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**Mark Andrew Tobin v. Michigan Mutual Insurance Co.
SC05-214**

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

CHIEF JUSTICE: GOOD MORNING. NEXT CASE ON THE COURT'S DOCKET IS TOBIN VERSUS MICHIGAN MUTUAL INSURANCE COMPANY. MR. LYNCH?

GOOD MORNING, YOUR HONORS AND MAY I PLEASE THE COURT. MY NAME IS CHRIS LYNCH AND I'M WITH THE FIRM OF HUNTER, WILLIAMS AND LYNCH AND WE'RE OUT OF CORAL GABLES, FLORIDA.

CHIEF JUSTICE: I DON'T KNOW IF OUR ORDER SETTING THIS FOR ORAL ARGUMENT SPECIFICALLY REFERRED TO YOUR CONCERN ABOUT THE NAMED INSURED. DID IT?

IT DID NOT.

CHIEF JUSTICE: THAT IS OUR INITIAL CONCERN WAS WHAT IS THE POSITION OF BOTH OF THE LITIGANTS ON WHETHER THE -- WHETHER THE IRNAME INSURED, CLASS ONE OR CLASS TWO NAMED INSURED?

I AM GOING TO GET DIRECTLY TO THAT ISSUE AND THAT IS THE CERTIFIED QUESTION FROM THE 11TH CIRCUIT DOES THE POLICY PROVIDE COVERAGE AND WHAT IS THE EXTENT OF THAT COVERAGE. OUR POSITION IS THAT UNIQUELY STATIONABLY THE POLICY PROVIDES COVERAGE BECAUSE WHEN THIS CARRIER ISSUED THIS POLICY COVERING THE RETAIL LEASE VEHICLE SFOR MOTOR VEHICLE LIABILITY IN FLORIDA, THERE WAS A UNDISPUTED WHAT WE BELIEVE TO BE A UNDISPUTED FAILURE TO SATISFY THE REQUIREMENT OF FLORIDA ON UNINSURED MOTORISTS.

WHEN YOU SAY IT IS THE POLICY FOR RETAIL LESSEE, WHAT YOU ARE -- IS WHAT YOU ARE REFERRING TO THE DESIGNATION IN THE INSURED BLANK ON THE POLICY THAT SAYS LEASE, ANY PERSON WHO HAS LEASED A VEHICLE? I MEAN, YOUR ARGUMENT IS BASICALLY WHAT THE THIRD TRICIT HELD, CORRECT?

NO, YOUR HONOR. WE FILED THE SE CASES UNDER THAT CASE, AND THAT CASE, THIS IS A POLICY UNLIKE ANYTHING YOU HAVE PROBABLY EVER SEEN, I'VE EVER SEEN. THERE IS SLOPPY UNDER WRITING HERE. THAT'S WHY WE ARE HERE.

JUSTICE: PEREZ IS WHAT JUSTICE WELLS ASKED YOU IS THAT THEY HELD THAT BECAUSE OF THE ITEM ONE NAMED INSURED THAT YOU ARE ENTITLED, THE PEOPLE INJURED WERE ENTITLED TO BENEFITS AND THERE, IT SEEMS AS THOUGH THE FEDERAL JUDGE AGREED WITH THAT BUT THE REFORMED THAT PROVISION; IS THAT A FAIR STATEMENT?

YES, WHEN WE FILED BASED ON THE PEREZ CASE THE YANS WERED SAYING THEY ARE GOING TO REFORM THE POLICY BUT THEY WERE IN A CATCH -22 SITUATION BECAUSE OF AN ENDORSEMENT TO THE POLICY WAS AND THEY ARGUED THIS IS A STAND-ALONE ENDORSEMENT. EVEN IF THE Y W IN ON THE PERSONAL ORAL POLICY SUPPLEMENT WHICH THE DISTRICT COURT JUDGE FOUND AS A MATTER OF FACT DID NOT COVER A S NAMED INSURED THE RETAIL LESSEES OR THE OCCUPANTS AND DID NOT COVER A SCOVERED VEHICLES THE RETAIL LEASED VEHICLES THE Y STILL HAD TO DEAL WITH THE ARGUMENT, WELL, IF STAND-ALONE ENDORSEMENT WHICH UNDISPUTEDLY COVERED THE RESALE LEASED VEHICLES THE RE WAS NO COMPLAINT WITH THE STATUTE AND THAT'S WHERE THE DISTRICT COURT --.

JUSTICE: THAT'S WHERE YOU GET INTO THIS WHETHER THAT'S AN EXCESS INSURANCE POLICY, BUT LET'S STICK WITH WHAT -- WHERE THE THIRD DISTRICT WAS, BECAUSE I'M CONCERNED ABOUT WHETHER UNDER WHAT THE THIRD DISTRICT HELD AND WHETHER IT IS YOUR POSITION THAT ANYONE WHO LEASED A VEHICLE FROM FORD MOTOR COMPANY WAS A CLASS ONE INSURED REGARDLESS OF WHAT ITS AID IN THE LEASE THAT THEY LEASED THE VEHICLE; IS THAT YOUR POSITION?

THAT'S WHAT THE THIRD DISTRICT HELD.

JUSTICE: THAT YOUR POSITION?

OUR POSITION IS THAT IF THE POLICY WAS REFORMED WE DIDN'T APPEAL THAT FACT FINDING FROM THE DISTRICT COURT JUDGE BECAUSE WE FELT IT WAS IRRELEVANT. WE MOVED FOR SUMMARY JUDGMENT AND WE DIDN'T THINK THERE WAS A TRIABLE ISSUE BECAUSE THE RE WAS WITH RESPECT TO THE ENDORSEMENT --.

JUSTICE: LET'S GO BACK TO THE FIRST QUESTION. WHAT CREATED THIS AS JUDGE WELLS HAS OUTLINED IS THAT YOUR POSITION, WAS IT NOT, THAT UNDER ITEM ONE ANY LEASED, ANY PERSON TO WHOM A MOTOR VEHICLE HAD BEEN LEASED WAS INSURED. YOU WOULDN'T HAVE THE REFORMATION IF THAT WERE NOT THE POSITION. YOU ARE JUMPING THE FIRST PARTS OF WHAT YOU ARE CONCEDED THAT THE COURT REFORMED IT?

AS A FACTUAL FINDING THAT WAS COUNT ONE OF THE COMPLAINT.

JUSTICE: YOU ARE SAYING YOU WERE BUT THE JUDGE HAS ENTERED THIS FACTUAL DETERMINATION OF REFORMATION SO NOW THE ONLY REASON THAT REFORMATION WAS NEEDED BECAUSE OF THE NAME AND NOW YOU ARE TAKING THE NEXT STEP AS REFORMED THIS IS WHAT YOUR POSITION IS.

YES. THE YCAN NOT BECAUSE LET'S SAY UNDER THE MAIN BODY OF THE POLICY WHICH THE COURT, DISTRICT COURT FOUND DID NOT RECOVER RETAIL LEASED VEHICLES BUT THEN THEY ADDED THIS ENDORSEMENT TO THE POLICY AT SOME POINT IN TIME WHICH DOES COVER THE RETAIL LEASE TO VEHICLES AND WHEN THEY ADDED THAT AND ISSUED THAT POLICY AS BOTHER PRINCIPALS INDICATED AT TRIAL THEY NEVER OFFERED UM COVERAGE. THE DISTRICT COURT WAS CORRECT IN REFORMING THE POLICY.

