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Taurus Holdings v. United States Fidelity & Guaranty Co.

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING , LADIES ANDGENTLEMEN, AND WELC OME T O THE FLORIDA SUPREME COURT. THE FIRST C ASE ON TODAY'S DOCKET IS TAU RUS HOLDINGS VERSUS UNITED ST ATES FIDELITY AND GUARANTY . ARE THE PARTI ES REA DY ?

CHIEF JUST ICE PARIENTE. JUSTICES. MAY IT PLEASE THE COURT. MY NAME IS CHRISTOPHERKNIGHT, AND I REPRESENT TAURUS HOLDIN GS , IN C. AND TAURUS INTER NATIONALMANUFACTURING, INC., OF MIAMI. OUR GENERA L COUN SEL CY B LOOMIS HERE , OUR GE NERAL CO-COUNSEL ARE ME , AND MR . HARBIN WILL BE CONDUCTING OUR ARGUMENT TODAY. THANK YOU.

CHIEF JUSTICE AND T HEOTHER JUSTICES , I T IS A PLEASURE TO BE HERE. AS YOU KN OW, THIS IS A CERTIFIED QUES TION F ROM THE ELEVENTH CIRCUIT .

WHY DO THEY ELECT TO CERTIFY THESE INSURANCE CASES TO US?

PARTICULARLY ONE THAT WE SUBMITTED WAS SO EAS Y U NDER EXISTING FLORIDA LA W. I DON'T KNOW. BUT THE IS SUE BEING WHETHER LAWSUITS, NUMEROUS LAWSUITS , ALL ALL EGE ING, IN PART , NEGLIGENT DISTRIBUTION , NEGLIGENT MANUFACTURING , NEGLIGENT MARKETING, i.e . CLAIMS UNRE LATED TO ANY CLAIM OF DEFECT IN THE PRODUCT , CLAIMS THAT WERE NOT PRODUCTS LIABILITY CLAIMS ARE EX-CLUEDED UN DE R FLORIDA LAW UNDER EXCLUDED UNDER FLORIDA LAW UNDER THE PR ODUCTS HAZARD EXCLUSION.

LET ME ASK YOU AN INI TIALQUESTION AB OUT THE CA USE OF ACTION SO.YOU WOULD AGREE IF THE NEGATIVES AND THE WA RNING ING AND MARKETING AL SO WAS T IED INTO WHAT WE CONSIDER A PRODUCT DEFECT , SOME THING WRONG WITH THE GUN, THAT EVEN THOUGH THE MARKETING OR THE FAILURE TO WARN , OCCURRED BEFORE THE PRODUCT LEFT THE PREMISES , IT WO ULD BE COVERED UNDER THIS O R ITWOULD BE EXCLUDED?

YES, YOUR HO NOR , THAT IS CORRECT. BOTH ST RICT LIAB ILITY OR NEGLIGENCE CL AIMS THAT SOUND IN PRODUCTS LIABILITY , WE AGREE , WOULD FALL WITHIN THE EXCLUSION, AND IN THAT REGARD THE AMI CUS B RIEF THAT FOLLOWS THE INCLUSION , MISINTERPRETS OUR ARG UMENT THAT ANY CLAIM OF NEG LIGENCE IS NOT CO VERED. THA T IS CO RRECT . I THINK THE EXAM PLE IS THE GASKINS CASE, ONE OF THE EARLIEST CA SES ON THE EXCLUSION, HELD THAT IT WAS A NEGLIGENCE CLAIM UNR ELATED TO A DEFECT IN THE PRODUCT AND THEREFORE WAS NOT WITHIN THE EXCLUSION, AND THE SUBJECT FLORIDA COURT CASE AND OTHER CASES WITHIN JURISDICTIONS

THE WO RD DEFE CT IN THE PRODUCT IS NOT US ED IN THE EXCLUSION , IS IT?

CORRECT, YOUR HONOR, EXCEPT THAT THE EXCLUSION

THE CON CLUSION SA YS ARISING OUT OF A PRODUCT, CORRECT?

CORRECT.

OKAY. AND SO WE START FROM THE PROPOSITION, DON'T WE , THAT WHAT HAPPENED , WHAT IS

BEING ALLEGED HERE , IS , ARE INJURIES AND DAMAGES ARISING OUT OF THE USE OF A WEAPON . ISN'T THAT RIGHT? OF A GUN.

THERE IS NO DISPUTE , THE ALLEGATIONS ARE THAT PEOPLE WERE INJURED, BASED ON THE USE OF THE GUNS. THAT IS CORRECT.

SO ARISING OUT OF THE USE OF THE GUN. I MEAN, THAT IS THE WAY THIS CAUSE OF ACTION WORKS RIGHT ?

IF I UNDERSTAND YOUR QUESTION, THE CAUSE OF ACTIONS ARE BASED ON USES OF THE GUN. THAT IS CORRECT .

ARE YOU NOT WILLING TO USE THE WORD ARISING OUT OF? IS THERE SOME REASON THAT YOU DON'T USE THAT WORD , OTHER THAN THE FACT THAT IT IS IN THE POLICY. I MEAN, IS THERE , DOES - ARISING OUT OF" PLAY A KEY ROLE, IN TRYING TO FIGURE OUT WHAT THIS POLICY IS INTENDED TO EXCLUDE?

IT OBVIOUSLY PLAYS A KEY ROLE, YOUR HONOR , AND I THINK TWO POINTS ABOUT THAT. WE ARE NOT RELYING ON AN ARGUMENT. OUR MAIN ARGUMENT IS NOT THAT THE PROVISION IS AMBIGUOUS. I THINK THERE IS AN ARGUMENT TO THAT EFFECT BUT THAT IS NOT OUR MAIN ARGUMENT , AND IN FACT , THE GASKINS CASE AND THE MAJORITY OF CASES FROM OTHER JURISDICTIONS THAT HAVE INTERPRETED THE EXCLUSION ONLY TO APPLY TO PRODUCTS LIABILITY , SHORTHAND PRODUCT DEFECTIVE CLAIMS, HAVE NOT RELIED ON THE AMBIGUITY DOCTRINE . IN FACT , GASKINS HELD THAT THE PROVISION WAS CLEAR, AND I WOULD POINT OUT I THINK YOU CAN GET THAT JUST FROM THE TITLE, THE TITLE OF THE PROVISION , IS YOUR PRODUCTS HAZARD EXCLUSION, i.e. PRODUCTS HAZARDOUS EXCLUSION. IT HAS ALWAYS BEEN INTENDED TO COVER PRODUCTS LIABILITY CLAIMS, AND ONE OF THE REASONS COURTS HAVE JUMPED , MANY COURTS , WITHOUT SIGNIFICANT ANALYSIS, AND REACHED THE CONCLUSION READILY, THAT THE EXCLUSION ONLY APPLIES TO PRODUCTS LIABILITY OR DEFECTIVE PRODUCT CLAIMS , IS BECAUSE THE GENESIS OF THE COVERAGE AND THE GENESIS OF THE EXCLUSION, WAS TO APPLY TO PRODUCTS LIABILITY.

CAN YOU EXPLAIN OR ADDRESS OUR DECISION IN QUAKOS? BECAUSE APPARENTLY THE FEDERAL DISTRICT COURT THOUGHT IT MADE ALL THE DIFFERENCE IN THIS CASE LITERALLY. HE HELD IN YOUR FAVOR BEFORE THAT , AND AFTER CONSIDERING QUAKOS, HE HELD AGAINST YOU, SO TO HIM IT MADE ALL THE DIFFERENCE, SO CAN YOU ADDRESS THAT CASE AND WHY IT DOESN'T APPLY?

