORE JULY 1st, 2008.

INSTEAD IT SAID THIS ACT SHALL BE A EFFECTIVE JULY 1st, 2008.

>> IF IT WERE TO APPLY YOU GO TO THE SECOND PRONG IF THERE IS ANY VIOLATION OF DUE PROCESS.

NOW, IS WAL-MART CLAIMING THAT THEY HAD A SETTLED EXPECTATIONS THAT THEY COULD KEEP COULD BE CHARACTERIZED, IF THEY DIDN'T HAVE AN INSURABLE INTEREST AS ILLEGAL BENEFITS?

>> AS THIS COURT ENUNCIATED IN MENENDEZ, THE CENTRAL FOCUS AND

CENTRAL INQUIRY AS TO
CONSTITUTIONALITY OF
RETROACTIVE APPLICATION IS
WHETHER OR NOT IT CREATED NEW
LEGAL CONSEQUENCES.
AND YES, OUR ARGUMENT IS, DID
IT IMPOSE NEW BURDENS, DID IT
IMPOSE NEW CONSEQUENCES?
ABSOLUTELY DID.
IT IMPOSED SETTLE THE
EXPECTATIONS THAT HAVE PASSED.
IT IS AKIN WE CITE IN OUR
BRIEFS A STATUTE OF LIMITATIONS
CASE A CONDUCT THAT HAD BEEN
CONSIDERED TO BE A VIOLATION OF
THE LAW GETS SETTLED, NOT
SETTLED, PARDON ME, BUT TIME
PASSES NO ONE SUES.
THERE IS SUBTLE EXPECTATION
THAT WHAT IS WHAT IT IS.
HERE IN THIS CASE AND AS THIS
OCCURRED RECOGNIZES YOU LOOK TO
THE LAW THAT WAS IN PLACE AT
THE TIME THE CONTRACT WAS
ENTERED.
HERE THE SOLE REMEDY WAS, NULL
AND VOID.
AS THIS COURT HAS RECOGNIZED
THOSE, ISSUES OF PERHAPS, WHAT
SOMEONE MAY SEEM TO FEEL IT IS
UNFAIR, WHY SHOULD THEY KEEP
THE PROCEEDS.
I DO WANT TO MAKE CLEAR FOR THE
RECORD.
THERE WAS NO PROFIT HERE.
THAT IS IN THE RECORD.

THEY LOST TENS OF MILLIONS OF DOLLARS.

THERE IS AFFIDAVIT.

THAT IS THE EVIDENCE BEFORE THIS COURT.

TO SAY THERE'S A PROFIT --

>> WHO LOST TENS OF MILLIONS?

>> DUPED OUT OF THIS PROGRAM WITH THE IRS THE PROGRAM WAS SET UP FOR TAX BENEFITS.

AND, BUT GOING BACK THERE'S JUST CLEARLY NO CLEAR

LEGISLATIVE HISTORY AND TO CLARIFY IF YOU LOOK TO THE LEGISLATIVE HISTORY ON THIS CLARIFYING EXISTING LAW

LANGUAGE, JUSTICE QUINCE, IT IS VERY CLEAR.

WE PROVIDED YOUR HONORS WITH THE LEGISLATIVE HISTORY THROUGH THE SPONSORS OF BILLS, TO BOTH HOUSE OF REPRESENTATIVES, SPONSOR OF BILL TO THE SENATE.

STAFF ANALYSIS AND THE WHITE PAPER THAT WAS WRITTEN BY THE COMMITTEE WAS ACTUALLY A TRUST AND ESTATE, TRUST AND ESTATE PLANNING COMMITTEE OF THE REAL PROPERTY TRUST AND LAW SECTION OF THE FLORIDA BAR.

