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Victor K. Borden v. East-European Insurance Co.

THE MARSHAL: ALL RISE. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

THE NEXT CASE ON THIS MORNING'S DOCKET IS BORDEN VERSUS EAST-EUROPEAN INSURANCE COMPANY. I JUST WANT TO -- BEFORE WE GET STARTED I WANT TO MAKE SURE THAT I'VE GOT THE TIME DIVISION CORRECT AND WHAT WE WILL DO IS YOU ARE GOING TO TAKE TEN MINUTES, AND THEN THE YELLOW LIGHT WILL COME ON AT FIVE MINUTES FOR MR. HENRY AND THEN THE YELLOW LIGHT WILL COME ON AND THEN THREE MINUTES FOR MISS BROWNELL AND THEN TWO MINUTES REBUTTAL SO I KNOW YOU HAD ASKED FOR MORE TIME BUT YOU HAVE DIVIDED IT THAT WAY BUT IF YOU CAN MAKE SURE YOU KEEP TRACK OF IT BECAUSE ONCE WE GET STARTED AND QUESTIONING IT IS SOMETIMES DIFFICULT TO SAY OKAY, I'M SITTING DOWN NOW SO JUST BE AWARE EVERY MINUTE YOU ARE UP IS TAKING AWAY FROM.

WE WILL FOLLOW THE LIGHTS, YOUR HONOR.

THANK YOU.

I'M NAT PIEPER FROM TAMPA. I REPRESENT VICTOR BORDEN. THIS IS ON PETITION FROM CERT FROM THE 2ND DCA BECAUSE OF A CONFLICT OUT OF THE 3RD DCA. MY CLIENT BROUGHT A MARITIME INSURANCE CLAIM AGAINST EAST-EUROPEAN WHICH IS A FOREIGN ALIEN UNDERWRITER. OTHER DEFENDANTS ARE OCEAN INSURANCE, LOCATED IN TAMPA, BARNHARDT IN JACKSONVILLE.

SINCE YOU HAVE A LIMITED TIME. LET ME GET RIGHT TO MY CONCERN.

PLEASE.

EVERYBODY SEEMS TO BE BRIEFING AND ARGUING THIS ISSUE ON SUBSECTIONS 1 THROUGH 4. MY QUESTION IS: DON'T WE HAVE TO LOOK AT WHAT THE STATUTE SAYS BEFORE THAT? ANY OF THE FOLLOWING ACTS IN THIS STATE AND UNAUTHORIZED INSURER, AND WHAT IS THE ALLEGATION OR THE EVIDENCE THAT ANY ACTS OF EAST-EUROPEAN INSURANCE OCCURRED IN FLORIDA AND THAT EAST-EUROPEAN WAS ACTING IN FLORIDA AS AN UNAUTHORIZED INSURER? DON'T WE HAVE TO ANSWER THOSE THRESHOLD QUESTIONS BEFORE WE GO INTO THE DIFFERENT SUBSECTIONS?

I THINK IT IS IMPORTANT TO ANSWER THAT, I THINK WE HAVE TO GO BACK TO THE FACT THAT MARITIME INSURANCE IS INTERNATIONAL IN NATURE. AS EAST-EUROPEAN SAID IN THEIR BRIEF, YOU DEAL THROUGH THE INSURANCE COMPANY DEALS THROUGH A CHAIN OF BROKERS. NOBODY MEETS FACE TO FACE. EVERYTHING GETS DONE ELECTRONICALLY. THE EVIDENCE IN THIS CASE CLEARLY IS THAT A POLICY OF THE COVER NOTE OR THE FINDER WAS, IN FACT, WRITTEN AND DELIVERED IN FLORIDA. ON BEHALF OF --

DID EAST-EUROPEAN WRITE AND DELIVER AN INSURANCE POLICY IN FLORIDA? THAT SEEMS TO BE WHAT THE STATUTE IS DIRECTED AT IS INSURANCE COMPANIES THAT ARE NOT AUTHORIZED TO ACT IN FLORIDA ACTING IN FLORIDA ANYWAY, BECAUSE THERE IS ANOTHER STATUTE THAT COVERS AUTHORIZED INSURANCE COMPANIES AND SAYS IN RETURN FOR YOUR PRIVILEGE OF

BEING LICENSES AND INSURANCED COMPANY IN THIS STATE YOU ARE HEREBY APPOINTING THE SECRETARY OF STATE TO BE THE -- TO SERVE PROCESS, TO BE SERVED -- THE AGENT FOR SERVICE OF PROCESS. YOU CAN'T DO THAT UNDER THAT STATUTE FOR UNAUTHORIZED INSURERS BECAUSE THEY ARE NOT SUPPOSED TO BE WRITING INSURANCE ANYWAY. SO IT SEEMS TO ME THIS STATUTE IS SAYING EVEN IF YOU ARE NOT AN AUTHORIZED INSURER BY ACTING IN THE STATE AS IF YOU WERE ONE AND CONDUCTING INSURANCE PRACTICE YOU ARE HEREBY AUTHORIZING THE SECRETARY TO ACT AS A RESIDENT FOR THOSE PURPOSES AS WELL. SO AS NOT TO GIVE THE UNAUTHORIZED INSURERS AN ADVANTAGE OVER THE AUTHORIZED INSURERS, BUT IT IS STILL ALL DESIGNED FOR INSURANCE ACTS THAT ARE CONDUCTED IN FLORIDA. NOT THESE INTERNATIONAL TRANSACTIONS.

WELL, I THINK SUBPART 4 WAS DESIGNED AS A CATCH-ALL TO PICK UP THIS.

BEFORE WE GET TO SUBPART 4 I'M TALKING ABOUT THE PREAMBLE, IF YOU WILL, THE ACTS -- ANY OF THE FOLLOWING ACTS IN THIS STATE BY AN UNAUTHORIZED FOREIGN INSURER. THAT'S WHAT I AM QUESTIONING.

AND ALL I CAN SAY IS THE ACT IN THE STATE IS THROUGH ITS BROKER/AGENT BARNHARDT IN JACKSONVILLE IT DID ISSUE AND DELIVER A POLICY. THERE WAS NO RESTRICTIONS PLACED ON BARNHARDT AS WHAT IT COULD DO BY EAST-EUROPEAN.

ISN'T THERE A QUESTION AS TO WHETHER OR NOT THEY ARE REALLY THE AGENT OF THIS INSURANCE COMPANY?

I THINK IF YOU LOOK AT THE OLDER CASES WHERE YOU ARE NOT DEALING WITH INTERNATIONAL INSURANCE PRACTICE, THAT MAY BE SO, BUT NOW AS THEY HAVE CONCEDED, INTERNATIONAL MARINE INSURANCE PRACTICE IS DONE THROUGH A CHAIN OF BROKERS. NOBODY DEALS DIRECTLY BETWEEN AN UNDERWRITER IN RUSSIA AND AN INSURED IN TAMPA.

IS THERE ANY EVIDENCE THAT EAST-EUROPEAN KNEW ABOUT THIS BROKER IN FLORIDA, FOUR OR FIVE BROKERS DOWN THE LINE IS THIS.

WE KNOW THAT THEY RECEIVED A PREMIUM FROM FLORIDA. WE KNOW THAT THEY HAD THE ABILITY TO CHECK THROUGH ITS LINE OF BROKERS TO FIND OUT WHERE THAT MONEY WAS COMING FROM.

BUT I'M TALKING ABOUT WHEN YOU ARE TALKING ABOUT ACTING IN THIS STATE AS AN UNAUTHORIZED INSURANCE, INSURER, THAT YOU ARE NOW HELD TO WHATEVER 5TH OR 6TH OR 10TH OR 20TH ACCORDING TO YOUR ARGUMENT BROKER DOWN THE LINE HAPPENS TO BE IN FLORIDA EVEN THOUGH YOU ARE IN RUSSIA AND THE OTHER BROKER WAS IN TURKEY, AND ANOTHER WAS IN LONDON, BECAUSE SOMEWHERE ON DOWN THE LINE THERE WAS A BROKER THAT HAPPENED TO BE IN FLORIDA YOU ARE NOW NOT ONLY ACTING IN THE STATE YOU ARE NOW AN UNAUTHORIZED INSURER IN THIS STATE.

BUT YOU ARE ALSO GETTING THE BENEFIT OF THE PREMIUM PAID IN FLORIDA AND TAKING ADVANTAGE OF WHAT WAS DONE IN FLORIDA. WHY SHOULDN'T -- MY POSITION WOULD BE WHY SHOULDN'T THAT UNDERWRITER HAVE THE OBLIGATION?

IS THERE A DISPUTED ISSUE ABOUT WHETHER THE INSURANCE POLICY ULTIMATELY THAT WAS ISSUED ACTUALLY WAS ISSUED IN THIS STATE?

NO, HERE'S WHAT YOU NEED TO UNDERSTAND. COVERNOTE AND BINDER. INITIALLY THE POLICY OR THE COVER NOTE WAS WRITTEN UP IN JACKSONVILLE. IT WAS ISSUED, DELIVERED IN TAMPA. THAT COVERNOTE STAYED AS THE TERMS OF THE POLICY UP THROUGH THE LOSS. FOUR MONTHS AFTER THE LOSS, MR. BORDEN GETS AN INSURANCE POLICY WHOSE TERMS HAD TREMENDOUSLY

CHANGED. APPLY RUSSIAN LAW. SETTLE IN ARBITRATION IN RUSSIA. THAT'S WHY WE HAVE SUED THE AGENCY. THE GAME HAS CHANGED. THE BROKERS HAVE SAID THE POLICY IS HOPELESSLY WRONG.