YES, YOUR HONOR. I THINK THE ANALYSIS QUAKOS ACTUALLY SUPPORTS OUR POSITION, BECAUSE YOUR HONOR IS OBVIOUSLY PREPARED THAN I AM , TO EXPLAIN WHAT THE OPINION MEANT. BURKES READING IT, THE COURT, FROM THE VERY FIRST DISCUSSION, BEGINNING WITH THE CITATION OF C TC , INTERPRETED THE POLICY IN FAVOR OF THE INSURED , BECAUSE ACCIDENT AND OCCURRENCE WERE UNDEFINED , AND IT WAS NOT , AS THE INSURERS CONTEND, A RULING THAT, BASED ON THE PLAIN , UNAMBIGUOUS LANGUAGE OF THIS POLICY, WE ARE FINDING UNDER THE INSURERS. THAT, THE ARGUMENT BY THE INSURERS THAT THEY HAVE MADE TO THE DISTRICT COURT AND MADE TO THIS COURT IS, TO ME, CONTRARY TO THE LANGUAGE OF THE OPINION. THE OTHER THING THE COURT DID IN

THE WAY THE DISTRICT COURT INTERPRETED QUAKOS , IT SAID THAT QUAKOS WAS THE SHOOTING THAT GAVE RISE TO THE INJURIES AND NOT THE NEGLIGENT FAILURE TO PROVIDE SECURITY, AND THAT IS WHAT LED THE DISTRICT COURT TO SAY, EVEN THOUGH IT WAS CONCERNED WITH THE DEFINITION OF OCCURRENCE , IT WAS CONCERNED THAT THE SHOOTING GAVE RISE TO THE INJURIES NOT THE NEGLIGENCE OF THE OWNER OF THE PREMISES.

THAT'S CORRECT.

IT HAS CLEARED UP THE FLORIDA LAW , AND INDICATES THAT THIS WOULD ARISE OUT OF THE GUNS , THEMSELVES , NOT OUT OF THE ON-PREMISE NEGLIGENCE.

THAT'S CORRECT, BUT AS I READ THE DECISION , HOW THIS COURT GOT THERE WAS HOLDING REPEATEDLY, THAT, AND BEFORE , EVEN BEFORE THIS COURT HELD THAT THE PROVISION WAS AMBIGUOUS , THAT THE PROVISION COULD BE INTERPRETED IN DIFFERENT WAYS AND WAS GOING TO BE INTERPRETED IN FAVOR OF THE INSURED , AND THE OTHER THING THE COURT DID THAT I THINK IS SIGNIFICANT IN REGARD TO QUAKOS IS THE COURT LOOKED AT THE PURPOSE IN DRAFTING OF SOME OF THE RELEVANT CLAUSES , PARTICULARLY IN THAT CASE THE CONTINUES EXPOSURE CLAUSE WHICH THE COURT FOUND WAS INTENDED TO BROADEN COVERAGE , AND IN THIS CASE I DON'T THINK THERE IS ANY SERIOUS DISPUTE THAT THE INTENT OF THE PROD YOU CAN'T HAVE PRODUCTS HAZARD EXCLUSION AND THE MERIT TO THE PRODUCTS HAZARD COVERAGE IS RELATED TO THE INTENT OF THE PRODUCT HAZARD CLAIMS. IN FACT, THE COVERAGE , UNDER THE PRODUCT HAZARD EXCLUSION , QUOTE , COVERAGE WILL BE PRECLUDE, ONLY WHEN THERE IS A DEFECT I HAVE CONDITION IN THE PRODUCT A DEFECTIVE CONDITION IN THE PRODUCT , ITSELF.

WHAT IS CJ S?

CORPUS JURIS , YOUR HONOR.

I WOULD THINK THAT THEY WOULD HAVE TO BE CITING SOME CASES. JUST GOING BACK TO YOU ARE TALKING ABOUT THE POLICY OF THE POLICY, CLEARLY , MANUFACTURERS HAVE PRODUCTS LIABILITY COVERAGE . I MEAN, I WOULD ASSUME THAT THAT IS PART OF THEIR , WHAT THEY GET. WHAT IS NORMALLY COVERED , THIS IS SORT OF, IT SEEMS AS A SOMEWHAT UNUSUAL CLAIM , BUT WHAT IS REALLY CONTEMPLATED FROM TAURUS'S POINT OF VIEW WITHIN THIS TYPE OF COVERAGE , THAT YOU ARE SEEING TO BENEFIT OF HERE? WHAT WOULD BE OTHER TYPE OF CLAIMS THAT WOULD BE WITHIN THIS, THE COVERAGE?

THAT IS A GOOD QUESTION , YOUR HONOR, AND THAT IS ONE OF THE POLICY REASONS WHY WE THINK THE EXCLUSIONS SHOULD BE LIMITED TO PRODUCTS LIABILITY CLAIMS, BECAUSE AS WE HAVE CRIED , INSURANCE TREATISES AND WE HAVE CITED COUCH ON INSURANCE, HOLDS THAT PRODUCTS LIABILITY COVERAGE ONLY APPLIES TO DEFECTIVE PRODUCT CLAIMS, AND, IN FACT, SOME OF THE COURTS FROM OTHER JURISDICTIONS WHO HAVE ADOPTED THE PRINCIPLE WHICH IS A PRINCIPLE OF LONG STANDING WE ARE ADVOCATING , HAVE DONE SO , IN PART ON THE BASIS THAT THEY WANT TO , THEY DON'T WANT TO HAVE A GAP IN COVERAGE. THEY WANT TO INTERPRET THE EXCLUSION CONSISTENTLY WITH THE COVERAGE PROVISION, AND THE BUCKEYE COURT IN OHIO , THE MORE RECENT DECISION IN PENNSYLVANIA, AND OTHER CASES HAVE SAID THAT PRODUCTS HAZARD COVERAGE COVERS IF THERE IS A DEFECTIVE PRODUCT OR PRODUCTS LIABILITY, NOT IF THERE IS AN ALLEGATION OF NEGLIGENCE THAT DOESN'T DEAL WITH AN ALLEGATION OF DEFECT IN THE PRODUCT . THE MIRROR IMAGE IS THE PRODUCTS HAZARD EXCLUSION SHOULD ONLY APPLY IF THERE IS A DEFECT IN THE PRODUCT. OTHERWISE , YOU WILL HAVE A SITUATION WHERE THE PRODUCTS HAZARD COVERAGE WON'T APPLY BECAUSE IT LIES IN THIS CASE , THERE ARE ALLEGATIONS AND LIKE IN GASKINS , YOUR ALLEGATIONS OF NEGLIGENCE AREN'T BASED ON AN ALLEGATION OF A DEFECT IN THE PRODUCT.

IS THAT WHAT IT IS CALLED , PRODUCTS HAZARDOUS COVERAGE? THIS IS, YOU SAY THAT IT MIRRORS THE EXCLUSION THAT THERE IS SOMETHING , SORT OF WITH AUTOMOBILE AND PREMISE , THAT THERE SHOULDN'T BE A GAP.

YES, YOUR HONOR.

IS THE STANDARD COVERAGE FOR PRODUCTS LIABILITY CALLED PRODUCTS HAZARDOUS COVERAGE?

YES , YOUR HONOR. I THINK SOME MAY RE FER T O IT AS PRODUCTS LIABILITY BUT I THINK IT IS GENE RALLY REFERRED TO AS PRODUCTS HAZARD COVERAGE.

TO GET TO YOUR POINT IN THIS, I BE LIEVE YOU STARTED OUT , PART OF YOUR ARGUMENT, SAYING THAT YOUR ARGUMENT ISN'T REALLY ABOUT WHETHER THIS EXCLUSION IS AM BIGUOUS OR NOT. DID I HE AR YOU CORRECTLY?

