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**United States Fire Insurance Co. v. J.S.U.B., Inc.**

**SC05-1295 | SC06-779**

>> GOOD MORNING!!\$\$# SUPREME COURT, PLEASE BE SEAT!!\$\$

SEATED.\$\$! -- THE NEXT CASE ON OUR CALENDAR THIS MORNING IS UNITED STATES FIRE --

LUMBERMENS INSURANCE, AND --

>> MAY IT FLEES COURT RONALD CAMERON ON BEHALF OF U.S. FIRE, THIS COURT, RECOGNIZED IN LAMAR AND CTC, THAT THE PURPOSE OF A9999LIABILITY POLICY TO COVER THE BUILDER FOR INJURY TO THE PAWNED THEIR PROPERTY!!\$\$!!

PROPERTY, CAUSED BY DEFECTIVE WORK.

A LIABILITY POLICY, DOES NOT COVER BUSINESS RISKS, SUCH AS THE COST TO REPAIR AND REPLACE THE DEFECTIVE WORK.

THAT IS THE PURPOSE OF A PERFORMANCE BOND OR A WARRANTY POLICY BOTH OF WHICH ARE READILY AVAILABLE TO CONTRACTORS FOR PURCHASE.

--

>> I'M SORRY.

>> IN THIS INSTANCE, THE THE JSUB CASE, THE THERE WAS A COMPACTION PROBLEM, THAT WAS A RESULT OF WORK OF A SAID CONTRACTOR.

>> CORRECT.

>> ABSOLUTELY CORRECT JFD -- JUSTICE.

>> WAS THERE O HE --

>> THAT IS NOT IN THE RECORD, BELOW.

>> OKAY.

AND SO, I THINK -- NORMALLY IN THESE CONSTRUCTION SITUATIONS, YOU WOULD HAVE THE PROBLEM IS COMES UP, WHEN YOU WORK YOUR WAY DOWN THE LADDER, AND THERE IS NOT A FINANCIALLY

RESPONSIBLE DEFENDANT, IS NOT THAT CORRECT?

>> I THINK -- MAYBE THAT IS PART OF THE PROBLEM.

BUT I THINK THE OTHER PART OF THE PROBLEM IS THAT UNI LIKE A LIABILITY POLICY, A CONTRACTOR IS PERSONALLY LIABLE FOR ANY PAYMENTS MADE UNDER A PERFORMANCE BOND.

AND SO YOU HAVE A SITUATION THAT BY CONVERTING AS LIABILITY POLICY INTO A BOND WHICH IS ESSENTIALLY WHAT THE SECOND DCA DID IN JSUB, CONTRACTORS NOW WILL BE ABLE TO SIMPLY TURN TO THEIR LIABILITY INSURERS, TO CORRECT THEIR OWN DEFECTIVE WORK, WITHOUT ANY PERSONAL EXPOSURE.

>> IS NOT A BIG DIFFERENCE BETWEEN LAMAR ISSUE AND THIS CASE, JSUB LAMARSH WAS THE CONTRACTOR, I -- LET'S, TAKE ASIDE, THESE OVER RIDING WHAT WE CALL PUBLIC POLICY REASONS, AND ALSO, I THINK YOU WOULD AGREE THERE IS A SPLIT IN THE AROUND THE COUNTRY, ON THIS ISSUE.

SO IT IS NOT LIKE IT IS SO CLEAR-CUT!!\$\$!

CLEAR-CUT, THAT EVERYBODY IS GOING ONE WAY, WHAT I WOULD LIKE TO YOU DO IS EXPLAIN HOW IN THE POLICY YOU COME TO THE CONCLUSION BASED ON THE POLICY LANGUAGE THAT THERE CANNOT EVER BE COVERAGE FOR A SUBCONTRACTOR DEFECTIVE WORK THAT DAMAGES ANOTHER PART OF A PROPERTY.

>> I WILL BE MORE THAN HAPPY TO DO THAT JUSTICE PARENTE. FIRST, JUST BECAUSE THERE IS A SPLIT AROUND THE COUNTRY DOES NOT NECESSARILY MEAN THERE IS AMBIGUITY IN THE POLICY.

>> YOU ACKNOWLEDGE THERE IS A SPLIT.

>> JUST AS THERE WAS A SPLIT, WHEN THIS COURT DECIDED DIM ILT ON SOUTHERN HE O ACCIDENT!!\$\$!! ACCIDENTAL POLLUTION EX-CLUES\$\$!ION

COURTS WERE EQUALLY SPLIT THIS COURT FOUND THE WORD SUDDEN ACCIDENTAL WERE IN NO WAY AMBIGUOUS!!\$\$!  
AMBIGUOUS, RETURNING TO YOUR QUESTION, JUSTICE PARENTE, WHY THERE IS NO COVERAGE, UNDER THIS POLICY AS FOUND IN THE INSURING AGREEMENT, WHEN SOMEONE BULTSDZ A BUILDING THAT DOES NOT CONFORM TO THE CONTRACT AND SPPD CONSEQUENCE IS THAT DAMAGE WILL ARISE, THAT EXPECTATION IS NOT AN ACCIDENT, IT IS NOT AN OCCURRENCE!!\$\$  
OCCURRENCE.

>> SO YOU ARE SAYING, THAT -- BECAUSE IT IS IT IS THE ISSUE IS WHETHER IT IS SXPD -- SPPD OR INTENDED IS WHEN FITS WITHIN THE DEFINITION --

>> RIGHT I THINK THAT IS WHY YOU CAN LEAD LAMARSH, AND CTCTOGETHER FOR THE -- THAT ROULT!!\$\$!!  
ROULT.

>> THE PROBLEM I HAVE WITH THAT IS IT WOULD THEN SAY THAT IT IS NOT AN ACCIDENT, IF THE 4th, 6TH CIRCUIT USE AND ALLERGY WALL FALLS OUTWARD DAMGZ AN AUTOMOBILE, IT IS COVERED IF IT FALLS INWARD AND DAMAGES THE FLOOR, IT IS NOT COVERED YOU ARE SAYING IT WOULDN'T BE SHOULDN'T BE COVER!!\$\$!!  
COVERED IN EITHER CASE BECAUSE IT IS NOT AN ACCIDENT.

>> NO, I'M NOT SAYING THAT AT ALL YOUR HONOR WHEN YOU ARE DEALING WITH WHAT AN OCCURRENCE IS, IT IS THE DEGREE OF FOR TO YOUITY THAT MAKES A DIFFERENCE.

>> FOR THEITY.

>> WHAT YOU ARE SAYING IS A BREACH OF CONTRACT -- IS NOT COVERED WITHIN AN OCCURRENCE.

>> WHAT I'M SAYING IS THAT DAMAGES WITHIN THE CONTRACT A JUSTICE WELLES ARE NOT IN AN OCCURRENCE THOSE DAMAGES ARE EXPECTED THEREFORE NOT

ACCIDENTAL AND NOT AN OCCURRENCE!!\$\$  
OCCURRENCE, ANOTHER WAY OF SAYING THAT, JUSTICE WELLS, WHO I WOULD AGREE WITH YOUR STATEMENT AS WELL, HOWEVER, JUSTICE PARENTE WHEN YOU GET TO DAMAGES OUTSIDE THE CONTRACT, THOSE DAMAGES USUAL VIRTUALLY UNLIMITED, AND THAT IS THE PURPOSE OF A COMMERCIAL GENERAL LIABILITY FOR A LIABILITY POLICY TO PROTECT THE PUBLIC, AND PROPERTY FROM DAMAGED CAUSED BY DEFECTIVE WORK AGAIN, WE ARE -- RETURNS TO THE INSURING AGREEMENT ITSELF, AND THAT IS WHY THE ONE OF THE REASONS, WHY JSUB WAS INCORRECTLY DECIDED RETURNING TO ANOTHER QUESTION, AND THAT IS WHAT IS CTC\$\$!STAMD FOR WHAT DOES LAMAR STAND FOR IN LAMARSH, THERE WAS ONLY DAMAGE TO THE WORK ITSELF. IN CTC, THERE WAS NO DAMAGE, TO THE WORK ITSELF.  
CTC INVOLVED A CLAIM, BY A NEIGHBORING PROPERTY OWNER, AND THAT THIS \$\$COURT'S DECISION IN CTC WAS CORRECTLY DECIDED, BECAUSE THERE WAS AN OCCURRENCE IN KA-- THAT CASE THERE WAS DAMAGE OUTSIDE THE C THE NEIGHBORING PROPERTY OWNER THAT WAS AN OCCURRENCE.  
>> OF COURSE THE INSURANCE COMPANY DIDN'T THINK SO AT THE TIME THE CASE WAS ARGUED.  
>> STATE FARM DID NOT THINK. SO BUT, PEOPLE TAKE A -- POSITIONS!!\$\$!  
POSITIONS, SOMETIMES, THOSE POSITIONS ARE CORRECTED BY THIS COURT, SOMETIMES THEY ARE NOT.  
BUT RETURNING TO THE DECISION, THE COURT GOT IT RIGHT AND SENT THE MESSAGE TO STATE FARM AND THE OTHER CARRIERS IS THAT WHEN THERE IS DAMAGE OUTSIDE THE CONTRACT TO A THIRD PARTY, IF YOU RETURN TO THIS COURT'S DECISION IN CTC, AND THIS IS