SO IF THERE IS AN ISSUE OF FACT WHETHER BARNHARDT WAS AUTHORIZED BY ALFA TO PREPARE OR ISSUE THE COVERNOTE, WHICH WAS -- IS THAT DISPUTED?

BARNHARDT SAID IT WAS AUTHORIZED. IT WOULD NOT HAVE WRITTEN IT OTHERWISE.

AND THEN THERE IS -- IS THERE A DISPUTED ISSUE AS TO WHETHER THE ULTIMATE INSURANCE POLICY THAT WAS PREPARED BY ALFA WAS THAT THEY WERE ACTING AS AN AGENT FOR EAST-EUROPEAN?

WELL, IT DEPENDS ON WHAT YOU FOCUS ON. WE SAY THE BINDER AND THE COVERNOTE IS THE POLICY.

AND THAT'S WHAT I AM ASKING YOU IS AT WHAT STAGE, BECAUSE THIS IS SOMETIMES WE HAVE THIS WITH THE CHICKEN AND THE EGG. WHAT STAGE SHOULD THIS HAVE BEEN SUBJECT TO A VENECIAN^SALAMI KIND OF AN INITIAL EVIDENTIARY HEARING?

THERE WAS.

WERE THERE FINDINGS ON IT?

THE JUDGE WROTE A 25-PAGE OPINION, DETAILED FINDINGS, ANALYZING THE JURISDICTION ISSUES OF THE CASE. THE TRIAL COURT WROTE A VERY DETAILED ORDER FINDINGS BY HIMSELF. AND THOSE FACTS ARE FACTS THAT WE ARE HAPPY WITH. THEY ARE THE FACTS AS FAR AS WE ARE CONCERNED IN THE CASE. THE POLICY THAT THEY WANT TO RELY ON IS THIS ONE THAT WAS ISSUED AFTER WE GOT AFTER THE LOSS SOMETIME WHICH CHANGES THE TERMS, PUTS US OVER IN MOSCOW, PUTS US APPLYING RUSSIAN LAW.

ASSUMING YOU GET JURISDICTION, THE QUESTION AS TO WHAT THE APPLICABLE POLICY IS.

ABSOLUTELY.

WOULD BE A SUBJECT OF STILL DISPUTED QUESTION.

BUT VENECIAN^SALAMI WAS FOCUSED ON EARLY. WE FOCUSED ON THAT A LOT.

THE ONLY LONG-ARM STATUTE THAT YOU ARE RELYING ON IS THIS 629.906, CORRECT?

YES.

NOT THE ONLY GENERAL LIKE YOU ARE DOING ACTS IN THE STATE?

THAT ISSUE WAS IN THE CASE, CERTAINLY BARNHARDT HAS RAISED THAT FROM THE VERY BEGINNING.

BUT THAT'S NOT WHY WE ARE HERE?

BUT WE ARE HERE TODAY BECAUSE OF 906.

TO ME IF YOU SAID THAT SOMEBODY IS AGAIN THE WOMAN THAT WAS HIS DAUGHTER IS IN THE STATE AND IS CERTAINLY ULTIMATELY COULD BE A MINIMUM CONTACT ANALYSIS IF YOU GET THE CORRECT STATUTE. NOW, IF YOU GET BY ANY OF THE FOLLOWING ACTS IN THIS STATE, WHICH YOU HAVE SAID WOULD BE THAT THE COVERNOTE AND BINDER WAS ISSUED, AND WE GET

BACK TO WHETHER SUBSECTION 4, WHICH SAYS ANY OTHER TRANSACTION OF INSURANCE IS CONSTRUED OR MUST BE CONSTRUED TO PROTECT ONLY RESIDENTS OF THE STATE. WHAT IS YOUR BEST ARGUMENT?

MY BEST ARGUMENT IS THIS: THAT SUBPART 4 IS A LEGISLATIVE CATCH-ALL. THE LEGISLATURE RECOGNIZED THAT FLORIDA DEFINITELY HAD AN INTEREST IN REGULATING CONTRACTS AND INSURANCE REGULATION IN FLORIDA.

ISN'T THAT NECESSARY TO PROTECT ITS RESIDENTS? WHAT INTEREST DOES FLORIDA HAVE IN PROTECTING A PERUVIAN CITIZEN OBTAINING INSURANCE OVER BOATS OPERATED IN INTERNATIONAL WATERS, INSURANCE POLICIES WRITTEN BY A RUSSIAN COMPANY?

IT HAS THE INTEREST OF KEEPING THE GAME FAIR WITH DOMESTIC UNDERWRITERS WHO ARE SUBJECTED TO FLORIDA'S JURISDICTION TO AUTHORIZE FOREIGN UNDERWRITERS WHO ARE THERE. WHY GIVE THIS ALIEN UNDERWRITER A BETTER SITUATION THAN THE PEOPLE THAT IT COMPETES WITH.

HOW DO WE KNOW IT IS A BETTER SITUATION?

WELL, I MEAN, THE MARINE AND INSURANCE BUSINESS IS COMPETITIVE. I MEAN --

MEANING THE BETTER SITUATION THAT THEY CAN AVOID --

ABSOLUTELY.

BUT THE QUESTION GOES BACK TO STATUTORY CONSTRUCTION ONE, WHICH IS THAT IF THE LEGISLATURE MEANT FOR 4 TO BE ANY OTHER TRANSACTION AND RETURN BEING -- IT SAYS ISSUANCE OR DELIVERY OF CONTRACTS OF INSURANCE TO RESIDENTS, SOLICITATION OF APPLICATIONS, COLLECTION OF PREMIUMS, ANY OTHER TRANSACTION. NOW, YOU ARE SAYING THIS REALLY FITS IN ONE WHICH IS THE ISSUANCE OF DELIVERY OF CONTRACTS OF INSURANCE.

I'M SAYING IT FITS IN 4 UNDER TRANSACTING INSURANCE IN THE STATE OF FLORIDA. REMEMBER THIS: IF THE LEGISLATURE WANTED TO LIMIT SUBPART 4 AS IT DID ON THE OTHER THREE, ALL IT HAD TO DO WAS ADD THREE WORDS, AND THAT WOULD BE INVOLVING SUCH CONTRACTS, AND THEN SUBPART 4 WOULD HAVE FIT RIGHT IN WITH THE REST OF THEM BUT THEY INTENTIONALLY LEFT THAT OUT.

SO SUBPART 4 SUBASSUMES ALL OF THE OTHER THREE PARTS AS WELL. THEY COULD HAVE SAID THY TRANSACTION OF INSURANCE AND YOU DIDN'T NEED PARTS 1 THROUGH 3?

AS FAR AS IT RELATES TO AN ALIEN UNAUTHORIZED UNDERWRITER THAT'S RIGHT.

I THINK WE'VE GOT YOU NOW GOING INTO MR. HENRY'S TIME. THANK YOU.

THANK YOU, YOUR HONORS, MAY IT PLEASE THE COURT. DAVE HENRY, ALLEN DYER FROM ORLANDO. I WANT TO ADDRESS JUSTICE BELL'S POINT. FLORIDA HAS COMPELLING INTEREST OF MAKING SURE THE DELIVERY SYSTEM OF AGENTS AND BROKERS SELL POLICIES THAT ARE NOT OFFERING ILLUSIARY POLICIES OF INDEMNITY AND TO MAKE SURE IT DOESN'T UNDERMINE THE INSURANCE DELIVERY IN THE STATE AND THAT'S WHY WE ARE BEING SUED.

BUT THIS STATUTE ITSELF SERVES A DIFFERENT PURPOSE. THIS STATUTE SEEMS TO BE ADDRESSED HOW FLORIDA RESIDENTS ARE GOING TO BE ABLE TO FILE SUIT AGAINST THESE NONREGULATED INSURANCE COMPANIES THAT ARE COMING IN HERE DOING BUSINESS WITHOUT BEING REGISTERED INSURANCE COMPANIES. THAT SEEMS TO BE THE FOCUS OF THIS STATUTE, NOT THESE OTHER THINGS THAT WE MAY HAVE AN INTEREST IN.

THAT IS THE FOCUS OF THE STATUTE BUT BY FOCUSING THAT WAY AS THE THIRD DISTRICT SAID IN WINTERTHUR THAT DOESN'T NECESSARILY IMPLY THE NONRESIDENTS ARE TO BE EXCLUDED. NO DOUBT THE COMPELLING INTEREST OF THE STATE IS JUSTIFIED IN SERVING ITS RESIDENTS BUT THAT DOESN'T MEAN THAT NONRESIDENTS CAN'T BENEFIT FROM THE STATUTE. NONRESIDENTS USE 48193 ALL OF THE TIME AND THERE IS NO CONSTITUTIONAL OR STATUTORY PROBLEM.

BUT THE WAY IT IS WRITTEN IN THE PREAMBLE THAT TALKS ABOUT PROTECTING RESIDENTS OF THE STATE. I MEAN I CAN UNDERSTAND YOUR POLICY ARGUMENT BUT WE'RE NOT HERE AS THE LEGISLATURE MAKING A POLICY DECISION. WE ARE TRYING TO, YOU AGREE, SOLELY INTERPRET A STATUTE.