YES , YOUR HONOR.

SO IF IT ISN'T AMBIGUOUS , THEN IT CO MES BACK TO , I THINK, THE POINT THAT JUSTICE WELLS WAS TRYING TO MAKE, IS WHAT DOES THIS ARISE IN G OUT OF LA NGUAGE MEAN? IT SEEMS TO ME THAT WE WOULD HAVE TO GET T O A POINT , TO SAY THAT THAT LANG UAGE I S AMBIGUOUS , BEFO RE WE CAN MAKE A R ULING THAT THIS EXCLUDES ONLY WHAT YOU PURPORT TO SAY IT EXCLUDES . I AM NOT SURE HO W WE GET TO THAT, WITHOUT SAY ING THAT THIS IS AMBI GUOUS , THIS IS AN AMBIGUOUS PROVISION. SO IF YOU COULD EX PLAIN THAT TO ME. WHY ISN'T THIS AMBIGUOUS , AND IF IT IS NOT , HOW DO WE GET TO THE POINT OF SAYING IT ONLY APPLIES TO A PRODUCT DEFECT?

TWO THINGS, YOUR HONOR . BEGINNING WITH THE TIT LE THAT IT IS PRODUCTS HAZARD EXCLUSION.

I UNDERSTAND THAT. THAT IS WHAT THE TITLE OF IT IS.

AND FROM THE START , IF YOU LO OK AT THE INTERPRETTATION REASONING OF THE EXCLUSION, IT WAS T O COVER PRODUCTS HAZARD CLAIMS. ONE CASE I WOULD LIKE TO CITE TO THE COURT , I DON'T KNOW IF IT HAS BEEN BRIEFED , IS A FLOR IDA FIRST DISTR ICT DECISION, MILLER ELECTRIC.

IS THIS SOMETHING THAT IS IN YOUR BRIEF?

I DON'T BELIEVE IT IS, YOUR HONOR.

THEN YOU REALLY CAN NOT ARGUE IT. YOU CAN SUB MIT IT AS SUPPLEMENTAL AUTH ORITY.

BUT I DO THINK THERE IS AN ARGUMENT OF AMBIGUITY , IN THAT ARISE ING OUT OF CAN B E RECOGNIZED TO , AND HAS BEEN RECOGNIZED AND SOME COURTS HAVE HELD IT IS AMBIGUOUS AND HAS DIFFERENT MEEPTION. I THINK IT IS UNDEFI NED. I THINK IT IS SUBJECT TO DIFFERING INTERPRETATIONS FOLLOWING THIS COURT'S ANALYSIS IN QUA KOS, AND I KNOW THAT, IN THE AUTO COVERAGE AREA, IT HAS BEEN REPEATEDLY HELD TO BE UNAMBIGUOUS, BUT WHEN YOU LOOK AT THE DEFINI TION OF THE HA GAN L I NE OF CASES , THE COURTS HAVE SAID IN FLORIDA THAT IT CAN MEAN ORIGIN ATING ALL THE WAY FROM HAVING ANY RELATIONSHIP, ANY CONNECTION WITH , WELL , T O ME TH OSE TWO DEFINITIONS ARE DIFFERENT AND HAS PARTICULAR APPLICATION IN THIS CASE , AND UNDER THE ALLEGATION OF NEGLIGENCE UNDER OUR PRE MISE , NEGLIGENT DISTR I BUTION , NEGLIGENT MARKETING , THE ORIGINAL CAUSE OF OUR PROVISION WAS NEGLIGENT DISTRIBUTION, NEGLIGENT ET CETERA.

WE HAVE SOME LANGUAGE THAT IS BRO ADER AND SOME THAT IS DIFFERENT. DOESN'T THE - ARISE ING OUT OF" FALL ON THE END OF THE SCALE AS BEING V ERY BROAD IN T ERMS OF CONN ECTION. HELP ME WITH THAT, THAT IS AS OP POSED TO A NAR ROW PHRASE, OKAY , DOESN'T THIS FALL IN T ERMS OF OUR INTERPRETATION IN A VERY BROAD AREA?

I AGR EE IT HAS BEEN PRIMARILY IN THE AUTO COVERAGE CASES. AGAIN, I WOULD SUBMIT ONE REASON IN THE CASES THAT HAS BEEN EXPLICIT I S ALSO FOR THOSE HOLD INGS IS TO MAKE AUTO COVERAGE AND AUTO EXCLUSIONS CONSISTENT . AND THAT POLICY RATIONALE HERE,

WOULD CALL FOR INTERPRETING "ARISING OUT OF" MORE NARROWLY , BUT I DO THINK THAT WHEN YOU LOOK AT HOW THE COURTS HAVE FOUND IT, THE DECISIONS THE MSELVES TALK ABOUT TWO DIF FERENTMEANINGS TO THE PROVISIO N. THE

L ET'S , IF WE DON'T HAVE IN FRONT OF US THE OTHER P OLICY , NOW , THAT WOULD TAKE AWAY FROM YOUR ARGUMENT THAT THIS IS NOT, THAT IT IS UNAMBIGUOUS.IN OTHER WORDS, IF WE HAD A REFERENCE OF AN OTHER POLICY , THAT WOULD MEAN THAT SOMEHOW WE COULDN'T FI GURE OUT FROM JUST READING THE EXCLUSION , WHAT IT REFERRED TO. AND SO I GU ESS GOING BACK TO IF YOU READ THE P LAINLANGUAGE OF THIS , I T IS SIMPLY, IT IS, IT IS CALL ED A PRODUCTS COM PLETED OPERATIONS HAZARD EXCLUSION OR PROVISION, AND IT IS INTENDED TO EXCLUDE ALL BODILY INJURY OCCURRING AWAY FROM YOUR PREMISE AND ARISING OUT OF YOUR PRODUCT. EXCEPT THAT IF THE PRODUCTS ARE STILL IN YOUR PHYSICAL POSSESSION, SO IT IS, Y OUKNOW, I GUESS MA YBE GETTING , MAYBE THE P URPOSE, SAYING THAT COURTS HAVE MADE A DISTINCTION THAT IT HAD TO BE A DEFECTIVE , IF IT WAS A DER EFFE CTIVE PRODUCT , BUT IT IS NOT IN THIS PLAIN LANGUAGE OF THIS EXCLUSION. COULD YOU TELL ME WHERE YOU G O TO FIND THE INTERPRETATION WITHIN THE PROVISION THAT YOU ARE SEEKING TO AD VANCE HERE ?

AGAIN, I WOULD START WITH THE TITLE, YOUR HONOR , THE PRODUCTS HAZARD EXCLUSION. IT IS ONLY EXCLUDING PRODUCTS HAZARDS . SOMETHING IN THE PRODUCT THAT CREATE S A HAZARD , NOT COVERING

IT DOESN'T , WHE N YOU G ETTO THE DEFINITION , A LO T O F THESE CASES, WE HAVE HAD TO WORRY ABOUT , HAVE NOT HAD DEFINITION, SO WE HAVE HAD TO WORK TO SU PPLY A DEFINITION. BUT HERE IS ONE THAT G IVES A DEFINITION.

WELL , EXCEPT IT DOESN'T DEFINE " ARISING OUT OF" AGAIN. IT IS IN THE DEFINITION.

SO NOW WE S HOULD A L WAYS BE INTERPRETING AS ARISE IN G OUT OF? IS THAT THE KEY HERE IS HOW YOU INTERPRET ARISING O UTOF?