WHERE MR. BOYLE AND I DISAGREE  
MR. BOYLE IN THIS BRIEF SAYS,  
THAT IN NO WAY SHAPE OR FORM,  
WAS THE IDENTITY OF WHICH  
PROPERTY WAS DAMDZ IMPORTANT  
BUT WHEN THIS COURT RENDERS  
HOLDING IN CTC WHAT IT SAYS,  
IS THAT THERE WAS DAMAGE AND  
A-- SURE DID NOT EXPECT OR  
CAUSE HARM TO A THIRD PARTY.  
-- I THINK THAT IS WHY AS YOU  
TAKE THE BODY OF LAW, AND IN  
TERMS OF LAMARSH, AND CTC, THE  
RESULT IS DAMAGE TO YOUR WORK,  
BUSINESS RISK, EXPECTED NOT AN  
ACCIDENT, NOT AN OCCURRENCE.  
ON THE OTHER HAND WHEN YOU GO  
OUTSIDE THE CONTRACT, THAT IS  
SOMETHING ONCE AGAIN THAT IS  
SOMETHING THAT IS  
UNPREDICTABLE AND THAT IS THE  
PURPOSE AND WHY YOU HAVE  
COMMERCIAL GENERAL LIABILITY  
POLICIES!!\$\$!!  
POLICIES.  
AND THAT IS WHY WHEN JUSTICE P\$\$!  
PARI!!\$\$  
PARIECH NTE ASKED WHERE IN  
POLICY IS JUSTIFICATION FOR  
THE BUSINESS RISK RIGHT THERE  
SMACK-DAB IN THE INSURING  
AGREEMENT.  
>> SEEMS LIKE WOULD IT BE SO  
EASY TO EXPLAIN THIS, IN CLEAR  
LANGUAGE, WITHOUT HAVING TO  
RESORT TO OCCURRENCE TO SAY  
THE BREACH OF CONTRACT -- ARE  
NOT WITHIN ANYTHING THAT GIVES  
RISE TO A BREACH OF CONTRACT  
IT IS NOT WITHIN THE POLICY --  
MY CONCERN IS IS THAT IF  
OCCURRENCES IN ANY WAY  
AMBIGUOUS AND THEN YOU GO AND  
LOOK AT THE EXCLUSION, YOU  
THEN HAVE THE EXCEPTION TO  
EXCLUSION FOR THE  
SUBCONTRACTOR AND WE IN BOTH  
OF THESE CASES UNI LIKE,  
LAMARSH, WE'VE GOT A  
SUBCONTRACTOR.  
>> RIGHT AND IF I COULD JUST  
EXPLAIN, THE SUBCONTRACTOR, MY  
TIME IS KIND OF UP I WILL  
YIELD THE FLOOR TO MISS

POWERS.

IS THAT WHAT IS CLEAR IN  
LAMARSHWHAT IT -- IS CLEAR AN  
EXCLUSION IN A POLICY CANNOT  
BE READ TO BROADEN COVERAGE  
BUT TO ADDRESS YOUR QUESTION,  
AND ONE RAISED BY MR. BOYLE IN  
THE BRIEF, IS WERE WELL, GIVE  
SOME PURPOSE TO THE  
SUBCONTRACTOR EXCEPTION, AND  
THERE IS.

AND HERE IS THE EXAMPLE, WHICH  
COULD HAVE AND HAVE A IN THIS  
CASE BECAUSE UNDISPUTED IN THE  
RECORD, THAT JSUB WAS THE  
BUILDER OF TRACK HOMES, EACH  
ONE OF THE HOMES, WAS YOUR  
WORK MEANING THE WORK OF JSUB.  
IF IT HOME NUMBER ONE, THEY  
HAD NEGLIGENTLY OR CONTRACT!!\$\$!!  
CONTRACTUALLY BREACHED THEIR  
CONTRACT, SO THERE WAS A GAS  
LINE THAT WAS IMPROPERLY IN  
PLACE, AND THEN YOU HAVE A  
HUGE EXPLOSION, DAMAGING NOT  
ONLY THAT HOME, BUT THE OTHER  
FOUR HOMES THAT JSUB BUILT,  
THOSE OTHER FOUR HOMES ALL  
WOULD HAVE BEEN YOUR WORK,  
OKAY, HOME BUILT HAD GASOLINE  
THE FOUR OTHER HOMES, ALL  
WOULD HAVE BEEN -- YOUR WORK,  
BUT FOR THE SUBCONTRACTOR  
EXCEPT!!\$\$!  
EXCEPTION, THERE WOULD HAVE  
BEEN NO COVERAGE NOT ONLY FOR  
THE ONE HOME BUT THE OTHER  
FOUR, BUT BECAUSE --.

>>.

>> I'M SORRY YOU ARE SAYING IF  
A GAS EXPLOSION DAMAGED  
ANOTHER HOME WHETHER DONE BY  
SUBCONTRACTOR OR CONTRACTOR  
WOULD WAS BY THE CONTRACTOR,  
IT WOULDN'T WOULD BE  
EX-EXCLUDED FROM THE POLICY?  
>> THAT IS FOR THE BUT FOR THE  
SUBCONTRACTOR EXA COLLUSION IF  
I UNDERSTOOD YOUR QUESTION YOU  
WANTED ME TO GO TO THE  
EXCLUSION AND SAY WELL, WE  
HAVE THE EXCLUSION THAT HAS  
THE SUBCONTRACTOR EXCEPTION,  
AND WHAT THAT SUBCONTRACTOR

EXCEPTION DOES, IS ONCE YOU  
HAVE DAMAGE OUTSIDE THE  
CONTRACT!!\$\$!!  
CONTRACT, AND IN MY HINT!!\$\$  
HINTHETICAL THAT IS THE DAMAGE  
TO -- HYPOTHETICAL DAMAGE TO  
FOUR HOMELAND SECURITY NOW,  
YOU HAVE OCCURRENCE OUTSIDE  
CONTRACT IN XEPD.  
-- UNEXPECTED BUT FOR THE  
SUBCONTRACTOR EXCEPTION, ALL  
FIVE HOMES WOULD BE YOUR WORK,  
SO WHAT THE SUBCONTRACTOR  
EXCEPTION DOES, IT NOW GIVES  
COVERAGE, FOR THOSE OTHER FOUR  
HOMES!!\$\$!!  
HOMES, BECAUSE THOSER FOUR  
HOMES WORK WAS DONE EITHER BY  
SUBCONTRACTOR!!\$\$  
SUBCONTRACTORS, OR THERE WAS  
DAMAGE TO WORK DONE BY  
SUBCONTRACTORS!!\$\$!!  
SUBCONTRACTORS, AND THAT IS  
THE PURPOSE OF THE  
SUBCONTRACTOR EXCEPTION TO THE  
EXCLUSION!!\$\$!  
EXCLUSION, AND WHY THE  
LINCHPIN IN MR. BOYLE'S  
ARGUMENT THAT ARGUED THE  
POLICY SOMEHOW RENDERS THAT  
CLAUSE SURPLUSAGE IS SIMPLY  
FALLS!!\$\$!!  
FALLS.\$\$! -- FALSE,,,,,

>> MAY IT WILL PLEASE THE  
COURT.

DENISE POWERS ON BEHALF OF  
AUTO OWNERS INSURANCE COMPANY.  
WE REQUEST THIS COURT ANSWER  
WITH A RESOUNDING NO THE  
QUESTION PRESENTED BY THE 11th  
CIRCUIT, THE ONLY DAMAGED  
PROPERTY WAS THE GE DEFECTIVE  
YIMS -- INSTALLATION OF  
WINDOWS WHICH WERE -- WHICH  
WERE DAMAGED AND DEFECTIVE --  
AB AAB!!\$\$!!INITIO.

>> WOULDN'T THAT BE ISSUE  
WHETHER PROPERTY DAMAGE OR NOT  
BECAUSE I THINK MY VIEW I'M  
NOT SURE ABOUT THIS BUT I  
READY ALL THESE CASES ALL OVER  
THE COUNTRY YOU'VE GOT THE 5th  
DISASTER -- 5th DISTRICT

PANELING INSTALLED PAN HE  
THINK WRONG PAN EDGED REPLACED  
THE PAN HE THINK THAT IS  
CLEARLY NOT -- TO ME, A  
SITUATION WHERE THE SOIL GIVES  
IS THE PROBLEM AND THEN THE  
HOUSE, WHICH WAS FINE TO BEGIN  
WITH, STARTS TO DEVELOP  
STRUCTURAL -- IS DIFFERENT  
THAN IT MAY BE IN YOUR CASE,  
THAT THE IF THE WINDOWS WERE  
DEFECTIVE FROM THE OUTSET,  
THERE MAY NOT BE ANY PROPERTY  
DAMAGE.