CORRECT.

NOW, WITH THAT IN MIND, WHY AND JUSTICE CANTERO REFERRED TO THIS, WHY DO YOU NEED 1, 2 AND 3 IF YOU HAD 4?

AND THAT'S THE POINT THAT MR.^BRANNOCK MAKES IN HIS BRIEF. IF YOU INTERPRET IT THE WAY WE DO YOU RENDER THE FIRST THREE SECTIONS MOOT AND HE IS EXACTLY WRONG. YOU'VE GOT TO UNDERSTAND THIS IN THE HISTORICAL CONTEXT. THIS STATUTE WAS DEVELOPED IN 1948 BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. THEY DIDN'T GIVE ONE HOOT ABOUT NONRESIDENTS USING THE STATUTE. IT WOULDN'T HAVE BEEN ON THE RADAR FOR THEM AND WHY WOULDN'T IT HAVE BEEN ON THE RADAR FOR THEM? BECAUSE IN 1948 INTERNATIONAL SHOE HAD JUST BEEN DECIDED IN 1945. MOST OF THE LAWYERS CAME FROM PANOIER MENTALITY. THEY DIDN'T CARE ABOUT NONRESIDENTS, FORM SHOPPING, LONG-ARM JURISDICTION BECAUSE THOSE KINDS OF CONCEPTS WEREN'T EVOLVED. SO, YES, THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS IN 1948 CAME UP WITH THIS UNIVERSAL LAW. IT WAS FIRST ADOPTED IN NEW YORK AND THEY SAID, FINE, WE'RE GOING TO LET RESIDENTS OF THE STATE BRING INTO COURT FOREIGN ALIEN INSURERS. WE DIDN'T CARE, WE DON'T THINK, IT DOESN'T MATTER TO US WHETHER NONRESIDENTS CAN USE THE STATUTE. THE KEY WORD IN THE STATUTE IS DEFINED. YOU WILL SEE IN 905 THE LEGISLATURE SAYS WE WANT TO DEFINE WHAT CONSTITUTES DOING BUSINESS IN THE STATE AND THEY DID THAT IN 1, 2 AND 3. THOSE ARE MEANT BY WAY OF EXAMPLE. YOU HAVE TO UNDERSTAND THIS IS A VERY PEDANTIC STATUTE AND THE REASON IT IS PEDANTIC WAS BECAUSE IN 194 THEY WERE DEATHLY AFRAID THE STATUTE WAS GOING TO BE DECLARED UNCONSTITUTIONAL AS AN ACT OF THE STATE IN VIOLATION OF THE COMMERCE CLAUSE SO THEY MADE THE STATUTE PEDANTIC BECAUSE IT WAS GOING TO BE CHALLENGED.

THAT SEEMS TO SUPPORT MR.^BRANNOCK?

NO, NO, THINK ABOUT --

WAS 4 ADDED AFTERWARDS?

NO, THE WHOLE POINT IS THEY WERE CONCERNED ABOUT THE RESIDENTS. THEY DRAFTED THIS PEDANTIC HEAVY-HANDED LANGUAGE SAYING THESE ARE ALL OF THE THINGS THAT MIGHT GET UPHELD IN COURT. NO ONE THOUGHT ABOUT NONRESIDENTS USING THE STATUTE.

SO HAS IT BEEN AMENDED SINCE 1948.

CORRECT, AND IT DOESN'T CORRECT PUBLIC POLICY TO ALLOW NONRESIDENTS TO USE IT. THERE IS NO LOGIC OR LAW IN THE IDEA THAT NONRESIDENTS SHOULDN'T BE ABLE TO AVAIL THEMSELVES OF A STATUTE AND THERE IS NOT A SCRAP OF LEGISLATIVE HISTORY OFFERED BY THE INSURANCE COMPANIES IN THIS CASE TO SUGGEST THE INTENT WAS TO EXCLUDE NOT

RESIDENTS. IT JUST WASN'T ON THE INJURIES PRUDENTIAL RADAR BECAUSE WE DIDN'T HAVE FORM SHOPPING, WE DIDN'T HAVE NONMODERN FORM MENTALITY.

I'M AFRAID TO INTERRUPT BUT IF I CAN INTERPOSE A QUESTION. WHAT ABOUT THE LANGUAGE THAT THIS HAS TO BE DONE IN THIS STATE AND IT IS ADDRESSED TO UNAUTHORIZED INSURERS SO WHERE IS THE ALLEGATION THAT THIS RUSSIAN INSURANCE COMPANY SOMEHOW WAS OPERATING IN FLORIDA?

THEY ARE OPERATING IN FLORIDA THROUGH THE DRASTIC AGENTS IN FLORIDA. ALL INSURANCE IS WRITTEN THROUGH AGENTS. HARDLY ANY SURPLUS LINES IN THE COMPANY AT ALL.

THIS IS AN AGENT OF AN AGENT OF AN AGENT OF AN AGENT.

I DON'T CARE. THAT'S HOW MARINE AND AVIATION GETS WRITTEN.

THAT'S FINE.

WAS THE PREMIUM PAID THROUGH FLORIDA?

YES, SIR.

SO THERE WAS THE DELIVERY OF MONEY?

ABSOLUTELY.

INTO FLORIDA?

THE CONTRACT WAS MADE IN FLORIDA. THE ARGUMENT IN THEIR BRIEF THAT THIS CONTRACT WAS MADE IN TURKEY OR ELSEWHERE IS DEAD BANG WROTE. THE QUOTE COMES FROM THE CARRIER, GOES TO THE INSURED, THE INSURED ACCEPTS THE CONTRACT. UNDER BROOKS YOU WOULD HAVE CHOICE OF LAW ISSUE WHICH WOULD BE FLORIDA. FLORIDA LAW GOVERNS THAT COVERNOTE. THEY CHANGE THE TERMS AND PUT IN A FOREIGN ARBITRATION CLAUSE IN MOSCOW AND EVERYBODY SAYS NOBODY AGREED TO THAT.

WHERE DID THAT COME FROM?

THAT CAME FROM EAST-EUROPEAN AFTER THE LAW.

WHERE WAS THAT DELIVERED?

PROBABLY IN THE HONDURAS. WE GET A COPY OF IT IN THE STATES BUT TO GO BACK TO YOUR POINT. WHAT IS THE ACTIVITY BY THE STATE? IT IS BY THE AGENTS. THERE ARE SURPLUS LINES CARRIERS ALL OVER THE COUNTRY. THEY DON'T HAVE AGENTS HERE. THEY DON'T DO ANYTHING HERE. THAT'S HOW INSURANCE GETS DONE. INSURANCE IS A DIFFERENT PUPPY.

COULD THEY HAVE FILED THIS UNDER THE LONG-ARM STATUTE GUIDING JURISDICTION UNDER THIS COMPANY? YOU ARE INDICATING THEY HAVE CONTACT.

I MADE THE 48193 ARGUMENT BECAUSE I'VE GOT A CROSS CLAIM --

WHAT HAPPENED TO THAT ARGUMENT?

2ND DCA FLUSHED IT AND SAID I DIDN'T RAISE IT AND THAT'S DEAD-BANG WRONG. I RAISED IT, HE PUT IT IN HIS COMPLAINT. WE RAISED IT IN YOUR BRIEFS. I DON'T MEAN TO BE CRITICAL BUT THAT IS DEAD-BANG WRONG. IT IS IS NOT UNFAIR TO REQUIRE A RUSSIAN CARRIER. 2K HAS AN OFFICE CALLED HORIZON. THE SECOND BROKER, SOUTH SEAS HAS AN OFFICE DOWN THE STREET

IN PANAMA CITY SO HOW CAN IT BE UNFAIR FOR THE RUSSIAN INSURER TO COME TO FLORIDA?

I CAN SAY, MR. HENRY, IN THE FIVE MINUTES WE GAVE YOU YOU DID A TEN-MINUTE ARGUMENT IN FIVE MINUTES.

OTHER THAN THAT I DON'T HAVE ANY STRONG FEELINGS ON THE SUBJECT.

MISS BROWNELL?

MAY IT PLEASE THE COURT, MY NAME IS REBECCA BROWNELL AND I'M HERE ON BEHALF OF OCEAN INSURANCE COMPANY AND I'M GOING TO ADD A COUPLE POINTS TO THIS.

WHERE DOES OCEAN FIT?

OCEAN IS THE ALLEGED AGENT IN THIS ACT. THEY DELIVERED THE POLICY TO THE BORDENS, THEY DELIVERED INFORMATION REGARDING THIS POLICY TO THE BORDENS AND ALSO TRANSFERED THE PREMIUM.

WHERE IS OCEAN?

A FLORIDA LICENSED COOPERATION -- AND IT ALSO EMPLOYS LICENSED AGENTS.

HOW IS NOT EAST-EUROPEAN, I MEAN AREN'T YOU THEIR AGENT THEN?

WELL, WE ARE SAYING THAT WE ARE THE AGENT IN A CHAIN OF BROKERS.

IT SEEMS LIKE THIS IS A GOOD 48193 CASE IS WHAT I AM SORT OF HAVING TROUBLE WITH HERE.