BUT YOU'LL NOTICE THAT THROUGHOUT ALL THOSE STATEMENTS, THE ENTIRE LEGISLATIVE HISTORY, WHAT THEY WERE CLARIFYING WAS WHETHER OR NOT, AND HOW DO YOU DETERMINE

WHETHER OR NOT AN INSURABLE
INTEREST EXISTS? THEY WERE NOT
CLARIFYING TO SAY, GEE, THE
COURTS ARE ALL MESSED UP HERE.
THE LAW DOESN'T KNOW.
DO YOU HAVE A CAUSE OF ACTION
OR DON'T YOU HAVE A CAUSE OF
ACTION.
THAT IS NOT WHAT THEY'RE
CLARIFYING.
TIME AND TIME AGAIN LANGUAGE
WAS CLEAR.
IT WAS TO CLARIFY WHETHER OR
NOT AN IRSUREABLE INTEREST
EXISTED AND WHAT WAS PROPELLED
BY A DECISION OUT OF EASTERN
DISTRICT OF VIRGINIA, A 2005
CALLED CHALA, WE POINT YOUR
HONORS TO THAT CASE IN OUR
BRIEFING AND DISCUSS IT.
BUT ESTATE PLANNERS AND
INSURANCE PROFESSIONALS NEEDED
GUIDANCE BECAUSE THEY HAD, WERE
USED TO BEING ABLE TO PUT INTO
TRUSTS IRREVOCABLE TRUST, LIFE
INSURANCE PROCEEDS.
AND THIS CASE, THREW EVERYTHING
TOPSY-TURVY.
WE CITE TO THOSE PAPERS IN OUR
BRIEF.
BUT THAT WAS IMPETUS FOR THIS.
THAT SECTION IS WHAT ACTUALLY
PROMPTED THE AMENDMENTS TO
THIS.
SO TO CLARIFY EXISTING
LANGUAGE IS NOT THAT WE NEED TO

CLARIFY WHETHER OR NOT
THE LAW WAS CLEAR.
YOU CAN SCOUR THE LAW.

THERE IS NO CASE.

THERE IS NO STATUTE.

AND THE LEGISLATURE AND FLORIDA
LAW AT THAT POINT HAD DECIDED
TO CIRCUMSCRIBE THEIR REMEDY TO
BE NULL AND VOID.

>> BUT WE DON'T HAVE AN ACTUAL
CASE THAT SAID THEY LACK, THAT
THE BENEFICIARY, THE INSURED'S
BENEFICIARIES LACKED, LACK
STANDING?

DO WE HAVE THAT CASE IN
FLORIDA?

WE MIGHT SAY THAT THE REMEDY
WAS NULL AND VOID BUT DO WE
HAVE A CASE WHICH ACTUALLY
SPECIFICALLY SAYS THAT THEY
LACK STANDING?

>> WE HAVE NEITHER ONE.

WE HAVE NO CASE WHERE THE ISSUE
AROSE, AND FRAMED, DOES AN
INSURED OR ITS REPRESENTATIVE
HAVE A CAUSE OF ACTION TO
MAINTAIN?

AND IN FACT, AS AGAIN, TO
REMEDY UNDER FLORIDA LAW SIMPLY
NULL AND VOID AS RECOGNIZED IN
THE 1939 KNOTT CASE AND STATUTE
THAT WAS ON THE BOOKS.

>> THERE WERE CASES FILED
ACTIONS WHETHER OR NOT THERE
WAS INSURABLE INTEREST.

ONE OF THEM INVOLVED KEY MAN

AND ONE INVOLVED A BANK
PRESIDENT OR SOMETHING.
HOW ARE THOSE CASES
DISTINGUISHABLE FROM THIS
SITUATION?

>> THOSE CASES ARE DEALING
WITH DIFFERENT ONES I CAN WALK
THROUGH.

McMULLEN, WHICH IS ONE, CLEARLY
DOESN'T AGAIN, NONE OF THESE
CASES GO THE STEP TO SAY YOU
HAVE A CAUSE OF ACTION.

THE COURT IN McMULLEN, IT WAS
ISSUE ABOUT HEIRS AND REMEDY
FOR LACKED INSURABLE INTEREST.
DEALING WITH THE PRESIDENT.
HE ASSIGNED HIS POLICY TO THE
BANK.

