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**Sandra Malu v. Security National Insurance Co.; Lazaro Padilla v. Liberty Mutual Insurance Co.**

CALL THE NEXT CASE , WHICH IS MALU VERSUS SECURITY NATIONAL INSURANCE COMPANY.

CHIEF JUSTICE: EVERYONE ON THE RIGHT SIDE. IT IS GETTING LESS AND LESS AUDIENCE. WE THINK YOUR CASE IS IMPORTANT. MS. TUTT , YOU ARE READY?

MAY IT PLEASE THE COURT. DIE AND TUTT ON BEHALF THE PETITIONERS. HOPEFULLY THIS CASE WILL HAVE A LITTLE BIT NARROWER FOCUS THAN THE PREVIOUS CASE. THIS CASE DEALS WITH A PIP STATUTE .

CHIEF JUSTICE: WOULD YOU EXPLAIN PROCEDURALLY HOW WE GOT HERE. IT SEEMS LIKE , AT THE BEGINNING OF THIS LITIGATION , BOTH SIDES WERE AGREEING IT WAS A QUESTION OF HOW MUCH MILEAGE AND NOW AT THE END , WE ARE TALKING ABOUT THERE WAS NEVER ANY AUTHORITY UNDER THE PIP STATUTE AT ALL. SO I AM TRYING TO SEE HOW IT MET A MODERBS FROM ONE - - MECHLT METAMORPHS TO ANOTHER SITUATION.

I AM TRYING TO SEE HOW THIS CAME FROM THE TWILIGHT ZONE. THERE ARE THREE DIFFERENT LAWSUITS, AND IN EACH OF THOSE LAWSUITS, THE INSURANCE COMPANY HAD PAID MILEAGE TO THE INSURED. THE ISSUE WAS , AS IT WAS PLED

CAN I STOP YOU ON ONE ISSUE HERE? ON WHAT BASIS WAS THE INSURANCE COMPANY PAYING MILEAGE ? WAS IT PURSUANT TO THE HUNTER CASE, THAT WHEN INSURANCE COMPANIES STARTED PAYING MILEAGE TO THESE CLAIMS OR WERE THEY ALWAYS PAYING MIAMI MOOIL AGE?

I CAN'T SAY THAT - - PAYING MILEAGE?

I CAN'T SAY THAT. HUNTER ALWAYS PAID IT AND IT WAS PAID BECAUSE HUNTER SAID THEY HAD TO , BUT THE RECORD DOESN'T SHOW THAT. STRICTLY, THERE HAS BEEN NO FACT FINDING TO THAT EFFECT , BUT THEY HAVE BEEN PAYING IT. THEY PAID IT IN THESE THREE CASES. THE ONLY ISSUE WAS CAN WE DO A CLASS ACTION TO ESTABLISH A HIGHER AMOUNT? THAT WAS THE ISSUE THAT WAS PLED BASICALLY , IN THE THREE CASES. THAT WAS THE ISSUE THAT WAS LITIGATED IN THE TRIAL COURT THROUGH A DISMISSAL MOTION. THAT WAS THE ISSUE THAT WAS BRIEFED IN THE DCA'S. AT NO TIME , WAS THE APPROPRIATE ISSUE OF PAYING WAS THE PROPRIETY OF PAYING A MILEAGE EXPENSE , WAS THE EVER RAISED. THE FIRST TIME THAT IT EVER CAME OUT IN THESE CONSOLIDATED CASES WAS IN THE FOURTH DCA OPINION IN MALU.

DID YOU NOT HAVE A CHANCE TO BRIEF IT?

WE DIDN'T HAVE A CHANCE TO BRIEF IT. WE FILED A MOTION FOR REHEARING , ASSERTING THAT IT WAS IMPROPER FOR THE FOURTH TO RAISE THIS ISSUE 'SUE RESPONSIBILITY' , WHEN NOT ONLY WAS IT NOT SUA SPONTE, WHEN IT WAS NOT RAISED BELOW , BUT THE CONSENT WAS THAT THEY PAID IT.

WE NOW HAVE A SUPREME COURT WE NOW HAVE A DECISION THAT IS CERTIFIED TO BE IN CONFLICT WITH HUNTER. DON'T WE HAVE TO REACH THAT PRECISE ISSUE NOW?

I AM CONCERNED AND AS AN ADVOCATE OF MY CLIENT , I AM UPSET BY THE WAY THIS CASE CAME OUT, BUT AS AN OFFICER OF THE COURT , I AM GLAD THIS ISSUE IS UP HERE.

YOU DIDN'T PUT IT IN BECAUSE I T WASN'T RAISED, THE ISSUE, BECAUSE IT IS A PURE QUESTION OF LAW.

STATUTORY CONSTRUCTION ISSUE IS A PURE QUESTION OF LAW. THAT'S CORRECT. AND WE HAVE CERTAINLY BRIEFED THIS ISSUE EXTENSIVELY. WHAT I WOULD LIKE TO DO TODAY - -

WELL , DID ANYONE GO INTO THE DEPARTMENT OF INSURANCE REGULATIONS OR ANYTHING LIKE THAT? ARE THERE ANY DIFFERENCES IN THE POLICY LANGUAGES ? ALL OF THOSE THINGS WOULD SEEM TO COME INTO PLAY.

NO ONE HAS DONE THAT, NO.

NO ONE HAS LOOKED AT ANY OF THOSE THINGS?

NO ONE HAS DONE THAT BECAUSE IT WASN'T AN ISSUE.

SO WE GO BACK TO WHETHER WE HAVE A RECORD YOU KNOW , THAT IS COMPLETE , AS FAR AS THE LANGUAGE OF DIFFERENT POLICIES WHICH CAN ADD TO THE , THEY CAN'T SUBTRACT FROM THE PIP STATUTE BUTTHEY CAN ADD TO IT. DO WE HAVE ANY LEGISLATIVE HISTORY , IN TERMS OF THE PIP STATUTE, ITSELF , YOU KNOW , AS A PRACTITIONER , I DON'T EVER RECALL ASKING FOR TRAVEL EXPENSES , BUT THAT DOESN'T SAY THAT THEY COULDN'T HAVE BEEN AWARD , BUT I JUST , IT IS SORT OF A MYSTERY THAT THIS HAS COME UP 20-PLUS , 30-PLUS YEARS AFTER THE PIP STATUTES COME INTO EFFECT.

IT IS A MYSTERY. I REALLY DON'T KNOW WHAT TRIGGERED THE FOURTH DISTRICT TO DO THIS.

WELL , THE LANGUAGE , I THINK IF YOU READ THE LANGUAGE OF THE STATUTE , YOU COULD COME UP WITH THAT INTERPRETATION.

I TOTALLY DISAGREE AND I WOULD LIKE TO SPEND A FEW MINUTES ON THAT YOU KNOW , WE HAVE ALL TALKED ABOUT DIFFERENT AIDS TO STATUTORY CONSTRUCTION. THERE ARE S O MANY CASES ON THE DIFFERENT POSSIBLE WAYS THAT WILL HELP A COURT TO CONSTRUE A STATUTE. WHAT I THINK, HOW I THINK THE STATUTE CAN BE CONSTRUED , IS B Y ITS PLAIN LANGUAGE , AND I WOULD LIKE TO VERY BRIEFLY , GIVE A QUOTE FROM JUSTICE , THEN JUSTICE PARIENTE'S CONCURRING OPINION IN UNITED AUTOMOBILE VERSUS RODRIGUEZ. QUOTE , LEGISLATIVE INTENT MUST BE DETERMINED PRIMARILY FROM THE LANGUAGE OF THE STATUTE , AND THAT IS WHAT I WOULD LIKE TO FOCUS YOUR HONORS IN ON TODAY . THE ACTUAL LANGUAGE OF THE STATUTE , WITHOUT REGARD TO ANY O F THESE MILES AN HOUR BEYOND A REASONABLE DOUBT STATUTORY CONSTRUCTION AIDS THAT WE HAVE ALL TALKED ABOUT.