BUT THAT DOESN'T MEAN THERE IS  
NOT INITIALLY THE OCCURRENCE,  
SO YOU DO -- AND I REALIZE YOU  
HAVE GOT TO ARGUE FOR YOUR  
CLIENT AS WELL AS THE GREATER!!\$\$  
GREATER -- YOU DO SEE WAY  
PROPERTY DAMAGE MAY BE REALLY  
WHAT IS IMPLICATED THAT IS THE  
DEFINITION OF WHETHER IT IS  
PROPERTY DAMAGE OR NOT, IN  
MANY OF THESE CASES, AS  
OPPOSED TO THE OCCURRENCE  
ISSUE?

>> I AGREE, YOUR HONORER I  
THINK WHAT IS VERY IMPORTANT  
IS THE FACT THAT -- THE  
CREATION!!\$\$!!  
CREATION, OF DEFECTIVE WORK,  
IS NOT AN OCCURRENCE, IT  
DOESN'T DAMAGE ANYTHING, BUT  
YOU HAVE TO --

>> -- AINITIO, IF THE SOIL  
IS -- FALSELY COMPACTED TESTED  
THE WORKS WHEN HOUSE GOT BUILT  
EVERYTHING WAS FINE WITH THE  
HOUSE IS NOT THAT DIFFERENT,  
THAN A WINDOW GETS INSTALLED,  
AND THEY NEVER -- THAT --  
INSTAILT WRONG TO BEGIN WITH,  
IS THERE --

>> THERE MAY BE FACTUAL  
DIFFERENCES!!\$\$!!  
DIFFERENCES, YOUR HONOR BASED  
ON THE RECORD, IN THE JACOB  
CASE MR. -- I'M NOT FAMILIAR  
WITH ALL THE INTRICACIES OF  
THE -- OF THE STATTUAL RECORD  
OTHER -- FACTUAL RECORD OTHER  
THAN IN THE OPINION OF THE  
SECOND DISTRICT.

BUT, THERE IS NO, THERE IS NO  
DAMAGE IN THE WINDOW CASE TO  
ANYTHING OTHER THAN THE REPAIR  
AND THE REPAYMENT OF THE  
WINDOW.

THE OCCURRENCE OCCURS, WHEN  
THERE IS OTHER PROPERTY  
DAMAGE.

HERE WE PAY FOR THE PROPERTY  
DAMAGE TO THE HOMEOWNERS,  
PERSONAL PROPERTY, SOME OF HIS  
-- ART, AND OTHER -- ITEMS,  
DAMAGED BY THE WORK AND THAT  
IS THE OCCURRENCE.

>> THERE WAS LEAKAGE CAUSED BY  
THE DEFECTIVE INSTALLATION OF  
THE WINDOW IS THAT RIGHT.

>> THAT DAMAGED THE PROPERTY,  
OF THE HOMEOWNER BECAUSE IT  
OCCURRED AFTER HE -- AFTER HE  
MOVED IN.

BUT THIS IS SOLELY FOR THE  
REPAIR AND THE REPLACEMENT OF  
THE WINDOWS, WHICH WERE DEFECT!\$\$!  
DEFECTIVELY INSTALLED, AB!\$\$!INITIO,  
BAD FROM DAY ONE.

>> NOT OCCURRENCE NOT PROPERTY  
DAMAGE --

>> IT IS NOT EITHER, YOUR  
HONOR LOOKING AT THE INSURING  
AGREEMENT, BECAUSE YOU HAVE TO  
HAVE PROPERTY DAMAGE CAUSED BY  
AN OCCURRENCE, NOT PROPERTY  
DAMAGE THAT OCCURS, OR DEFECT!\$\$!  
DEFECTIVE WORK THAT OCCURS,

AND I THINK THAT IS THE  
DISTINCTION I THINK THAT IS  
WHY, I AGREE WITH MR. -- THAT  
THIS CASE IS EVEN THE AUTO  
OWNERS CASE CONSISTENT WITH  
THIS COURT -- COURT IN  
CTCBECAUSE THE OCCURRENCE WAS  
THE DAMAGE TO THE NEIGHBORS\$\$'  
PROPERTY.

THE CTC CASE WASN'T -- TAKES  
THE HOUSE THAT HAS BEEN  
IMPROPERLY LOCATED, REBUILD IT  
PROPER!\$\$!

PROPERLY, NO.

YOU HAVE DAMAGED YOUR  
NEIGHBOR.

THAT NEIGHBOR WAS ENTITLED TO  
DAMAGES!\$\$

DAMAGES, OUTSIDE THE CONTRACT,

OUTSIDE THE WORK OF THE CONTRACTOR.

WHAT WE ARE BEING WHAT THE CARRIER UNDER INTERPRETATION OF JSUB IS BEING ASKED TO DO IS TO PAY TO REDO THE IMPROPER -- IMPROPER WORK, AND IT IS NOT CORRECT TO TAKE AND START AT THE BOTTOM.

>> SO YOU ARE MAKING A DISTINCTION HERE AS I UNDERSTAND IT, BETWEEN THE PROPERTY, THAT WAS ACTUALLY INSTALLED!!\$\$! INSTALLED, AND THE ENTIRE HOUSE, IF IT WAS DAMAGE TO THE HOUSE ITSELF, YOU SAY YOU WOULD COVER IT BUT NOT TO THE TELL YOU -- THE ACTUAL IN THIS CASE WINDOW.

>> NO, THAT IS NOT WHAT I SAID, JUSTICE KWENZ WHAT I SAID IN THIS CASE, IN THE POSEY WINDOW CASE, THE DAMAGE WAS NOT TO THE REMAINDER OF THE HOUSE THE DAMAGES THAT WE DID --

>> I THOUGHT YOU SAID THERE WAS SOME DAMAGE, TO THE HOUSE, FROM WATER THAT HAD SEENED IN AND THAT HE SEEPED IN.

>> TO MR. PEREZ' PROPERTY. THE ONLY CLAIM PRESENTED HERE IS THE REREPAIR AND REPLACEMENT OF THE WINDOW. ANY DAMAGE, FOR WHICH MR. -- THE HOMEOWNERS SUSTAINED, I BELIEVE IT WAS SOME RUGS, OR I KNOW THERE WAS PERSONAL PROPERTY DAMAGE IN A CLOSET. THOSE WERE PAID.

WHAT IS BEFORE THIS COURT WHEN IS BEFORE U.S. DISTRICT COURT ARE THE DAMAGES TO REPAIR AND REPLACE THE WINDOWS, PERIOD. WE ARE NOT DEALING WITH DAMAGES TO ANY OTHER PART OF THE STRUCTURE, OF THE HOME. BUT THAT IS THE --

>> IN OTHER WORDS, WHAT YOU ARE -- IN MY TERMS, I WOULD SAY YOUR ARGUMENT IS THIS -- THIS GENERAL HALL LIABILITY POLICY WAS NOT A WARRANTY --

>> CORRECT, IT WAS NOT A WARRANTY!!\$\$!  
WARRANTY, IT WAS NOT A PERFORMANCE BOND.  
AND FURTHER ANSWER YOUR QUESTION JUSTICE, WHAT THE GENERAL CONTRACTOR IS SELLING, IS A PRODUCT IN THE WINDOW CASE IT WAS ONE HOME.  
>> I KNOW YOU WERE ALSO INVOLVED IN THE HANOVER.  
>> YES YOUR HONOR.  
>> AND DISCUSS WITH US HOW HANOVER AND THIS CASE FIT TOGETHER SO IF THEY ARE THERE YOUR HONOR, IT WAS IT WAS A BUILDING OF CONDOMINIUM BUILDING SO IT WAS MULTIPLE BUILDINGS AND THERE THE ONLY DAMAGES SOUGHT IN THE HANOVER CASE WERE FOR REPAIR AND REPLACEMENT!!\$\$!  
REPLACEMENT.  
AND THOSE ARE THE OPERATIVE WORDS!!\$\$!  
WORDS, ALTHOUGH THERE WAS A PHRASE THAT THE WINDOWS ALLOWED WATER INTRUSION THERE, WAS NO CLAIM FOR SUCH DAMAGES. THE DAMAGES WERE TO REPAIR AND REDO IT WAS COMPLETED OPERATIONS COVERAGE, TO REDO THE OCCUPIED CONDOMINIUMS THE UNDERLYING CASE HAD BEEN THE CONDOMINIUMS!!\$\$!  
CONDOMINIUMS, THE HOMEOWNERS WARRANTY COMPANY SETTLED THEN BROUGHT THE CASE AGAINST THE GENERAL CONTRACTORS, CGPOLICY AND THERE WERE SUBCONTRACTORS INVOLVED.  
THAT IS THE PROCEDURAL FACTUAL EVOLUTION OF THE HANOVER CASE!!\$\$  
CASE --  
>> -- HE WILL GENERAL LIABILITY POLICY DID NOT PROVIDE COVERAGE.  
>> DID NOT, BECAUSE -- AND THE SIMPLE MATTER THAT IT YOU ARE DOING IS HAVING QUOTE WATER INSTRUION IF THAT -- INTRUSION IF THAT DOESN'T DAMAGE ANYTHING ELSE, IF THAT IS ALL!!\$\$!  
ALL --

>> ANYTHING ELSE, IF THE IT IS  
A WALL THAT THE WATER  
INTRUSION HAS DAMAGED AND YOU  
NEED TO REPLACE THE WALL.  
THEN, THAT IS NOT COVERED.