I SUBMIT IT IS NOT THE ONLY KEY. IT IS OBVIOUSLY IMPORTANT. I THINK THERE IS A NOTHER IMPORTANT PART OF THE PROVISIONS THAT SOME OF THESE POLICIES AS IS STATED IN THE INSURER S BRI EF ON PAGE 7, STATE THAT THE DEFINITION INCLUDES WARRANTIES , I DON 'T HAVE THE EXACT LANGUAGE , WARR ANTIES , ET CETERA.

IF YOU HAVE TO G O SOMEPLACE ELSE, THEN THAT TELLS ME THAT THERE IS A AMBIGUITY, AND I GUESS WE TAKE YOUR CON SE SSION , WHIC H IS THERE ISN'T AN AMBIGU ITY. ONCE THERE ISN'T, THEN IT IS , ONCE YOU , TO REFER TO OTHER DOCUMENTS, MEANS THAT THERE IS SOMETHING THAT WE CANNOT DECIPHER FROM READING JUST WHAT IS SET FORTH IN THE POLICY.

WELL, AGAIN, LET ME BE CLEAR WITH OUR ARGUMENT. I DO THINK THERE IS AN ARGUMENT, THERE IS AN AMBIGUITY THERE.AT LEAST THERE THE IS A N UNDEFINED TE RM SUB JECT T O DIFFERING INTERPRETATIONS AS WITH THE ACC IDENT IN QUAKOS , BUT , A GAIN, WHEN THIS IS THE MAJORITY RULE OF THE COURTS THAT HAVE INTERPRETED THIS EXCLUSION, HAVE NOT GONE ON THE, MOST OF THEM HAVE N OTGONE ON THE B ASIS OF AMBIGUITY.

I GUESS IT DEPENDS ON HOW YOU DEFINE MAJO RITY RULE , RIGHT? BECAUSE THE COURTS THAT HAVE INTERPRETED THE EXCLUSION UNDER THESE PARTICULAR CIRCUMSTANCES , AND THERE HAVE BEEN T H RE E , THEY ARE U P AND IN MUST AGAINST YOU.

CORR ECT.CORRECT.

I GUESS IT DEPENDS ON HOW YOU DEFINE THE MAJ ORITY OF COURTS.

CORRECT. BUT THE DECISIONS IN THE OTHER JURISDICTIONS, ALSO, DEAL WITH HAND GUN SALES, MANUFACTURE, GUNPOWDER, ET CETERA, AND I THINK THOSE THREE CASES CAN BE DISTINGUISHED.

YOU ARE IN YOUR REBUTTAL, BUT BEFORE YOU SIT DOWN LET ME ASK YOU, BOTH SIDES ARE CONCENTRATING ON ARISING OUT OF YOUR PRODUCT, BUT AT LEAST IN SOME OF THESE POLICIES THERE IS AN ADDITIONAL PHRASE "OR YOUR WORK". DOESN'T THAT MAKE IT EVEN BROADER? IF IT DOESN'T ARISE OUT OF YOUR PRODUCT, IT CERTAINLY ARISES OUT OF WHAT YOU HAVE DONE, YOUR MARKETING, YOUR WORK. WHY HAVEN'T YOU ADDRESSED THAT PHRASE?

THE INSURERS HAVE NOT CLAIMED THAT PHRASE IS THE BASIS FOR THE EXCLUSION, BUT I THINK THE SAME GENERAL PRINCIPLES WOULD APPLY. VERY THE SAME GENERAL PRINCIPLES WOULD APPLY. VERY BRIEFLY, I WILL TRY TO SAVE ONE MINUTE FOR REBUTTAL, BUT TO GO BACK TO THE CHIEF JUSTICE'S QUESTION. INCLUDING ANY WARRANTY ABOUT USE, ET CETERA, WELL, IF THE PROVISION ABOUT ARISING OUT OF YOUR PRODUCT MEANS AS BROADLY AS THE INSURER SUBMITTED, ARGUED MEANS, THAT RENDERS THE LANGUAGE SUPERFLUOUS. I WOULD ALSO SUBMIT, WHEN YOU ARE TALKING ABOUT THE MANUFACTURE AND SALE AFTER PRODUCT AS OPPOSED TO A MANUFACTURER AND SELLER WHO USES AN AUTOMOBILE INCIDENTALLY IN THE BUSINESS, YOU RISK SWALLOWING THE WHOLE COMMERCIAL GENERAL LIABILITY COVERAGE, IF YOU INTERPRET THAT ANYTHING THAT RECEIPTS IN THAT RELATES IN ANY WAY TO THE PRODUCT IS EXCLUDED, THEN YOU RISK SWALLOWING THE CGO COVERAGE, AND THAT IS WHY, AND THE REASON WHY SOME OF THESE COURTS HAVE INTERPRETED IT AS THEY HAVE.

CHIEF JUSTICE: THANK YOU.

GOOD MORNING YOUR HONORS. MAY IT PLEASE THE COURT. MY NAME IS JOHN CONSTINE. I REPRESENT FEDERAL INSURANCE COMPANY, AND I AM ALSO SPEAKING ON BEHALF THE OTHER NOMINAL DEFENDANTS, I GUESS IN THE POSITION OF APPELLEES IN THIS CASE.

CHIEF JUSTICE: JUSTICE LEWIS.

MR. CONSTINE, ONE OF THE ARGUMENTS THAT YOUR OPPOSITION ADVANCES, THAT HAS SOME ATTRACTIVENESS TO IT, IS THIS CONCEPT OF GAAPS. AND CERTAINLY WE NEED TO HAVE A PRACTICAL APPLICATION, AND AS YOU ARE AWARE AND WE ARE ALL AWARE THAT ARISING OUT OF IS LIKE THE TERM RELATIVE, LIKE ANYTHING IN THE UNIVERSE CAN BE RELATIVE IN OR RELATED TO IN A CERTAIN ASPECT. BUT WOULD YOU ADDRESS FROM YOUR PERSPECTIVE, DO THESE KINDS OF THINGS, HOW DO THESE PROVISIONS MEASURE, BECAUSE WE ARE DEALING WITH PRODUCT, COMPLETED OPERATIONS AND ALL OF THESE THINGS, KIND OF BECOME INVOLVED, SO WOULD YOU RESPOND TO THAT AND EXPLAIN TO US WHY, THE WHY'S OF IT NOT JUST LANGUAGE BUT WHY, HOW THIS ALL FITS TOGETHER.

I WOULD BE HAPPY, TO YOUR HONOR, AND IN FACT, COINCIDENTALLY, YOU HAVE TOUCHED UPON THE VERY FIRST POINT THAT I WANTED TO MAKE.

I GUESS I AM INTUITIVE, THEN, HUH?

AND THAT IS BECAUSE, AS CHIEF JUSTICE PARIENTE MENTIONED, OR ASKED ABOUT, DO WE HAVE THAT KIND AFTER POLICY IN FRONT OF US? WELL, ACTUALLY WE DO HAVE THAT KIND OF POLICY IN FRONT OF US. IT IS THE SAME POLICY AT ISSUE IN THIS CASE, BECAUSE THIS POLICY HAS A PROVISION, ALL OF THE POLICIES, I BELIEVE, BUT CERTAINLY SOME OF THE POLICIES THAT A REBEFORE THE COURT, HAVE A PROVISION THAT SAYS YOU CAN PURCHASE PRODUCTS COMPLETED OPERATIONS HAZARD. IF YOU LOOK AT, AND I APOLOGIZE THE COURT CAN'T SEE, BUT ON THE DECLARATIONS PAGE OF THE COMMERCIAL GENERAL LIABILITY POLICY, THERE ARE LISTS OF LIMITS OF INSURANCE, AND THERE ARE LIMITS FOR GENERAL AGGREGATE LIMIT.

IT SAYS "OTHER THAN PRODUCTS COMPLETED OPERATIONS."