IN THIS TRANSACTION, WHAT WE BROUGHT UP BEFORE IS THIS CHAIN OF BROKERS. WHAT IS REALLY IMPORTANT TO UNDERSTAND IS THAT NO CHAIN COULD BE BROKEN BY THE NEXT BROKER. IT HAS TO BE BROKEN BY THE UNDERWRITER. WHEN THAT CHAIN COMES DOWN TO THE AGENT AND THE AGENT IS OCEAN AND THEY TRANSACT CERTAIN ACTIVITIES, FOR EXAMPLE IF OCEAN HAD CONDUCTED THESE ACTIVITIES ON BEHALF OF EAST-EUROPEAN AND HAD NOT BEEN DUALY LICENSED IN FLORIDA, WE WILL CALL THEM AN UNAUTHORIZED AGENT THEY WOULD BE HELD TO THE JURISDICTION OF THE COURT FOR THE SAME ACTIVITIES THAT EAST-EUROPEAN PARTICIPATED IN.

UNDER WHAT STATUTE?

THE REGULATORY STATUTES IN FLORIDA UNDER THE INSURANCE CODE BETWEEN 624 AND 626.

WHO BROUGHT OCEAN INTO THIS? WHO WAS -- IS THIS BARNHARDT THAT WENT TO OCEAN?

OCEAN ACTUALLY WENT TO BARNHARDT SOLICITING INSURANCE FOR MR. BORDEN. BARNHARDT WENT TO THE NEXT CHAIN. THAT PERSON WENT TO THE NEXT LAYER IN THE CHAIN UNTIL IT WENT UP TO EAST-EUROPEAN. EAST-EUROPEAN COMMUNICATED INFORMATION DIRECTLY DOWN THE CHAIN. THEY NEVER BROKE THE CHAIN. THE AGENT REMAINED THE AGENT IN THE STATE OF FLORIDA. THE AGENT WAS OCEAN WHO DEALT WITH THE BROKER BARNHARDT. THERE WAS NEVER ANY AUTHORITY TO DO ANYTHING ELSE BUT TO FOLLOW THE CHAIN OF COMMAND. THESE ARE THE ACTIONS THAT BRING THE UNAUTHORIZED INSURER INTO THE STATE OF FLORIDA.

UNDER YOUR THEORY THAT WE HAVE ESSENTIALLY ELIMINATED FROM FLORIDA LAW THE CONCEPT OF A TRUE BROKER, BECAUSE VIRTUALLY ALL OF THIS OVER THE LAST 50 YEARS WE'VE BEEN LITIGATING WHAT IS AN AGENT AND WHAT IS A BROKER BUT IF WE FOLLOW THAT THEORY TRADITIONALLY IT HAS BEEN THAT THE BROKER IS NOT EMPLOYED BY ANY PARTY OR PERSON. IT SOLICITS INSURANCE FROM VARIOUS COMPANIES ALTHOUGH WE DO HAVE CASE LAW THAT SAYS

ONCE YOU ACCEPT THE PREMIUM AND PASS IT ON TO A COMPANY THEN YOU ARE THEIR AGENT FOR AT LEAST THAT PURPOSE, BUT --

AND WE HAVE MADE THE WORD AGENT AND BROKER MORE ELASTIC AND BECAUSE OF THAT, WE ARE ABLE TO EXPAND IT JUST LIKE WE HAVE DONE IN THE CHAIN OF BROKER ANALYSIS. WE HAVEN'T DESTROYED THE TITLE. WE'VE JUST MADE IT MORE ELASTIC. IT ALLOWS US TO MAKE CERTAIN ASSUMPTIONS ABOUT WHO DID WHAT AND THEN WHAT IMPACT DID THAT HAVE ON THE NEXT BROKER. DID THEY DO SOMETHING DIFFERENT OR INCONSISTENT THAT WOULD HAVE TAKEN THAT CHAIN AND BROKEN IT ALONG THE WAY AND THEY DIDN'T.

WHERE IS ALFA IN THIS?

WELL, ALFA WAS THE DEAD SAYSOR INSURANCE COMPANY FOR EAST-EUROPEAN.

OKAY.

SUCCESSOR.

SO THEY ARE NOT A SEPARATELY NAMED PARTY?

I'M SORRY?

THEY ARE NOT A DEFENDANT RIGHT NOW?

THEY ARE ONE AND THE SAME. THEY ARE EAST-EUROPEAN. BY READING INTO THE --

YOU ARE NOW GOING TO BE IN HIS REBUTTAL.

AND THANK YOU FOR YOUR TIME.

BUT IF YOU WANT TO MAKE ONE MORE STATEMENT IF YOU THINK IT IS CRITICAL.

ACTUALLY I WILL DEFER TO COUNSEL.

THANK YOU.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT, I'M STEVE BRANNOCK HERE REPRESENTING THE RESPONDENT INSURANCE COMPANIES WHO IS COLLECTIVELY REFERRED TO AS ALFA BUT ALFA AND EAST-EUROPEAN ARE THE SAME COMPANY.

THIS IS A SERVICE OF PROCESS STATUTE, RIGHT?

RIGHT.

THIS IS NOT A PERSONAL JURISDICTION STATUTE.

THAT'S CORRECT.

THE WAY I READ IT, THIS SIMPLY PROVIDES FOR THE SERVICE OF PROCESS ON THE COMMISSIONER WHEN THESE ACTS ARE COMMITTED IN THIS STATE, BUT YOU STILL HAVE THE HURDLE OF PERSONAL JURISDICTION FROM WHAT I CAN SEE.

I THINK IT HAS BEEN UNDERSTOOD OVER THE YEARS, THOUGH, TO CONFER, BOTH SERVICE OF PROCESS STATUTE AND IN EFFECT THE LONG-ARM STATUTE AS WELL. THAT'S HOW IT HAS BEEN INTERPRETED IN FLORIDA AND OTHER STATES. IF YOU SATISFY THE UIPL THEN THERE IS JURISDICTION.

IS THIS A 1948 STATUTE THAT HAS BEEN -- IS COMMON THROUGHOUT THE COUNTRY?

WE THINK THAT THERE ARE ABOUT 30 STATES THAT HAVE ADOPTED ONE FORM OF THIS STATUTE OR ANOTHER. THERE IS NOT A SINGLE CASE OTHER THAN THE WINTERTHUR CASE OUT OF THE 3RD DCA WHERE IT HAS BEEN APPLIED TO A NONRESIDENT. ALL OF THE OTHER CASES INCLUDING THE DECISION BELOW HAVE APPLIED ONLY TO RESIDENTS. WE THINK THAT THE DECISION BELOW NEEDS TO BE APPROVED FOR TWO DIFFERENT REASONS. ONE ITSELF UIPL APPLIES ONLY TO RESIDENTS AND SECONDLY THERE IS NO VOLUNTARY CONTACT BETWEEN ALFA AND FLORIDA THAT WOULD GIVE RISE TO THE JURISDICTION.

THAT WOULD BE MINIMUM CONTACT.

LET ME ASK THIS QUESTION, WHEN YOU ARE TALKING ABOUT THE PURPOSES OR PHILOSOPHY OF THIS, IT WOULD SEEM THAT YOU COULD VERY EASILY GET INTO A SITUATION WHERE YOU HAVE THOSE OPERATING AS BROKERS OR AGENTS IN THIS CHAIN CERTAINLY SUBJECTED TO THE LAWS AND THE RESTRICTIONS OF FLORIDA BUT THEN THE INSURANCE COMPANY THAT THEY ARE SUPPOSEDLY REPRESENTING ARE NOT AMENABLE TO BEING HAILED BEFORE THE SAME COURT OVER THE SAME DISPUTE SEEMS TO BE. IS THAT WHAT WOULD RESULT HERE THEN?

THAT'S ABSOLUTELY CORRECT, BUT THE LAW REQUIRES US TO LOOK AT THE VOLUNTARY CONTACTS FROM ALFA'S PERSPECTIVE. THIS CASE BECOMES VERY EASY IF YOU LOOK AT IT FROM THE PERSPECTIVE OF THE RUSSIAN INSURANCE COMPANY HERE.

THE PAYMENT OF THE PREMIUM IS NOT SUFFICIENT THEN. THE PAYMENT TO THE FLORIDA OPERATION THAT WILL FIND ITS WAY TO THE POCKET OF THAT FOREIGN INSURED IS NOT, IN YOUR VIEW, SUFFICIENT?

THAT'S RIGHT FOR A COUPLE OF REASONS. FIRST LOOKING AT THE CASE FROM ALFA'S POINT OF VIEW. ALFA WAS CONTACTED BY A TURK ISSUE BROKER BY -- TURKISH BROKER WHO OWNED A HONDURAN VESSEL THAT WAS GOING TO SALE IN HONDURAN WATERS. THAT IS ALL THAT ALFA KNOWS. IT IS ENTERING INTO AN INSURANCE CONTRACT WITH A HONDURAN. THERE IS NO EVIDENCE IN THIS RECORD THAT IT KNEW BARNHARDT. THERE IS CERTAINLY PLENTY OF EVIDENCE IN THIS RECORD THAT IT NEVER HAD ANY CONTACT WITH BARNHARDT WHICH WAS THE JACKSONVILLE BROKER.

WELL, TRACE THE PREMIUM BACK UP IN YOUR DISCUSSION. WHEN THE PREMIUM IS PAID IN FLORIDA, WHERE DID THE MONEY GO?