>> THAT IS NOT COVERED THAT IS  
NOT COVERED, BECAUSE THAT IS  
-- THAT IS THE ENTIRE HOME,  
THAT IS THE ENTIRE PRODUCT.

>> THE WALLPAPER THAT THE  
HOMEOWNER PLACED ON THAT WALL  
IS COVERED.

>> AND THAT IS.

>> -- THE PROPERTY, AS BUILT  
BY THE BUILDER AS OPPOSED TO  
OTHER PROPERTY THAT IS NOT  
BUILT BY THE BUILDER.

>> CORRECT, THAT IS WHY YOU  
WILL READ ABOUT PANELING,  
WALLPAPER, AND -- CURTAINS,  
AND RUGS, THANK YOU YOUR HONOR.

>> YOU HAVE USED YOUR TIME  
OFAKE THANK YOU MR. BOYLE YOU  
ARE FIRST UP.

>> MAY IT PLEASE THE COURT MY  
NAME IS MARK BOIL I'M THE  
ATTORNEY FOR FIRST IF HOME  
BUILDERS!!\$\$!!

BUILDERS, WE ARE HERE TODAY,  
ON AN INSURANCE CONTRACT, CASE  
AND I DON'T WANT TO LOSE SIGHT  
OF THAT.

IF YOU INTERPRET THIS POLICY  
CONSISTENT WITH THISCOURT\$\$S  
RULES OF CONSTRUCTION,  
PARTICULARLY THIS \$\$COURT'S  
DECISION IN CTC --

>> DON'T WE HAVE TO TAKE INTO  
CONSIDERATION THE REAL WORLD  
OF HOW THESE ALL THE FUNCTION  
OUT THERE.

AND THAT WHAT WE ARE DEALING  
WITH IS A CONTRACTOR AND A  
CONTRACT TO COP STRUCK --  
CONSTRUCT SOMEBODY SOMETHING  
AND A SUBCONTRACTOR?

AND THAT THE FINANCIAL  
RESPONSIBILITY OF THE -- OF  
THESE PEOPLE IN ORDER TO LIVE  
UP TO THEIR CONTRACTS IN THE  
EVENT THAT THERE IS A BREECH  
OF THEM, IS COVERED BY A  
SHURLT BOND -- SURE\$\$!ITY BOND  
CORRECT.

>> SURETY BONDS NOT COMMON IN RESIDENTIAL CONSTRUCTION LIKE THIS BUT AS PRACTICAL MATTER YOUR HONOR THE ANSWER IS, NOT WHICH -- WHICH TYPE OF INSURING AGREEMENT A SURETY BOND OR A POLICY SHOULD COVER A LOSS, THE QUESTION IS WHAT DO THE WORDS OF THE POLICY SAY.

>> GO BACK TO WERE A JUSTICE -- JUSTICE WELLES IS SAYING A REAL WORLD OPERATING IN ANOTHER COVERAGE HE IS REFERRING TO OR IT COULD BE IN THE NATURE OF COMPLETED OPERATIONS COVERAGE, ONE OR THE OTHER IS NOT IT. THAT IS THE RUB THAT YOU GET INTO YOU CAN'T CONSTRUE THESE TERMS SO IN SUCH A MANNER SO THAT YOU TURN A LIABILITY POLICY INTO A WARRANTY PERFORMANCE BOND, OR THE OTHER COVERAGE THAT YOU HAVEN'T PURCHASED THAT IS THE COMPLETED OPERATION, WHAT IS THE DIFFERENCE THEN BETWEEN COMPLETED OPERATIONS, AND LIABILITY POLICY THESE DAYS IS THERE NO DIFFERENCE?

>> THERE IS A DIFFERENCE, JUDGE.

THERE IS A VERY CLASSIC EXAMPLE!!\$  
EXAMPLE, FOUND IN THE JSUB!!\$  
JSUBCASE, THAT SILVERMAN WHO WROTE THE OPINION ALSO WROTE THE DECISION IN AUTO OWNERS VERSUS MARVIN A CASE CITED BY THEY MY OPPONENTS IN THAT CASE, THERE WAS SOME DAMAGE TO THE WORK, AND THE COURT HELD THAT THE BECAUSE THE INSURED CONTRACTOR HADN'T PURCHASED COMPLETED OPERATIONS COVERAGE, THAT THEY DIDN'T HAVE COVERAGE FOR THAT LOSS.

AND THE CONTEXT OF THE LOSS THE WE ARE HERE ABOUT TODAY IT IS UNDISPUTED MY CLIENT, BOUGHT COMPLETED 079 ASPIRATIONS HAZARD COVERAGE PAID A PREMIUM FOR IT.

AND TO GO BACK TO A QUESTION  
THAT COUNSEL ANSWERED WE KNOW  
WHAT THE SUBCONTRACTOR EXCEPT!!\$\$!  
EXCEPTION TO EXCLUSION L,  
YOUR --

>> MAKE SURE I UNDERSTAND  
THIS, YOUR -- WE ARE HERE  
TALKING ABOUT A COMPLETED  
OPERATIONS POLICY?

>> MY CLIENT HAS -- COMPLETED  
OPERATION HAZARD COVERAGE, ON  
THEIR GENERAL LIABILITY  
POLICY.

>> RIGHT, IT IS IN THE POLICY.

>> DID THEY PAY ON THAT  
COVERAGE?

>> NO, JUDGE.

THE ONLY THING SO IF WHAT?  
I'M JUST -- TOTAL LOSS THEN  
YOU BOUGHT BOTH COVERAGE DZ  
HERE TALKING ABOUT WHAT IS  
TRADITIONALLY!!\$\$  
TRADITIONALLY, A COMPLETED  
OPERATIONS COVERAGE BUT WE ARE  
HERE TALKING ABOUT A CJ.L.  
POLICY.

>> MY CLIENT HAS A CJLE POLICY  
WITH -- HE OPERATION HAZARD  
PURCHASED WITH THE POLICY  
THERE IS A SEPARATE LIMIT OF  
INSURANCE, LISTED FOR THE  
PRODUCT COMPLETED OPERATION  
HAZARD!!\$\$!  
HAZARD.

>> HAS THAT COVERAGE.

>> SO THEY PAID THAT DID THEY  
PAY THAT LOSS?

UNDER THAT -- NUMBER, THEY  
HAVEN'T PAID DOLLAR ONE.

>> THEY HAVEN'T EVEN THEY  
HAVEN'T EVENT PAID FOR THE  
WALLPAPER!!\$\$!  
WALLPAPER.

>> LET JUST MAKE SURE.

>> --

>> BUT THEY HAVEN'T I HADDOI  
THEY HAVEN'T PAID.

>> THE ISSUE IN YOUR CASE SO  
WE UNDERSTAND THERE IS NO  
QUESTION AND THEY HAVE AGREED  
THEY WOULD PAY FOR THE OTHER  
PROPERTY.

BUT THEY ARE CONTESTING IS THE  
COST TO REPAIR THE STRUCTURE

OF THE HOUSE.

AND THERE IS NO QUESTION I  
THOUGHT THAT -- THAT THIS  
POLICY HAD A PRODUCTS  
COMPLETED OPERATION HAZARD --  
RIDER IN COVERAGE, AND THAT  
WAS THAT IS WHAT YOU ARE  
SEEKING YOUR COVERAGE UNDER.

>> THAT IS CORRECT.

>> OKAY.

>> NOW, TO BE CLEAR --

>> THE COURT TALKED ABOUT THE  
PROPERTY DAMAGE, ELEMENT I  
WANT TO MAKE CLEAR WHAT THIS  
CASE IS NOT ABOUT THIS CASE IS  
NOT ABOUT REPAIR OR  
REPLACEMENT OF MY CLIENT'S  
WORK.

OR EVEN REPAIR OR REPLACEMENT  
OF THE ERRANT SUBCONTRACTOR'S  
WORK IT IS UNDISPUTED THE  
FACTS ARE STIPULATED, MY  
CLIENT!!\$!