I THINK YOU CAN ASSUME THAT WE UNDERSTAND THAT THERE ARE TWO DIFFERENT COVERAGES, THAT IT CAN BE PURCHASED. WHAT WE ARE GOING TO, IS HOW DO THEY MEASURE TOGETHER? HOW DO THEY MERGE TOGETHER?

THEY DOVE TAIL PRECISELY, BECAUSE AT THIS POLICY IN ISSUE, FOR EXAMPLE, ALLOWS YOU TO PURCHASE OR NOT PURCHASE PRODUCTS COMPLETION LIABILITY COVERAGE. HAD THEY PURCHASED THAT COVERAGE, THEY WOULD HAVE COVERAGE FOR THESE CLAIMS.

WHY IS THAT?

BECAUSE THEY FALL WITHIN THE DEFINITION OF PRODUCTS COMPLETED OPERATIONS.

WHAT IS THE STANDARD DEFINITION?

THE DEFINITION, AS SET FORTH IN THE POLICY, IS BODILY INJURY ARISING FROM YOUR PRODUCT. I THINK IT IS, ALSO INCLUDES OFF PREMISE AND THERE ARE SOME QUALIFICATIONS.

THE COVERAGE MATCHES THE EXCLUSION.

THAT'S RIGHT. THE COVERAGE MATCHES THE EXCLUSION. THE COVERAGE IS THE EXCLUSION. IN OTHER WORDS, THERE IS A DEFINITION, A PROVISION, OF PRODUCTS COMPLETED OPERATIONS. IT IS THE SAME WHETHER IT IS COVERAGE OR COVERAGE EXCLUSION, AND THEN THE POLICY SAYS IF YOU BUY PRODUCTS COMPLETION COVERAGE, YOU HAVE THAT COVERAGE.

IS THAT A SEPARATE POLICY? IT IS SEPARATE FROM WHAT WOULD BE CALLED PRODUCTS LIABILITY COVERAGE, OR THIS IS WHAT IT IS CALLED? THIS IS A GUN MANUFACTURER THAT I WOULD ASSUME WANTS, IN THIS DAY AND AGE, INSURANCE COVERAGE.

RIGHT.

SO WHEN THEY SAY, LISTEN, I WANT TO BE PROTECTED OUT OF, YOU KNOW, IF SOMEONE GOES HOME OR I GET SUED BECAUSE OF MY GUN, DO THEY BUY PRODUCTS COMPLETION HAZARDOUS COVERAGE, OR DO THEY HAVE TO WORRY ABOUT WHETHER IT IS A DEFECT IN THE PRODUCT OR A MARKETING CLAIM? THIS COVERS

THEY DON'T HAVE TO WORRY ABOUT THAT AT ALL, YOUR HONOR. THERE ARE TWO WAYS TO GO ABOUT IT. THEY CAN BUY A POLICY THAT POTENTIALLY COVERS EVERYTHING AND THEN THEY CAN CHOOSE THE DIFFERENT COVERAGES OUT OF THE POLICY THAT THEY WANT, SO IN THIS CASE FOR EXAMPLE THE POLICY POTENTIALLY COULD PROVIDE PRODUCTS COMPLETED OPERATIONS COVERAGE IF YOU BUY THAT COVERAGE, IF YOU PAY PREMIUM FOR IT AND THEY SET A LIMIT FOR IT. I BELIEVE YOU CAN ALSO GO OUT AND BUY A SEPARATE POLICY THAT WOULD ALSO COVER THE SAME HAZARD, WITHOUT ALL OF THE OTHER BELLS AND WHISTLES, WITHOUT THE GENERAL LIABILITY COVERAGE. IN OTHER WORDS, YOU COULD BUY, AND I BELIEVE IN THIS POLICY, YOU COULD JUST BUY THE PRODUCTS COMPLETED OPERATIONS IF YOU WANTED TO.

LET ME DIRECT YOU TO WHAT HAS BEEN ARGUED IN THIS CASE.

YES, SIR.

AND HOW DO YOU DEAL WITH THE GASKINS FACTUAL SITUATION, IN THAT, THAT SEEMS TO ME, TO BE A PERFECTLY REASONABLE SITUATION, IS WHERE SOMEBODY COMES IN AND THE CLERK GIVES THEM THE WRONG PRODUCT, THAT THIS EXCLUSION IS, REALLY, NOT INTENDED TO COVER THAT TYPE OF SITUATION, OR IS IT?

WELL , I AC TUALY THINK IT IS INTENDED TO COVER T HAT TYPE OF SI TUATION, AND I THINK THAT THERE HAS BEEN SOME DISCUSSION OF WHAT IS A MAJORITY AND WHAT IS N'T A MAJORITY. THERE IS A SPLIT OF AUTHORITY ON THE GENERAL QUESTION OF WHETHER THIS TYPE OF EXCLUSION SHO UL D B E INTERPRETED , B ASED ON ITS EXPLICIT LANGUAGE, AND THEREFORE NOT LIMIT ED TO MERELY DEFECTIVE PRODUCT CLAIMS BUT ALL PRODUCT CLAIMS, WHICH IS WHAT I T SAYS, OR WH ETHER IT S HOULD BE, THE COURT SH OULD JUDICIALLY REW RITE IT AND LIMIT IT , BASED ON THE INTENT. THERE IS A SPLIT O F AUTHORITY.I THINK THAT THE CASES THAT FOLLOW THE RULE THAT YOU APPLY THE LANGUAGE AS WRITTEN , ARE FAR M OR E CONSISTENT WITH THE APPROACH THAT THIS COURT HAS USED IN FLORIDA, AND I THINK THE CORRECT APPROACH IN INTERPRETING INSURANCE POLICIES, BUT THERE ARE OTHER POINTS TO BE MADE , WITH RE GARD TO GASKINS. I MEAN, THIS COURT DOESN 'T, THIS COURT, COULD AND I THINK SHOULD, IF IT FELT THAT IT HAD TO REACH THE ISSUE, FIND THAT GASKINS WAS SIMPLY WRONG, BUT IT DOESN'T NEED TO. GASKINS , FIRST OF ALL , INVOLVED DIFFERENT POLICY LANGUAGE, AS FAR AS WE C ANTELL FROM THE OPIN ION. THE POLICY LANGUAGE IN THIS CASE, SAYS WE DO NOT COVER CLAIMS , BASED ON CLAIMS FOR INJURY ARISE ING OUT OF A PRODUCT. THEREFORE WHAT YOU LOOK A T IS THE CONNECTION BETWEEN THE INJURY, THE B ODILY INJURY, BECAUSE KE EP IN M IND AS HAS NEVER BEEN IN DISPUTE , THE BO DRY INJURY AT IS SUE THE BODILY INJURY AT ISSUE , THIS POLL LY ONLY COVERS BOD THIS POLICY ONLY COVERS BODILY INJURY OR PROPERTY DAMAGE, BUT I DON'T THINK THERE IS ANY ISSU E AS TO THAT, AS TO THE PROPERTY DAMAGE, SO THIS COVERAGE COVERS BODILY INJURY ONLY , SO YOU HAVE TO SAY THAT THE SUBSET ISSUES MAY NOT INCLUDE BODILY INJURY, AND THEN YOU LOO K AT THE EXCLUSION AND SAY , THE EXCLUSION SAYS WE DON'T COVER CLAIMS ARISE ING OU T OF THE PRODUCT , AND YOU HAVE TO LOOK AT THE GUN , AND THE GUN SHOT INJURY, AND THEN YOU SAY DO THESE INJURIES ARISE OR ARE THEY CAUSED BY GUN S?