IN THAT CASE THEY SOUGHT TO
RECOVER THE HEIRS OF THE
PRESIDENT OF THE BANK, SOUGHT
TO RECOVER THE PROCEEDS THAT
THEY HAD RECEIVED FROM THE
POLICIES THAT WERE INSURING THE
PRESIDENT'S LIFE.

WHAT WAS DECIDED IS, THEY
AGREED THAT THE BANK PROCURED
THE POLICIES AND THAT THEY WERE
ENTITLED TO KEEP IT.

>> I GUESS ALTHOUGH THE CASES
DON'T ACTUALLY TALK ABOUT
WHETHER THERE IS A CAUSE OF
ACTION, IT SEEMS TO ME THAT,
SOMETHING WAS AJUDICATED IN
THOSE CASES AND SO I'M NOT SURE
THAT THE CASES HAVE TO SAY

THERE IS A CAUSE OF ACTION.
I MEAN IN ONE OF THEM IT SEEMS
TO ME THEY SAID THAT THE
PARTNERSHIP OR, I BELIEVE IT
WAS, WAS ENTITLED TO THE \$1,000
POLICY, AND THE OTHER, YOU
KNOW, SO THE CASE, THE CASES
WERE ACTUALLY AJUDICATED.
SO THAT'S MY ISSUE HERE IS,
EVEN THOUGH IT DOESN'T SAY
THERE IS A SPECIFIC CAUSE OF
ACTION, THE CASE WAS DECIDED.

>> DECIDED BUT THEY'RE NOT THE
ISSUE THAT'S BEFORE THIS COURT
AND THAT IS WHETHER OR NOT
FLORIDA LAW DID NOT RECOGNIZE
SUCH A CAUSE OF ACTION AND IT
DIDN'T RECOGNIZE IT UNTIL JULY
1st OF '08.

UNDER THE CLEAR LEGISLATIVE
HISTORY AND THERE'S NO CLEAR
LEGISLATIVE INTENT THAT THAT BE
APPLIED RETROACTIVELY.

>> [INAUDIBLE].

I WOULD EXPECT THAT PERSON TO
BE ABLE TO GO INTO COURT AND
SEEK SOME TYPE OF DECLARATORY
ACTION THAT THAT POLICY IS
REALLY VOID.

>> I DON'T NECESSARILY DISAGREE
WITH THAT, YOUR HONOR.

>> THAT STATUTE WOULD HAVE NO
APPLICATION IN THAT AREA.

>> THAT IS ONE ISSUE OF
STANDING.

STANDING TO DECLARE IT VOID.

THAT IS NOT WHAT THIS ACTION IS ABOUT.

>> RIGHT.

DIFFERENCE STANDING TO SEEK SOME TYPE OF ADJUDICATION WHETHER THERE IS INSURABLE INTEREST AND STANDING TO SEEK RECOVERY OF BENEFITS UNDER A POLICY.

>> CORRECT.

>> I ABSOLUTELY, YOUR HONOR.

>> SO IF THEY SIMPLY WANTED TO DECLARE THAT THESE POLICIES WERE VOID, THEY WOULD HAVE STANDING?

>> THE MAJORITY OF THE STATES, FLORIDA HAS NOT DECIDED THAT ISSUE.

NOW I WILL AGREE THAT THERE ARE CASES THAT WOULD SEEM TO INDICATE THAT.

THE STATUTE IS NOT CLEAR.

AND IT IS CORRECT THAT IN THE MAJORITY OF THE, UNITED STATES COMMON LAW, WITH THE EXCEPTION OF TWO STATES, THERE IS NO STANDING.

THEY HAVE HELD THERE WAS NO STANDING, AND I THINK, FRANKLY THERE WAS ONE, LIKE 1890 CASE OUT MICHIGAN, CITED IN OUR BRIEFS.

SMITH VERSUS --.

CITED IN OUR BRIEFS, BASED ON CONTRACT PRINCIPLES, THE PARTIES YOU HAVE TO HAVE

STANDING.

THEY WERE NOT PARTIES TO THE CONTRACT.

AND THEY WEREN'T HARMED BY IT.