CLIENT'S SOIL SUBCONTRACTOR  
MAY BE SUBCONTRACTORS MORE  
THAN ONE -- -- COMPLETED THEIR  
WORK THAT DAMAGED -- OTHERWISE  
CORRECTLY PERFORMED WORK OF  
OTHER SUBCONTRACTORS, DURING  
THE PRODUCTS COMPLETED  
OPERATION HAZARD PERIOD.  
INCLUDING DRYWALL, THE  
FOUNDATION, SOME CASES THE  
CABINETS THE WALLS.

>> IF THIS HAD BEEN WORK DONE  
WITHOUT THE CONTRACTOR --  
SUBCONTRACTOR, WOULD THE  
EXCLUSION APPLY?

>> YES.

>> SO IT IS ONLY THE BECAUSE  
OF THE EXCEPTION TO THE  
EXCLUSION!!\$!

EXCLUSION, FOR SUBCONTRACTOR  
WORK AND THAT OF COURSE, WAS  
MY VIEW DISTINGUISHES LAMARSH,  
WHICH WAS DIFFERENT POLICY,  
AND WAS THE CONTRACTOR ITSELF.

>> I AGREE WITH EVERYTHING THE  
COURT SAID, I WANT TO MAKE ONE  
THING CLEAR ABOUT THIS  
SUBCONTRACTOR EXCEPTION,  
COUNSEL GAVE HYPOTHETICAL  
ABOUT THE PIPE.

WE DON'T HAVE TO GUESS WHAT

THE SUBCONTRACTOR EXCLUSION  
MEANT.

IF YOU LOOK AT THE BRIEF THAT  
WAS FILED BY POOL AND KENT IN  
THIS CASE THEY ATTACHED,  
INSURANCE SERVICES  
ORGANIZATIONS CIRCULAR, WHICH  
WAS DESIGNED TO TELL THE  
INSURANCE INDUSTRY, HOW TO  
INTERPRET BOTH BROAD FORM  
ENDORSEMENT 1979 -- 1976  
CIRCULAR!!\$\$!!

CIRCULAR, AND THE 86 CIRCULAR  
WHICH TOLD THE ENTIRE  
INSURANCE INDUSTRY HOW TO  
INTERPRET THE NEW POLICY, AND  
IT SAYS, RESPECTFULLY THAT I'M  
RIGHT.

THIS IS WHAT WAS INTENDED BY  
THIS VFL.

-- VESSEL.

SO WE DON'T HAVE TO GUS  
COUNCIL SAYS WE DON'T NEED TO  
GET INTO WHAT THE INSURANCE  
INDUSTRY WANTED TO DO, BECAUSE  
YOU DIDN'T DO THAT IN -- WELL  
THE DIFFERENCE IN DIMMIT AND  
THIS CASES IN DIMMIT THE COURT  
FOUND THE CERTAINLY "SUDDEN"  
UNAMBIGUOUS JUSTICE P\$ARIENTE  
HAS WRITTEN THE OPINION THAT  
MAKES THE LAWSUIT OF THIS  
COURT, OCCURRENCE IS AMBIGUOUS  
CAN BE CONSTRUED MORE THAN ONE  
WAY WHEN TRYING TO HARMONIZE  
THE WHOLE POLICY WE NEED TO  
LOOK AT THE TERM OCCURRENCE  
THE EXCLUSIONS EXCEPTION GIVE  
THEM ALL MEANING.

>> ON THAT, YOU DO -- THE  
FIFTH DISTRICT CASE I REFERRED  
TO WHERE THEY WERE SEEKING TO  
REPLACE THE PANELING, YOU DO  
SEE THAT AS BEING STILL  
EXCLUDED UNDER YOUR  
INTERPRETATION OF THE POLICY?

>> I DON'T THINK IT IS  
EXCLUDED BUT THAT CASE DOESN'T  
GET THROUGH THE COVERAGE  
BECAUSE IT IS NOT PROPERTY  
DAMAGE.

>> THAT IS, I GUESS, THAT IS  
-- SO IN OTHER WORDS AND, I  
GUESS, THIS IS UP TO POSEY,

THE ISSUE THAT I HAVE OF  
POTENTIAL PROBLEM WITH --  
WITHIN POSEY IS WHETHER THERE  
WAS ACTUAL PROPERTY DAMAGE, IN  
POSEY!!\$\$!

POSEY, YOU DON'T -- I THINK  
YOUR SITUATION IS DIFFERENT,  
BECAUSE, AGAIN, YOU HAVE GOT  
CLEAR SOIL, THAT SUBCONTRACTOR  
AND THEN A HOUSE THAT WAS --  
AT LEAST ALLEGEDLY WASSU FEIN  
WHEN IT WAS BUILT UNTIL -- WAS  
FINE WHEN BUILT -- UNTIL THE  
-- THAT IS YOUR CLAIM.

>> THE COURT MAKES AN  
IMPORTANT POINT, THAT SHOWS  
THE TERM PROPERTY DAMAGE IS  
REALLY IMPORTANT IN THESE  
CASES!!\$\$!

CASES, THAT WEST ORANGE CASE  
THE FIFTH DISTRICT CASE HAD TO  
REPLACE CEDAR SIDING FAVORITE  
EXAMPLE A SIMILAR LIKE -- CASE  
LIKE THAT FROM WASHINGTON  
SUPREME COURT IF THERE IS NO  
PHYSICAL DAMAGE TO TANGIBLE  
PROPERTY OR LOSS OF USE, YOU  
NEVER MAKE IT THROUGH YOU THE  
COVERAGE GROONT -- GRANT.  
SO MANY ASPECTS OF FAULTY WORK!!\$\$  
WORKMAN!!\$\$

WORKMANSHIP, WILL NOT BE COVER!!\$\$!  
COVERED NOT AS A RESULT OF  
SOME GENERIC PLATITUDE, BUT  
BECAUSE THE OPERATIONAL A  
DEFINITIONAL TERMS IN THE  
POLICY DON'T ALLOW FOR  
COVERAGE OF THAT --

>> WHAT ABOUT THE MAIN  
ARGUMENT, THAT HE MADE HAVE  
HERE, THAT IT IS NEVER CAN BE  
AN OCCURRENCE, BECAUSE IF IT  
IS IN IF IT IS CONTRACTUAL  
DAMAGES!!\$\$  
DAMAGES, IT HAS TO GET  
CONTEMPLATED!!\$\$!

CONTEMPLATED, PLEASE GIVE THE  
BEST COUNTER!!\$\$! TO THAT ARGUMENT  
THAT IS A MATTER OF LAW BREACH  
OF CONTRACT CANNOT BE AN  
OCCURRENCE, WHICH IS WHAT  
SOUTH CAROLINA SUPREME COURT  
AND OTHER COURTS HAVE HELD,  
DIFFERENTLY THAN THE WISCONSIN

SUPREME COURT, AND COULD YOU, ADDRESS THAT.

>> I WASN'T TO SAY A FEW THINGS ABOUT THAT THEY TALKED ABOUT THE ECONOMIC LOSS DOCTRINE IN -- IF THEY WERE RIGHT ON THAT, EVERY STATE, THAT ADOPTED THE ECONOMIC LOSS DOCTRINE, WOULD EFFECTIVELY PUNISH THEIR IN HE INSURANCE, BY DISALLOWING COVERAGE IF THEIR VESSEL IS CORRECT, IF THERE WAS NO ECONOMIC LOSS DOCTRINE IN FLORIDA MY CLIENT WOULD HAVE BEEN SUED IN TORT,P FOR THESE ACTIONS, AND THEN, THERE WOULD BE -- ON THE WOULD HAVE A REMEDY UNDER THEIR INSURANCE POLICY IF COUNSEL IS RIGHT, THE REAL ANSWER TO THE QUESTION THAT IS THE INSURING AGREEMENT, MAKES ABSOLUTELY NO REFERENCE TO THE TYPE OR FORM OF ACTION AGAINST THE INSURED IT OM USES AS THE TERM "LEGALLY OBLIGATED", CERTAINLY!!\$\$! CERTAINLY --

>> THAT IS WHAT -- LAMARSH, AS I UNDERSTAND LAMARSH, WAS TALKING ABOUT THE FACT THAT YOU CAN NOT PERFORM UNDER A CONTRACT, GET PAID NAB -- IN ACCORD APS WITH THE CONTRACT, AND IN ACCORDANCE WITH THE CONTRACT THEN COME BACK MAKE AN INSURANCE CLAIM, ON THE BASIS THAT YOU DIDN'T PERFORM. UNDER THE CONTRACT. NOW, IF THERE IS SOME HAZARD, THAT CAUSES DAMAGE, AFTERWARDS!!\$\$ AFTERWARDS, THAT IS SEPARATE AND APART FROM YOUR PERFORMANCE UNDER THE CONTRACT, THAT IS THE WHERE THE COMPLETED OPERATIONS COMES IN.

BUT -- IT -- BUT I -- THINK LAMARSHFOR MY UNDERSTANDING THAT IS THE REASON ALL THESE DISTRICT COURTS HELD AGAINST YOUR POSITION.