CHIEF JUSTICE: YOU WANT TO GO ON TO REFORMATION. WE'RE STILL ON CLASS ONE, CLASS TWO TWO. YOU SAY THE NARROW ISSUE BEFORE THIS COURT IS WHETHER THEY WERE PERMISSIVE OCCUPANTS OF THE VEHICLE UNDER THE LIABILITY INSURANCE ARE ENTITLED TO UM BECAUSE OF THE FAILURE TO COMPLY WITH THE REQUIREMENTS, AND YOU TAKE THE FAILURE TO COMPLY WITH THE REQUIREMENTS AS BEING THE PRIMARY ISSUE, BUT IS YOUR, AGAIN, ARE YOU CHANGING YOUR POSITION OR HAS YOUR POSITION ALWAYS BEEN DESPITE WHAT YOU ARE SAYING IN THE REPLY BRIEF THAT THEY ARE CLASS ONE INSUREDS?

THEY ARE CLASS TWO INSURED UNDER THE ENDORSEMENT COVERING THE RETAIL LEASE . THEY ARE OCCUPANTS OF THE COVERED VEHICLE . AS SUCH BECAUSE OF THE FAILURE TO COMPLY WITH THE STATUTE THEY ARE ENTITLED TO THE COVERAGE .

CHIEF JUSTICE: THESE WERE NOT LESSEES , EACH OF THEM WERE OCCUPANTS ?

THEY WERE ALL OCCUPANTS . THE TOBIAN AND THE HUNTER BLF WERE LESSEES , AND THE MACKAY'S WERE SIMPLY PASSENGERS .

CHIEF JUSTICE: DOESN'T THAT MAKE A DIFFERENCE WHETHER THEY ARE LESSEES OR OCCUPANTS ?

CLASS ONE'S ARE NAMED INSUREDS , CLASS TWO'S ARE JUST OCCUPANTS FROM THE USERS OF A VEHICLE WHICH IS INSURED FOR UM COVERAGE AND THIS POLICY , BECAUSE OF THE FAILURE TO COMPLY WITH THE STATUTE I S D E E M E D T O P R O V I D E T H E U M C O V E R A G E . N O W , W E P L E D I N T H E A L T E R N A T I V E . T H A T ' S W H Y W E P L E D C O U N T O N E A F T E R T H E Y A N S W E R E D T H E I N I T I A L C O M P L A I N T W E P L E D S O L E L Y I N I T I A L L Y B A S E D O N T H E P E R E Z D E C I S I O N A N D W H E N T H E Y A N S W E R E D T H E Y I N D I C A T E D T H E Y A R E G O I N G T O S E E K R E F O R M A T I O N A N D T H A T ' S W H E R E W E H A D T H E M I N T H E C A T C H - 2 2 .

JUSTICE : I T H I N K T H A T T H E P R O B L E M T H A T T H I S W H O L E T H I N G H A S , T H E R E A S O N I ' M H A V I N G T R O U B L E W I T H I T A T L E A S T I S B E C A U S E T H E F A C T T H A T T H E O N L Y R E A S O N T H E D I S T R I C T C O U R T J U D G E W E N T T O R E F O R M A T I O N W A S B E C A U S E T H E D I S T R I C T C O U R T J U D G E W A S C O N F R O N T E D W I T H T H E P E R E Z C A S E . C O R R E C T ?

YES.

JUSTICE: AND IF THE PEREZ CASE IS HELD TO BE WRONG THEN THESE PEOPLE WOULD NOT BE THE REVERSE OF THE PEREZ CASE WOULD BE THAT THE SEPEOPLE WERE NOT CLASS ONE INSURED UNDER THEN YOU WOULD HAVE TO DEAL WITH THE ENDORSEMENT, I UNDERSTAND THAT.

YES.

JUSTICE: THE ENDORSEMENT BEING A CONTINGENT LIABILITY SITUATION . BUT THAT'S THE REASON THAT I AM CONCERNED , BECAUSE IT HARDLY MAKES , I MEAN I'M REALLY HAVING A HARD TIME UNDERSTANDING THE REASONING OF THE PEREZ CASE THAT WOULD MAKE EVERY LESSEE OF A FORD MOTOR COMPANY CAR A CLASS ONE INSURED . MEANING IF THEY WERE PEDESTRIANS SOMEWHERE THAT THEY WOULD BE COVERED BY UM COVERAGE.

THAT'S THE ARGUMENT THEY MADE AND THEY CONVINCED THE DISTRICT COURT , BUT THEN THE JUDGE WENT ON TO THE ALTERNATIVE ARGUMENT AND HE WAS FLAT OUT WRONG . HE SAID THE UM STATUTE DID NOT APPLY TO THE ENDORSEMENT WHICH AS A RESULT OF THE ARGUMENT THEY MADE IS A STAND-ALONE ENDORSEMENT . IT DOESN'T MODIFY THE UNDERLYING PERSONAL POLICY SUPPLEMENT BECAUSE THEY CONVINCED THE COURT THAT THAT HAS NOTHING TO DO WITH RETAIL LEASE VEHICLE S . SO UNDER OUR SECOND ARGUMENT , THE DISTRICT COURT WAS FLAT OUT WRONG AND HE SAID THAT THE UNINSURED MOTORIST STATUTE DOES NOT APPLY TO THIS POLICY , AND THE PRECEDENTS SAY IT APPLIES TO EVERY POLICY ISSUED IN FLORIDA . WE THEN GO TO OUR ALTERNATIVE ARGUMENT BECAUSE THERE WAS AN UNDISPUTED ARGUMENT TO OFFER UM ON THAT ENDORSEMENT . THERE WAS NO REFORMED REJECTION UNDER MULLIS , THERE ARE TWO TYPES OF INSURED'S AND OUR PLAINTIFFS ARE INSURED'S OCCUPANTS .

JUS TICE : T O W H O M W E R E T H E Y S U P P O S E D T O O F F E R T H E U M ?

F O R D , T H E N A M E I N S U R E D I S T H E O N L Y O N E T H A T N E E D S T O R E J E C T I T . T H E F O R D R E P R E S E N T A T I V E T E S T I F I E D A T T R I A L T H A T T H E I S S U E O F U M C O V E R A G E U N D E R T H A T E N D O R S E M E N T W A S N E V E R D I S C U S S E D A N D N E V E R O F F E R E D .

JUS TICE: S O I F T H E Y W E R E S U P P O S E D T O O F F E R I T T O F O R D , W H Y W O U L D S O M E B O D Y W H O I S A N O C C U P A N T O F T H E V E H I C L E N O T T H E I N S U R E D H A V E S T A N D I N G T O R A I S E T H E I S S U E T H A T U N I N S U R E D M O T O R I S T C O V E R A G E W A S N O T O F F E R E D ?

T H A T ' S T H E C O U R T C A S E A N D T H E C O U R T I T H I N K S A Y S T H A T A L L C L A S S T W O I N S U R E D S A R E E N T I T L E D T O R A I S E T H A T A R G U M E N T F O R T H E R E A S O N B E I N G T H A T M O S T O F T H E T I M E T H E N A M E D I N S U R E D A N D I N Q U I R K T H E R E W A S A P O L I C Y , A L S O , T H E N A M E O F T H E P O L I C Y I S A C O R P O R A T I O N A N D I F Y O U A R E G O I N G T O A F F O R D A N Y P R O T E C T I O N A S D I C T A T E D B Y M U L L I S Y O U M U S T G I V E T H E M T H E O P P O R T U N I T Y T O R E J E C T T H E C O V E R A G E . T H E C O V E R A G E I N C L A S S T W O A L O T I S M A D E T O D O A B O U T T H E F A C T T H A T O U R P E O P L E A R E G E T T I N G F R E E C O V E R A G E . C L A S S T W O I N S U R E D S , T H E C O V E R A G E I S A L W A Y S G R A T U I T O U S . Y O U D O N ' T P A Y F O R I T .