THE PREMIUM WENT TO OCEAN AND THEN IT WENT TO BARNHARDT AND THEN IT WENT TO MICI IN LONDON AND THEN IT WENT TO SOUTHERN SEAS IN LONDON AND THEN IT WENT TO TURKEY AND THEN ALFA WHO IS RECEIVING A PREMIUM FROM ITS TURKISH BROKER.

SO EACH PHASE SOME PORTION OF THE PREMIUM WAS SKIMMED OFF FOR LACK OF A BETTER TERM?

JUST THAT, RIGHT. I MEAN THIS IS A CONTRACT BETWEEN A RUSSIAN INSURANCE BROKER AND A HONDURAN RESIDENT. EVERYONE ELSE IN BETWEEN IS REALLY NOTHING MORE THAN A MESSAGE CARRIER IN THIS CASE. WHEN THEY SAY THAT THIS COVER NOTE WAS ISSUED IN JACKSONVILLE BY BARNHARDT THAT'S A BIT OF AN EXAGGERATION HERE BECAUSE I THINK THEY ARE TRYING TO INVOKE THE TYPICAL INSURANCE SITUATION WHERE YOU CALL YOUR BROKER AND YOU SAY I'M PURCHASING A NEW CAR. WILL YOU BUY COVERAGE AND THEN HE HAS BEEN AUTHORIZED CAN ACTUALLY BIND COVERAGE. THAT'S NOT WHAT HAPPENED HERE.

JUST AS YOU SAY, THAT'S NOT WHAT HAPPENED HERE. BECAUSE THEY SAY IT COULD BE AN ISSUE

THAT HAS BEEN RESOLVED AND THAT IS THE COVER NOTE PREPARED BY BARNHARDT WAS THE BINDING INSURANCE. WAS THERE ANY DETERMINATION JUST FOR THE PURPOSES OF THE LONG-ARM STATUTE AS TO THE TRUTH OF THAT OR NOT?

THE TRIAL COURT IN ITS REASONING SUGGESTED THAT BARNHARDT'S ACTIVITIES WERE ENOUGH TO BIND ALFA, EVEN THOUGH ALFA KNOWS NOTHING ABOUT BARNHARDT.

I GUESS THAT TO ME IS A PRETTY CRITICAL FACT. I MEAN, IT MAY BE THAT IN DEFENDING THE CASE, YOU KNOW, WHAT IS THE APPLICABLE INSURANCE POLICY IS, AND WHETHER THERE WAS AN AFTER THE FACT IN PROPER REFORMATION, DO WE -- I KNOW WE COME UP WITH THIS IN TERMS OF, YOU KNOW, IF SOMETHING STATES A CAUSE OF ACTION AND ENOUGH TO INVOKE THE LONG-ARM STATUTE SO WHERE DO WE FIGURE IN THE ISSUE OF OR HOW DO WE ANALYZE THE ISSUE OF WHETHER BARNHARDT WAS AUTHORIZED TO PREPARE OR ISSUE THE COVERNOTE ON ALFA'S BEHALF? HOW DO WE GO ABOUT THAT?

WELL, FIRST ALL THIS COVERNOTE SAYS BASICALLY IS WE HAVE BEEN INFORMED BY OUR CONTACTS UP THE CHAIN THAT ALFA HAS AGREED TO INSURE THIS HONDURAN VESSEL ON THESE TERMS. IT IS NOT BARNHARDT AFFIRMATIVELY ISSUING A POLICY OF INSURANCE ON BEHALF OF SOMEONE ELSE. IT IS BARNHARDT PASSING DOWN A MESSAGE THAT IT GOT FROM ITS CONTACT MICI THAT ALFA HAS AGREED TO DEAL WITH THE HONDURAN RESIDENT, MR. BORDEN HERE. MICI ISSUED ITS OWN COVERNOTE IN LONDON BASED ON THE MESSAGE IT RECEIVED FROM SOUTHERN SEAS SO THESE COVERNOTES WERE NOT INSURANCE BINDERS. THEY WERE PASSING A MESSAGE DOWN THE CHAIN.

IS THAT AN ISSUE OF FACT, IS THAT AN ISSUE OF LAW AND IS THAT SOMETHING THAT HAS TO BE DETERMINED DEFINITELY, THAT AN OPERATIVE MATERIAL FACT FOR PURPOSES OF THE STATUTE BECAUSE AGAIN REFERRING BACK TO THE FACT THAT IT SAYS ACT IN FLORIDA, SO IF THE COVERNOTE IS THE BINDER SO TO SPEAK, THEN THAT IS ONE THING. IF IT IS NOTHING OTHER THAN JUST A LETTER THEN IT -- SO HOW DO WE DETERMINE? IS THAT A LEGAL ANALYSIS? IS IT A FACTUAL ANALYSIS? A QUESTION OF LAW AND FACT?

IN THIS CASE IT IS A LEGAL ANALYSIS BECAUSE THE FACTS ARE ABSOLUTELY UNDISPUTED. NO ONE DISAGREES ABOUT THE FACTS HERE. THE QUESTION IS AS A MATTER OF LAW WAS BARNHARDT AN AGENT OF ALFA AND THE ANSWER IS NO. THERE WAS NO CONTACT BETWEEN BARNHARDT AND ALFA. THERE IS NO EVIDENCE THAT ALFA EVEN KNEW THAT BARNHARDT EXISTED. THERE IS NO CONNECTION. NOR DID THEY HAVE AN AGENCY.

SO IF ALL OF THIS OCCURRED THROUGH THESE CHAINS OF, YOU KNOW, THAT THAT'S THE ONLY WAY AN INSURANCE GETS WRITTEN IS THAT ALFA KNOWS THEN THAT THE TURKISH BROKER CONTACTS THEM BUT THE TURKISH BROKER ISN'T GOING TO BE BY ITSELF FURTHER, I WOULD ASSUME, THEN WHEN THE PREMIUM GETS PAID THEY NOTICE THAT THERE ARE CHUNKS TAKEN OUT. THEY'VE GOT TO KNOW WHO TOOK THE CHUNKS OUT ALONG THE WAY. I MEAN, THEY ARE NOT JUST MESSENGERS. THEY GOT MONEY FOR IT.

RIGHT.

SO HOW DO WE ANALYZE THAT?

WHAT'S IMPORTANT ARE THE TWO ENDS OF THE TRANSACTION. NOT SO MUCH WHERE THE CHAIN HAPPENS TO PASS THROUGH. ALFA KNOWS IT IS INSURING A HONDURAN RESIDENT. WHETHER THE CHAIN OF BROKER PASSES THROUGH THE UNITED STATES IS NOTHING MORNING HAPPENSTANCE, RANDOM CONDUCT.

IT IS NOT THAT RANDOM BECAUSE THE HONDURAN, THE AGENT SO TO SPEAK WAS SYLVIA BORDEN WHO WAS THE BUSINESS MANAGER WHO RESIDEND FLORIDA. THIS IS NOT A

HAPPENSTANCE.

IT IS CLEARLY NOT RANDOM FROM THEIR PERSPECTIVE BUT ALFA HAS NO WAY OF KNOWING THAT THIS CHAIN IS GOING THROUGH LONDON, JACKSONVILLE, THROUGH TAMPA.

NOT AT THE TIME IT IS CONTACTED BY THE TURKISH BROKER BUT WHETHER IT FINALLY GETS THE PREMIUM IT SURE KNOWS THAT -- WHERE IT HAS COME FROM, RIGHT?

IT KNOWS IT HAS RECEIVED A CHECK DRAWN ON A TAMPA BANK ACCOUNT. I THINK THAT'S ALL IT KNOWS.

SO THEY KNOW THERE ARE OTHER CHAINS, LINKS IN THE CHAIN I GUESS THAT'S WHAT I AM TRYING TO UNDERSTAND. AGAIN BECAUSE WE ARE SO USED TO THE TYPICAL AUTO BROKER AND AGENT AND THAT'S ABOUT IT.

BUT THE JURISDICTIONAL ANALYSIS DOESN'T DEPEND ON PLAINTIFF'S CONTACTS. IT DEPENDS ON DEFENDANTS CONTACT WITH THE FOREIGN.

I APPRECIATE THAT FOR THE MINIMUM CONTACTS PART BUT IF WE ARE JUST GETTING BACK TO THE STATUTE HERE, AND WHETHER THERE ARE ACTS IN THE STATE THAT HAVE TO BE PERFORMED, THEN THOSE ARE OBJECTIVE ACTS IN THE STATE, NOT SUBJECTIVE ACTS. THE SECOND PART IS TO WHETHER EVEN IF THE STATUTE APPLIES, WHETHER IT MEETS THE CONSTITUTIONAL GUARANTEE OF MINIMUM CONTACTS, I THINK YOUR ARGUMENT WOULD GO TO THAT.

THERE ARE ACTS IN THIS STATE ONLY BARNHARDT OR OCEAN CAN BE CONSIDERED AN AGENT OF ALFA, AND THERE IS NO EVIDENCE IN THE RECORD THAT WOULD SUPPORT THAT. AN AGENCY REQUIRES SOME DEGREE OF CONTROL. HOW COULD ALFA CONTROL BARNHARDT WHEN THERE WAS NEVER EVEN CONTACT BETWEEN ALFA AND BARNHARDT? BARNHARDT'S REPRESENTATIVE TESTIFIED THEY NEVER TALKED TO ALFA. THERE HAS TO BE A DEGREE OF CONTROL AND THERE IS NO CONTROL IN THIS CASE.