LET ME GET TO YOU THAT POINT. THE STATUTE SAYS THAT 80 PERCENT OF ALL REASONABLE EXPENSES FOR MEDICALLY NECESSARY SERVICES.

YES.

HOW IS PERSONAL TRANSPORTATION TO AND FROM THE OBTAINING OF MEDICAL NECESSARY SERVICES , A SERVICE IN AND OF ITSELF?

IT IS NOT. IT IS THE FIRST PART OF THAT STATUTE THAT CONTROLS . FORGET THE 80 PERCENT. WE ARE TALKING ABOUT ALL REASONABLE EXPENSES FOR MEDICALLY NECESSARY. THE "ALL REASONABLE EXPENSES FOR -" IS WHAT HAS TO BE CONSTRUED, AND IN THAT LIGHT

EXPENSES FOR THE SERVICES, NOT IN CONNECTION WITH THE SERVICES. IS THAT WHAT

IF YOU LOOK , THERE IS A CASE DECIDED , A COLORADO SUPREME COURT CASE , ALLSTATE

VERSUS SMITH , 902 PFK SECOND 1386 PACIFIC SECOND 1386 , THEY CONSTRUED THE STATUTESIMILAR TO OUR STATUTE, SAY ING EXPENSES THAT ARE MEDICALLY REASONABLE AND NECESSARY . THEY ADDED THE WORD NECESSARY. AND WHAT THE COURT DID WAS ADD FOR. THEY LOOKED IN BLACK'S LAW AND SEVERAL OTHER DICTIONARIES , AND THEIR INTERPRETATION FROM THESE DICTIONARIES, THAT THE WORD "FOR" MEANS INCURRED IN CONNECTION WITH , CAUSALLY RELATED TO , THINGS OF THAT NATURE. BLACK'S LAW DICTIONARY , IN FACT , SAYS THIS INCURRED INCONNECTION WITH . SO MY INTERPRETATION , AND I THINK THIS IS A BIG PART OF THE HUNTER COURT'S INTERPRETATION, IS THAT WHEN OUR STATUTE SAYS "ALL REASONABLE EXPENSES FOR" MEDICALLY NECESSARY SERVICES,THEY ARE TALKING ABOUT EXPENSES THAT ARE RELATED TO OBTAIN ING THE MEDICAL EXPENSES.

HUNTER DIDN'T HAVE TO DEAL WITH THE TERM MEDICALLY NECESSARY.ISN'T THAT RIGHT?

IT DID. BUT I WOULD HA LOVE TO RESPOND TO THAT I WOULD LOVE TO RESPOND TO THAT. MEDICALLY NECESSARY HAS GOT NOTHING TO DO WITH THE FIRSTPART OF THIS STATUTE THAT TALKS ABOUT REASONABLE EXPENSES FOR. IT IS SIMPLY TELLING EVERYONE THAT THE MEDICAL EXPENSES, THEMSELVES , THE DOCTORS' VISITS , THE TESTS , THOSE HAVE TO BE MEDICALLY NECESSARY T DOES NOT, THE LEGISLATURE DID NOT PUT NECESSARY.IT DOES NOT, THE LEGISLATURE DID NOT PUT THE WORD MEDICALLY NECESSARY , IN FRONT OF THE FIRST PART OF THAT STATUTE.

I F A PERSON HAS TO HIRE A BABY-SITTER IN ORDER TO GO TO THE DOCTOR, IS THAT AN EXPENSE FOR MEDICALTREATMENT?

THE WORD REASONABLE SUGGESTS AND IN FACT MANDATES, THAT THIS IS A SITUATION THAT WOULD DEPEND ON THE CASE.I HAVE COME UP WITH A FEW DIFFERENT SUGGESTIONS AS TO WHAT MIGHT BE A REASONABLEEXPENSE FOR GETTING MEDICALSERVICES. FOR EXAMPLE , WHAT IF SOMEONE NEEDS

IF WE ARE DOING THIS ON THE PLANE LANGUAGE , AS I UNDERSTOOD YOUR ARGUMENT, YOU ARE DOING THIS ON THE PLANE LANGUAGE , EXPENSES FOR MEDICALLY NECESSARY TREATMENT , AND SO WE HAVE GOT TO COME TO SOME UNDERSTANDING OF WHAT THE INTERPRETIVE BOUNDARIES OF THAT WOULD BE , AND SO THAT IS THE REASON THAT I THINK , I WOULD LIKE TO UNDERSTAND WHAT THOSE BOUNDARIES ARE O R WHETHER IT IS JUST AN AUTOMOBILE EXPENSE, A TAXI EXPENSE, OR WHETHER IT IS GETTING SOMEBODY TO COME IN AND CARE FOR YOUR MOTHER WHILE YOU GO T O THE DOCTOR .

I DON'T REALLY THINK THAT THOSE MINUTE POSSIBILITIES NEED TO BE ADDRESSED BY THE COURT. THE WORD REASONABLE , AND THE CASE LAW FROM THIS ENTIRE STATE , HAS SAID WHEN A STATUTE TALKS ABOUT A REASONABLE SOMETHING OR OTHER, IT IS UP TO THE FACT FINDER IN A PARTICULAR CASE. IT IS POSSIBLE THAT THERE IS AN INDIVIDUAL WHO IS , LIVESBY THEMSELVES AND HAS ABSOLUTELY NO ONE TO TAKE CARE OF THEIR CHILD , AND A JURY MIGHT FIND THAT BABY-SITTING IS APPROPRIATE. I RATHER DOUBT IT. BUT I THINK THERE ARE SOME OTHER THINGS THAT COULD EASILY BE CONSIDERED REASONABLE, SUCH AS WHAT IF SOMEONE NEEDS A DRIVER OR AN AID TO GET THEM TO THE DOCTOR? WHAT IF SOMEONE NEEDS A WHEELCHAIR TO GET THEM TO THE DOCTOR?

BUT YOU GO ONE STEP FURTHER AND LET'S ASSUME THAT , AS OPPOSED TO THE PLAIN LANGUAGE OF THE STATUTE , BEING UNAMBIGUOUS AND CLEAR , LET'S SUPPOSETHAT WE FIND THAT THERE IS AN AMBIGUITY THERE, YOU KNOW , TRYING TO READ THE WHOLE THING. WHAT , WOULD YOU GIVE US YOUR ANALYSIS, IF WE FIND THAT IT IS AMBIGUOUS, WHAT WOULD BE THE POLICY CONSIDERATIONS THAT WOULD GUIDE US , AND THEN IN CONSTRUING THE STATUTE?

ALL RIGHT. FIRST OF ALL , LET ME, AGAIN , JUST REPEAT MY CONTENTION THAT THE 2001 AMENDMENTS TO THE PIP STATUTES , WHERE IN THEY ADDED THE WORD "MEDICALLY" IS NOT

RELEVANT TO WHAT WE ARE TALKING ABOUT. IF YOU LOOK AT 627.732, I BELIEVE IT IS, WHERE THEY DEFINED MEDICALLY NECESSARY, WHAT THAT IS TALKING ABOUT IS WHAT KINDS OF THINGS ARE REALLY MEDICALLY NECESSARY, AS OPPOSED TO SOME PERSONAL CHOICE ON THE PART OF A PATIENT? SO I DON'T THINK THAT THE 2001 AMENDMENTS HAVE ANYTHING TO DO WITH THIS ANALYSIS.

THAT MIGHT HAVE TO DO WITH JOINING A HEALTH CLUB OR EXERCISING.