JUS TICE : I G U E S S I ' M S T I L L T R Y I N G T O U N D E R S T A N D H O W T H E S E P L A I N T I F F S A R E C L A S S T W O I N S U R E D . H O W D O Y O U G E T T O T H E P O I N T W H E R E Y O U S A Y T H E Y A R E C L A S S T W O I N S U R E D S ? W E R E F O R M E D T H E C O N T R A C T , A N D S O W E K N O W T H E Y A R E N O T C L A S S O N E I N S U R E D S , C O R R E C T ?

Y E S .

JUS TICE: S O H O W D O T H E Y G E T T O B E C L A S S T W O I N S U R E D S ?

T H E P O L I C Y W A S R E F O R M E D F O R T H E -- L I M I T E D T O T H E T H R E E T Y P E S O F V E H I C L E S O R A T L E A S T T O F O R D E M P L O Y E E S B U T T H E N Y O U H A V E T H E E N D O R S E M E N T W H I C H D O E S P R O V I D E C O V E R A G E T O R E T A I L L E A S E D V E H I C L E S .

JUS TICE: A N D T H E N T H A T I S W H I C H S E C T I O N ?

E X C U S E M E ?

JUS TICE: W H I C H S E C T I O N O F T H I S P O L I C Y A R E Y O U G O I N G O N ? A R E Y O U O N T H E S E C T I O N 5 T H A T S A Y S E N D O R S E M E N T E X C L U S I O N S ?

Y E S , A N D I F Y O U R E A D D O W N A T T H E B O T T O M I T S A Y S I T P R O V I D E S L I A B I L I T Y I N S U R A N C E , A M O T O R V E H I C L E L I A B I L I T Y P O L I C Y S U B J E C T T O T H E U M S T A T U T E . I F T H E R E I S A F A I L U R E T O C O M P L Y W I T H T H E S T A T U T E C O V E R A G E I S M A N D A T E D B Y L A W A N D U N D E R M U L L I S , W H I C H I S T H E F O U R T H C I R C U I T -- .

J U S T I C E : H O W D O Y O U G E T T O O R H O W D O Y O U I N T E R P R E T T H E P A R T O F T H E P O L I C Y T H A T S A Y S T H I S P O L I C Y H O W E V E R S H A L L P R O V I D E C O N T I N E N T L O S S I N E X C E S S B U T O N L Y A S R E S P E C T S T H E L I A B I L I T Y O F N A M E D I N S U R E D S ?

T H E P O L I C Y A N D T H A T ' S O N E O F T H E A R G U M E N T S T H E Y M A K E I T W O U L D O N L Y P R O V I D E L I A B I L I T Y C O V E R A G E U N L E S S T H E L E S S E E ' S C O V E R A G E W A S D E N I E D . I T W O U L D O N L Y P R O V I D E L I A B I L I T Y I N S U R A N C E T O T H E L E S S O R . H O W E V E R -- .

JUS TICE: T H A T S E E M S T O B E , W H A T P A R T O F T H A T S A Y S T H A T T H E S E P L A I N T I F F S F I T U N D E R T H A T ? T H A T ' S W H A T I A M H A V I N G A H A R D T I M E G E T T I N G T O . H O W D O T H E S E P L A I N T I F F S F I T U N D E R T H I S S E C T I O N O F T H E P O L I C Y ?

THE POLICY IS REFORMED TO PROVIDE UM COVERAGE MANDATED. THEY ARE NOT ENTITLED UNDER THAT POLICY LANGUAGE FOR LIABILITY COVERAGE AND I DON'T THINK CLASS TWO INSUREDS, THE TEST FOR WHETHER CLASS TWO INSURED S ARE ENTITLED TO UM TURNS ON WHETHER THEY HAVE LIABILITY POLICY UNDER THE LIABILITY COVERAGE UNDER THE LIABILITY POLICY AND THERE IS NO CASE THAT SAYS THAT. AND MULTIS SETS FORTH THE PARAMETERS UM COVERAGE MANDATED AS A RESULT OF THE FAILURE TO COMPLY WITH THE STATUTE IS THE RECIPROCAL. IT PARALLELS COVERAGE REQUIRED TO BE PROVIDED UNDER THE FINANCIAL RESPONSIBILITY STATUTE, THE STATUTE OBLIGATES COVERAGE ON BEHALF OF THE OWNER OF THE VEHICLE AND ALL PERMISSIVE USERS AND THAT'S WHY MULTIS SETS FORTH THE TWO CATEGORIES OF INSURED CLASS ONE, CLASS TWO. THAT LANGUAGE THAT IS THE RECIPROCAL OF THE FINANCIAL RESPONSIBILITY STATUTE HAS BEEN ENFORCED, REAFFIRMED AS RECENTLY AS THE 2002 BY FLORES, IN THE FLORES CASE BY THIS COURT CITED OVER AND OVER AGAIN THE RE IS UNIFORM COVERAGE. IT DOESN'T MATTER. YOU CAN'T EXCLUDE COVERAGE TO A CLASS TWO INSURED BY ARGUING, WELL, HE IS NOT COVERED UNDER THE LIABILITY PORTION BECAUSE THAT WOULD COMPLETELY UNDERMINE THE MULTIS DECISION.

JUSTICE: MAY BE THIS IS AN APPROPRIATE TIME THEN FOR ME TO SAY SOMETIMES WE GET CERTIFIED QUESTIONS AND FROM THE CIRCUIT COURT OF APPEALS AND SOMETIMES OUR REACTION TO THOSE ARE, WELL, THEY ARE JUST ASKING US TO DECIDE A PARTICULAR CASE, AND I MUST SAY MY INITIAL REACTION TO THE CERTIFICATION SHEWERE, YOU KNOW, WILLYOULOOK AT THIS AND, YOU KNOW, TELL US WHETHER, YOU KNOW, WHETHER THERE IS COVERAGE, AND JUSTICE WELLS ASKED YOU SOME QUESTIONS ABOUT A DISTRICT COURT OF APPEAL CASE THAT I UNDERSTOOD YOUR RESPONSE TO THAT TO SAY YOU ARE NOT REALLY CHALLENGING THAT CASE. YOUR POSITIONS IN THIS CASE AREN'T DEPENDENT ON THE CORRECTNESS OF THE RULING IN THAT CASE. CAN YOU ARTICULATE FOR ME AT LEAST ALL WE ARE SUPPOSED TO DEAL WITH HERE ARE ISSUES OF LAW, ALRIGHT, NOT, YOU KNOW, A FACT QUESTIONS LIKE REFORMATION AND THESE OTHER THINGS. WHAT WOULD YOU SAY IS THE ESSENTIAL ISSUE OF LAW THAT THE CIRCUIT COURT OF APPEAL IS ASKING US TO ANSWER FOR THEM THAT HASN'T BEEN ANSWERED UNDER FLORIDA LAW YET? COULD YOU ARTICULATE THAT FOR ME?

I DON'T THINK THERE ARE ANY. I THINK THIS - - I'M KIND OF SURPRISED THAT WE GOT THIS FAR. I THINK EVERY CASE WHERE THERE IS A FAILURE TO COMPLY WITH THE STATUTE AS THE RE IS HERE UNDISPUTED THE REMEDY IS SIMPLY, YOU HAVE COVERAGE MANDATED BY MULTIS AND THE STATUTE AND THAT COVERAGE IS COVERAGE FOR CLASS ONE INSURED S, CLASS TWO INSURED S.

JUSTICE: THAT'S WHERE YOU ARE SAYING THE PREEXISTING LAW IS CLEARLY ON YOUR SIDE, YOU KNOW, BUT DO YOU SEE AN ISSUE OF LAW HERE THAT WE ARE BEING ASKED TO ADDRESS?