IF BORDEN WAS A FLORIDA RESIDENT BUT HAD A BOAT IN HONDURAS, AND ALL REALLY ALFA CARES ABOUT IS WHERE THE VESSEL IS GOING TO BE AND WHAT KIND OF WATER. THEY DON'T REALLY CARE WHO THE OWNER IS, DO THEY?

YES, ALFA, IF MR. BORDEN WAS A FLORIDA RESIDENT THEN IT IS EASY. THE STATUTE APPLIES.

I GUESS WHAT I AM SAYING IS THE PROBLEM IS STILL THERE FOR ALFA THAT THEY MIGHT NOT KNOW THAT THE CHAIN HAS EXISTED BECAUSE THEY KNOW THAT THE VESSEL IS GOING TO BE IN THE INTERNATIONAL WATERS IN AND AROUND HONDURAS, AND THAT'S THE RISK THEY ARE ASSUMING. THE RISK ISN'T GREATER OR LESS DEPENDING ON WHO IS THE OWNER OF THE VESSEL.

BUT THE CHAIN IS NOT IMPORTANT IF ALFA KNOWS IT IS DEALING WITH A FLORIDA RESIDENT. IF ALFA KNOWS THAT IT IS ENTERING INTO A POLICY OF INSURANCE INTO A CONTRACT WITH A FLORIDA RESIDENT ALFA IS DOING BUSINESS IN FLORIDA, ALFA IS SUBJECT UNDER THE UIPL TO JURISDICTION IN FLORIDA. WHAT IS KEY IS THAT THE TWO ENDS OF THE CHAIN HAVE NOTHING TO DO WITH THE STATE OF FLORIDA. WE ARE TALKING ABOUT A HONDURAN RESIDENT CONTRACTING WITH A RUSSIAN INSURANCE COMPANY. IN THAT SENSE THEN THE CHAIN BECOMES IRRELEVANT AND NOTHING MORE THAN RANDOM OR HAPPENSTANCE CONDUCT. THINK OF THE WORLDWIDE VOLKSWAGEN CASE FROM THE U.S. SUPREME COURT. VERY MUCH LIKE THIS AND IF YOU HAD A PLAINTIFF WHO BUYS AN AUDI FROM A NEW YORK DEALER, THEN DRIVES THE PLAINTIFF THEN DRIVES THE CAR TO OKLAHOMA, AN ACCIDENT HAPPENS IN OKLAHOMA, SUES IN OKLAHOMA. THE U.S. SUPREME COURT SAYS, WAYS A -- WAIT A SECOND. YOU CAN'T SUE IN OKLAHOMA. IT IS HAPPENSTANCE THAT THIS CONDUCT HAS A SECTION WITH OKLAHOMA. WE

HAVE TO LOOK AT THE CASE, SAYS THE U.S. SUPREME COURT, FROM THE DEFENDANT'S PERSPECTIVE FROM THE CAR DEALER'S PERSPECTIVE WHO KNOWS HE IS DEALING WITH A NEW YORK RESIDENT, SELLING A CAR TO A NEW YORK RESIDENT. THE FACT THAT THE NEW YORK RESIDENT THEN DOES THINGS ON ITS OWN TO BRING THE CAR INTO CONTACT WITH OKLAHOMA IS IRRELEVANT AND THAT'S EXACTLY WHAT YOU HAVE HERE. ALFA KNOWS THAT IT IS DEALING WITH A HONDURAN RESIDENT. THE FACT THAT THE HONDURAN RESIDENT TAKES ACTIONS TO HAVE CONNECTIONS WITH FLORIDA THAT ARE UNBEKNOWNST TO ALFA DOES NOT SUBJECT IT TO JURISDICTION. THINK ABOUT THE CASE THIS WAY.

GO AHEAD. I DIDN'T MEAN TO INTERRUPT. GO AHEAD.

YOU HAVE A NEW YORK CORPORATION THAT DOES BUSINESS OFTEN IN GEORGIA AND DEALS WITH A GEORGIA CUSTOMER. CAN THAT GEORGIA CUSTOMER SOMEHOW CREATE JURISDICTION IN FLORIDA BY HAVING THEIR COUSIN MAIL THE CHECK FROM FLORIDA TO THE NEW YORK CORPORATION? OF COURSE NOT. THAT'S BASICALLY WHAT IS HAPPENING HERE.

CERTAINLY THE STATUTE USES TWO WORDS. TALKS ABOUT ISSUANCE AND TALKS ABOUT DELIVERY. DO WE NOT USUALLY THINK OF ISSUANCE WITH REGARD TO THE PARTY TO WHOM THE INSURANCE WILL FLOW, BUT DELIVERY NEED NOT BE TO THAT PERSON. WOULD THAT NOT BE CORRECT? FOR EXAMPLE, WE HAVE MANY POLICIES THAT ARE DELIVERED WITHIN THE STATE THAT MAY INSURE FOLKS EVERYWHERE BUT THIS STATUTE USES THE WORD DELIVERY OF CONTRACTS TO RESIDENT -- DELIVERY, SO IF YOU DELIVER ONE IN THE STATE IT MAY OR MAY NOT INSURE A FLORIDA RESIDENT BUT YOU ARE STILL DELIVERING A CONTRACT TO SOMEBODY IN FLORIDA. NOW, WHERE DOES THAT FALL APART?

THE FLORIDA CASES HAVE SAID THEY NOT ONLY HAVE TO BE DELIVERED IN THE STATE BUT DELIVERED TO A FLORIDA RESIDENT IN THE STATE.

I UNDERSTAND WHAT THOSE CASES ARE SAYING. THEY ARE TRYING TO LIMIT THIS TO A FLORIDA INSURED, A FLORIDA RESIDENT INSURED, BUT WHY DOES IT FALL APART THAT JUST THE PHRASE DELIVERY? I CAN DELIVER A POLICY THAT MAY NOT COVER SOMEONE IN FLORIDA. I CAN CERTAINLY AS AN INSURANCE COMPANY DELIVER TO THEM.

BUT THE STATUTE SAYS IT HAS TO BE DELIVERED TO RESIDENTS OF THIS STATE. THERE WAS NO POLICY DELIVERED TO A RESIDENT OF THIS STATE IN THIS CASE.

I THOUGHT THAT WHATEVER WOULD BE DELIVERED, LET'S ASSUME THAT THIS POLICY COMES DOWN AND IT MADE ITS WAY, DID IT NOT, TO THE HANDS OF THE FLORIDA RESIDENT CORPORATION?

BUT ULTIMATELY IT WAS DELIVERED TO A HONDURAN RESIDENT. I GUESS YOU COULD IMPLY DELIVERY --

YOU ARE SAYING DELIVERY HAS TO BE TO THE INSURED?

YES.

I THOUGHT IT WAS ALWAYS THAT FOR EXAMPLE YOU COULD HAVE DELIVERY TO THE AGENT CONSTITUTES DELIVERY UNDER FLORIDA LAW AS I UNDERSTOOD IT.

INNING UNDER THE UIPL THE CASES HAVE SAID YOU HAVE TO BE DELIVERING --

WOULD YOUR ARGUMENT BE THE SAME IF THE FLORIDA BROKER DEALT DIRECTLY WITH THE RUSSIAN COMPANY? IN OTHER WORDS, THAT IT WAS THE FLORIDA BROKER NOW THAT MADE THE CONTACT WITH THE RUSSIAN COMPANY ON BEHALF OF THE HONDURAS RESIDENT?

IT WAS THE TURKISH BROKER.

I KNOW IT WAS. I'M SAYING LET'S WIPE THE TURKISH AND THE 89 OTHER LINKS IN THE CHAIN OUT AND JUST HAVE THE FLORIDA BROKER NOW THAT HAD BEEN CONTACTED BY THE HONDURAS RESIDENT AND THEY MADE THE CONTACT WITH THE RUSSIAN INSURANCE COMPANY.

I THINK WE HAVE A MUCH TOUGHER CASE THAN THAT.

WHY?

BECAUSE WE HAVE A --

YOU STARTED OUT WITH THE ARGUMENT THAT ALL THAT YOUR CLIENT KNEW WAS THAT IT WAS WRITING INSURANCE FOR A HONDURAN RESIDENT, AND THAT THAT -- THAT THOSE ARE THE IMPORTANT AND CRITICAL FACTS. THAT EVERYBODY IN THE MIDDLE DOESN'T MATTER.

LET ME MAKE IT CLEAR. IT WOULD BE A HARDER CASE FOR US UNDER THE CONSTITUTIONAL LONG-ARM PRINCIPLE. IT WOULD NOT BE A DIFFERENT CASE UNDER THE UIPL.

THAT'S BECAUSE OF THE RESIDENT ISSUES, THOUGH, RIGHT?

EXACTLY.

LET'S TAKE THE RESIDENT ISSUE OUT AND CONSUME THAT WE CONSTRUE THE LANGUAGE NOT TO BE LIMITED TO THE FLORIDA RESIDENT.

THEN PART TWO OF THE ANALYSIS HAS TO BE YOU HAVE TO LOOK AT THE CONSTITUTIONAL PRINCIPLES AND WHETHER IT IS FAIR UNDER THESE CIRCUMSTANCES TO HAIL ALFA INTO COURT IN THE UNITED STATES WHEN ALFA IS ENTERING INTO A CONTRACT OF INSURANCE WITH A HONDURAN PARTY NOT DEALING IN ANY STAGE IN THIS TRANSACTION WITH ANY ENTITY IN FLORIDA I THINK IT IS A VERY, VERY TOUGH SELL TO SUGGEST --

I AM POSING THE HYPOTHETICAL THAT THEY ARE DEALING WITH AN ENTITY IN FLORIDA.

