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**Allstate Insurance Co. v. Holy Cross Hospital, Inc.**

**SC05-435 | SC05-545**

>>> THE FINAL CASE ON THE  
CALENDAR THIS MORNING IS  
ALLSTATE INSURANCE VERSUS  
HOLY CROSS.  
JUST IS CANTERO IN THE CASE.  
>> I WILL STAY HERE.  
>> I AM FEELING LIKE  
SOMETHING IS GOING ON HERE.  
>> FIRST, MY MIC DOESN'T  
WORK.  
THEN IT IS WORKING.  
>>>GAIN, FOR THIS CASE,  
JUSTICE WELLS WILL  
PARTICIPATE IN THE DECISION.  
HE WILL WATCH THE TAPE THAT  
IS PREPARED.  
>> THANK YOU, YOUR HONORS.  
MAY IT PLEASE THE COURT MY  
NAME IS RICK GODFREY, I  
REPRESENT ALLSTATE.  
AS THE COURT KNOW, THIS  
APPEAL IS HERE OUT OF  
DECISIONAL CONFLICT ON A  
FAIRLY NARROW STATUTE.  
>> BEFORE 1991.  
>> YES.  
>> COULD ALLSTATE DO WHAT IT  
IS TEMPTING TO DO HERE?  
>> IT BELIEVES THAT KITE.  
IT BELIEVES THAT THE 1992  
AMENDMENTS TO SUBSECTION 10  
SIMPLY DID TWO THINGS:  
NUMBER ONE, WHETHER WAS A  
DISPUTE ABOUT WHETHER  
INSURANCE COMPANY COULD PAY  
MORE THAN THE 8% WHETHER  
THEY COULD HAVE EXPANDED  
BENEFITS AN INCOME PETIVE  
ENVIRONMENT TO SEE WHY SOME  
INSURANCE COMPANIES MAY SAY,  
WE LIKE TO COMPETE AGAINST  
PROGRESSIVE OR NATIONWIDE.  
THEN, THE SECOND POINT WAS  
THAT THERE WAS A DISPUTE AND

HISTORY, WELL, IT IS SOMEWHAT SPARSE, SEEMS TO SUGGEST ABOUT WHETHER OR NOT INSURANCE COMPANY ITSELF ISSUE PPO POLICY AND CONTRACT DIRECTLY WITH THE PROVIDER, SO AT THE TIME OF THE SEAL, COMPARED TO AT THE TIME OF SERVICE, WHEN WE LOOK AT THE DECISIONAL CONFLICT, WE HAVE BEEN INVOLVED IN ALL THREE CASES, SO THIS IS ROUND FOUR FOR US WHICH IS SOMEWHAT UNUSUAL IN MY EXPERIENCE.

>> AS WE GO INTO THIS, AS A BACKGROUND, I HAVE A GROUP AND IT IS THE SUN WORSHIPERS OF SOUTH FLORIDA, I GO TO HOLY CROSS HOSPITAL. IT COULD BE RELIGIOUS ORGANIZATION, I GO TO HOLY CROSS, THEY AGREE TO GIVE ME SERVICES AT LESS THAN MARKET VALUE.

THEY WILL GIVE IT TO ME FOR 20%.

ANY STATUTE, FEDERAL OR STATE, OR REGULATION, THAT WOULD PROHIBIT THAT AND THEN ALLSTATE DOING THAT FOR US?

>> NO, NOT AT ALL.

>> OKAY.

>> HAVE WE CROSSED, HAVE WE OR ANY COURT CROSSED THE QUESTION OF UNDER THAT CIRCUMSTANCE THAT I AM THEN INJURED, THE HOSPITAL CHARGES ME ONLY 20% OF WHAT IT WOULD NORMALLY CHARGE SOMEONE ELSE, AS TO WHETHER THE HEALTH CARE PROVIDER CAN CHARGE ANY INSURANCE COMPANY 100% ?

WITH WE CROSSED THAT ANYWHERE IN THE CASE LAW?

>> NOT OUTSIDE OF THESE THREE CASES.

>> OKAY, THAT IS WHAT I AM SAYING.