I THINK THE Y TRY TO FORMULATE THE QUESTION OF, WELL, AS A LAST RESORT THEY SAY WHETHER A CLASS - - SOMEONE CAN QUALIFY AS A CLASS TWO INSURED IRRESPECTIVE OF WHETHER THERE IS LIABILITY COVERAGE AVAILABLE UNDER THE POLICY TO THAT INSURED AND I BELIEVE MULTIS ADDRESSES THAT AND I CAN READ THE ONE SENTENCE HOLDING OF MULTIS. MULTIS SAYS IT IS NOT THE POLICY IN QUESTION. IT IS POLICY MUST SATISFY THE FLORIDA FINANCIAL RESPONSIBILITY STATUTE AND THAT IS COVERAGE FOR THE OWNER AND ALL PERMISSIVE USERS. YOU ANNOTED EVIATE FROM THAT. IF YOU DO YOU WILL UNDERMINE MULTIS BECAUSE IT WANTS STANDAR DIZED, UNIFORM COVERAGE FOR THE PROTECTION OF THE MOTORING PUBLIC AND AS JUDGE PARIENTE QUOTE D SALLIS IN THE FLORES CASE, THE SCOPE OF THE COVERAGE IS NOT A MATTER OF CONTEMPORATION FOR THE PARTIES IN WRITING THE POLICY. IT IS A CREATURE OF STATUTE.

JUS TICE : C OULD W E G O T HROUGH THIS A ND W E A RE USING ALL OF T HI S N IC E L AN GUAGE AND STU FF LET 'S SEE I F W E CAN P EE L THI S ONI ON D OWN. L ET M E R EC IT E T O Y OU WHA T I T A PPEA RS A ND Y OU TEL L M E WHERE IT IS WRO NG . I T A PPEA RS T HA T THI S P OLIC Y W AS ISS UED WIT H I TE M O NE CERTA IN N AMED I NS URED S , AND T HA T G IV ES Y OU C ER TAIN S TATU S UNDER F LORI DA L AW , A ND THE T RIAL JUD GE H ER E A T T HE D IS TR IC T C OURT L EV EL F OLLO WED P EREZ A ND SAI D , Y ES , I T HINK T HA T 'S WHA T I T I S. B UT THE N THE JUD GE WEN T O NE S TEP F UR THER A ND DID A REF ORM ATIO N ; IS T HA T C ORRECT?

YES, A BS OL UT EL Y .

J USTI CE : THEN I T HINK Y OU SAID THAT THE R EFOR M ATIO N W AS UNDER T HE THR EE C ATEGOR IES, L EA SE D VEH IC LES, E XECUTIVE VEH ICLES , SAL ES V EHICLES.

AND N AMED I NSUR ED .

J USTI CE : W HY WOU LD T HERE BE A R EFOR M ATIO N B ECAU SE T HIS IS A LREADY IN THE E NDORSEMENT , W HY WOULD YOU C OURT NEE D T O R EFOR M I F I T IS I N T HE END OR SE MENT ? S O I UND ER STOOD W HA T THE T RIAL J UDGE D ID WAS T O R EFORM O NLY T HE N AMED I NSURED , AND THE N O UR N EX T S TE P IS , WELL , L ET'S T HE N TAK E A L OO K A ND S EE WHETH ER THE O THER I NS URAN CE CLA US E O R CON TI NG EN T I NSUR AN CE C LAUSE GIV ES T HESE F OL KS SOME BEN EFIT S. N OW, WHA T 'S W RO NG WIT H T HA T A NALYSIS?

THAT'S C ORRECT . I T D OE S B ECAUSE IT I S A M OT OR V EH IC LE L IA BI LI TY P OLICY U NQ UEST IONA BL Y THE END ORSE MENT UNQ UE STIO NABLY INS URES T HE LEA SE VEH IC LE T HEY WER E IN. SIN CE THE Y WERE I N T HO SE C ARS AND T HE RE W AS A FAI LURE T O O FFER U M WIT H R ESPE CT T O T HA T .

JUS TICE : L ET M E A SK YOU A Q UE STION, T HOUGH. IT APPEARS THA T R EALL Y T HE R ETAI L V EHIC LE S WERE N OT L ISTED A S COVERED V EH IC LE S I N T HI S P OLIC Y , W ER E THE Y?

PER EZ H EL D THA T TH EY WERE.

JUSTICE: W EL L , PER EZ H EL D T HE NAM ED I NSUR ED . S O WE'VE GOT A N AMED INSURED. I'M LOOKING TO S EE I F W E C AN F IND WHER E THE R ETAI L VEH ICLE S.

I THINK THE DIS TRIC T COURT JUDGE H EL D T HA T TH EY WERE N OT , L W HE RE I T S AY S , H E H EL D THA T T HO SE O NL Y R EFERRE D TO VEH ICLE S L EASE D T O FOR D E MP LOYE ES .

JUSTI CE: S O W E D ON'T H AVE A COVERED VEHICLE. WE HAVE A NAMED INSURED B UT NOT A C OVERED VEH ICLE S O THEN THE QUESTION B EC OM ES A FTER R EFOR M AT IO N I F Y OU C HANGE THE N AMED I NSURED T O R EFLE CT WHATEVER IT IS , THE N WE HAVE TO A NALY ZE THE P OLICY A S A PER SO N T O W HO M L EASE I S NOT I N T HE EQU ATIO N B UT W E L OO K A T I T F RO M N AMED I NSUR ED P RO VI SION AS A MEND ED THERE A ND THE N Y OUR A RGUMEN TS THA T F LO W A FT ER T HA T. ISN'T THAT REALLY WHERE WE ARE?

YES .

J USTICE: I MEAN D O THE P AR TIES A GREE T HA T 'S WHE RE W E ARE ?

IT I S U NUSU AL B ECAUSE T HE Y ATTAC H A S A N END OR SEMENT TO A P OLIC Y SOMETHING WHICH THEY DIDN'T WAN T T O BE A FF EC TE D B Y. T HERE I S U M C OV ER AG E UND ER T HE MAI N B ODY OF THE P OL ICY. W HY W OU LD Y OU END OR SE T HE R ETAI L LEA SE D VEH IC LE S T O T HA T POL ICY? T HEY S HO UL D H AV E L IS TE D T HE CAR RIERS DUE T O THE L ONG-TE RM L ES SOR. THA T W AS N OT D ON E HER E. S LOPPY U NDER WRIT IN G B UT T HE Y HAVE TO LIVE WIT H T HA T.

JUSTICE: DIDN'T THE REFORMATION REALLY CUR E ALL OF THAT BECAUSE THEN FOR D MOTOR COMPANY REALLY BECAME THEN AMED INSURED ?

FOR THOSE TYPES OF VEHICLES AND ALSO THE REISSANAMED INSURED FOR THE RETAIL VEHICLES.

JUSTICE: AND IF THEY ARE THE NAMED INSURED THEN WHATEVER IS OFFERED OR REJECTED BY THEM IS IN THE CONTROL, IS IT NOT ?

YES .

JUSTICE : IT SEEMS TO ME YOU ARE NOW GOING TO STEP THREE , STEP ONE IS WHO IS THE NAMED INSURED . STEP TWO IS THE REFORMATION AND NOW STEP THREE IS I'VE GOT YOU ANYWAY BECAUSE THE YHAD TO OFFER THE INSURANCE COMPANY HAD TO OFFER FOR D TO WHOM IT WAS PROVIDING THE INSURANCE , THE OPTION TO TAKE OR DECLINE UNINSURED MOTORIST COVERAGE AND BECAUSE THEY DIDN'T OFFER THAT TO FOR D , THE BEFORE , NOW EVERY BODY IS INSURED EVEN THE PERSON OCCUPYING THE VEHICLE ?