AND THEN THAT'S WHAT I AM SAYING IS THAT'S A HARDER CASE FOR US IF THERE IS A VOLUNTARY CONNECTION BETWEEN ALFA AND BARNHARDT. ALFA AND BARNHARDT ARE DEALING DIRECTLY, I THINK THAT MAKES IT A MORE DIFFICULT CASE.

WHAT IF THE TURKISH BROKER HERE SAYS A FLORIDA BROKER, OKAY, IS SEEKING TO GET INSURANCE FOR A HONDURAN CLIENT AND THEY WANT TO KNOW WHETHER OR NOT YOU WILL WRITE THE INSURANCE FOR THE HONDURAN CLIENT. IN OTHER WORDS, THEY ARE PUT ON EXPRESS NOTICE THAT THE ORIGINATING BROKER IN THE TRANSACTION IS A FLORIDA BROKER. IS THAT --

I DON'T THINK THAT THAT WOULD BE ENOUGH. I THINK YOU HAVE TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES AS THE U.S. SUPREME COURT CASE SAYS AND WHETHER THERE IS A VOLUNTARY EFFORT TO AVAIL YOURSELF OF THE PRIVILEGE OF DOING BUSINESS IN FLORIDA. NOW, I THINK THAT IF ALFA WERE OUT THERE, IF ALFA HAD CONTACTED BARNHARDT AND WERE SAYING, LOOK, WE WANT TO EXPAND OUR BUSINESS IN THE WESTERN HEMISPHERE, WE WANT TO EXPAND OUR BUSINESS IN FLORIDA AND THE UNITED STATES, CAN YOU HELP US WITH THAT, AND THEN AFTER THAT THEY ENTERED INTO A RELATIONSHIP AND BARNHARDT STARTED FEEDING IT BUSY THINK THERE IS ABSOLUTELY NO QUESTION THAT THEY WOULD BE SUBJECT TO.

THAT'S UNDER THE GENERAL BUSINESS BUT WHAT ABOUT THE TRIAL COURT'S FINDING AT PAGE 20 OF THE TRIAL COURT'S ORDER THAT THE COURT AND NO DISPUTED ISSUES OF FACT

REGARDING RESIDENCY. MULTIPLE CORRESPONDENCE WAS MAILED TO THE TAMPA ADDRESS WHICH WAS JOINTLY OWNED BY THE PLAINTIFF AND SYLVIA BORDEN, AND FURTHERMORE SYLVIA BORDEN INITIATED CONTACT WITH OCEAN TO PAY PREMIUMS. THEY WERE PAID FROM A JOINTLY ISSUED FLORIDA ACCOUNT. SYLVIA BORDEN SIGNED THE CHECKS AND THE NOTICES OF CANCELLATION OF CHECKS ISSUED THROUGH THE CHAIN OF THE FLORIDA ADDRESS PRIOR TO THE LOSS. ALSO AT THE TIME OF THE LOSS NEITHER PLAINTIFF NOR SYLVIA BORDEN HAD RECEIVED THE POLICY. IN ANY EVENT, FLORIDA CONTACTS ARE PRIMARILY VIEWED FROM THE PERSPECTIVE OF EAST-EUROPEAN. AND THEN THEY WENT ON FROM THERE.

ALL OF THOSE CONTACTS WITH FLORIDA WERE PLAINTIFF'S CONTACTS WITH FLORIDA. THEY WERE THINGS THAT THE PLAINTIFF DID TO BRING FLORIDA INTO THE PICTURE. NONE OF THOSE THINGS WERE ANYTHING ALFA DID TO AVAIL ITSELF THE PRIVILEGE OF DOING BUSINESS IN FLORIDA.

THE COURT FINDS THAT EAST-EUROPEAN ACCEPTED PREMIUMS PAID AND DELIVERED TO BARNHARDT IN FLORIDA BY PLAINTIFF PURSUANT TO THE ISSUE OF THE COVERNOTE. EAST-EUROPEAN'S ACCEPTANCE OF THE PREMIUM AT A MINIMUM ESTABLISHED IMPLIED AUTHORITY AND THEN IT GOES ABOUT IMPLIED OR APPARENT AUTHORITY. AND SO IT DOESN'T, TO ME I GUESS THE PROBLEM, I MEAN I DON'T HAVE THE SENSE OF THE RANDOMNESS OF THE CONTACT WITH FLORIDA THAT WE SEE IN SO MANY CASES THAT COME INTO OUR COURTS, YOU KNOW, WHERE PEOPLE ARE TRYING TO GET JURISDICTION. AND SO LET'S GO BACK TO FOCUS ON WHAT I THINK YOUR STRONGEST ARGUMENT GOES BACK TO IS THAT THE STATUTE REALLY ONLY APPLIES TO RESIDENTS AND I DON'T KNOW THAT ANY CONTINUING DISPUTE IS BEING RAISED THAT VICTOR BORDEN WAS NOT A RESIDENT OF FLORIDA. SO WOULD YOU WANT TO JUST STAY ON THE STATUTORY -- GO BACK TO THE STATUTORY CONSTRUCTION?

I THINK WE HAVE TWO VERY STRONG ARGUMENTS FROM THE STATUTORY PERSPECTIVE. THE ONE IS -- FIRST IS THAT WE ALL AGREE THAT THE POLESTAR IS THE LEGISLATURE'S INTENT. IN MANY CASES WE ARE GUESSING BUT HERE WE DON'T HAVE TO GUESS BECAUSE WE HAVE 626.905 WHICH TELLS US THIS STATUTE WAS DESIGNED TO PROTECT RESIDENTS. IT SAYS THAT ABSOLUTELY EXPLICITLY AND EVERY FLORIDA CASE TO INTERPRET 626.906 HAS REACHED THAT CONCLUSION, SAVE THE WINTERTHUR CASE. BOTH PARTIES HAVE LOOKED OUTSIDE OF FLORIDA TO OTHER CASES UNDER OTHER UIPL'S. NO ONE HAS FOUND ANY CASE THAT HAS INVOLVED A NONRESIDENT. I THINK IT WOULD BE VERY INSTRUCTIVE FOR THIS COURT TO READ THE BEST CASES THAT THE OTHER SIDE HAS CITED IN THEIR BRIEF. I'VE READ THEM ALL AND YOU WILL FIND THAT THEY ARE ALL CASES WHERE THERE ARE LOTS OF CONTACT WITH THE FOREIGN STATE, MUCH MORE CONTACT THAN THERE IS HERE.

AGAIN IF THE CONTACT WITH THE STATE WOULDN'T MATTER IF IT IS ONLY LIMITED TO RESIDENTS.

THEY ARE ALL RESIDENTS CASES WITH THE EXCEPTION IN NEW YORK, NEW YORK STATUTE IS A LITTLE DIFFERENT BECAUSE IT SAYS IT APPLIES TO RESIDENTS AND TO CORPORATIONS THAT ARE AUTHORIZED TO DO BUSINESS IN THE UNITED STATES.

THIS STATUTE WAS IN EXISTENCE SINCE 1948 UNAMENDED. IS THAT CORRECT?

I THINK THERE WAS A MODEL STATUTE THAT WAS DEVELOPED. IT WAS THEN ENACTED IN VARIOUS FORMS IN VARIOUS STATES OVER THE PAST 60 YEARS NOW.

BUT SECTION 4 WAS NOT ADDED AFTER THE INITIAL STATUTE?

NOT THAT I'M AWARE OF, NO.

IS THERE ANY SIGNIFICANCE TO THE FACT THAT SECTION 4 DOES NOT CONTAIN THAT SAME

LANGUAGE THAT FOR SUCH CONTRACTS, WHICH SEEM TO RELATE BACK TO SECTIONS 2 AND 3, TO SECTION 1 WHERE THAT LANGUAGE FOR SUCH CONTRACTS DOES NOT EXIST IN SUBSECTION 4 SO IS THERE SOME SIGNIFICANCE TO THAT LANGUAGE NOT BEING THERE?

I THINK THAT THAT'S THEIR BEST ARGUMENT BUT IF YOU THEN INTERPRET SUB4 AS BEING THIS BROAD CATCH-ALL THE PROBLEM THAT CREATES IS A COMPLETELY SUBSUMES PARAGRAPHS 1 THROUGH 3 AND BECOMES INCONSISTENT WITH SUBPARAGRAPH 1 THROUGH 3. SUBPARAGRAPH 2 TALKS ABOUT SOLICITATION, THERE HAS TO BE SOLICITATION OF A FLORIDA RESIDENT. IF YOU INTERPRET SUB4 AS BEING THE BROAD CATCH-ALL THEN IMMEDIATELY ALTHOUGH SUBSECTION 2 SAYS SPECIFICALLY FLORIDA RESIDENT THEN SUBSECTION 4 BRINGS NONFLORIDA RESIDENTS RIGHT BACK IN SO YOU'VE CREATED AN INCONSISTENCY AND WHEN YOU HAVE THAT INCONSISTENCY YOU'VE GOT TO GO BACK TO THE LEGISLATURE.

YOU ARE OUT OF YOUR TIME BUT JUSTICE BELL HAS ONE QUESTION.