THEY DIDN'T PAY THE PREMIUMS.

SO THE DECISION WAS MADE, NO STANDING.

NOW, WHERE THEY STARTED CREATING STANDING WAS THROUGH STATUTORY RIGHTS.

SO, IN FLORIDA WE DON'T DIRECTLY ADDRESS THAT.

BUT AGAIN, THIS ISSUE OF STANDING IS A DOUBLE LAYERED QUESTION.

AND WHAT WE'RE SAYING IS, THEY DON'T HAVE STANDING TO MAINTAIN, THERE IS NO LEGALLY COGNIZABLE ISSUE.

EXCUSE ME, CAUSE OF ACTION IN FLORIDA THAT PERMITS THEM UNTIL JULY 1st OF 2008, THAT PERMITS AN INSURED OR ITS REPS TO GO BACK AND CLAW BACK INSURANCE PROCEEDS.

AND THAT THE WISDOM AND PROPRIETY OF THAT CIRCUMSCRIBED REMEDY HAS EXISTED IN THIS STATE FOR QUITE A FEW YEARS.

>> LET ME, GOING BACK JUST TO McMULLEN.

I DON'T HAVE THE CASE IN FRONT OF ME.

I HAVE WAL-MART'S DISCUSSION OF WHAT IT SAID.

McMULLEN RECOGNIZED INSURED'S

STANDING TO RAISE BENEFICIARY
LACK OF INSURABLE INTEREST.
YOU SAY THAT'S INCORRECT.
BUT HEIRS OF BANK PRESIDENT
SOUGHT TO RECOVER THE PROCEEDS
THE BANK RECEIVED FROM POLICIES
INSURING THE PRESIDENT'S LIFE.
OKAY.

THAT'S, THERE WASN'T A MOTION
TO DISMISS FOR LACK OF
STANDING, CORRECT?

WHAT HAPPENED WAS, INSTEAD,
THEY, THE DETERMINATION WAS
THAT THE BANK DID HAVE AN
INSURABLE INTEREST.

GOING BACK TO, ISN'T THE
IMPLICATION THAT THE CAUSE OF
ACTION IF THEY COULDN'T, THAT
THEY WOULD HAVE HAD IF THE BANK
DIDN'T HAVE INSURABLE INTEREST,
THEY WOULD HAVE BEEN ABLE TO
RECOVER THE PROCEEDS?

>> I DISAGREE, YOUR HONOR.

>> YOU DISAGREE.

THAT IS, OTHERWISE THEY WOULD
SAY THAT THE BENEFICIARIES HAD
NO STANDING TO RAISE THIS ISSUE
TO BEGIN WITH.

>> THE REMEDY AS PERMITTED
UNDER THE LEGISLATURE IS TO
VOID THE POLICIES AS NULL AND
VOID.

>> THAT IS NOT WHAT THE HEIRS
WERE SEEKING.

THEY WERE SEEKING BENEFITS PAID
TO THE BANK.

I MEAN I HAD, I HAD LIMITED, I
MEAN I WOULD HAVE AGREED WITH
YOU THAT I THOUGHT THE ONLY
REMEDY WAS TO BE ABLE TO VOID A
POLICY BUT I DON'T THINK
McMULLEN CAN BE DISPENSED WITH
AS SIMPLY IN TERMS OF THIS
COURT WAS SAYING, CERTAINLY
DIDN'T SAY THEY DIDN'T HAVE
STANDING.

AND CERTAINLY DIDN'T SAY THEY
WOULDN'T HAVE THAT CAUSE OF
ACTION.

YOU WOULDN'T AJUDICATE THE
DISPUTE IF THOSE THRESHOLDS,
TWO FINDINGS WERE CONTRARY?

>> WELL THE COURT, DID, OUR
READING AND MY READING OF
McMULLEN IT STRICTLY DIDN'T
ADDRESS THE ISSUE AS TO WHETHER
OR NOT THE HEIRS DID
HAVE STANDING TO RECOVER THE
PROCEEDS.