YES . THAT'S OUR POSITION.

CHIEF JUSTICE: AND WITH THAT YOU ARE OUT OF TIME. THANK YOU.

THANK YOU, YOUR HONOR .

MAY I PLEASE THE COURT , I'M STEPHEN HARBURGER ON BEHALF OF MIC HIGAN MUTUAL INSURANCE COMPANY.

CHIEF JUSTICE: WOULD YOU FOLLOW UP WITH JUSTICE ANSTEAD'S QUESTION? THE COURT HAS MORE AND MORE SEEN AND WE'RE VERY POLITE BECAUSE IT IS THE 11TH CIRCUIT BUT SEEMS THE ONLY QUESTIONS THAT ARE EVER CERTIFIED TO THIS COURT INVOLVE INSURANCE AND SOMETIMES VERY CASE SPECIFIC ISSUES. WHAT IS IT , WHAT QUESTION OF LAW ARE WE SUPPOSED TO BE HELPING THE 11TH CIRCUIT DECIDE THAT HAS NOT YET BEEN DECIDED UNDER FLORIDA LAW?

YOUR HONOR, I WOULD POINT OUT THAT NEITHER SIDE WOULD WERE THE 11TH CIRCUIT A SKIN G FOR CERTIFICATION . BOTH SIDES ' POSITION THAT IT SHOULD NOT BE.

CHIEF JUSTICE: AT LEAST WE AGREE ON ONE THING .

I BELIEVE , YOUR HONOR , GIVEN THE HISTORY OF THIS CASE WHICH MANY OF THE JUSTICES HAVE COMMENTED ON , THAT WHAT WAS CONCERNING JUDGE BARKEETT , A FORMER MEMBER OF THIS COURT WAS THE REWAS SOME BROAD ISSUE THAT SHE WAS JUST CONCERNED ABOUT AND SHE SOMEHOW FELT THAT THIS COURT NEEDED TO HELP HER. I DON'T THINK SHE WAS CORRECT . I DON'T THINK THERE IS A FUNDAMENTAL LEGAL ISSUE. I THINK WHAT HAPPENED HERE WAS THE PEREZ COURT INTERPRETED THE POLICY IN A WAY THAT WE BELIEVE FULLY WRONG. SIMPLY LOOKED AT ITEM ONE, THE NAMED INSURED , AND IGNORED ITEM TWO , THE VEHICLE , AND SO WHEN THEY SAW THE WORD - - .

JUSTICE: WOULD YOU TELL US WHAT FLORIDA CASES SAY THAT YOU AMEND WHO ANAMED INSURED IS BY CHANGING COVERED VEHICLES? THERE IS NO FLORIDA CASE THAT GOES IN THAT DIRECTION , SO THAT'S THE REASON WE END UP IN THIS POSTURE .

I THINK WHAT HAPPENED IN PEREZ IS THEY SIMPLY , THEY DIDN'T READ THE POLICY AS A WHOLE .

J U S T I C E : W E L L , Y O U A L W A Y S R E A D W H O A N A M E D I N S U R E D I S B Y W H O T H E N A M E D I N S U R E D I S .

Y E S , B U T W H E N I T S A I D L E S S E S , A N D I T H I N K W H A T H A P P E N E D , Y O U R H O N O R , I S T H E Y D I D . T H E Y F O C U S E D O N T H A T A N D W H A T T H E N H A P P E N E D W H E N W E G O T T O T H E D I S T R I C T C O U R T W A S W E S A I D I F T H A T ' S H O W Y O U A R E R E A D I N G I T T H A T ' S N O T W H A T T H E T W O P A R T I E S , M I C H I G A N M U T U A L A N D F O R D S A Y . W E R E F O R M E D I T W H I C H W A S A R E A S O N A B L E T H I N G T O D O I F T H E P O L I C Y D O E S N ' T M E E T T H E I N T E N T O F T H E P A R T I E S . W E H A D T O E S T A B L I S H T H A T B Y C L E A R A N D C O N V I N C I N G E V I D E N C E . W E P U T T H A T E V I D E N C E O N A N D I T I S N O T I N D I S P U T E . I T W A S N ' T I N D I S P U T E I N F R O N T O F T H E 1 1 T H C I R C U I T . > > J U S T I C E : B U T Y O U W O U L D N ' T H A V E N E E D E D R E F O R M A T I O N U N D E R O N E O F Y O U R A R G U M E N T S B U T I T W A S G R A N T E D S O I T W A S C O R R E C T U N D E R O N E O F T H E A R G U M E N T S , Y O U A R E A S S E R T I N G , A N D I T W A S N ' T E V E N N E C E S S A R Y U N D E R T H E O T H E R ?

T H A T ' S R I G H T .

J U S T I C E : W E F I N D O U R S E L V E S I N A P O S T R E F O R M A T I O N S I T U A T I O N ?

Y E S , A N D T H E D I S T R I C T C O U R T W A N T E D T O S A Y P E R E Z W A S W R O N G B U T T H E Y F E L T C O M P E L L E D T O F O L L O W T H A T .

J U S T I C E : W O U L D Y O U A D D R E S S T H E P O S T R E F O R M A T I O N N O W ?

E X C U S E M E M E ?

J U S T I C E : Y O U R O P P O S I T I O N S A Y S T H A T H E I S E N T I T L E D T O C E R T A I N B E N E F I T S P O S T R E F O R M A T I O N B Y L O O K I N G A T S O M E O F T H E S E C L A U S E S .

A F T E R W E A R G U E D T H E W H O L E R E F O R M A T I O N I S S U E , M R . L Y N C H W A S I N P E R E Z A N D H E W A S T R Y I N G T O A D V A N C E P E R E Z I N T H E S E C A S E S T H E Y T H E N S W I T C H E D T O A D I F F E R E N T A R G U M E N T A N D S A I D , O K A Y , W E A R E N O T N A M E D I N S U R E D B U T L E T ' S G O T O E N D O R S E M E N T O N E .

J U S T I C E : T H A T ' S A F T E R T H E R E F O R M A T I O N .

T H E Y H A D N O C H O I C E .

J U S T I C E : S O T H A T ' S W H E R E W E A R E .

S O N O W W E A R E L O O K I N G A T E N D O R S E M E N T O N E W H I C H C A N B E F O U N D O N P A G E 4 O F P L A I N T I F F ' S A P P E N D I X O N E A N D T H A T P R O V I D E S A N A D D I T I O N A L C O V E R A G E B U T I T O N L Y A P P L I E S I T T O F O R D F O R I T S L I A B I L I T Y , P O T E N T I A L L I A B I L I T Y A S T H E O W N E R O F A L E A S E D V E H I C L E . T H E L E S S O R I S O F F E R D E E M E D T O B E T H E O W N E R . U N D E R F L O R I D A L A W , T H E R E I S A F I N A N C I A L R E S P O N S I B I L I T Y L A W W H I C H M A K E S T H E L E S S E E O F T H I S T Y P E O F L E A S E D V E H I C L E T H E O W N E R . A N D W H A T P L A I N T I F F S W E R E T R Y I N G T O D O H E R E I S T O S A Y W E O W N T H E V E H I C L E B U T W H I C H O R D I N A R I L Y W O U L D M A K E Y O U C L A S S O N E B U T W E C A N ' T B E C L A S S O N E S O N O W W E W A N T T O D E S C R I B E O U R S E L V E S A S O C C U P A N T S A N D W E W L O O E F I T - - B E L I E V E I T I S I M P R O P E R F O R S O M E O N E W H O I S T H E O W N E R O F T H E V E H I C L E T O S T E P B A C K A N D S A Y N O W I W A N T T O B E A N O C C U P A N T I N M Y O W N V E H I C L E .