YEAH. WHAT IS A MEDICAL SERVICE. WHAT IS A REASONABLY NECESSARY MEDICAL SERVICE, SO BEYOND THAT, I JUST WANTED TO GET THAT OUT OF THE WAY, BUT BEYOND THAT, THERE IS BASICALLY THREE STATUTORY CONSTRUCTION CONCEPTS THAT HAVE BEEN DISCUSSED IN THE CASE. ONE OF THEM IS THAT THE PIP STATUTES ARE TO BE CONSTRUED BROADLY IN FAVOR OF INSURED. THAT IS A VERY WELL-SETTLED PROPOSITION AND AN AID TO STATUTORY CONSTRUCTION IN THE STATE. A SECOND ONE IS THAT, IF A CASE HAS CONSTRUED A STATUTE AND THERE HAS BEEN A LONG PERIOD OF TIME WHERE THE LEGISLATURE HAS NOT AMENDED THE STATUTE TO SPECIFICALLY ADDRESS THAT CASE AND OVERRULE IT, THEN THAT IS A VERY GOOD INDICATION THAT THE LEGISLATURE IS SATISFIED WITH THE CONSTRUCTION PLACED ON THAT CASE. IE HUNTER, DECIDED IN 1906. THERE HAVE BEEN NO AMENDMENTS TO THIS PARTICULAR STATUTE, WHAT IS THAT, MY DECIDED IN 1986. THERE HAVE BEEN NO AMENDMENTS TO THIS PARTICULAR STATUTE, WHAT IS THAT, MY DAUGHTER WAS BORN IN 1986 AND SHE 18 YEARS NOW, SO THE LEGISLATURE HAS NOT SEEN FIT TO MAKE ANY CHANGE IN THE STATUTE, EXCEPT FOR THIS MEDICALLY NECESSARY ASPECT THAT WAS PASSED IN 2001, AND I CAN ASSURE YOUR HONORS THAT THAT WAS NOT PASSED AT THE BEHEST OF ANY INSURANCE COMPANY IN ORDER TO MEET HUNTER, BECAUSE IT WAS NEVER RAISED BELOW. IT WAS NEVER RAISED BY THESE THREE INSURANCE COMPANIES IN THE TRIAL COURT OR THE DCA. IF IT HAD BEEN A HUNTER AMENDMENT, THEY CERTAINLY WOULD HAVE BROUGHT THAT TO THE COURT'S ATTENTION. IT HAD NOTHING TO DO WITH HUNTER.

DID ANYBODY EVER CHALLENGE THE REIMBURSEMENT RATES IN A COURT THAT YOU ARE AWARE OF, PRIOR TO THESE CHALLENGES?

NOT THAT I AM AWARE OF, NO. THERE ARE A NUMBER OF CASES PENDING. IN FLORIDA THERE HAS BEEN NO CHALLENGE TO MY KNOWLEDGE. THE THIRD

YOU MEAN AN APPELLATE DECISION.

CORRECT. I ASSUME. NO APPELLATE DECISIONS. PENDING CASES.

THESE CASES GO ON ALL THE TIME FOR THE LAST 30 YEARS.

THERE ARE PENDING CASES. NO APPELLATE CASES INVOLVED.

I AM TALKING ABOUT CHALLENGE !!ING THE AMOUNT, THE REIMBURSEMENT RATE OF MILEAGE, WHICH IS A CLASS ACTION SUIT. ARE YOU AWARE OF ANY OTHER SUITS THAT CHALLENGED OVER THE LAST 18 YEARS, THAT CHALLENGE WHETHER IT WAS REASONABLE?

I HAVEN'T SEEN ANY GO UP TO THE DCA AND I HAVEN'T SEEN IT. I AM NOT AWARE OF IT. THOSE ARE CLEARLY IN FAVOR OF OUR CONSTRUCTION OF THE STATUTE.

WOULD YOU AGREE THAT THERE WAS SOME HINT IN HUNT TORY ANALOGIZE THE WORK OF THE COMPENSATION STATUTE? IS THERE SOMETHING IN TERMS OF THE HISTORY OF THE PIP CLAIMS, THAT SHOWS THAT THIS WOULD, YOU KNOW, AGAIN I N LOOKING ALTERNATE OTHER AIDS OF STATUTORY LOOKING AT OTHER AIDS OF STATUTORY CONSTRUCTION, THAT YOU HAVE ALL OF THE LOST WAGES, MEDICAL BENEFITS OF LOST WAGES, AND WHEN YOU GO UNDER MEDICAL BENEFITS THAT, THE IDEA WAS TO BE AS EXPANSIVE AS POSSIBLE SO THAT THERE WILL BE NO

OUT-OF-POCKET EXPENSES INCURRED AS A RESULT OF THE ACCIDENT . FIRST OF ALL , WORKERS COMPENSATION, IS IT THE SAME OR IS IT DIFFERENT , AND SECOND , IS THERE SOME OTHER POLICY WHEN THEY TOOK AWAY A PERSON'S RIGHT TO SUE , THAT WAS, YOU KNOW , AND SUBSTITUTED PIP, AND THEN THE PERMANENT INJURY THAT WOULD SUPPORT YOUR CONSTRUCTION?

I THINK THAT , FROM BOTH STANDPOINTS THAT YOU JUST TALKED ABOUT, THERE IS A SIMILARITY BETWEEN WORKERS COMP AND PIP. NUMBER ONE, THERE IS A DESIRE TO GIVE MEDICAL CARE TO THE INJURED PARTY , AND NUMBER TWO , YOU DON'T HAVE THE RIGHT TO SUE FOR THAT , AND INSTEAD YOU HAVE BEEN GIVEN THESE BENEFITS FROM YOUR INSURANCE COMPANY. THERE IS A SLIGHT DIFFERENCE. I THINK THAT , AND COUNSEL FOR THE DEFENDANTS HAVE ARGUED THIS , THAT IN WORKERS COMP I THINK YOU GET 100 PERCENT , WHEREAS IN THE PIP YOU GET 780 PERCENT. THAT I S YOU GET 80 PERCENT. THAT IS A MATTER OF DEGREE. I DON'T THINK IT GOES TO THE ISSUE OF HOW EXPANSIVE THESE SERVICES AND MEDICAL CARE, ITSELF, IS SUPPOSED TO BE COVERED. I DON'T THINK THERE IS ANYTHING IN EITHER THE CASE LAW OR THE LEGISLATIVE HISTORY, THAT WOULD SUGGEST THAT PIP -INJURED INDIVIDUALS HAVE BEEN GIVEN UP THE RIGHT TO SUE UNDER \$10,000 , SHOULD BE TREATED ANY DIFFERENTLY THAN THE WORKERS COMP .

COULD YOU THEN SPEAK TO AND RELATE TO 736 A S TO ADMINISTRATIVE JUDGE AWARDING NONNEUROLOGICAL INJURIES. SPEAK TO TRAVEL.

CERTAINLY. THAT IS ONE AREA IN WHICH THE LEGISLATURE HAS ENUMERATED, A AND IF YOU LOOK AT THAT STATUTE , THEY DON'T JUST SAY MEDICAL CARE AND TRAVEL EXPENSES. THAT LIST QUITE A FEW DIFFERENT KINDS OF SERVICES. IT IS VERY BROAD, THE PIP STATUTE. IT LISTS CATEGORIES. IT SAYS , FOR EXAMPLE , X RAYS T DOESN'T SAY MRI 'S. IT SAYS CATEGORIES.

THERE ARE CATEGORIES AND THAT RULE OF CONSTRUCTION , ALL RELATE TO ACTUAL MEDICAL TYPE EXPENSES.

THAT GETS BACK TO M Y ORIGINAL INTERPRETATION THAT YOU CAN'T IGNORE THE FIRST PART OF THAT STATUTE THAT SAYS ALL REASONABLE EXPENSES FOR THE MEDICAL CARE.

WHAT IF , YOU SEE, BUT IF YOU TOOK AN AMBULANCE TO GET TO THE DOCTOR , THAT IS COVERED UNDER THE SECOND PART, WHICH SAYS "AND NECESSARY AMBULANCE, HOSPITAL AND NURSING SERVICES."

MY INTERPRETATION IS THAT, BECAUSE THE LEGISLATURE USED THE WORD "AND" THE FIRST PART OF THE STATUTE IS SEPARATE FROM THE SECOND PART OF THE STATUTE , THAT THEY ENUMERATED THE DIFFERENT KINDS OF MEDICAL CARE IN THE FIRST PART AND SAID YOU CAN GET REASONABLE EXPENSES FOR THESE, AND THEN THEY SAID YOU CAN GET AMBULANCE , HOSPITAL AND NURSING.