ITYMI ZING OUT THE DIFFERENT LAWSUITS , NUM BER FOUR ITEM IZING ONE FROM SAN FRANCISCO , AND TH OSE ARE PUBLIC NUISANCE, UNT RUE AND MISLEADING STATEMENTS IN ADVERTISING , INAC CURATE , AND FRAUDULENT BUSINESS PRACTICES.THOSE ARE THE CAUSE OF ACTION THAT THE JU DGE L ISTSHERE. WHICH DIRECTLY DEALS WITH BODILY INJURY CAUSED BY THE SHOOTING OF A GUN?

OUR PO SITION , ONE OF THE POSITIONS THAT WE HAVE TAKEN AND WE DON'T CONCEDE THAT , PERHAPS, NO NE OF THEM REALLY INVOLVE BODILY INJURY AT ALL BECAUSE THEY ULTIM ATELY S E EK ECONOMIC LOSS, AND TO THE EXTENT THAT IS THE CASE , THERE IS NO COVERAGE WHATSOEVER, AND THAT IS CRITICALLY IMPORTANT. THEY EITHER INVO LVE BODILY INJURY OR, IF THEY DON'T , THERE IS NO COVERAGE IN THE FIRST PLACE.WE HAVE ASS UMED, FOR PURPOSES OF THIS APPEAL , THAT THERE IS SOME ALLEGATION OF BODILY INJURY, AND IF YOU MAKE THAT ASSUMPTION, I THINK THEIR ARGUMENT HAD BEEN THAT, BECAUSE INDIVIDUALS WERE SHOT WITH GUNS , THEY INCURRED BODILY INJURY , A NDI THINK NUISANCE , I THINK ACTUALLY MOST OF THOSE CLAIMS, ACCO RDING TO TAURUS , AT L EAST IN PART , INVOLVE A BODILY INJURY , BECAUSE EITHER THE GUNS WERE FLOODED UNDER THE MAR KET , RESU LTING IN PE OPLE BEING SHO T WITH THEM, OR THERE W ERE STATEMENTS MADE BY TA URUS ABOUT ITS GUNS , FAILURES TO WARN OR WHATEVER , THAT FALL WITHIN, POSSIBLY , UN FAIR TRADE PRACTICES , THAT RESULTED IN PE OPLE MISU SING GUNS AND GE TTING SHOT WITH GUNS, BUT FUNDAMENTALLY , THE ONLY WAY COVERAGE IS TRIGGERED, IS BY THE EXISTENCE OF A PE RSON BEING SHOT WITH A GUN. IF THERE ISN'T THAT , THEN W E DON'T EVEN HAVE TO ADDRESS THE EXCLUSION. AND THEN THE QUESTION, TO GET BACK TO YOUR QUE STION

IS THERE NO ADVERT ISING LIABILITY OR LIABLE , SLANDER? BECAUSE OR LIBE L, S LANDER , BECAUSE THAT IS PART OF THESE GENERAL COMPREHE NSIVE POLICIES IN MOST INSTA NCES .

AND IT WAS UNDISPUTED BELOW AND NEVER DISP UTED BY TAURUS THAT THOSE PROVISIONS DON'T APPLY. THE ONLY COVERAGE THAT CAN EXIST IS BODILY INJURY. I DON'T BEL IEVE , W E COULD WALK THROUGH THE ALLE GATIONS , BUT I DON'T BELIEVE THATTHERE ARE ANY ALLE

GATIONS THAT WOULD FALL WITHIN THOSE DEFINITIONS.

WE ARE HERE AND TALK ABOUT COVERAGE. YOU KNOW IN FLORIDA THE DUTY TO DEFENDED HIS GREATER THAN THE D UTY TO COVER , AND WE ARE ONLY DEALING WITH DUTY TO DEFEND.

YES.

CORRECT. SO THIS , G OING BACK TO THE QUESTION OF WHAT THE , THIS WAS , THIS WAS A GENERAL LIABILITY INSURANCE POLICY .

YE S, YOUR HONO R.

FOR A MANUFACT URER , AND I DON'T KNOW IF IT SHOWS IN THE RECORD WHAT THE PREM IUM , DO WE HAVE WHAT THE PREMIUM IS IN THE RECORD?

I DON'T KNOW WHETHER THAT IS IN THE RECORD, YOUR HONOR.

WHAT DOES IT COV ER? WHAT TYPES OF CLAIMS , WOULD IT COVER?

IT WOULD COVER ANY KIND , IT WOULD COVER IN GENERAL , ACCIDENTS ON PREMI SE. IT WOULD COVER IF SOM EONE IS INJURED.

I AM SURE THERE IS A WORKERS COMPENSATION EXCLUSION.

IT WOULD APPLY TO VISITORS, IT WOULD APPLY T O BUSINESS INVITE ESE. IT WOULD APPLY T O ADVERTISERS.IT WOULD APPLY TO ANYONE WHO IS INJURED ON THE PREMISE AS A RESULT.

THE STANDARD , LIKE THEY SLIPPED AND FELL.

WELL , I THINK THAT UNDER STATES THE KIND OF COVERAGE BECAUSE THERE ARE OTHERKINDS OF ACCIDENT S THAT CAN OCCUR BUT IT WOULD CERTAINLY COVER THAT. IT ALSO COVERS OFF-PREMISES ACCIDENTS THAT DON'T INVOLVE OR DON'T ARISE OUT OF ITS PRODUCT.

THAT WOULDN'T BE AUTO ACCIDENTS.

IT WOULDN'T COVER AN A UTO ACCIDENT, BUT SAY A N EMPLOYEE IS OFF PREMIS E AND GETS INTO A FI GHT WITH SOMEONE THAT HE IS T RYING T O MAKE A DEAL WITH , AND THEREFORE

THERE IS PROB ABLY AN INTENTIONAL , YOU KNO W, ACTS.

ON A D UTY TO DEF END , THERE WOULD BE COVERAGE , THOUGH, BECAUSE YOU COULD SAY HE IS ACTING IN SELF-DEFENSE. IT WOULDN'T NECESSARILY BE INTENTIONAL OR THAT PERSON INADVERTENTLY CAUSE SOME ONE ELSE INJURY OFF HO URS .

WITHOUT THIS EXCLUSION.

I AM SO RRY .

WITHOUT THIS EXCLUSION , WOULD THE POLICY COVER THESE TYPES OF CLAIMS?

WITHOUT THIS EXCLUSION , WITHOUT THIS EXCLUSION , YES. I MEAN , WELL , EXCEPT FOR THE BODILY INJURY ASPE CT, YOUR HONOR. I AM SORRY. THERE IS A DISPUTE ABOUT THAT, BUT ASSU MING THAT

HELP ME WITH THAT , BECAUSE ORDINARILY THAT IS WHAT EV ENING WHAT WE THINK, THAT IS WE THINK THAT WE HAVE GOT A B ROAD POLICY , USE OF THE WORD "BROAD" ADVISEDLY. BUT

WE HAVE GOT A BROAD POLICY THAT ORDINARILY COVERS PARTICULAR CHRACTLS.

YES.

NOW, BY AN EXCLUSION, WE HAVE CHERRY PICKED OUT SOME OF THE CLAIMS THAT ORDINARILY WOULD BE COVERED. AND SO HELP ME A LITTLE BIT, WITH REFERENCE TO, BECAUSE I AM NOT SURE, BASED ON YOUR EARLIER EXPLANATION OF THE FACT THAT ALL OF THESE COVERAGES ARE AVAILABLE AND THEREFORE YOU PICK THE ONES THAT YOU WANT AND YOU PAY FOR THEM, AND THAT THEY DIDN'T PICK THIS ONE, BECAUSE AS I SAID BEFORE, WE USUALLY ASSOCIATE EXCLUSIONS FROM A THEORY OF COVERAGE, WITHOUT THE EXCLUSION, SO I DO NEED YOU TO HELP ME WITH, IS THERE COVERAGE IN THIS CASE, IF WE TAKE A WAY THE EXCLUSION? IN OTHER WORDS, IS THE LANGUAGE OF THE POLICY IN THIS CASE, BROAD ENOUGH TO COVER THESE CLAIMS, TAKE, WITHOUT THE IT BEING AN EXCLUSION, KNOWING THEM OUT?