J U S T I C E : T H E Y A R E S A Y I N G T H E Y A R E E N T I T L E D T O B E N E F I T S B E C A U S E T H I S P O L I C Y D O E S P R O V I D E S O M E T Y P E O F C O N T I N G E N T L O S S O R E X C E S S C O V E R A G E . I S N ' T T H A T W H A T T H E A R G U M E N T I S ?

THAT' S T HEIR A RGUMENT.

JUSTICE: S O T HE REFO RE I T IS A N E XCESS O R O TH ER I NSURANCE CLAUSE THAT THEY A RE A TTEM PT IN G T O A SSER T T O ASS ERT THE I R F UNDA ME NT AL R IGH TS.

YES, SIR.

JUSTICE: A ND Y OU D IS AG REE WITH THAT?

I DIS AG RE E T HA T THEY ARE E NTITLED TO IT. I D ON'T DIS AGRE E THAT'S W HA T THEY ARE TRYING TO DO.

JUSTICE: A ND T HE LEG AL R EASO NING IS?

THE L EG AL R EASO NING , I S TWO -FOL D , YO UR HONOR. FIRST THERE IS A SIM PL E S TATUTO RY A RGUMENT. T HE Y FOCUS O N THE S TATUTE 6 27.7 27 , S UB SECT IO N 1 W HI CH A PPLIES T O PRI MA RY , THE P ROBL EM IS THI S I SN'T A P RIMARY POLIC Y. IF YOU LOO K A T I T O N I TS FAC E I T TES S IS A AN E XC ES S POL ICY. T HAT LEADS YOU T O 7 27 SUB SECT IO N 2. T HAT SECTION W AS P UT I N T O L ESSE N T HE REQ UIRE MENT O F T HE WAIVER.

JUSTICE: BUT THEIR ARGUMENT IS THAT T HI S I S A CTUA LLY AS I UND ER ST AND THE A RGUMEN T , C OR RECT ME I F I 'M W RONG , B UT I S T HA T THI S IS N OT W HA T WOU LD B E A STA ND AR D U MBRELL A E XCES S POL ICY. THI S IS A Z ER O D OLLA R POL ICY IN SO FAR A S F OR D MOTO R C OMPANY I S C ON CERN ED . F ORD MO TO R COM PA NY THE N I F Y OU D IS AG RE E WIT H THA T S AY S T HAT FO RD MOTOR C OMPA NY H AS A RIG HT O F R EJECTI ON O F U M C OVRAG E U ND ER M ULLI S , AND U ND ER T HE U M C OVRAG E AND T HAT F OR D MO TO R C OMPA NY W AS N OT OFF ERED THE OPP OR TUNI TY TO REJ EC T I T. I SN'T T HA T THE I R A RGUM ENT?

I BELIEVE I T IS , YO UR HONOR , AND THE P RO BL EM, T HOUGH, I S THE Y A RE FOC US IN G O N T HE STR IC TE R REQ UIRE MENT S U NDER SUB SE CTIO N 1 W HI CH A PPLY T O PRI MA RY POL ICY W HI CH R EQ UIRE K NOWI NG R EJECTI ON AND A W RITT EN R EJECTION. S UBSECT IO N 2 F OR EXC ES S POL ICIE S E STAB LI SHES A M UCH L OW ER B AR A S T HI S COU RT REC OGNI ZE D THI S S TROC HA K . > > JUSTICE : H OW I S T HI S A N E XCES S POL ICY I F , I N FAC T , T HE L ESSE E H AS N O I NS URAN CE A ND T HE F ORD MO TO R COM PA NY H AS L IA BILI TY FRO M D OLLA R O NE ?

YOUR HONOR, I B ELIE VE THE A NSWER T O THA T Q UESTION IS FOU ND S IMPL Y O N THE FAC E O F T HE E ND OR SEME NT THAT W E ARE L OOKI NG A T . AGA IN PAG E 4 O F T HE EXH IB IT W HI CH I S E ND ORSE MENT N UM BE R ONE IT SAYS THI S POLICY, HOWEVER , S HALL P ROVI DE C ONTI NGENT L OS S I N E XCES S A UTO L IABI LI TY COVERAGE AND THEN IF Y OU LOOK AT THE D EFINITIO N O F C ON TING EN T L OS S W HA T I T S AY S I S T HE L ESSE E'S U ND ER LY I N G PRI MA RY I NSURANCE LIMIT I S I NADE QUATE. T HAT' S W HA T E XCES S POL ICIE S DO, THE Y SIT O N TOP O F A N U ND ER LYI NG P RIMA RY POL ICY. T HAT'S W HA T THI S IS. T HAT M AK ES I T A N EXC ESS POL ICY . P LAINTIFF S MAKE A N ARG UMENT IT HAS TO B E A N U MBRE LL A POL ICY BUT T HE S TATUTE J US T SAYS PRI MA RY O R N ONPR IMAR Y. T HE V ER Y LAN GU AG E O F T HE POLICY M AK ES I T CLE AR T HA T I S A N E XC ES S POL ICY. I T H I N K THA T' S W HA T W E W OUL D R ELY O N. T HE I NSUR ANCE C OMPA NY W HEN THEY ISSUED IT AND F OR D W HEN THEY BOUGHT IT , P UT I N THE P HRAS E EXC ES S POL ICY .

J US TI CE : AND T HE S TATUTE FOR EXCESS POLICY S AYS THAT THE INSURANCE COM PA NY H AS T O M AKE A VAIL AB LE CER TA IN COVERAGES?

THAT'S RIGHT.

JUSTICE: S O YOUR ARG UMENT I S WE MADE IT AVA IL ABLE I F THEY WANTED IT W E H AD I T

BUT WE DID N'T H AV E T O A FFIRMA TIVELY O FFER IT?

WE D ID N' T H AV E T O - - YOU D ON'T H AV E T O S HO W A R EJECTION AND W E BEL IE VE T HERE I S MO RE THA N S UBST ANTIAL C OM PLIA NC E WIT H THAT ADD O NE WAY T O SEE T HA T I S T O S IM PL Y G O B AC K T O T HE DEC LARATI ON S P AG E WHI CH S TARTED THIS OFF. T HAT W AS WHE RE T HE N AMED I NSURED PRO VI SION A PPEA RS O N P AG E 1 O F E XHIB IT 1 , W HI CH R EFERRE D T O AS T HE D ECLA RA TION S P AG E AND I N FAC T I N T HIS O VERA LL P OLIC Y W HERE FOR D W ANTE D UM C OVERAG E, FOR E XAMPLE, FOR I TS E XECU TIVE S , UND ER T HE P OLICY WH O ARE T HE NAM ED I NS UR ED S , I T GOT IT. S O THE RE I S N O QUE ST IO N I N T HE NEG OTIA TI ON OF THI S P OLIC Y T HE RE W AS U M COV ER AG E WHE RE THEY WANTED I T AND R EJEC TION W HERE THEY DID N' T AND U NDER S UBSECT IO N 2 I T D OESN 'T H AV E T O B E A WRI TT EN R EJECTION. Y OU J US T H AV E T O B E C ONVINC ED T HEY K NE W ABOUT I T AND W E BELIEVE I T I S C LE AR FROM THE FACE OF THE P OLIC Y B EYOND THA T F AC T T HA T T HIS W AS N EG OTIA TE D O N B EH AL F O F B Y D AN I E L S IM PSON W HO I S T HEIR D IREC TO R O F C ORPO RA TE I NSURANCE AND T HERE I S L ITTLE DOUBT THAT HE W AS A WARE O F T HE AVA ILAB ILITY O F UM COVERAG E. I N FAC T, HE T ES TI FIED T O THAT ABOUT THE VAR IOUS LAW S T HAT A PPLY I N DIF FERE NT S TATES ABOUT THE U M COV ER AG E .