IF YOU HAD THAT , WHICH PART SAYS YOU CAN ACTUALLY GET THOSE EXPENSES. IN OTHER WORDS THE WAY YOU ARE READING THIS , WOULDN'T REASONABLE EXPENSES , I GUESS AS I READ IT, IT REALLY MEANS THE REASONABLE EXPENSES OF THESE NECESSARY MEDICAL

IT DOESN'T SAY OF, THOUGH, YOUR HONOR , AND I WOULD IMPLORE YOUR HONORS IT TO LOOK AT THAT COLORADO CASE. IT IS VERY INTERESTING IN THE WAY IT IS DRAWN FROM THE DIFFERENT DICTIONARIES .

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

OKAY. BECAUSE IT DOESN'T SAY "OF", AND IT DOESN'T SAY "REASONABLE MEDICAL EXPENSES " , IT SAYS REASONABLE EXPENSES FOR.

SO YOU ARE READING IT DIFFERENTLY THAN HUNTER, BECAUSE HUNTER REALLY RELIED ON THE AMBULANCE PART OF IT IN THE TRANSCRIPT.

HUNTER HAD THREE DIFFERENT INTERPRETATIONS. THEY HAD THE AMBULANCE. THEY HAD , WHAT I AM TALKING ABOUT IS IN HUNTER. IT WAS JUST ONE O F THEIR ANALYSIS. THANK YOU .

GOOD MORNING. MAY IT PLEASE THE COURT. I AM BETH VOGEL SANG FOR SECURITY NATIONAL INSURANCE COMPANY AND I AM JOINED B Y MARK SCHAPIRO , WHO REPRESENTS LIBERTY MUTUAL INSURANCE COMPANY AND DOREEN LASCH.

I WANT TO BE CLEAR. YOU HAVE HUNTER. YOU GO ALONG. THE STATUTE DOESN'T CHANGE ANYTHING. THIS ISSUE COMES UP. ARGUE IN FRONT OF THE FOURTH DISTRICT, ARGUE ABOUT WHO SHOULD SET THIS, WHETHER THERE IS MORE EXPENSE OR LESS, THEN YOU GET THIS OPINION THAT COMES OUT AND SAYS , HEY , YOU DIDN'T HAVE TO PAY IT TO BEGIN W THE ISSUE WAS NOT RAISED AT ALL AS A POSITION OF THE INSURANCE COMPANY , THAT THE STATUTE DOES NOT INCLUDE TRANSPORTATION EXPENSES .

CHIEF JUSTICE, IF YOU LOOK AT THE TRANSCRIPT FROM THE HEARING , WHEN WE WERE ON THE MOTION T O DISMISS AT THE TRIAL COURT , WE WERE BOUND TO TELL THE TRIAL JUDGE THE ONLY CASE OUT THERE, IS THE HUNTER CASE, AND EVEN THOUGH IT IS FROM THE FIFTH DISTRICT

I UNDERSTAND THAT IN THE TRIAL COURT, BUT THEN IN THE FOURTH DISTRICT LEVEL, IF THERE WAS AN ISSUE AND YOU PAID EXPENSES , YOU PAID TRANSPORTATION EXPENSES IN THIS CASE , CORRECT?

WE HAD TO. WE WOULD HAVE BEEN ACTING IN BAD FAITH, HAD WE NOT PAID.

BECAUSE OF HUNTER.

BECAUSE OF HUNTER.

THEN YOU GOT A CHANCE. NOW YOU ARE GOING UP TO THE FOURTH DISTRICT. YOU HAVE A CHANCE NOW, T O SAY THAT HUNTER WAS WRONG. YOU DON'T D O THAT.

YOU ARE CORRECT. YOU ARE CORRECT. THE FOURTH DISTRICT .

I AM NOT SAYING IT IS A STATUTORY CONSTRUCTION.

THE FOURTH DISTRICT , IN WHICH WE WERE REQUIRED TO PAY , THE STATUTE SAID , HAY , THE HEY, THE STATUTE DOESN'T REQUIRE YOU TO PAY UNDER THE PLAIN LANGUAGE. THE STATUTE WAS FULLY BRIEFED ON THE THIRD HEARING, AND THEN THE THIRD DISTRICT, WHICH HAS BEEN CONSOLIDATED , THE THIRD DISTRICT HAD THE BENEFIT OF THE COURT'S ANALYSIS IN MALU, AND IT WAS CITED AS SUPPLEMENTAL AUTHORITY , AND THE THIRD DISTRICT INVITED BOTH PARTIES TO FULLY REBRIEF THE ISSUE IN MALU, SO IT WAS FULLY BRIEFED AT THE THIRDDISTRICT, THEN IT CAME BEFORE THE COURT.

IS THIS THE BEST INTERPRETATION AS WE ARE LOOKING AT THIS OVERALL SCHEME, THAT WE HAVE SOMEONE THAT HAS BEEN INJURED AND CAN'T DRIVE THEIR CAR , BUT THEY CAN HAVE SOMEONE TAKE THEM, AND WE HAVE AN EXPENSE FACTOR IN GETTING THERE , THAT IT WOULD CONTEMPLATE IN THE STATUTE , THAT YOU SHOULD, THAT IT IS BETTER OR THAT THE INTERPRETATION SHOULD BE YOU HIRE OR YOU CALL THE AMBULANCE TO TAKE YOU , BECAUSE YOU CAN'T GET THERE , AND YOU PAY \$150 WHATEVER IT IS, FOR THE AMBULANCE TO COME AND GET YOU BECAUSE WE ARE NOT REIMBURSING FOR THE OTHER TRANSPORTATION THAT IS NOT

AMBULANCE.

AMBULANCE COSTS ARE ONLY SUBJECT TO COMPENSATION IF THEY ARE MEDICALLY NECESSARY.

IT MUST BE MEDICALLY NECESSARY. ASSUME A PERSON CAN'T GET , YOU CANNOT GET THERE .

MEDICALLY NECESSARY , THE STATUTE WENT ON, WHEN THE LEGISLATURE ADD THE WORD MEDICALLY NECESSARY, TO BOTH MEDICAL SERVICE AND AMBULANCE SERVICES, THEY ALSO SET FORTH THE DEFINITION OF MEDICALLY NECESSARY , CONTAINED IN THE STATUTE, AND NOW IT REFERS TO THIS TERM MEDICAL SERVICE OR SUPPLY THAT A PRUDENT PHYSICIAN WOULD SUPPLY FOR THE PURPOSE OF PRECONVENIENCE, DIAGNOSING OR TREATING A DISEASE, ILLNESS OR SYMPTOM , AND THEN IT GOES FROM THERE.

THE AMBULANCE IS NOT COVERED , IS WHAT YOU ARE SAYING.

IF YOU LOOK AT THE STATUTORY DEFINITION OF AMBULANCE , THE AMBULANCE IS THE VEHICLE WHERE THE PATIENT, NOT ONLY DOES THIS VEHICLE HAVE MEDICAL SERVICES AVAILABLE BUT THE PATIENT IS ANTICIPATED TO NEED MEDICAL SERVICES DURING THE TRANSPORTATION. FOR EXAMPLE MRS. SCHIAVO , IF SHE HAD TO BE TRANSPORTED FROM ONE NURSING HOME TO A HOSPITAL FACILITY, IT WOULD BE MEDICALLY NECESSARY , I WOULD ASSUME UNDER THAT SITUATION , THAT SHE BE TRANSPORTED BY AMBULANCE , SO

BUT ISN'T IT A FACT THAT , IF YOU LIVE IN BONIFAY , FOR INSTANCE , AND OUT HERE NEXT TO CHIPLEY IN WEST FLORIDA , AND THEY DO NOT HAVE AN ORTHOPEDIC SURGEON IN THE WHOLE OF WASHINGTON COUNTY , AND YOU , THE ONLY PLACE WHERE YOU CAN GET AN ORTHOPEDIC 'S TREATMENT , IS OVER HERE AT TALLAHASSEE MEMORIAL, AND YOU ARE REQUIRED TO HAVE AN ORTHOPEDIC TREATMENT THAT IS MEDICALLY NECESSARY FOR YOU TO GO FROM BONIFAY FROM TALLAHASSEE TO GET THAT TREATMENT. ISN'T THAT JUST A PLAIN , SIMPLE FACT?