ABSENT THE EXCLUSION, THERE WOULD BE COVERAGE.

AND WHAT IS THE LANGUAGE

AT LEAST ON A DEFENSE BASIS.

WHAT IS THE LANGUAGE IN THE POLICY THAT PROVIDES THE COVERAGE?

THAT PROVIDES THE COVERAGE?

RIGHT. TO START WITH, THE COVERAGE THAT COVERS THESE CLAIMS.

WELL, YOUR HONOR, IT IS, WE WILL PAY DAMAGES IF THE INSURED BECOMES LEGALLY OBLIGATED TO PAY BY REASON OF LIABILITY IMPOSED BY LAW OR INSURED UNDER CONTRACT FOR BODILY INJURY CAUSED BY BODILY INJURY CAUSED BY OCCURRENCE, AND THEN WE ALL AGREE IT IS PERSONAL BODILY INJURY COVERAGE, WHICH WE ALL AGREE THAT DO NOT APPLY, BUT THE COURT HAS EXPRESSED QUERIES IN CERTAIN CASES THAT THE EXCLUSION COVERS BROADLY TWO ISSUES, BUT IN THIS CASE THE DECLARATIONS PAGE, WHICH IS AT LEAST THE FIRST THING AN INSURED WILL LOOK AT TO SEE WHETHER THEY ARE COVERED, SAYS COMMERCIAL LIABILITY, GENERAL AGGREGATE LIMIT OTHER THAN PRODUCTS COMPLETED OPERATIONS, SO IT IS VERY CLEAR THAT THEY ARE NOT BUYING THE PRODUCTS COVERAGE. THEN THERE IS AN EXCLUSION IN THE POLICY THAT SAYS WE DO NOT COVER ANYTHING WITHIN THE PRODUCTS HAZARD, AND THEN THERE IS A VERY EXPLICIT DEFINITION THAT SAYS WE DO NOT COVER ANY PRODUCTS HAZARD INCLUDES ANY CLAIM FOR INJURY ARISING OUT OF YOUR PRODUCT.

CAN YOU ADDRESS THE "OR YOUR WORK" PHRASE, BECAUSE AT LEAST SOME OF THE POLICIES HAVE THAT, YOUR PRODUCT OR YOUR WORK, AND EVERYBODY SEEMS TO BE CUTTING OFF THAT PRODUCT.

FRANKLY, YOUR HONOR, I THINK THE REASON, MY UNDERSTANDING HAS BEEN AND I HAVE TO SAY THIS IS AN ISSUE THAT HASN'T BEEN PREVIOUSLY ADDRESSED BY EITHER SIDE, THAT THE WORK REFERS TO SITUATION WHERE AN INSURED DOESN'T PRODUCE A GOOD BUT, INSTEAD, PRODUCES WORK.

SERVICE.

A SERVICE OR BUILDS SOMETHING, AS OPPOSED TO SELLS A GOOD OR MANUFACTURES A GOOD, AND I THINK THAT MAY BE WHY THAT WASN'T RAISED. I WOULD CERTAINLY NOT TRY TO ARGUE TO THE COURT THAT THAT DOESN'T, ALSO, INCLUDE THIS, BUT I THINK THAT IS WHY THAT

PARTICULAR PROVISION WASN'T RAISED.

YOU ARE COMING BACK TO GASKINS.

I WAS , YOUR HONOR , AND AS I SAID, I THINK IT IS IMPORTANT, FIRST OF ALL GAS KINCE INVO LVED GASKINS INVOLVED DIFF ERENT POLICY LANGUAGE, AS FAR AS WE CAN TELL FROM THE PLOITION . ARISING OUT OF YOUR PRODUCT IS A DIFFERENT CONCEPT , A NDI THINK THE COURT COULD H AVE READ IT THAT WAY , AS DIFFERENT FROM ARISING OUT OF YOUR PRODUCT. THE DIFFER ENCE HE RE CAN B E THE GUN , AS THIS COURT FO UND IN QUAK OS. SECONDLY, THE GASKINS CASE INVOLVED A VERY DIFFERENT K IND OF FA CTUAL SI TUATION . I MEAN, THIS IS A CASE WHER E A GUN MANUFACT URER , ACCOMPANY IN THE BU SINESS O F MANUFACTURING AND DISTRIBUTING GUNS , BUYS A POLICY THAT EXPR ESSLY SAYS WE DON'T COVER ANY CLAIMS ARISING OUT OF YOUR PRODUCT, WHICH OBVIOUSLY IS YOUR GUNS. THEY ARE, THEN , SUED IN MASS TORT LITIGATION , F ORSPECIFIC, FOR INJURIES BY PEOPLE BEING SHOT WITH THEIR GUNS BECAUSE OF THEIR A PRACTICES .

THOSE ARE THE BUSINESS PRACTICES.IT IS NOT BECAUSE, AGAIN , THE GUN DIDN'T HAVE A SAF ETY OR SOMETHING THAT OF THAT NATURE.

THAT IS PART OF IT , BUT IT IS ALSO BECAUSE THEY FLOODED THE MARKET WITH GUNS IRRESPONSIBLY, AND THE DANGEROUS GUNS RESUL TED I N PEOPLE BEING SHOT. THAT IS THE UNDER LYING CASE. THE BUSINESSES P R ACTICES DON'T CAUSE INJURY.IT IS THE BUSINESS PRA CTICES THAT RESULT IN THE GUNS FLOODING THE MAR KET AND T HEN THE GUNS ARE SHOT AND PE OP LEARE INJURED AS A RESULT.

SO IF THIS SPEC IFIC , I DON'T KNOW WHAT LIT IGATION WITH THE INSURANCE IN THE TOBACCO CASES OCCURRED, B UT THERE WAS A LOT OF CLAIMS OF FALSE AD VERTISING.

THAT'S CORRECT.

IN, AND THA T WAS THE ALLEGATION OF NEGLIGENCE, WAS THE FA LSE ADVERTISING , AND YET THE CIGARETTE CAUSE THE DEATH. IS THAT , WOULD THAT STIL L, WOULD YOU SAY THAT SOMETHINGLIKE THAT WOULD BE ALL EXCLUDED UNDER A POLICY LIKE THIS?

YOUR HONOR, THAT I S EXACTLY WHAT THE DELA WARE SUPREME COURT FOU ND. THE DELAWARE SU PREME COURT ADDRESSED THIS PRE CISE ISSUE, AND IN THE CONTE XT OF THE TOBACCO LITIGATION , A NDFOUND THAT THE EXCLUSIONS APPLIED, BECAUSE ULTIMATELY WAS THE PRODUCT THAT W AS CAUSING THE INJURY.

I AM NOT SURE WHY YOUR YELLOW LIGHT WENT ON. IS THERE, YOU ARE N OT DIVIDING YOUR TIME, ARE YOU?

NO , I AM NOT.

YOU STILL HAVE YOUR TIME .

CAN YOU EXP LAIN WHY QUAKOS APPL IES?