CHIE F J US TICE : S O THE R EFOR MATION T HEOR Y , I F I T IS D EEMED TO B E E XCES S INSURANCE AND THEN THE REQUIREMENT IS A LOWER R EQUIRE ME NT , WHA T IS T HE S IGNIFICANCE O F A NY I SS UE O F R EFOR M AT IO N , ANY F AC T-BA SE D ISSUE?

I THINK, YOUR H ON OR , O NE OF THE REASONS AND YOU STA RTED W HY DID T HE 1 1T H C IRCUIT C ERTIFY IT. I BEL IEVE T HA T J UD GE BAR K ET T I N PAR TI CULA R A ND T HE P AN EL A S A W HO LE W ER E CON CE RN ED - - .

CHIEF JUSTICE: IT MIGHTNOT H AVE BEEN JUD GE B AR KETT ?

I T HINK T HE Y W ER E C ONCERN ED A F EDER AL C OU RT REF ORMING A C ONTR AC T T O G ET A ROUND ESS EN TIAL LY W HA T T HE P EREZ C OU RT DID . I T HINK T HEY W ER E T RO UBLED BY THAT AND T HE Y W ANTE D THI S COURT T O WEIGH I N B UT THE Y AR E NOT R AI SING THA T ISS UE .

JUS TICE : BECAUSE T HE Y A RE A CCEP TING. WE ARE TO T HE P OI NT T O ACCEP T THE REF ORMA TION W AS DONE.

I THINK THERE W AS FUN DAMENTAL LY A C ONCERN BY THE FEDERAL C OURT O F ARE W E A LLOW ED . WE KNOW WE ARE BOU ND BY T HE S TATE COURT D ECISION. WE HAVE TO FOL LO W T HEIR LAW. I THINK T HERE IS A F UNDA ME NTAL CON CERN O F DOE S R EFOR MATI ON A PPLY.

JUS TICE: S O W E NEE D T O ANSWER THAT Q UESTION.

I D ON 'T T HINK S O B ECAU SE THE PLA IN TI FFS A REN'T C HALL ENGING.

JUSTICE: T HAT'S THE ISS UE A ND THE N THERE ARE F ACTS A ND IT IS A F AC TUAL SIT UA TI ON S O IT IS WIT HIN T HE B ROAD ER C ONCEPT O F W HETHER THERE IS COV ERAG E C ERTAINLY.

IF THEY WANTE D T O G O A S A C LASS O NE COV ER AG E WHI CH T HEY S AI D T HE Y AR E N OT DOING.

JUSTICE: BECAUSE OF T HE R EFOR M AT IO N.

THE Y AR E NOT CHA LL EN GING THE V ALID IT Y O F T HE R EFOR MATION.

JUSTICE: T HAT WAS DON E J UDICIALLY , T HO UGH?

YES , A ND I T HINK T HE C OURT C OU LD S AY TO THE 11T H C IRCUIT IN R ES PONSE TO Q UESTION C, YES , I T I S P ERMISS IBLE TO R EFOR M A C ONTRAC T WHERE IT I S C LE AR B Y CLEAR A ND C ONVIN CIN G E VIDENCE THA T THE INT EN T O F T HE PARTI ES IS N OT MET B Y T HE I NT ERPR ETAT ION OF THA T CONTRACT. WHETHER THAT I NTER PR ETAT ION IS BY A PARTY O R A C OU RT I T SHO ULDN 'T MATTER. R EFORM A SIAN I S T HE A PPROPR IA TE R EMED Y .

J US TI CE : B UT T HE N O NCE W E GO F UR TH ER O NCE W E HAV E THE R EFORMA TI ON W HE RE D OE S T HA T LEA D US?

THAT LEA DS YOU T O THE S ECOND A RGUMENT , YOUR HON OR, W HICH IS A BRO ADER P OLIC Y A RGUM ENT WHICH I S THE SE P EOPL E OWN THE VEH ICLE . W E BEL IEVE THA T B EYON D THE S TATUTE , E VE N IF Y OU W ER E T O D ISAGRE E W ITH O UR S TA TUTORY T HEORY , T HA T T HERE SHO UL D B E - - Y OU S HOUL DN'T P ER MI T S OMEONE W HO I S AN O WN ER I N T HEIR O WN V EHIC LE T O C LAIM T HA T THEY ARE J US T A N O CCUPANT . T HA T I S C ONTR AR Y T O P OL IC Y B ECAUSE WHAT Y OU EN D U P D OING IS O RDIN AR IL Y U NINSURED MOT OR IS T I S TO P ROTECT T HE INN OC EN T I NSUR ED A GAINST THE B AD D ECIS ION O F S OME O THER D RIVER. H ERE THE SE L ES SEES A S T HE O WNER S OF T HE V EH ICLE O F T HEIR O WN S TATU TO RY O BLIG ATION TO O BT AI N I NSURANCE F OR LIA BI LITY C OVERAGE. WITH THAT COM ES THE O PPORTUNITY U NDER 6 27 .727 .1 TO O BTAI N U M C OVER AG E. I N FACT , T HERE I S A S TRON G POLICY THAT THEY GET I T F OR W HATEVER R EASO N THEY ARE N OW C LAIM ING THEY DID N' T GET ENOUGH. I N OTHER WORDS, THEY ARESEEKING TO USE THE U M S TATU TE T O P ROTECT T HEMS EL VES FRO M THE I R O WN B AD DEC IS ION NOT TO G ET C OVER AGE. NOT THE B AD D EC IS ION OF T HE T HIRD -P ARTY DRIVER WHO INJURED THEM.

JUSTICE: THE THING T HAT SEEMS TO C ON V O L UT TH I S IS I F - - C ON VO LUTE TH I S I S O NC E T HE P OL IC Y , T HEIR V EHIC LE S ARE N'T E VEN C OVER ED ?

Y ES , YOUR H ONOR , E XC EP T FOR THE N AR ROW E ND ORSE ME NT . BUT THA T EXP LI CI T LY S AYS.

JUSTICE: T HE N AR RO W E NDORSE ME NT I S O NLY C ONTING EN T LOS S O R EXC ESS. THA T'S L IK E USI NG T HE O THER I NSURAN CE C LAUSE T O TRY T O CHANGE THE NAMED VEHICLE . Y OU C AN 'T USE THE C OV ER ED V EHIC LE T O C HANG E T HE N AM ED I NSURED. H OW CAN YOU USE T HE O THER I NSURANCE C LAUS E T O C HA NG E THE V EHICLES I NSURED ? I MEAN, THA T' S --

YOU R H ONOR , THA T' S W HY W E THINK IT IS I MPRO PE R WHA T THEY ARE TRY IN G T O DO.

J US TI CE : I 'M T RYIN G TO UNDERSTAND YOUR A RG UMENT YOU'RE GOING MUCH FURTHER AND IT IS A M UC H S IM PL ER A NS WER T O T HI S I T S EE MS.

I TH I NK , YOUR H ONOR , I T C ERTAINLY I S A N A PPRO PR IATE WAY TO LOOK A T T HI S HAV IN G BEEN EXCLUDED IN THE O NE C ONTEXT, T HERE I S N OTHI NG I N THE P OL ICY THAT BRING S THE M B AC K I N.

JUSTI CE : F OR A VEH IC LE O R A S A N AMED I NSUR ED , EIT HE R O NE ?