>> THEY DID HAVE TO BECAUSE
THERE WAS INSURABLE INTEREST.

>> IT WAS A KEY MAN POLICY.

>> DIFFERENT WAYS TO CONSIDER
THOSE ISSUES.

THEY WENT DOWN ONE TRACK
INSTEAD OF GOING DOWN THE OTHER
TRACK WHICH MAY BE MORE LOGICAL
BUT IT DOESN'T NECESSARILY
DECIDE THAT QUESTION.

>> CORRECT, YOUR HONOR.

THAT'S CORRECT.

AND IT WAS A KEY MAN INSURANCE

POLICY.

SO THAT'S WHY, PRESIDENT OF A BANK.

SO THEY FOUND THERE WAS IN FACT AN INSURABLE INTEREST.

I SEE MY TIME IS RUNNING OUT.

UNLESS, ANY JUSTICE HAVE ANY OTHER QUESTIONS.

WITH THAT I APPRECIATE YOUR TIME.

WOULD URGE THAT YOU ANSWER THE CERTIFIED QUESTION THAT, NO, SECTION 627.405 SHALL NOT BE APPLIED RETROACTIVELY.

YES IT CREATED A NEW CAUSE OF ACTION THAT INSUREDS OR REPS WERE NOT ENTITLED TO MAIN A CAUSE OF ACTION FOR INSURANCE PROCEEDS RECEIVED PRIOR TO JULY 1st, 08.

THANK YOU VERY MUCH.

>> WITH MY REBUTTAL, LET'S STAY ON TOPIC OF VOID.

VOID DOES NOT MEAN THE APPELLANT'S LOSE.

THERE'S A CASE INVOLVING THESE SAME POLICIES ON WAL-MART'S TEXAS RANK AND FILE EMPLOYEES. IT IS MAYO VERSUS HARTFORD LIFE INSURANCE, 354 FED THIRD 400. FEDERAL DISTRICT COURT FINDS AND FIFTH DISTRICT AFFIRMS THE POLICIES ARE VOID BECAUSE WAL-MART HAS NO INSURABLE INTEREST BUT THE PLAINTIFFS STILL WIN.

IN THIS, IN THIS STATE THERE IS
A CASE INVOLVING PROPERTY
INSURANCE CALLED PHOENIX
INSURANCE COMPANY VERSUS
HILLIARD.

THE POLICY ON ITS FACE IS VOID
BECAUSE THE NAMED BENEFICIARY
ISN'T THE EXCLUSIVE OWNER OF
THE PROPERTY.

>> LET ME ASK YOU THIS
QUESTION.

IF, YOU DON'T NEED TO RELY ON
THE STATUTE --

>> RIGHT.

>> -- WHY DIDN'T YOU INCLUDE A
SEPARATE CAUSE OF ACTION,
COMMON LAW CAUSE OF ACTION
UNDER, DID YOU?

>> YOUR HONOR, THAT'S OUR ONLY
CASE.

OUR CASE IS FOR DECLARATION OF
RIGHTS THAT WAL-MART HAS --

>> WHAT'S YOUR ONLY CASE?
UNDER THE STATUTE?

>> NO, YOUR HONOR, WE FILED THE
SUIT BEFORE THE STATUTE WAS
ENACTED.

>> SO WHOSE THERE BEEN AND
DETERMINE NATION THAT THERE IS
NO, SOMEONE MADE A
DETERMINATION THERE IS NO
COMMON LAW CAUSE OF ACTION?

>> THE DISTRICT, FEDERAL
DISTRICT COURT JUDGE WHEN HE
SUA SPONTE THREW THE CASE OUT.

>> BUT THAT WASN'T CERTIFIED TO

US.

>> THAT WAS, THAT, --

>> ONLY QUESTION CERTIFIED TO US WHETHER THIS STATUTE IS, CAN IT BE RETROACTIVELY APPLIED?

>> THAT DEPENDS ON WHETHER IT IS REMEDIAL AND DEPENDS WHETHER STATES HAVE STANDING TO SUE.