ILL, YOUR HONOR, AND I THINK THAT IT TIES INDIRECTLY TO THE ANSWER TO JUSTICE WELLS'S QU ESTION. ONE REASON THAT QUAKOS , I THINK, WAS HELP FUL T O JU DGE JORDAN, WAS IT WAS CLEAR , I THINK IT YOU I THINK , I F YOU LOOK AT HIS OPINION THAT , HE IS LOOKING AT THE CASE LAW AND ANALYZING THE CASE LAW, AS A DISTRI CT COURT JUDGE, FEELING COMP ELLED TO MAKE A PREDICTION , AND , A LSO , FEELING COMPELLED TO FO LLOW THE INTERMEDIATE APPELLATECOURT. THE COURTS, HE SAYS , I DON'T KNOW EX ACTLY WHERE IT WOULD GO, BUT I FEEL CONSTRAINED BY GASKINS. WE, THEN, PRESENTED QUAKE QUAKOS TO JUDGE JORD AN AND

HE SAYS THIS CHANGES THINGS, BECAUSE THE PREMISE WAS THAT THE ACCIDENT OCCURRED ON THE PREMISE. THAT THE ACCIDENT WAS THE SALE OF THE HERBICIDE, NOT, THE ACCIDENT WASN'T WHEN THE HERBICIDE, WHICH THEY THOUGHT THEY WERE BUYING FERTILIZER AND THEY WERE ACTUALLY GETTING POISON INSTEAD, THE COURT SAID THE ACCIDENT WASN'T WHEN YOU PUT THE HERBICIDE ON THE TOBACCO PRODUCT AND IT KILLED THE M. THE ACCIDENT WAS ON THE PREMISE WHEN THEY MADE THE DECISION TO GIVE YOU THE WRONG PRODUCT OR MADE THE NEGLIGENT ACT OF GIVING YOU THE WRONG PRODUCT. QUAKOS ANALYZED PRECISELY, THE ISSUE OF WHAT IS THE ACCIDENT. WHAT IS THE OCCURRENCE WHICH IS DEFINED AS AN ACCIDENT. AND IN QUAKOS AT PAGE 271, 849 SO.2D, THE COURT SAID THE ACCIDENT WAS THE SHOOTING INCIDENT AND NOT THE NEGLIGENT FAILURE TO PROVIDE SECURITY. IN OTHER WORDS, IN QUAKOS, THE COURT SAID THE ACCIDENT ISN'T THE NEGLIGENCE THAT PREDATED THE SHOOTING. THE ACCIDENT WAS THE SHOOTING, ITSELF. SO I THINK QUAKOS IS HELPFUL IF FOR NO OTHER REASON, IN UNDERCUTTING THE THEORY UNDER WHICH THE GASKINS DECISION WAS MADE, BUT, FURTHER, QUAKOS ESTABLISHES VERY CLEARLY AND DISSEMINATELY AND DECISIVELY THAT IT IS THE SHOOTING THAT CAUSE THE INJURY, THE SHOOTING CAUSE THE INJURY, WHICH MEANS THAT THE CAUSAL CONNECTION BETWEEN THE GUN AND THE SHOOTING, IS INDISPUTABLE. I AM SORRY. THE GUN AND THE INJURY IS INDISPUTABLE, AND GETTING BACK TO THE DEFINITION OF ARISING OUT OF, ARISING OUT OF, THE COURTS HAVE YOU AND IN MOSTLY FOUND IT IS UNAMBIGUOUS. THEY HAVE UNANIMOUSLY FOUND THAT IT IS BROADER OR ALMOST UNANIMOUSLY FOUND IN FLORIDA TELL AT LEVELS, THAT IT IS BROADER THAN MERELY CAUSED BY, BUT IN ANY CASE, IT INVOLVES AT LEAST SOME CAUSAL RELATIONSHIP, AND THE CAUSAL RELATIONSHIP BETWEEN A GUN AND THE GUN SHOT WOUND CANNOT BE DISPUTED. I SEE MY TIME IS UP. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THANK YOU VERY MUCH. REBUTTAL.

I HAVE THREE POINTS. MAY IT PLEASE THE COURT, I WOULD LIKE TO MAKE ON REBUTTAL. FIRST, THE INSURER'S CONTINUED EFFORT TO ARGUE THAT GASKINS IS DISTINGUISHABLE BECAUSE THE DAMAGE DIDN'T RELATE TO THE PRODUCT, AND THEIR OTHER BASIS FOR DISTINGUISHING GASKINS IS SPECIOUS. THE GUNS WERE THE FINAL STEP IN CAUSING THE INJURY, AND THE HERBICIDE WAS THE DIRECT AND IMMEDIATE CAUSE OF INJURY TO GASKINS.

IT SAYS IN YOUR POSITION AND I QUOTE, ACCORDINGLY ON THE FACTS OF GASKINS, THE NEGLIGENCE ITSELF, CAUSED THE INJURY, AND THE PRODUCT WAS, QUOTE, MERELY THE INCIDENTAL INSTRUMENTALITY THROUGH WHICH THE DAMAGE WAS DONE. CLOSE QUOTE.

I THINK THAT'S CORRECT. I THINK IN GASKINS, THAT IS SHORTHAND FOR THIS IS NOT A DEFECTIVE PRODUCT OR PRODUCTS LIABILITY CASE, AND GASKINS HAS BEEN UNDERSTOOD TO MEAN THAT IN THE FOUR SUBSEQUENT FLORIDA CIRCUIT COURT DECISION THAT IS HAVE CITED IT, ALL CONSISTENT WITH ITS HOLDING, IN THE FIVE DIFFERENT CASES AND TREATISES OUTSIDE OF FLORIDA THAT HAVE CITED GASKINS THAT UNDERSTAND GASKINS TO BE THE ADOPTED RULE THAT THE EXCLUSION ONLY APPLIES TO DEFECTIVE PRODUCTS, AND ONE OF THE SUBSEQUENT FLORIDA CASES, I THINK, ALSO SHOWS THAT THEIR PROMISE, AND GASKINS WAS A CASE THE COURT NOTED, THAT THE INSURED DID NOT PURCHASE PRODUCTS HAZARD COVERAGE.

CHIEF JUSTICE: YOUR TIME IS UP. DID YOU GET TO YOUR SECOND, DO YOU WANT TO JUST BRIEFLY MENTION YOUR SECOND.

IF I MAY BRIEFLY MENTION IT. THE AEGIS DECISION WAS A CASE OF INTERPRETING THE PRODUCTS HAZARD COVERAGE, AND IT APPLIED COVERAGE ONLY BECAUSE IT FOUND THERE WAS A DEFECTIVE PRODUCT CLAIM IN THE CASE. A DEFECTIVE PRODUCT. IF IT HADN'T FOUND A DEFECTIVE PRODUCT, THE IMPLICATION WAS IT WOULDN'T HAVE FOUND THE PRODUCTS HAZARD COVERAGE WOULD HAVE APPLIED. THEREFORE THERE WOULD HAVE BEEN DIFFERENT LIMITS, SO THIS IS A DIFFERENT PROVISION, AND THE FINAL POINT IS SIMPLY THAT THEIR ARGUMENT

ABOUT THE SCOPE OF "ARISING OUT OF" WILL SWALLOW THE COVERAGE FOR US , IF UNDER THEIR INTERPRETATION IF SOMEONE BUYS OUR GUN AND BRINGS IT BACK TO REPAIR IT AND T HEY SLIP AND FALL, THAT REL ATES , THAT IS CON NECTED SOME HO W TO THE GUNS WE SOLD , THERE F ORIT IS EXCLUDED , IT WILL SWALLOW OUR COVERAGE. THANK Y OU.

CHIEF JUSTICE: THANK YOU. THANK YOU TO BOTH SI DES FOR A HELPFUL ORAL ARG UMENT. INTERESTING QUESTION.