AND NOW IS NOT THAT RIGHT?

>> ACTUALLY, I THINK THE SECOND IS -- YOU SAY ALL THESE

DISTRICT COURTS, THERE IS LOTS OF DIFFERENT CASES IN THE FACTS MATTER, I WANT TO YOU KNOW WE DON'T HAVE TIME TO TALK ABOUT EVERY SINGLE FACT PATTERN BUT IF YOU LOOK AT THE WAY IF YOU LOOK AT LAMARSH, I THINK IMENT IS VERY CLEAR AN EXCLUSION CASE, JUSTICE KWENZ WAS ON PANEL A CASE HARDAWAY, IN THE SECOND DISTRICT IF YOU LOOK AT ALL CASES IN THE SECOND DISTRICT THEY RECOGNIZE!!\$\$! RECOGNIZED THAT LAMARSIS EXCLUSION CASE THE EXCLUSIONS CHANGED SUBSTANTIALLY PURPOSEFULLY CHANGES AS HAZARD REFERENCE BY CHIEF JFD LEWIS ALL THESE WERE DESIGNED INTEND!!\$\$! INTENDED TO ALLOW COVERAGE FOR A VERY LIMITED FACT PATTERN KEEP IN MIND WHAT THE FACT PAET EARN -- PAT ON THES BE UNINTENDED, UNEXPECTED, PHYSICAL DAMAGE TO TANGIBLE PROPERTY OR LOSS OF USE, IT HAS TO FIRST, THIS COURT HASN'T SOLVED THE TRIGGER ISSUE THE DAMAGE HAS TO HAPPEN OR HAS TO MANIFEST ITSELF, AFTER OPERATIONS ARE COMPLETE. THAT HAS TO BE A SUBCONTRACTOR'S FAULT -- >> BECAUSE THE CONCERN, I THINK THAT I WAS -- WOULD DEFINITELY HIS IT IS NOT PUNCH LIST COVERAGE WHICH IS -- IF YOU LOOK AT ONE OF THE THIRD DISTRICT CASES YOU LOOK AT THE IN THE FOOTNOTE, WHAT THEY LIST IS AS FAR AS WHAT WAS BEING SOUGHT, YOU HAVE A LOT OF THE SITUATIONS WHERE DAMAGE THAT HASN'T OCCURRED, BUT, A FEE THAT SOMEHOW THE WINDOW WAS IMPROPERLY PUT IN, OR YOU KNOW, SOMETHING IS NOT RIGHT, IN THE HOUSE. THAT THERE IS NO OTHER DAMAGE TO THE HOUSE. >> AND I WANT TO GO BACK TO JUSTICE WELLS' QUESTION. >> YOU DO AGREE THAT THE WAY THAT THOSE PUNCH LISTS, TYPE

OF SITUATIONS WOULD NOT BE  
COVER!!\$\$!  
COVERED?

>> IF THERE IS NO PROPERTY  
DAMAGE YOU ARE NOT GOING GELT  
THROUGH THE INSURING AGREEMENT  
AND AS TO MANY IF NOT MOST  
CONSTRUCTION DEFECTS,  
PARTICULARLY ALL THE ONES THAT  
OCCUR BEFORE ALTERATIONS ARE  
COMPLETE EXCLUSIONS ARE GOING  
TO BE THERE, AND BAR COVERAGE  
FOR MOST ASPECTS OF QUOTE  
FAULTY WORKMANSHIP OR DEFECT!!\$\$!  
DEFECTIVE CONSTRUCTION JUSTICE  
WELLS I DIDN'T FINISH  
ANSWERING YOUR QUESTION ABOUT  
LAMARSH, AND I WANT TO COULD  
IT.

>> YOU ARE REC CORRECT AS TO  
THE REASONS WE HAVE EXCLUSION  
IN LAMARSH, AS TO THE REASONS  
WE STILL HAVE SOME BUSINESS  
RISK EX-CLUIONS, EXCLUSIONS  
THE INSURANCE INDUSTRY IS  
CONCERNED ABOUT THOSE CONSIDER!!\$\$!!  
CONSIDERATIONS THAT YOU  
REFERENCE WE DON'T WANT TO  
TURN THIS INTO A WARRANTY  
POLICY, THE PROBLEM IS, FOR  
THEM!!\$\$  
THEM, THEY PURPOSEFULLY  
CHANGED THE POLICY TO PROVIDE  
THIS LIMITED EXCEPTION TO THE  
BUSINESS RISKS.

ANDP I RESPECTFULLY SUMMIT  
WOULD IT BE IMPROPER FOR THIS  
COURT TO GIVE THIS BUSINESS  
RISK CONCEPT LIFE APART FROM  
IT'S -- ITS APPEARANCE IN THE  
POLICY.

>> TRADITIONALLY WE HAVE FELT  
IN THIS STATE THAT YOU DON'T  
CREATE COVERAGE BY THE  
EXCLUSION!!\$\$!  
EXCLUSION.

AND THAT IS WHERE LAS TIER  
CAME IN.

LASITER CAME IN, SO THE REAL  
QUESTION SEEMS TO ME, HAS GOT  
TO PINPOINT HERE AS TO WHETHER  
AN OCCURRENCE INCLUDES A  
BREACH OF CONTRACT.

THAT IS THAT THAT IS WHAT THE

WISCONSIN COURT SPLIT ON  
ALTHOUGH KIND OF HARD FOR ME  
TO TELL HOW MANY JUDGES VOTED  
IN THE MAJORITY IN WISCONSIN,  
AND THAT IS WHERE SOUTH  
CAROLINA WENT THE OTHER WAY.

>> THE COURT HAS PINPOINTED  
WHERE THE -- ACROSS THE COUNT  
IT IS ABOUT THE TERM  
OCCURRENCE.

>> LET ME ASK YOU ALSO, THE  
QUESTION, I MEAN, YOU CAN TURN  
THIS CASE ANY WHICH WAY, BUT  
IT DOESN'T MENTION THE BUILD!!\$\$!!\$\$  
BUILDER'S RISK COVERAGE IN THE  
OPINION.

>> YOU ASKED ME ABOUT THE --  
OPERATION --.

>> THAT IS WHAT I'M TALKING  
ABOUT, DOES IT?

>> MY JSUB?

>> RIGHT.

THE JSUB CASE.

>> I BELIEVE THE OPINION DOES  
REFERENCE THE FACT THERE IS  
PRODUCTS COMPLETED OPERATION.

>> I DON'T THINK IT DOES I  
JUST READ IT AGAIN THAT IS  
WHAT I THINK CAUSING CONFUSION  
AS TO WHERE THESE THINGS ARE  
GOING BECAUSE I THINK THERE  
MUST BE RELATIONSHIP TO THEM,  
AND THERE IS GOING BE UNDER  
ONE O ARE THE OTHER, THE  
COVERAGE, IN A POLICY.

>> LET ME BE CLEAR, JUDGE THE  
RECORD.

>> OKAY.

>> NOT IN DISPUTE THERE IS  
PRODUCTS COMPLETED OPERATION  
HAZARD KM FOR MY CLIENT IF YOU  
LOOK IN JSUB OPINION THERE IS  
REFERENCE TO THE FACT  
EXISTENCE OF PRODUCTS  
COMPLETED OPERATION HAZARD A  
DISTINCTION BETWEEN, THE CASE  
THAT IT WAS DECIDING, AND THE  
OLDER LAMARSH.

>> IN THE DEFINITION, UNDER --  
LESSON 16.

>> ON PAGE --

>>!!\$\$!!

>>.

>> JSUB?

>> OF JSUB.

>> THEY DISCUSS THE BROAD  
COVERAGE --

>> COMPLETED OPERATIONS.

>> THEY DISCUSS DOES THE --  
DOES IT NOT DISCUSS THE TERMS  
OF THE GCL POLICY UNDER  
DEFINITIONS THEY LIST?

.  
>> -- UNDER, COVERAGE 8,!!\$\$!!EIGHT,  
BODILY INJURY PROPERTY DAMAGE  
LIABILITY DISCUSSED AS I READ  
IT.

ISN'T IT?

>> I DON'T HAVE THE OPINION IN  
FRONT OF ME RIGHT NOW.

>> IS THAT YOU GROW HE THAT  
THAT IS NOT BUILDERS COMPLETED  
OPERATIONS COVERAGE.

>> I AGREE THERE ARE DIFFERENT  
-- BUT I'M.

>> WHAT IT IS YOUR --

>> WHAT IS THE TRIAL COURT  
RELY ON?

IN SO IF TRIAL COURT DIDN'T --  
DIDN'T RULE MY FAVOR SO THEY  
DIDN'T GET TO COMPLETED  
OPERATIONS QUESTION.

THE TRIAL COURT, FELT LIKE IN  
LETTER RULING FELT HE WAS  
BOUND BY LASITER AND  
HOMEOWNERS WARRANTY.