ONE SHORT QUESTION. READING THE TRIAL COURT'S ORDER THEY SEEM TO BE ADDRESSING THE ISSUE OF LONG-ARM JURISDICTION IN A GENERAL CONTEXT. DO YOU AGREE WITH THAT? I MEAN IT IS NOT FOCUSED TO 626.906 IN THIS 25-PAGE TRIAL COURT ORDER THAT I FOUND. AND THEN IN FOOTNOTE 1 OF THE UNDERLYING OPINION FROM THE APPELLATE COURT HERE IT SAYS BARNHARDT ALSO ARGUES 448.193, THE LONG-ARM STATUTE. THIS ARGUMENT NOT ONLY HAS NO MERIT BUT ALSO WAS NOT RAISED.

THE ONLY PLACE WHERE THE ARGUMENT WAS RAISED WAS IN THE CROSS-CLAIM. THE CROSS-CLAIM SPECIFICALLY REFERS TO 48.193 BUT WHEN WE GOT TO THE ARGUMENT ON THE MOTION TO QUASH, 48.193 WAS NEVER DISCUSSED IN ANY OF THE MEMORANDA THAT WAS SUBMITTED TO THE JUDGE.

SO WHAT WAS ARGUED BECAUSE THE TRIAL COURT AGAIN DOES NOT FOCUS ON IT.

IT REQUIRES US TO LOOK AT 121.06 AND THEN IF YOU FIND IT IN 626.906 APPLIES TO FLORIDA RESIDENTS THEN YOU HAVE TO DO A GENERAL DUE PROCESS ANALYSIS, SO THAT'S THE ANALYSIS.

SO YOU SEEM TO CONCEDE THAT 906 IS BOTH A SERVICE OF PROCESS STATUTE AND A JURISDICTIONAL STATUTE?

ALTHOUGH OBVIOUSLY THE JURISDICTIONAL REACH CANNOT GO BEYOND THE BOUNDS OF DUE PROCESS.

RIGHT. YOU STILL NEED TO DO THE CONSTITUTIONAL ANALYSIS BUT THE WAY I READ THE STATUTE, THE SERVICE OF PROCESS STATUTE SO EVEN IF YOU HAVE SERVICE OF PROCESS YOU STILL HAVE TO GO THROUGH 48.193 BECAUSE THAT GIVES YOU THE PERSONAL JURISDICTION SEPARATE AND APART FROM WHO YOU SERVE PROCESS.

THAT IS NOT HOW THE STATUTE, IF YOU LOOK AT THE CASES GOING BACK DISCUSSING 626.906 THE COURTS SEEM TO SUGGEST THAT IT IS BOTH A LONG-ARM STATUTE AND A SERVICE OF PROCESS STATUTE. THEY COMPRESS THAT ANALYSIS WITHOUT SPECIFICALLY LOOKING AT 48.193. I THINK THAT'S AN INTERESTING POINT. NONE OF THE CASES THAT HAVE ADDRESSED THE STATUTE SPECIFICALLY.

AND YOU HAVEN'T RAISED THAT?

I HAVE NOT RAISED THAT.

WITH OUR HELP, YOU HAVE GONE OVER YOUR TIME. SO REBUTTAL, WE WILL GIVE YOU HOW

MANY MINUTES? WE WILL GIVE YOU IF YOU NEED AN EXTRA COUPLE OF MINUTES.

JUST A FEW POINTS. IN ANSWERING YOUR QUESTION, YES, EACH BROKER TOOK A BITE OUT OF THE PREMIUM. HE WAS PAID OUT OF A TAMPA BANK OF AMERICA ACCOUNT OF SYLVIA BORDEN'S TO BARNHARDT AND THEN IT WORKED ITS WAY UP THE LINE.

BUT YOU ARE NOT CONTESTING, THERE IS NOT AN ISSUE THAT VICTOR BORDEN WAS NOT A RESIDENT, I MEAN --

NO, HE IS CLOSE BUT NOT QUITE.

THANK YOU.

I THINK IT IS IMPORTANT THE TRIAL COURT DID FIND THIS: EAST-EUROPEAN ISSUED AND DELIVERED A POLICY IN FLORIDA THROUGH A CHAIN OF BROKERS TO PLAINTIFF FOR PROFIT. I MEAN, THAT'S REALLY THE GUTS OF THE CASE.

THAT WOULD BE FINE IF WE DIDN'T HAVE THE NONRESIDENCE ISSUE.

THAT'S RIGHT, AND THAT'S WHY SUBPART 4 BECOMES SIGNIFICANT. WHEN THIS CASE WAS FILED, AND WINTERTHUR WAS THE STATE OF THE ART. IT WAS THE ONLY CASE IN FLORIDA. BORDEN WAS EVEN A BETTER CASE BECAUSE BORDEN THE POLICY WAS DELIVERED IN FLORIDA. IN WINTERTHUR THE POLICY WASN'T EVEN DELIVERED IN FLORIDA SO IT SEEMS LIKE 906 WAS BEST.

HOW DO YOU CIGARETTE AROUND THE 905 EX--- HOW DO YOU GET AROUND THE 905 EXPLICIT EXPLANATION FOR 1006? NORMALLY WE ARE LOOKING AT LEGISLATIVE HISTORY AND WE THINK THAT'S NOT A GOOD WAY TO COME UP WITH LEGISLATIVE INTENT BUT HERE THEY HAVE STATED IT IN THE STATUTE?

I THINK THEY STATED IT BROADER, THOUGH. THE PURPOSE IS TO SUBJECT UNAUTHORIZED INSURERS TO THE JURISDICTION OF FLORIDA COURTS ON OR BEHALF OF INSURED UNDER INSURANCE CONTRACTS AND THEN IT GOES ON TO SAY A SUBJECT OF CONCERN IS THAT MANY RESIDENTS OF FLORIDA, YOU KNOW, MAY HAVE TO SUE BUT IT DOESN'T SAY, AND THAT'S MY POSITION IS THAT IT DOESN'T SAY THAT IT IS LIMITED. IF THEY WANT TO LIMIT IT THEY SAY THEY WOULD SEND IT TO THE SUBJECT OF CONCERN THAT WE ARE ADDRESSING IS THE RESIDENTS.

I REMEMBERED YOUR INITIAL REACTION TO WHAT HAPPENS IF WE INTERPRET IT THE WAY YOU ASK US TO, WHAT HAPPENS TO SUBSECTIONS 1, 2, 3, WHY WERE THEY NECESSARY TO PUT IN THE STATUTE?

I THINK BASICALLY TO PROVIDE GUIDANCE TO UNAUTHORIZED INSURERS. I'M NOT SURE WHY, BUT IT IS NOT MY JOB TO GUESS. THEY SHOULD HAVE MADE IT CONSISTENT BY PUTTING IN THOSE THREE WORDS THAT I SAY IN THE SUBPART 4. THE THREE WOULD POINT IT BACK TO THE CONTRACT, THE SUBJECT OF THE CONTRACT WHICH THEY DID ON 1, 2 AND 3.

DO YOU AGREE WITH YOUR OPPOSITION THAT THE WORD ISSUANCE AND THE WORD DELIVER -- ISSUANCE AND DELIVERY BOTH REFER TO THE NAMED INSURED OR THE PERSON RECEIVING THE INSURANCE BENEFIT?

NO, I DON'T AGREE WITH THAT. I THINK THAT THE KEY IS ISSUED AND DELIVERED. IT WAS DELIVERED TO --

NO, IT SAYS ISSUED OR DELIVERED IS WHAT THE STATUTE SAYS.

IT DOES SAY THAT AND APPARENTLY IT WAS ISSUED IN JACKSONVILLE AND CLEARLY IT WAS

DELIVERED TO MY AGENT, OCEAN INSURANCE IN ST. PETERSBURG, IN TAMPA. THE AGENCY CASES ARE IMPORTANT BECAUSE I THINK THEY GO OFF ON BASICALLY, YOU KNOW, WHAT ARE YOU DOING? WHAT HAT IS THE BROKER WEARING AT THE TIME? IF HE IS COLLECTING PREMIUM HE IS ACTING FOR THE INSURANCE COMPANY, OKAY, IF HE SENDS OUT A NOTICE OF CANCELLATION WHICH THEY DID IN THIS CASE, HE WAS ACTING FOR THE INSURANCE COMPANY.

WHO SENT OUT THE NOTICE OF CANCELLATION?

BARNHARDT DID.

ON BEHALF OF?

ON BEHALF OF THE UNDERWRITER, BECAUSE ALLEGEDLY PREMIUMS -- ADDITIONAL PREMIUMS WERE OWED. PREMIUMS THEN WERE PAID AGAIN THROUGH SILLY A BORDEN AND TAMPA SO THEY WERE DOING VARIOUS THINGS. IT SOUNDS LIKE HOGAN'S HEROES, SERGEANT SHULTZ. I KNOW NOTHING. WELL, THAT'S WHAT THEY ARE SAYING, THEY DON'T KNOW NOTHING BUT THE LAW REQUIRES THEM TO KNOW SOMETHING.

WITH OUR HELP AND GIVING YOU ADDITIONAL TIME, WE THANK YOU VERY MUCH.

THANK YOU. I APPRECIATE IT.

THANK YOU TO ALL PARTICIPANTS FOR A LIVELY ORAL ARGUMENT. WE WILL TAKE IT UNDER ADVISEMENT.