>> NOT THAT I AM AWARE OF. WILE GIVE ANOTHER HYPO, THEN WE CAN GET DIRECTLY INTO THE STATUTORY CONSTRUCTION

QUESTION.

BUT WE ARE LIMITED HERE  
BECAUSE -- FOR ME, IN TRYING  
TO UNDERSTAND CONTEXT, WE  
HAVE CONTRACTS THAT ALLSTATE  
ENTERED WITH BEECH STREET OR  
WHAT BEECH STREET ENTERED  
WITH HOLY CROSS.

>> WE DO HAVE THAT.

>> I THOUGHT THEY WERE NOT  
IN THE RECORD.

NO.

>> THERE IS SOME VAGUENESS  
IN THE BRIEFS.

I WAS READING IT LAST NIGHT.  
I REAL UZED ONE OF YOU MIGHT  
ANSWER THAT QUESTION.  
I WILL TELL WHERE YOU YOU  
CAN FIND IT.

>> WHERE ON THE RECORD?

>> THERE ARE TWO DIFFERENT  
SPOTS.

WELL, IF YOU LOOK AT PAGE  
127 OF THE RECORD AND GO TO  
PAGE 142 MUCH THE RECORD IS  
THE FIRST TIME, THEN THE  
SECOND TIME IS 152 TO 163,  
IT IS AGAIN, BECAUSE THESE  
ARE TWO CONSOLIDATED CASE,  
WHAT WE HAVE ON THE RECORD,  
UM, IS THE AFFIDAVIT OF  
CHRISTY WHO IS FROM BEECH  
STREET, SHE CATCHES THE  
BEECH STREET CONTRACT.  
IT LAYS OUT WHAT IT  
PROVIDES.

WE THEN HAVE AND YOU ARE  
QUITE CORRECT ON THIS POINT.  
WHAT WE DO NOT HAVE ON THE  
RECORD BECAUSE IT WAS RAISED  
ONLY AT THE TIME OF THE  
JUDGMENT ARGUMENT, THERE WAS  
AN AFFIDAVIT THAT WAS PUT IN  
BY SOMEONE FROM ALLSTATE  
TALKING ABOUT THE CONTRACT  
THAT ALLSTATE WOULD HAVE AT  
BEECH STREET LAYING OUT THAT  
AND THE PURPOSE THERE WAS TO  
LAYOUT THE NOTIFICATION TO  
THE INSURERED THAT THE IN  
SHIREER WAS GIVEN NOTICE OF  
THE OPPORTUNITY FOR THIS PTO  
BENEFITS BEFORE HE ACTED ON  
IT.

ONLY AT THE TIME OF THE ORAL ARGUMENT AND NEATHER WERE INVOLVED IN THE RECORD OF THE TRIAL COURT.

WELL, YOU ARE MISSING THAT CONTRACT.

THE COURT DESIDES FOR BETTER FOR WORSE, LOOK, IF IT IS VIOLATION OF SUBSECTION 10 BASED ON WHAT YOU SAID THE AFFIDAVIT, THE CONTRACT DOESN'T MATTER.

>> RIGHT.

>> WHAT WE DON'T HAVE IS THE CONTRACT THAT ALLSTATE ENTERED INTO OF MARCH OF 2000 WITH BEECH STREET AN AGP.

>> WELL, MY QUESTION WOULD BE.

I AM, STATE OF FLORIDA, BLUE CROSS-BLUE SHIELD IS OUR MANAGEMENT OF OUR PPO PLAN, SO GOY TO HOLY CROSS NOT BECAUSE ALLSTATE SENDS ME, BUT BECAUSE IT IS PART OF MY PROVIDER AND I AM, YOU KNOW, I HAVE A CERTAIN CHARGE.

A YES.

>> ON THE OTHER HAND, I AM A PERSON THAT HAS -- LET'S TAKE HOLY CROSS.

I AM A BEECH STREET PROVIDER.

I GO TO HOLY CROSS BASE AM PART OF THE BEECH STREET PPO.

THE SECOND SCENARIO, I GO THERE BECAUSE IT IS AN EMERGENCY ROOM I JUST GO THERE.