I DON'T DISAGREE WITH THE FACT THAT THERE ARE CASES WHERE YOU ARE GOING TO NEED TO HAVE LENGTHY TRANSPORTATION, IN ORDER TO GET TO GET TO THE MEDICAL SERVICES THAT YOU NEEDED , BUT I THINK THE ISSUE HERE IS , UNDER THE PLAIN LANGUAGE OF THE PIP STATUTE , IS THAT CAR RIDE WITH THE GAS IN MY CAR , IS THAT A MEDICALLY NECESSARY MEDICAL SERVICE, AND THAT IS NOT HOW IT IS DEFINED IN THE STATUTE.

IF YOU GO AHEAD AND YOU GET THROUGH THE PIP THRESHOLD AND YOU GO TO COURT AND YOU ARE LISTING YOUR OUT-OF-POCKET EXPENSES , MEDICAL BILLS , WOULD THOSE KINDS OF TRANSPORTATION EXPENSES BE A LEGITIMATE PART OF YOUR OUT-OF-POCKET EXPENSES INCURRED AS A RESULT OF THE AUTOMOBILE ACCIDENT? ANOTHER VICTIM WOULD HAVE A RIGHT TO GO AGAINST THE TORTFEASOR . THEY DON'T EVEN HAVE TO MEET THE THRESHOLD FOR ANY ECONOMIC EXPENSES , INCLUDING THAT MILEAGE , EVEN THOUGH IT IS NOT PAID OR PAYABLE BY PIP.

WHAT WOULD BE THE OTHER ECONOMIC EXPENSES THAT AREN'T COVERED BY THE PIP STATUTE THAT THERE COULD BE A LAWSUIT FOR IT?

I THINK, WELL , REMEMBER, PIP ONLY COVERS , USUALLY \$8,000, BECAUSE MOST PEOPLE ELECT THE \$2,000 DEDUCTIBLE , SO YOUR 20 PERCENT COPAYMENT.

SO YOU ARE THINKING THAT THE LEGISLATURE SO YOU ARE THINKING THAT THE LEGISLATURE WOULD LIKE TO SET UP SCHEME WHICH IS DESIGNED TO LIMIT THE AMOUNT OF LITIGATION THAT WOULD SAY , NOW , TO ALL OF THESE PIP CLAIMANTS ARNDT STATE, THAT THEY ARE NOT GOING TO GET A REASONABLE TRANSPORTATION EXPENSE UNDER THE PIP STATUTE, THAT WE ARE GOING TO HAVE THEM ALL GO INTO THE COUNTY COURT SUE THEIR INSURANCE COMPANY AND

GET ATTORNEYS FEES, AND WE ARE GOING TO HAVE A LAWSUIT FOR IT, BECAUSE VIRTUALLY EVERYBODY GOING TO DOCTORS, HAVE TO , UNLESS THEY ARE WALKING THERE , ARE GOING TO BE INCUR ING TRANSPORTATION EXPENSES. IS THAT WHAT YOU THINK THE LEGISLATURE, WHEN THEY WERE DESIGNING THIS, WOULD HAVE EXPECTED OR THE INSURANCE COMPANIES WOULD WANT, THAT, I MEAN, ISN'T THAT THE NATURAL EFFECT OF THIS , IF WE DON'T GIVE THIS MORE REASONABLE INTERPRETATION THAT HUNTER GAVE THE STATUTE 18 YEARS AGO?

I THINK THAT THE PURPOSEOF THE LEGISLATURE , THIS COURT RECENTLY HELD IN UNITED AUTO VERSUS RODRIGUEZ , IS TO PROVIDE QUICK PAYMENT FOR YOUR MEDICAL BILLS , FOR YOUR HOSPITAL , YOUR DOCTORS.

BUT WASN'T IT ALSO SO THAT INSURANCE COMPANIES DIDN'T WANT, WE WERE TRYING TO MINIMIZE THE NUMBER OF SMALL LAWSUITS . I A M REMEMBERING BACK , I MEAN, THAT WAS EXACTLY WHAT THE INSURANCE INDUSTRY WANTED. THEY WERE TRADING OFF THEFACT THAT YOU COULDN'T GO TO COURT. YOU WERE GOING TO GET THIS AMOUNT. BUT UNDER YOUR INTERPRETATION, NOW THEY AREGOING TO HAVE THIS AND STILLHAVE TO SUE YOU.

WELL , THEY STILL WOULD , IF THEY WANT TO SUE FOR THEIR GAS TO GET TO THEIR DOCTOR'S OFFICE , THEY WOULD STILL HAVE , IF YOU DIDN'T EVEN HAVE THAT , THEY STILLHAVE THE RIGHT TO SUE FOR THEIR 20 PERCENT COPAYMENT. YOU KNOW, IF I GO TO THE DOCTOR AND H E CHARGES M E \$1350 , MY PIP INSURANCE - - \$150 , MY PIP INSURANCE ONLY PAYS 8 0 PERCENT, SO UNLESS I AM LUCKY ENOUGH TO HAVE PRIVATE MEDICAL INSURANCE, YOU WILL STILL ALWAYS HAVE UNINSURED MEDICAL PAYMENTS , SO I DON'T THINK THAT GOES INTO THE POLICY OR THE LEGISLATIVE POLICY FOR THE STATUTE. I AM SORRY. ALL I F WE AGREE THAT THE STATUTE COULD BE READ IN THE MANNER THAT THE APPELLANT WANTS THE STATUTE READ , THAT IS THAT THE EMPHASIS IS ON EXPENSES , MEDICALLY NECESSARY FOR, THE FOR ARGUMENT THAT SHE HAS MADE, THEN YOU WOULD, WOULD YOU , IF WE AGREE THAT THE STATUTE IS AMBIGUOUS, ISN'T IT , AND THEN WHAT , IF THAT IS SO, WHAT WOULD BE YOUR BEST ARGUMENT AS TO WHY THIS AMBIGUOUS STATUTE SHOULD BE READ IN THE MANNER THAT YOU ARE SUGGESTING?

AS A PREFACE , OF COURSE,I DON'T BELIEVE IT IS

AS I SAID WITH THAT PREMTIS THAT IT CAN BE READTHAT WAY. EYE UNDERSTAND. THEN I SAY THAT THIS

I UNDERSTAND. THEN I SAY THAT THIS COURT WOULD HAVE TO ASSUME THAT THE LEGISLATURE , WHEN IT ADDED THE PHRASE , IF THE PETITIONER'S ARGUMENT IS CORRECT , AND ALL TYPES OF TRANSPORTATION, INCLUDING MY PERSONAL VEHICLE TO DRIVE TO MY DOCTOR'S APPOINTMENT, IS SUBSUMED WITHIN THAT STATUTORY LANGUAGE , REASONABLE EXPENSES FOR MEDICALLY NECESSARY MEDICALSERVICES, THEN THE PHRASE "AND MEDICALLY NECESSARY AMBULANCE SERVICES" IS MEANINGLESS.IT IS SUPERFLUOUS , AND IT I S BASIC STATUTORY CONSTRUCTION RULES , THAT EVERY

BUT ON THE OTHER HAND , I MEAN, LOOK AT WHEN YOU WERE ANSWERING ONE OF THE JUSTICES ' QUESTIONS ABOUT WHETHER OR NOT YOU COULD IN FACT TAKE THE AMBULANCE TO THE HOSPITAL OR THE DOCTOR'S OFFICE, BECAUSE YOU HAD NO OTHER WAY TO GET THERE , AND YOU WERE SOMEHOW SDNLDDISABLED AND HAD NO OTHER SOMEHOW DISABLED AND HAD NO OTHER WAY TO GET THERE , YOU WERE SEPARATING THE USE OF AN AMBULANCE FROM THE SAME KIND OF USE THAT A N AUTOMOBILE WOULD BE PUT TO , SO I AM NOT SURE I REALLY CAN FOLLOW THAT ARGUMENT THAT YOU ARE NOW MAKING.