OBVIOUSLY!!\$\$!

OBVIOUSLY, HE FELT LIKE HE  
COULDN'T!!\$\$!!

COULDN'T.

>> YOU ARE CORRECT, THAT IS  
WHERE -- JUDGE SILVERMAN CAME  
DOWN DISTINGUISHED WHAT HE WAS  
DEALING WITH HERE IN AND DEALT  
WITH IN HIS PRIOR OPINION.

>> I'M DOWN TO MY LAST EIGHT  
SECONDS, I THINK JUDGE SILVER!!\$\$!

SILVERMAN'S DECISION IN THE  
SECOND DISTRICT GIVES MEANING  
AND EFFECT TO EVERY KILOMETER  
OF THE POLICY -- COMPONENT THE  
PIN SHOULD BE APPROVED AND  
AFFIRMED!!\$\$!!

AFFIRMED.

>> MAY IT PLEASE THE COURT, MY  
NAME IS ED, I REPRESENT  
APPEARLY POSEY WINDOW COMPANY  
ASSIGNEE OF THE INSURED.

>> YOU HAVE GOT A WRITTEN ASSIGNMENT?

YES, MA'AM.

>> OKAY, THE NEXT CASE WILL INVOLVE THE ATTORNEYS FEES WE GET!!\$\$!

GET.

>> -- ASSIGNMENT STANDING IN THE SHOES OF THE INSURED THE INSURED GENERAL CONTRACTOR, ISSUE HERE IS WHEN OR NOT, PRODUCT COMPLETED OFF HAZARD -- THIS CONTRACT OF PURCHASE WE HAVE AMPLE RECORD EVIDENCE IN THE FILE, THAT THERE WAS AN EXTRA PREMIUM PAID FOR THE -- COMPLETED -- HAZARD!!\$\$!

HAZARD, AND MR. CHIEF JUSTICE LEWIS ONE TIME WE HAVE HISTORY IN OUR RECORD AS WELL, YOU HAD TO BUY A SEPARATE POLICY -- BEFORE COMPLETE --

>> YOU DIDN'T HAVE IT BECAUSE OF THE BROOD FORM OF YOUR WORKS EXCLUSION THAT WAS IN THE GENERAL LIABILITY POLICY WAS THAT BROAD FORM OF EXCLUSION!!\$\$!

EXCLUSION, THAT THIS COURT APPLIED IN LAMARSH, IN 1980. EXCLUSION OIFRMENT, IN THAT POLICY -- OH, EXTREMELY BROAD ANYTHING ARISING OUT OF THE AWARD OF -- INSURED BARRED SIX YEARS LATER I -- ISO COMBINED WASN'T SEPARATE -- COMBINED INTO THE POLICY, AND SUBCONTRACTOR EXCEPTION.

>> IN OTHER WORDS, IT JUST BECAUSE I -- AND THAT ACTUALLY CONFUSE IMMEDIATE AS KEEP IT ON READING THIS POLICY, BUT, A SEPARATE THERE IS A SEPARATE PREMIUM AND A SEPARATE YOU HAD A ONE MILLION DOLLAR LIMIT AGGREGATE LIMIT FOR PRODUCT COMPLETED OPERATION.

>> YES, MA'AM.

>> LIMIT BUT IT IS NOT -- IT IS NOT A SEPARATE COVERAGE, IT IS ACTUALLY, PUT INTO THE DEFINITION SECTION.

>> THAT IS CORRECT, THAT IS

WHERE THE CONFUSION ARISES YOU  
HAVE TO LOOK AT THE AT THE  
TELL YOU COVERAGE IN THE DECK,  
YOU HAVE TO GO FROM THERE, TO  
THE BASE COVERAGE FOR  
LIABILITY INSURED FOR  
OCCURRENCE OF PROPERTY DAMAGE  
AND BY THE WAY PARTS WAS NEVER  
AN ISSUE IN THEIR -- IN OUR  
CASE, MR. SCOT NORRIS HOUSE  
COUNCIL -- COUNSEL CONCEDED IN  
PRETRIAL DEPOSITIONS THERE WAS  
AN OCCURRENCE OF PROPERTY  
DAMAGE AS ALLEGED BY MY CLIENT  
THEN POSEY WINDOW --  
>> YOU KNOW I KNOW OF YOU SAID  
THAT I WOULD LIKE YOU TO  
ADDRESS MY PARTICULAR CONCERN,  
AND IN YOUR SITUATION, WHICH  
IS THAT IS PROPERTY DAMAGE HAS  
TO BE DAMAGED TO OTHER  
TANGIBLE PROPERTY, IF THE  
WINDOWS!!\$\$  
WINDOWS, WERE -- INSTALLED OUT!!\$\$!  
OUTSET ALL YOU ARE DOING IS  
REPLACING WINDOWS A OPOSED TO  
WHAT I SEE AS WINDOWS LEAK AND  
CAUSED DAMAGE TO THE STRUCTURE  
EVEN IF A STRUCTURE I SEE THAT  
AS BEING PROPERTY DAMAGE, OR  
WALLPAPER, THEN EVERYONE  
AGREES WITH THAT -- A RUG, BUT  
WHEN THE TELL YOU DEFECTIVE  
THING BEING REPLACED, HOW IS  
THAT PROPERTY DAMAGE?  
>> WELL, HERE THE WINDOWS WERE  
NOT THE PRODUCT OR THE WORK  
THAT A SUBCONTRACTOR THEY WERE  
THE PROPERTY OF THE OWNER OF  
THE HOME MR. PEREZ BOUGHT THE  
WINDOWS DIRECTLY, FROM A  
DISTRIBUTOR!!\$\$!!  
DISTRIBUTOR, ASKED -- BRIAN  
SCOTT BUILDERS THE  
SUBCONTRACTOR TO INSTALL THOSE  
WINDOWS!!\$\$  
WINDOWS, NOW, THE WINDOWS, AND  
THE INTERIOR OF THE HOME WHOLE  
HOUSE IS THE WORK OF THE  
INSURED GENERAL CONTRACTOR,  
AND THAT IS WHERE WE GET BACK  
TO THE LANGUAGE OF THE POLICY  
IN THAT --  
>> SO NOW, SO I AND I DON'T

KNOW IF MUST BE IN THE RECORD,  
TO SAY SO THAT THE WINDOWS  
WERE NOT WERE THE OWNERS  
OWNERS WINDOWS IF THEY WERE  
THE OWNERS WINDOWS RATHER THAN  
CONTRACTOR'S WINDOWS WOULDN'T  
THEY BE COVERED UNDER WHAT  
THEY HAVE EVEN TALKED ABOUT  
WHICH IS THE \$OWNER'S  
WALLPAPER, I SEE SOME NO --  
SOMETHING FROM MISS HOWARD  
BUT, STILL, DOES THAT ALLOW  
FOR THE -- IF DEFECTIVELY  
INSTALLED IN OUR -- NOW YOU  
ARE GOING TO REINSTALL THEM,  
WHY SHOULD THE HOW IS IT  
PROPERTY DAMAGE TO SAY THAT WE  
INSTALLING THEM IS COVERED  
UNDER THE POLICY?

>> WELL, THE WINDOWS,  
THEMSELVES, ARE SOME OF THEM  
NOT ALL OF THEM, THE WINDOWS  
THEMSELVES WERE DAMAGED BY THE  
SAME WATER INTRUSION THAT MAY  
HAVE DAMAGED THE RUGS OR THE  
CURTAINS!!\$\$!

CURTAINS, THE WALLPAPER A.

>> SENT TO THE WINDOWS HAD TO  
BE REPLACED WHEN WINDOWS WERE  
REPLACED!!\$\$!

REPLACED, THE VERY FINE, I  
GUESS, IT WAS MARSHALIZED,  
MARBELIZED!!\$\$

MARBELIZED --

>> AS PETE PROPERTY DAMAGE  
COVER THE COST OF PUTTING BACK  
IN WINDOWS THAT WERE DEFECT!!\$\$!  
DEFECTIVELY INSTALLED?

I DON'T SEE HOW THAT IS PART  
OF THE PROPERTY DAMAGE.

>> MAYBE IF THE WINDOWS WERE  
SEPARATE FROM THE YOU KNOW,  
WERE NEVER DEFECTIVE THE  
WINDOWS WEREN'T DEEFECTIVE  
JUST THE INSTALLATION SEEMS TO  
ME THAT THAT IS -- STILL  
HAVING PROBLEMS SEEING HOW  
THAT IS PROPERTY DAMAGE.

>> WELL, THE DEFINITION OF  
PROPERTY DAMAGE, IN OUR POLICY  
HAS TWO COMPONENTS, TANGIBLE OUR  
POLICY HAS TWO COMPONENTS.  
TANGIBLE INJURY TO, PROPERTY.  
PHYSICAL INJURY TO TANGIBLE

PROPERTY AND LOSS OF USE OF  
UNDAMAGED PROPERTY.