IS ALLSTATE'S POSITION THAT WHAT IT HAS TO REIMBURSE HOLY CROSS OR ME AS THE INSURED IS THE SAME WHETHER I AM PART OF THE BEECH STREET NETWORK AS AN INSURERED OR NOT.

WITHOUT ANY OTHER CONTRACT EXISTING IN DO YOU UNDERSTAND MY QUESTION?

>> I THINK SO.

I WILL ANSWER THINK IT WAY.

THE REIMBURSEMENT TO HOLY CROSS IS THE RATE THAT HOLY CROSS AGREED TO CHARGE IN THE BEECH STREET ARRANGEMENT.

> BUT ONLY AS TWO PEOPLE IN THE BEECH STREET NETWORK?  
A YES, THAT IS ALLSTATE PERSON.

YOU SEE, THAT IS WHERE, I GUESS, THIS IS WHAT I AM CONCERNED ABOUT:

THERE IS FREEDOM OF CONTRACT ISSUES THAT CERTAINLY GET INTO IT, BUT THE FIRST SENTENCE OF SUBSECTION 10 SAYS AN INSURER MAY NEGOTIATE AND ENTER INTO CONTRACTS WITH LICENSE HEALTH CARE PROVIDERS, NOW YOU HAVE TAKEN THE POSITION THAT THAT MEANS BOTH DIRECT AN INDIRECT.

>> YES.

>> MR. VAKA MAKES THE POINT IN HIS BRIEF THAT THE LEGISLATURE KNOWS HOW TO ACCOMPLISH THE PURPOSE OF INDIRECT AS IT HAS IN OTHER STATUTES.

WHY, IF THE INTENT WAS TO ALLOW THIS TO BE DONE WOULD THE LEGISLATURE TALK ABOUT NEGOTIATING AND ENTERING INTO CONTRACTS WITH LICENSED HEALTH CARE PROVIDERS BUT SAY, NOW WHAT WE REALLY MEANT WAS TO ALLOW NEGOTIATIONS IN ENTERING INTO CONTRACTS WITH THE PROVIDER ITSELF, WHATEVER --

>> WELL, THAT IS ISSUE TO YOU EXCLUDE.

LET'S START WITH THIS QUESTION.

I WAS GOING TO PHRASE THE QUESTION -- WHAT TERM OF THE STATUTE DID ALLSTATE'S CONDUCT VIOLATE?

YOU ARE ASSUMING BY THE QUESTION.

THE QUESTION FOR MR. VAKA IS UNLESS THERE IS EXPRESSED AUTHORIZATION GIVEN BY THE

LEGISLATURE, IT IS BANNED.

>> THAT GOES BACK TO ISSUE  
THIS THIS WOULD NOT BE A  
SECTION 10, WE WOULDN'T BE  
INVOLVED IN STATUTORY  
CONSTRUCTION BECAUSE IT  
COULD HAVE HAPPENED BEFORE  
SUBSECTION 10 WAS IN  
EXISTENCE.

I DIDN'T HEAR YOU MAKE THAT  
DIRECT ARGUE.

>> THAT IS AN ARGUMENT WE  
HAVE MADE.

>> THERE IS NOTHING TO  
PREVENT ALLSTATE FROM  
ENTERING INTO ARRANGEMENTS  
THAT FAIRLY AND WITH NOTICE  
BOTH TO THE INSURED AND TOP  
THE HEALTH CARE PROVIDER.

>> AND ON THAT POINT, JUST  
FOR THE RECORD, -- ON PAGE  
130 IN THE RECORD, THERE IS  
A LETTER FROM BEECH STREET  
IN EARLY 2000 TO HOLY CROSS  
SAYING GOOD NEWS.

ALLSTATE WAS 1.6 MILLION  
CUSTOMERS IS NOW PART OF  
YOUR PROVIDER NETWORK.  
NOW HAVE ACCESSES TO MORE  
PEOPLE WHICH IS WHAT WERE  
YOU INTERESTED IN DOING.

>> BUT THAT IS NOW HOW THIS  
GOES BACK.