BECAUSE THE ARGUMENT THAT THE PETITIONER IS MAKING , IS WE SHOULD CONSTRUE VERY BROADLY, AND ACTUALLY THIS COURT SHOULD READ WORDS INTO THE STATUTE THAT DON'T EXIST , THAT WHEN THE LEGISLATURE SAYS MEDICALLY NECESSARY , MEDICAL EXPENSES , THAT

INCLUDES ALL RELATED TRAVEL , EVEN THOUGH WE KNOW THE LEGISLATURE KNOWS HOW TO SAY RELATED TRAVEL.

IS SHE SAYING THAT OR IS SHE SAYING AT THE BEGINNING OF THAT PHRASE , IS WHAT INCLUDES THE TRAVEL ? AND NOT THE MEDICALLY NECESSARY PORTION OF IT.

I THINK SHE IS SAYING REASONABLE , I HEARD HER ARGUMENT, THE PHRASE REASONABLE EXPENSES FOR MEDICAL SERVICES .

SHE IS SAYING FOR , MEANING IN CONNECTION WITH , AND THAT, I MEAN , THAT IS THE ISSUE. IS THERE ANYTHING I N THE LEGISLATIVE HISTORY THAT SHE DID ANY LIGHT O N THIS? COULD YOU GO BACK AND SEE, WELL , MAYBE THERE WASN'T ANY , BACK WHEN THEY ENACTED THE PIP STATUTE, ANYTHING T O INDICATE WHETHER TRAVEL EXPENSES WERE ROUTINELY CONSIDERED TO BE PART OF WHAT WAS

THERE IS NOTHING IN THE LEGISLATIVE HISTORY, BUT THIS CASE, THE STATUTE CAME OUT, I BELIEVE I T IS 1971 , AND THAT WAS SEVERAL YEARS , MORE THAN TEN YEARS AFTER THE MOBLEY DECISION CAME OUT INTERPRETING THE WORKERS COMPENSATION STATUTE, AND I THINK I T IS SIGNIFICANT BECAUSE ONE OF THE THING THAT IS BOTHERED THIS COURT ABOUT THE WORKERS COMPENSATION STATUTE AND WE HAVE ARGUED IN THE BRIEF AND WE KNOW HOW MUCH MORE COMPREHENSIVE WORKERS COMPENSATION BENEFITS ARE, BECAUSE IT IS TO BE ABSOLUTELY NO EXPENSE TO THE INSURED IN OBTAINING THAT MEDICAL TREATMENT , BUT ONE OF THE THINGS THAT THIS COURT WAS BOTHERED BY, WAS THAT THE WORKERS COMPENSATION STATUTE DID NOT HAVE LANGUAGE FOR AMBULANCE TRANSPORTATION. IT SAID THAT THE EMPLOYEE WAS ENTITLED TO REASONABLE REMEDIAL TREATMENT , CARE AND ATTENDANCE, AND THE COURT SAID, WELL, IF YOU LOOK AT THAT, IT DOESN'T SAY TRAVEL, AND CERTAINLY WE WOULD ALL AGREE THAT TRAVEL BY AMBULANCE MUST BE COMPREHENSIBLE. HERE WE HAVE THE STATUTE AFTER MOBLEY , ENACTING THE PIP, THE LEGISLATURE ENACTING THE PIP STATUTE, AND SAYING , WELL , WE ARE GOING TO COVER NECESSARY AMBULANCE EXPENSE , BUT THEY PURPOSE US FULLY DON'T SAY ANY OTHER TRAVEL EX BUT THEY PURPOSE US FULLY DON'T SAY ANY OTHER TRAVEL EXPENSE.

WOULD YOU DRAW OUR ATTENTION TO THESE PROVISIONS THAT YOU SAY DEFINE AMBULANCE , THAT WOULD EXCLUDE THE USE BY A DISABLED PERSON , TO OBTAIN THE NECESSARY TREATMENT, PLEASE.

YES. THE WORD AMBULANCE , IS DEFINED IN SECTION 401.23. I PARAPHRASED IN MY NOTES 401 IS NOT PART OF THE PIP STATUTE.

IT IS NOT PART OF THE PIP STATUTE. BUT IT IS A DEFINITION , THE ONLY STATUTORY DEFINITION OF WHAT AMBULANCE IS, THAT I AM AWARE OF IT.

WHAT OTHER ONES DO YOU HAVE? I DON'T FIND ONE IN THE PIP STATUTE.

THERE IS NONE IN THE PIP STATUTE , JUSTICE. THAT IS CORRECT.

WHAT OTHER ONES DO WE WANT TO RELY ON. 401. WHAT ELSE?

401 IS THE ONLY ONE THAT I AM AWARE OF , THAT DEFINES THE TERM AMBULANCE.

YOU COULDN'T A QLOO IT , BECAUSE 40 YOU COULDN'T USE IT, BECAUSE 401.23 WOULD PROHIBIT THAT KIND OF USE.

WHEN IT SAYS MEDICALLY NECESSARY AMBULANCE SERVICE, I THINK WE HAVE TO LOOK AT

WHEN IS AN AMBULANCE SERVICE NECESSARY , AND OF COURSE THAT WOULD BE A FACTUAL QUESTION, AND THE ONLY PLACE THAT I HAVE FOUND A DEFINITION OF WHAT IS AMBULANCE IS, IS WHEN SOMEONE IS EXPECTED T O

THAT IS HYPOTHETICAL . ALL RIGHT.

I AM SORRY.

THE THING THAT I AM HAVING TROUBLE WITH , IS THAT I, BEING A S GRAY-HAIRED AS JUSTICE LEWIS , I WAS AROUND WHEN THIS STATUTE WAS PASSED. AND THE FACT IS THAT THIS WAS T O COVER, AND THE WAY THAT WE ALL UNDERSTOOD IT AT LEAST , THE MEDICAL EXPENSES THAT WERE CONNECTED WHEN PEOPLE WERE INAUDIBLE ACCIDENTS , AND ONE OF THE THINGS THAT YOU ALWAYS ROUTINELY HAD , WAS AN AMBULANCE BILL T O CART SOMEONE FROM THE ACCIDENT SCENE TO THE HOSPITAL , AND SO THAT WAS AN IDENTIFIED THING IN THE STATUTE , JUST AS A MATTER OF FACT. IT DIDN'T HAVE A SPECIFICALLY DELINEATING DIFFERENCE BETWEEN WHAT WAS A TRANSPORTATION COST , BECAUSE IT WAS A N AMBULANCE. IT WAS BECAUSE IT WASSOMETHING THAT WAS NORMALLY PART OF AN AUTOMOBILE ACCIDENT OR THERE COULD BE QUESTION ABOUT IT. BUT , ALSO , WE GREW U P OVER 18 YEARS, UNDERSTANDING THAT REASONABLE TRANSPORTATION EXPENSES TO A DOCTOR, WERE ALSO COVERED. I MEAN , THE POLICY SAID THAT , THE REGULAR SAID THAT, AND INSURANCE COMPANIES ROUTINE LY PAID IT. ISN'T THAT RIGHT?

SINCE HUNTER, THE INSURANCE COMPANIES HAVE ROUTINE LY PAID IT. MY CLIENT, I DID TRY TO SKRX ONE OF THE PANEL MEMBERSASKED WAS IT PAID BEFORE THE HUNTER DECISION?

NEVER WENT TO THE LEGISLATURE AND SAID , WOE , THAT FIFTH DISTRICT HAS SAID , WHOE , THAT FIFTH DISTRICT HAS MADE US PAY SOMETHING THAT WE WERE NEVER INTENDED TO PAY.