>> BUT IF THE ISSUE IS THAT THERE'S A SEPARATE COMMON LAW CAUSE OF ACTION THAT IS JUST NEVER BEEN, NEVER BEEN REJECTED, JUST NEVER WAS, ENUNCIATED, WOULDN'T THE CORRECT QUESTION ALSO CERTIFY, WOULDN'T YOU WANT TO ASK US TO CERTIFY A CAUSE OF ACTION FOR A COMMON LAW CAUSE OF ACTION TO RECOVER BENEFITS EXISTS PRIOR TO THAT DATE?

>> YOUR HONOR, I THINK THAT THAT ISSUE IS FAIRLY BEFORE THIS COURT BECAUSE THE SECOND PART OF THE QUESTION CERTIFIED ASKS WHETHER THIS, STATUTE CREATED A NEW CAUSE OF ACTION SUCH THAT THE FAMILY WOULD LACK STANDING TO SUE FOR BENEFITS OBTAINED PRIOR TO THE ENACTMENT OF THE AMENDMENTS. SO THE QUESTION CERTIFIED TO YOU ASKS EXPRESSLY, COULD YOU SUE BEFORE THE STATUTE?

AND THE ANSWER IS YES, BUT, --

>> ANSWER WE NEVER DECIDED IT.

>> WELL, YOUR HONOR, IN MAYO

VERSUS HARTFORD LIFE INSURANCE
JUST BECAUSE IT IS VOID DOESN'T
MEAN THE PLAINTIFFS LOSE.

IN FACT THEY WIN.

IN PHOENIX INSURANCE COMPANY
VERSUS HILLIARD IN FLORIDA THE
CONTRACT'S VOID BUT THIS COURT
HOLDS INSURANCE COMPANIES STILL
HAVE TO PAY THE PARTY WITH THE
INTEREST.

SO, APPELLANTS STILL WIN EVEN
IF THE POLICY IS VOID.

THIS CASE IS McMULLEN.

THERE IS, THIS IS McMULLEN.

ONLY DIFFERENCE IS THAT WAS
ESTATE OF A KEY PERSON WHO
SUED.

HERE WE HAVE THE ESTATE OF RANK
AND FILE EMPLOYEES.

IF INSURANCE, IF THESE INSUREDS
HAVE STANDING TO SUE, THEN THIS
SEAMLESS WEB OF THE LAW WORKS
PERFECTLY.

McMULLEN WAS CORRECT.

GERSTEL WAS CORRECT.

LISS VERUS LISS WAS CORRECT.

LEGISLATURE WAS CORRECT IN
CLARIFYING DICTIONARY LAW.

DEFINITION IS TO MAKE EASY TO
UNDERSTAND.

DOESN'T ADD ANYTHING.

WEB OF THE LAW IS SEAMLESS.

PUBLIC POLICY IS PROMOTED.

IF ONLY INSURANCE COMPANY HAS
STANDING TO SUE, THE INSURANCE
COMPANY IS DELEGATED WITH

OBLIGATION OF ENFORCING PUBLIC
POLICY.

THIS COURT GOT IT WRONG IN
McMULLEN BECAUSE THERE SHOULD
HAVE BEEN A DISMISSAL ON
STANDING.

THIS COURT HAS GOT IT WRONG IN
GERSTEL.

THIS COURT, FOURTH DISTRICT GOT
IT WRONG IN LISS.

LEGISLATURE GOT IT WRONG WHEN
IT SAID CLARIFYING EXISTING LAW
BECAUSE IF ONLY INSURANCE
COMPANIES HAVE STANDING TO SUE
IT CREATED A SEA CHANGE IN THE
LAW.

ON ONE HAND WE HAVE EVERYTHING
FITTING PERFECTLY TOGETHER, IF
THE ESTATES HAVE STANDING.

AND ON THE OTHER HAND WE HAVE A
MACHINE WHERE THE PARTS ARE
FLYING TO PIECES BECAUSE
EVERYBODY'S WRONG.

THANK YOU.

>> THANK YOU BOTH FOR YOUR
ARGUMENT