IF, THE PROPERTY IS  
DEFECTIVE, I SAY THERE'S  
LOSS OF USE OF THAT PROPERTY,  
THAT THE HOMEOWNER COULD  
HAVE SUED FOR.

BUT HERE WE HAVE DAMAGE TO  
THE WORK, TO THE PROPERTY OF  
THE HOMEOWNER AND TO THE  
WORK OF THE GENERAL  
CONTRACTOR.

THAT BRINGS ME TO THE POINT  
I WANT TO MAKE.

I GUESS I'M OUT OF TIME.

MY PROFESSOR IN HIGH SCHOOL  
WAS A, RETIRED COLONEL OF  
THE ARMY WHO HAD SERVED WITH  
GENERAL GEORGE PATTON IN THE  
WAR.

HE SAID ONE THINGS I WANT  
YOU STUDENTS TO DO IS RTP AS  
HE CALLED IT.

READ THE PROBLEM.

I THINK HERE THE TASK FOR  
THE COURT IS READ ALL POLICY  
UNDER CONSTRUCTION PLAIN  
LANGUAGE AMBIGUITY!!IES THIS  
COURT ADOPTED, FIAD.

PC, AND THE EXECUTION AT  
ISSUE HERE SAYS WE WILL  
EXCLUDE PROPERTY DAMAGE YOUR  
WORK, THE WORK IS THE  
INSURED OF THE GENERAL  
CONTRACTOR ARISING OUT OF IT  
OR ANY PART OF IT INCLUDING  
IN THE PART THAT IS -- THAT  
IS THE KPOPGS TO THE  
EXCLUSION.

THIS EXCLUSION DOES NOT  
APPLY, IF THE DAMAGED WORK,  
NEGLIGENTLY INSTALLED  
WINDOWS, BY THE  
SUBCONTRACTOR, OR, IN THE  
WORD OR, IS IN THIS CLAUSE,  
OR THE WORK OUT OF WHICH THE  
DAMAGE ARISES IS PERFORMED  
ON YOUR BEHALF BY THE  
SUBCONTRACTOR.

ALL OF THE FEDERAL JUDGES  
WHO CONSIDERED THAT CLAUSE  
SAID THE PLAIN LANGUAGE  
COVERS THIS LOSS.

OUR EIGHT-PERSON JURY AGREED

WITH THEM.

AWARDED DAMAGES INCLUDING  
PUNITIVES.

WE THINK THIS COURT SHOULD  
ALSO AGREE WITH THAT PLAIN  
LANG WAGE.

>> THANK YOU VERY MUCH.

MR. KAMMER YOU WILL PRESENT  
THE REBUT CALL.

YOU WERE SHORTENED A LITTLE  
BIT.

YOU GAVE IT BACK.

>> THANK YOU VERY MUCH.

IN ORDER FOR COVERAGE UNDER  
LIABILITY POLICY TWO THINGS  
MUST OCCUR.

ONE THERE MUST BE OCCURRENCE  
AS JUSTICE PARRY ENTAE  
SAID.

THERE MUST BE.

PROPERTY DAMAGE.

THERE IS NO OCCURRENCE HERE  
BECAUSE WHEN YOU BUILD A  
HOUSE AND YOU USE DEFECTIVE  
SOIL AND EXPECTED  
CONSEQUENCE OF THAT  
DEFECTIVE SOIL IS THAT THE  
HOUSE WILL SETTLE, AND CAUSE  
DAMAGE TO THE STRUCTURE,  
ITSELF.

>> MY PROBLEM WITH THAT IS  
THE SAME EXPECTATION, I  
THINK, IS THAT, IF IT'S  
GOING TO SETTLE, IT'S ALSO  
GOING TO DAMAGE PROPERTY OF  
THE OTHER PERSON.

NEVER SAY THAT WASN'T AN  
OCCURRENCE YOU'RE PAYING ON  
THAT.

>> AND, I AGREE, YOUR HONOR,  
IF THERE WAS DAMAGE OUTSIDE  
THE CONTRACT, WHICH THERE  
WAS IN J.S.U.B. AS MR. BOYLE  
INDICATED WE'VE AGREED TO  
PAY FOR THAT.

>> I GUESS WHAT YOU'RE  
SAYING IS THAT YOU WOULD SAY  
THAT AS A MATTER OF LAW,  
THAT, ANY DAMAGE WITHIN A  
CONTRACT HAS TO BE  
FORESEEABLE AND THAT'S  
NOT -- WHERE IS THAT IN THE  
POLICY?

>> THAT IS FOUND IN THE

DEFINITION OF OCCURRENCE,  
JUDGE PARRY ENTAE.

THERE MUST BE ACCIDENT,  
SOMETHING UNEXPECTED AND  
UNINTEND.

>> PLAIN HOW ALL THE CHANGES,  
WHAT ABOUT ALL THE CHANGES  
ABOUT IN 1986?

>> IN 1986, THIS IS CONCEDED  
BY BOTH SIDES, THE ONLY,  
CHANGE TO THE DEFINITION OF  
OCCURRENCE IS IT TOOK OUT  
THE -- OCCURRENCE FROM  
UNEXPECTED AND MOVED THAT  
INTO, INSURING AGREEMENT  
MOVED THAT INTO AN  
EXCLUSION.

>> I'M TALKING ABOUT THE  
ADDITION OF, PCOH COVERAGE  
INTO THE GENERAL LIABILITY  
POLICIES?

>> THAT GOES ALL THE WAY  
BACK TO 1973, YOUR HONOR,  
WHEN BEFORE THE 1986  
REVISIONS YOU NEEDED TO HAVE  
PCOH COVERAGE AND THAT WAS  
HOW, THE SUBCONTRACTOR  
EXCLUSION GOT INTO THE  
POLICY.

WHAT IS IMPORTANT, WHAT  
MR. BOYLE SAYS TO YOU, LAMAR  
IS NOTHING MORE THAN  
EXCLUSION CASE.

IT STANDS FOR SOMETHING MORE  
THAN EXCLUSION BECAUSE IT  
SAYS TO THIS COURT WHAT THE  
PURPOSE AFTER LIABILITY  
POLICY.

>> WHAT HE IS SAYING.  
LA MARS HAD PROPERTY DAMAGE  
WORK PERFORMED BY OR ON  
BEHALF OF THE NAMED INSURED  
WAS ARISING OUT OF THE WORK  
WAS EXCLUSION O.

IT CLEARLY FELL INTO  
EXCLUSION O.

THAT WAS -- THEY QUOTED  
QUIDO.

>> THE NICE THING ABOUT Q  
WIDO.

IT ALSO SAYS LET'S LOOK AT  
POLICIES THAT WERE ALSO, HAD  
PCOH COVERAGE IN THEM AND  
IT'S FOOTNOTE 6 OF THE WIDO

DECISION I SEE MY TIME IS UP  
GO BACK TO THE THAT CASE  
WHICH SUPREME COURT ADOPTED  
IN LAMARSH.  
SAID EVEN IN THOSE POLICIES  
THAT PCOH COVERAGE I'M  
TALKING ABOUT WIDO THERE IS  
STILL NO COVERAGE.  
WHAT CHIEF JUSTICE LEWIS  
SAYS THERE IS DIFFERENCE  
BETWEEN A COMMERCIAL GENERAL  
LIABILITY POLICY AND A  
PERFORMANCE BOND.  
THE COMMERCIAL GENERAL  
LIABILITY POLICY COVERS  
DAMAGE CAUSED TO PEOPLE AND  
PROPERTY BY DEFECTIVE WORK.  
IT HAS NOT, FOR 40 YEARS IN  
THIS STATE, COVERED DAMAGE  
TO THE WORK ITSELF.  
IF YOU HE BREACH A CONTRACT,  
THAT IS SIMPLY, NOT AN  
OCCURRENCE, BECAUSE THAT  
PLACES ENTIRELY IN THE HANDS  
OF THE POLICYHOLDER, WHETHER  
THERE'S COVERAGE OR NOT.  
AND IF YOU LOOK AT OUR BRIEF  
YOU WILL SEE, THAT, THAT  
SIMPLY IS UNACCEPTABLE,  
MORAL HAZARD.  
FOR THAT REASON WE  
RESPECTFULLY SUGGEST THIS  
COURT SHOULD OVERTURN  
J.S.U.B..  
THANK YOU VERY MUCH.  
>> THANK YOU.  
BOTH FOR YOUR PRESENTATION  
THIS IS MORNING.  
YOU USED UP ALL YOUR -- SHE  
HAS NO MORE TIME CORRECT,  
MARSHALL?  
YOU USEDDDED UP ALL THE TIME.  
SO --  
>> WE --  
>> THAT WAS MY  
UNDERSTANDING.  
SO WE THANK BOTH OF YOU.  
TAKE THE CASE UPPED  
ADVISEMENT.  
THANK YOU BOTH FOR EXCELLENT  
PRESENTATIONS.