BUT THE WAY THAT COULDCOME ABOUT IS SOMEBODY IN BAD FAITH AND REFUSED TO PAY IT , GOT SUED FOR IT AND IT WAS BROUGHT UP IN ANOTHERDISTRICT.

BUT THE INSURANCE INDUSTRY HAS LOBBYIST THERE EVERY SESSION , DOINGSOMETHING WITH THE PIP STATUTE.

BUT IN FAIRNESS , JUSTICEWELLS , THERE HAVE BEEN SO MANY PROBLEMS WITH THE PIPSTATUTE.

IS THIS A PRETTY SIGNIFICANT , WE ARE LOOKING NOT AT WHY DIDN'T YOU DO IT BUT THERE IS A PRINCIPLE OF STATUTORY CONSTRUCTION , AGAIN, IF WE ACCEPT THAT I T IS NOT PLAIN BUT IS AMBIGUOUS, AND THEN WE LOOK TO AIDS FOR STATUTORY CONSTRUCTION , AS MS. TUTT POINTED OUT , ONE OF THOSEAIDS IS WHETHER , AFTER A DECISION OF A COURT, THE LEGISLATURE CONTINUES THE STATUTE IN THE, AS TO THE APPLICABLE LANGUAGE, IN IN THE SAME WAY , AND S O IT IS 18 YEARS-WORTH, WITH THE IDEA BEING THAT , IF THERE WERE, IF THIS WAS NOT IN ACCORDANCE WITH THE ORIGINAL LEGISLATIVE INTENT , THE LEGISLATURE HAS NOT BEEN SHY OVER THESE PAST 18 YEARS I N MAKING A CHANGE , AND IT COULD SAY THIS EXCLUDES , BLAH BLAH BLAH , AND THAT IS WHAT IT EXCLUDES .

THE REVERSAL OF THAT WOULD BE TO SAY I T INCLUDES AMBULANCE AND OTHER MEANS OF TRAVEL, AS THEY DID IN THE WORKERS COMP STATUTE FOR MANY YEARS AND AS THEY HAVE DONE IN OTHER PIP LEGISLATION THROUGHOUT OTHER STATES OR AS THEY DID IN THE BIRTH NEUROLOGICAL INJURY STATUTE, AND I UNDERSTAND THAT THAT CAN , IN A STATUTORY CONSTRUCTION , WHICH I DON'T THINK THE COURT GETS T O BECAUSE IDON'T BELIEVE THE LANGUAGE IN THE STATUTE IS AMBIGUOUS .

LET'S ASSUME W E ACCEPT THE APPELLANT'S ARGUMENT , I AM GOING TO TRY TO GET REAL BRIEFLY TO THE CLASS CERTIFICATION ISSUE, CAN YOU SPEAK TO THAT?

YES , JUSTICE.

I MEAN , IS I T INDIVIDUAL AS TO EACH PERSON , OR IS THERE A CLASS ISSUE AS TO THE RATE PER MILE?

I DON'T BELIEVE THEY HAVE PLED OR COULD PLEAD , TO LOCALITY, BECAUSE I N THOSE FEW CASES WHERE MILEAGE HAS BEEN DISCUSSED AS A TRANSPORTATION COST , WHAT THIS COURT HELD IN MOBLEY, ONE OF THE THING THAT IS THIS COURT LOOKED AT IN MOBLEY IS THE COMMISSION HAD ENACTED A RULE, I THINK IT WAS THEN 7 CENTS A MILE , AND THIS COURT SAID, ALTHOUGH IT FOUND THAT MILEAGE WAS APPROPRIATE TRANSPORTATION COSTS WERE APPROPRIATE UNDER THE WORKERS COM P CONTEXT , IT THREW OUT THIS RULE O F REIMBURSEMENT OF 7 CENTS , 7 AND-A-HALF CENTS PER MILE, AND IT SAID IT IS A GREAT IDEA, AND IF THE EMPLOYEE CAN AGREE WITH THE CARRIER ON A RATE, WONDERFUL , BUT IT CANNOT BE JUDICIALLY LEGISLATED , AND I T HAS TO BE DECIDED ON A CASE-BY-CASE BASIS , AND EVEN HUNTER , WHEN IT WAS DISCUSSED AND IT EXTENDED THIS HOLDING IN MOBLEY TO THE NO-FAULT STATUTE, IT AGAIN SAID IT IS FACT INTENSIVE , AND WHAT THE ACTUAL COST IS, BECAUSE IT HAS TO BE WHAT MY ACTUAL COST IS.

IS THAT THE INSURANCE COMPANY DOES AS A MATTER OF COURSE? IN OTHER WORDS THEY NEED TO FIND OUT WHAT TYPE OF VEHICLE THE INJURED PARTY IS DRIVING, TO SEE WHETHER THEY HAVE GOT A HIGHER GAS PER MILE THAN SOMEBODY IN A GAS GUS GUZZLER VEHICLE?

I AM SAY ING THAT THEYHAVE TO PAY A MILEAGE RATE.

YOU ARE NOT SAYING THAT YOU WANT EVERY INDIVIDUAL TO BE LOOKING AND SAYING, MAYBE IN THAT ONE CASE IT IS 24CENTS A MILE AND IN ANOTHER IT SHOULD BE 40 CENTS? IT SHOULD JUST BE VARIATION FROM PERSON TO PERSON?

THE RELIEF THAT THE PETITIONER ASKED FOR IN THE COMPLAINT WHICH IS I THINK HOW THIS GETS HERE, THAT THEY ARE ASKING THE COURT TO JUDDISH REALLY LEGISLATE IN EACH OF - - TO JUDICIALLY LEGISLATE IN EACH OF THE THREE CLASS ACTION CASES WHICH ARE PENDING, WHAT RATE SHOULD APPLY, AND IF YOU DON'T ACCEPT OUR RATE , THEN YOU MUST PRESENT EVIDENCE , AND THAT IS WHAT THIS COURT HAS HELD , THEN YOU MUST PRESENT EVIDENCE ON A CASE-BY-CASE BASIS , AS TO WHAT YOUR ACTUAL EXPENSES ARE FOR OUT OF POCKET MILEAGE . IF THIS EVENING 39 CENTS IS NOT ENOUGH, I THINK IT KEEPS GOING UP. IT WAS 34 AND-A-HALF CENTS AT THE TIME. IF THAT IS NOT THE APPROPRIATE, THEN PRESENT US WITH EVIDENCE AS TO WHAT YOU ACTUALLY DID PAY. HOW FAR WAS YOUR DOCTOR'S APPOINTMENT? WHAT KIND OF CAR , AND THEN WE GET INTO ALL OF THESE FACT-INTENSIVE QUESTIONS.

ARE THERE DIFFERENCES BETWEEN THE POLICIES BETWEEN THE VARIOUS CLASS ACTION CASES THAT YOU ARE POINTING TO AS BEING , ALSO A DIFFERENT , IN OTHER WORDS DID SOME INSURANCE COMPANIES ACTUALLY SPECIFY IN THE POLICY , SOMETHING ABOUT REIMBURSABLE TRANSPORTATION EXPENSES?

I AM NOT AWARE O F ANY THAT DO. OUR POLICY , WHICH IS ACTUALLY PART OF THIS RECORD BECAUSE IT WAS ATTACHED AS EXHIBIT TO OUR MOTION TO DISMISS, I T TRACKS THE LANGUAGE OF THE STATUTE, AND THERE IS NO MENTION OF MILEAGE O R TRANSPORTATION COSTS AT ALL , BECAUSE THERE ISN'T ANY IN THE STATUTE.

AND ON THIS ISSUE OF WHETHER WE LOOK AT THIS AS A PLAIN LANGUAGE OR A.M. BIG YOUTH , AS I A M OR AN AMBIGUITY , AS I A M UNDERSTANDING I T , YOUR ARGUMENT IS THAT I T PLAINLY DOESN'T PROVIDE IF IT , AND THE OTHER SAYING I T PLAINLY DOES, AND SO YOU ARE , BUT IF WE , AGAIN, IF WE GO TO THE AMBIGUITY , WHAT OTHER, DO YOU HAVE ANY OTHER PRINCIPLES OF STATUTORY CONSTRUCTION THAT GET TUESDAY TO YOUR POSITION ?