THAT'S R IGH T. THAT'S AN APPROPRIATE WAY T O LOOK AT IT. Y OUR HON OR S , I REA LIZE TH I S I S A C OM PL ICAT ED C AS E. I F T HERE A RE Q UEST IONS AND I K NOW THERE MIG HT B E I W OU LD B E HAPPY T O A NSWER T HEM. I F N OT -- . > > CHIEF J US TICE: DO YOUTHINK IN ANSWERING T HI S THA T W E HAV E T O T AK E ISSUE W ITH THE PEREZ D ECIS ION?

I D ON'T B EL IEVE S O , YO UR H ONOR, BECAUSE THE PLA IN TIFFS ARE N'T CHALLENGING THAT PART OF TH E D ECISION . W E B ELIEVE P ER EZ I S W RONG A ND W HI LE W E C ERTA INLY WOU LD WEL COME YOU T O SAY T HA T W E THINK PEREZ IS W RONG I D ON'T T HINK T HA T I S A N ECES SA RY , THAT IT IS NECESSARY FOR T HE COURT TO DO THAT.

J USTICE : Y OU A GREE T HE O NLY A RGUM ENT THEY ARE MAKING HERE IS STE P T HR EE ?

YES.

JUSTICE: SO T HE Q UE STIO N THEN SHOULD MOR E P RO PE RL Y B E M AYBE PHR AS ED I S T HA T A CCEPTING REF OR MATI ON O F T HIS POLICY A S R EFOR ME D W HETHER THERE I S A NY C OVERAGE?

THAT'S C ORRECT. I THINK THA T I S A PRO PE R Q UESTIO N.

JUSTICE: BUT T HAT'S N OT GOING TO REACH THE U NI TE D STA TES C IRCU IT C OURT 'S CON CERN W IT H R EFOR M AT ION T HEN.

I T ISN'T , YOUR HON OR , BUT I THINK IN THI S C OURT LOO KING AT THE POL IC Y D ETER MINES U NDER F LORIDA LAW THERE IS NO C OV ERAGE FOR T HESE L ESSE ES T HE N I T HINK THA T ANS WERS T HEIR QUE STION.

CHIE F JUSTICE: E XCEPT THAT IT IS NOT THE A PPROPRIATE USE OF C ERTI FI ED QUE ST IONS. YOU ARE SAYING GO T O S TE P 3 W HICH IS K IN D O F A MIX ED Q UESTIO N OF F AC T O R LAW WHE N R EALL Y N ORMA LL Y W E' RE ANS WERING S TE P ONE T HE L EGAL I SSUE S INVOLVE D , AND I THI NK THA T' S W HA T FRA NKLY WHY W E D ECID ED T O H AV E ORA L A RGUMENT IS T O TRY T O F IGUR E O UT W HERE , W HY W E W ER E O R W ER E NOT A SK ED T O DEC IDE O R S HOULD O R S HOULD N OT D ECID E THE FIRST A ND SEC ON D S TEPS .

I T HINK , YOUR HON OR , I F YOU LOOKE D A T THE W AY THE 1 1TH C IRCU IT S EN T THI S T HE Y A SKED ONE Q UE STION, A ND T HE N THEY HAD F IV E SUB PA RTS. W HICH THE Y S UGGE STED M IGH T H ELP T HE COU RT . I THINK THE RE M AY H AV E B EE N S OME CON FU SION AS T O W HA T WOULD ACTUALL Y HELP THI S COURT I N RES OL VING T HE Q UESTION.

CHIEF JUSTICE: HELP THAT COURT OR THIS COURT.

I THINK T HERE I S CONFUSION ON THAT COURT, YOUR HONOR , CER TAIN LY N OT ON T HIS COURT . I THI NK YOUR HON OR S ARE F OCUSIN G A ND I THI NK F RANK LY T HE Y J US T WER E UNC OMFO RT AB LE WITH THIS. I WIL L S AY HAV IN G S PENT S OME TIME WIT H F LO RIDA UNI NSUR ED M OTORIS T LAW I T IS N OT A LWAYS EASY T O UND ER STAND. T HERE IS C OM PL EXIT Y T O I T AND I THINK THE Y W ER E U NCOMFO RTABLE WADING I NT O THA T COM PL EXIT Y A ND P ER HAPS I F Y OU P UL L A S TRIN G HER E YOU G ET A RES UL T H ERE AND I T HINK THEY W ER E N ERVI NG A BOUT WAD IN G INT O THA T. I CAN S EE T HA T .

J U S TI CE : WAS T HI S S TE P THREE ARGUMENT M ADE I N THE C IR CUIT COURT OF APPEAL?

IT WAS , YOUR HON OR . A ND FOR W HA TEVE R R EASO N T HE Y I T HINK WER E S O F OCUS ED O N T HE REF OR M AT IO N ISS UE T HE Y W RA PPED I T ALL UP.

JUS TICE: I DID N' T S EE T HAT THE O PI NION R EA LLY DISCUSSED W HAT WE A RE F OCUSING O N HERE I N ORA L A RGUM ENT.

THERE IS ONE A RE A W HE RE I T HINK I T DOE S , YOUR HON OR , IF YOU LOOK A T QUE STIO N E.

J USTI CE : WEL L , T HE Q UESTION, Y ES , BUT T HE IR D ISCUSSION OF L AW A ND E VERYTH ING THEY SEEM TO B E F OCUS IN G ON WHA T THE DISTRICT COURT F OC USED O N I N P EREZ AND I S P ER EZ RIGHT O R W RONG, D OES IT APP LY A ND I F I T DOES APP LY CAN I T B E R EFOR ME D , HERE'S T HE TESTIMONY BACK AND FORTH, AND THEN W E'RE GOING TO A SK T HESE QUE STIONS. T HEY D IDN'T S EEM T O F OC US O N THE ARGUMENT THA T M R. L YN CH I S M AKIN G NOW , H EY

, E VE N ASS UMIN G R EF OR M AT IO N YOU HAD T HE O BL IGAT IO N U ND ER T HE S TATUTE T O
OFF ER THI S C OVERAGE AN D YOU DID N' T AND THEREFORE I'M COVERED.

I THINK IF T HE Y H AD T HE Y WOU LD HAV E REA LI ZE D P LA INTIFF 'S ARGUMENT WAS UNDER
THE WRONG S ECTION , U NDER SEC TION 1 AND N OT S ECTION 2 AND T HE RECOR D I S C LEAR T
HA T M ICHI GA N MUT UA L M ET I TS OBL IGAT IONS U NDER S ECTION 2 . THERE I S THE BROAD
ER Q UEST ION UNDER A NY E VENT W HE N YOU J US T L OO K AT THE P OLICY ONCE T HEY A RE R
EFORME D O UT A ND N OT C HALLENGING THAT WHAT I S LEFT OF IT . I F T HERE A RE N O FUR TH
ER QUE STIONS, YOUR HONOR, I WOULD ASK THA T T HE C OURT I N R ESPONDIN G TO T HE 11T H C
IRCUIT SAY THE RE I S N O COVER AG E FOR T HE M U NDER T HE POLICY. THANK YOU.

CHIEF JUSTICE: T HANK YOUVERY MUCH . I 'M AFR AID Y OU'V E U SE D U P A LL O F Y OU R T IM E
A ND UNL ES S ANY OF THE MEMBERS OF THE PAN EL FEE L THA T Y OU W AN T A NYTH ING F UR
THER.

JUSTICE: W AS C OUNSEL C ORRECT T HA T N EITHER O F Y OU W ANTED C ERTIFI CA TI ON HER E
, NEITHER OF Y OU S OU GH T C ERTIFI CA TION?

YES.

J USTI CE : T HA T' S A LL .

CH IEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL BE IN R ECES S U NTIL 9:0 0 A.M . TOM
OR RO W M ORNING .

TH E M AR SHAL : P LEASE RIS E . ,, ,, ,, ,, ,, ,,