WELL , THERE IS THE ONE THAT THE FOURTH DISTRICT, AND I THINK WE HAVE ALREADY DISCUSSED THAT, IT IS THE LATIN PHRASE, I MIGHT BUTCHER IT, BUT BASICALLY IF ONE MEANS OF TRANSPORTATION IS PROVIDED FOR , WHICH IT WAS HERE , AMBULANCE, THEN IT IS IMPLIED THAT THE STATUTE , THE LEGISLATURE DID NOT INTEND ANY OTHER TYPES OF TRANSPORTATION. ALSO WE HAVE THE 2001 STATUTORY AMENDMENT , WHERE THEY HAVE INSERTED THE PHRASE "MEDICALLY" IN DEFINING MEDICALLY NECESSARY , AND THERE IS AN ACTUAL DEFINITION, WHICH MY OUT OF POCKET MILEAGE DOESN'T COVER, AND I THINK ONE OF JUSTICE WELLS'S EARLIER QUESTIONS , AM I OUT OF TIME? EXCUSE ME. I WAS JUST GOING TO ALSO SAY IN CONCLUSION , ABOUT THE CHILDCARE, IF MY GAS TO GET THERE IS NECESSARY, IF I AM AN AT-HOME MOM AND I HAVE GOT TO GO AND I HAVE LITTLE CHILDREN AT HOME AND HAVE TO GO TO REHABILITATION THERAPY , YOU KNOW , THEN THE STATUTE WOULD SAY CAUSALLY CONNECTED TO , NOT EXPENSES FOR MEDICAL TREATMENT. THANK YOU FOR YOUR TIME.

CHIEF JUSTICE: THANK YOU VERY MUCH . THREE MINUTES.

I WOULD JUST REPEAT, WHAT DOES THE WORD "FOR" MEAN? IF YOU LOOK AT THE DEFINITIONS IN BLACK'S LAW DICTIONARY AND OTHER DICTIONARIES , "FOR" MEANS CAUSALLY RELATED TO , AND I THINK YOU ALL UNDERSTAND THAT PART OF THE ARGUMENT. I WOULD LIKE TO ADDRESS BRIEFLY, THE MOBLEY CASE. THERE WAS A DIFFERENCE BETWEEN THE PIP STATUTE AND THE WORKERS COMP STATUTE IN MOBLEY, AND IN FACT , THE MOBLEY STATUTE WAS EVEN LESS FAVORABLE TO THE WORKERS COMP CLAIM STATUTE HERE, BECAUSE IT SAID, I WROTE IT SOMEWHERE , IT DIDN'T SAY REASONABLE EXPENSES FOR. IT SAID THAT IT WAS SUCH REMEDIAL TREATMENT , CARE AND ATTENDANCE AS THE INJURY SHALL REQUIRE , SO IN OUR CASE IN THE PIP STATUTE , WE GO BEYOND THAT. IT SAYS WE ARE GOING TO GIVE YOU REASONABLE EXPENSES FOR ALL OF THESE MEDICAL THINGS. REGARDING THE , WHETHER THE LEGISLATURE COULD HAVE SAID AMBULANCE AND OTHER TRANSPORTATION COSTS, IT WAS UNNECESSARY TO DO SO , BECAUSE AMBULANCE IS REALLY IN THE NATURE OF A MEDICAL EXPENSE . ANYBODY HAS EVER BEEN IN AN AMBULANCE OR HAD LOVED ONES BEEN IN AN AMBULANCE, YOU CAN SEE IT. THEY PROVIDE A MEDICAL SERVICE. IT IS NOT STRICTLY A TRANSPORTATION SERVICE. THE TRANSPORTATION EXPENSE FALLS INTO THE BEGINNING PART OF THE STATUTE , AS A REASONABLE EXPENSE IN CONNECTION WITH MEDICAL SERVICES . SINCE MEDICALLY NECESSARY PART SIMPLY MEANS THAT YOU CAN'T TAKE YOUR VEHICLE TO AN AROMATHERAPIST , FOR TREATMENT , AND HAVE THAT COVERED , BECAUSE THE TREATMENT MUST BE MEDICALLY NECESSARY. REGARDING THE CLASS ACTION , I WOULD EMPHASIZE THAT THIS CASE WAS YES .

DO THE CLASS ACTION. I HAD ANOTHER QUESTION ON THE STATUTE. YOU WANT TO THE MENTION CLASS ACTION . I WANT TO SOUND IF REASONABLE EXPENSES MODIFIES FOR MEDICALLY NECESSARY, THEN WHEN IT GETS TO , AND SAYS "AND MEDICALLY NECESSARY AMBULANCE, HOSPITAL AND NURSING SERVICES", IS YOUR ARGUMENT THAT REASONABLE EXPENSES FOR , ACTUALLY EXTENDS TO THE SECOND PART OF THE SENTENCE?

I AM NOT CLEAR ON THAT .

THAT IS A PROBLEM , ISN'T IT?

I DON'T KNOW WHETHER REASONABLE EXPENSES FOR ONLY MODIFIES THE FIRST PART OR THE SECOND PART.

THAT WOULD BE NO, BECAUSE THEN YOU COULDN'T GET TO A HOSPITAL. YOU COULDN'T

I THINK IT PROBABLY MODIFIES BOTH SECTIONS, BECAUSE IT , EXACTLY BECAUSE OF. THAT IF YOU NEEDED TO GET TO A HOSPITAL.

WHAT DO THEY THEAD AT THE END THEN? WHAT DO THEY NEED AT THEEND THEN?

BECAUSE AMBULANCE , HOSPITAL AND NURSING SERVICES, ARE KIND OF A DIFFERENT CATEGORY THAN MEDICALLY NECESSARY DOCTOR SERVICES. I THINK THAT IS WHY THEY BROKE IT OUT. THE FIRST PART GO AHEAD.

I WAS JUST GOING TO , SINCE YOU ARE RUNNING OUT OF TIME , I WOULD LIKE TO HEAR YOUR POSITION ON THE CLASS ACTION. ANOTHER CLASS S X ACTION WAS WAS DECIDED , ALL THREE CASES WERE DECIDED AT THE DISMISSAL STAGE. WE HAVE HAD NO OPPORTUNITY TO DEVELOP ANY KIND OF RECORD, ANY KIND O F DISCOVERY. WE HAVEN'T BEEN ABLE TO LOOK AT THE DIFFERENT INSURANCE POLICIES. WE HAVEN'T BEEN ABLE TO ATTEMPT T O OBTAIN FIGURES FROM ANY RECOGNIZED GOVERNMENTAL AGENCIES, AS TO WHETHER THERE IS AN OVERALL REASONABLE COST OF MILEAGE , YOU KNOW, AS WE ALL KNOW , THESE THREE INSURANCE COMPANIES, PICKED A MILEAGE RATE THAT THEY USE ACROSS THE BOARD. AND FOR THEM TO SAY, WELL , NOW IT SAYS , SINCE THEY PICKED THE MILEAGE RATE ACROSS THE BOARD , WHEN WE GO IN TO SUE FOR IT , WE CAN'T PICK THE MILEAGE RATE ACROSS THE BOARD , I DON'T BELIEVE THAT THAT IS APPROPRIATE. I THINK WE CAN. WE NEED AN OPPORTUNITY TO DEVELOP SOME RECORD ON THAT. AND THAT IS WHY THAT WAS PREMATURE.

CHIEF JUSTICE: THANK YOU VERY MUCH. THANK YOU TO BOTH PARTIES, AND WE ARE GOING , BEFORE CALLING THE LAST CASE, WE ARE GOING TO TAKE OUR MORNING RECESS , THE 15 MINUTES.

MARSHAL: PLEASE RISE.