THEY DIDN'T COME, THEY  
WEREN'T THEN, THIS ALLSTATE  
INSURED DIDN'T MAKE DECISION  
TO GO TO HOLY CROSS BECAUSE  
THEY WERE PART OF THE BEECH  
STREET NETWORK THEY WENT  
THERE AFTER NETWORK?

>> NUMBER ONE, NUMBER TWO,  
NOTHING IN THE FACTUAL  
RECORD THAT TELLS US, WE  
KNOW THEY WENT THERE.

WE KNOW THERE WAS PERIOD OF  
A SHORT TIME BETWEEN THE  
ACCIDENT BUT WE DON'T KNOW  
WHETHER THEY CALLED THE TOLL-  
FREE NUMBER OR ANYTHING  
ELSE.

WE DO KNOW BEFORE THE COURT  
THAT IN THE SURED WAS TOLD  
IN INSURANCE POLICY RENEWAL  
ABOUT THE BEECH STREET

NETWORK.

>> WHAT DIFFERENCE DOES THAT MAKE AT ALL?

>> YOU ARE RIGHT. IT DOESN'T MAKE A DIFFERENCE.

>> IT IS A QUESTION OF WHETHER HOSPITAL PROVIDER CAN CHARGE WHAT RATE THEY CAN CHARGE FOR WHATEVER, ISN'T IT?

>> YES.

>> WHETHER THEY WENT THERE BAUG THEY WANTED TO BECAUSE THE AMBULANCE TOOK THEM THERE, THE QUESTION IS, ARE THEY CAPPED BECAUSE THEY SIGNED AN AGREEMENT AND THE QUESTION I GUESS IS NUMBER ONE, CAN THEY CHARGE MORE? NUMBER TWO, IF THEY DO NOT, IS IT IN VIOLATION OF OUR STATUTE?

>> YES.

ON THAT POINT, THERE IS SOMETHING THAT IS KIND OF BURIED ON THE RECORD HERE AND PREPARING FOR THIS, WE PROBABLY SHOULD HAVE MADE A POINT OF THIS.

YOU KNOW, BEECH STREET WAS NOT AN INNOCENT NAERT DID NOT KNOW ABOUT THIS.

THEY HAD THE RIGHT TO CANCEL THE CONTRACT ON 3 OR 90-DAYS NOTICE THEY COULD HAVE CANCELLED BY THE VERY TERMS LONG BEFORE WIESNER EVER SHOWED UP BUT THEY TOOK THE BENEFIT OF THE CONTRACT WHICH WAS THE ACCESS TO THE 1.6 MILLION INSURED POOL, THEY TOOK THE BENEFIT OF THAT, THEY EXCHANGE FOR WHICH, WE'LL ONLY CHARGE X RATE, NOW, THEY STAND BEFORE THE COURT SAYING, YOU KNOW WHAT, WHEN WE PROMISED X RATE, WE DIDN'T MEAN IT.

WE WANT X PLUS Y.

ONE OTHER PART OF RECORD THAT IS IMPORTANT HERE.

>> BEFORE YOU MOVE TOO FAR FROM THAT, YOU SAID

SOMETHING I THINK, THEY HAVE ACCESS, THEY ENTERED INTO THE CONTRACT, NOW, HOLY CROSS HAS ACCESS TO THE 1.6 MILLION UNSURED.

HOW DO THEY HAVE ACCESS IF YOU CAN, IF YOU ARE ALLSTATE PT -- PIT PERSON, YOU CAN GO ANY PLACE YOU WANT TO. YOU DON'T HAVE TO GO TO HOLY CROSS, SO HOW DO THEY HAVE ACCESS?

>> BECAUSE IN THE INSURED POLICY, THIS IS WHERE I MENTIONED THE POLICY THAT WAS SENT OUT BEFORE THESE ACCIDENTS.

>> YOU MEAN INSURED POLICY?  
>> THE POLICYHOLDER RECEIVED INSURANCE RENEWAL, THEN THE INSURANCE RENEWAL ON PAGE 415, THIS IS WIESNER'S POLICY.

WIESNER IS TOLD WHEN HE GETS RENEWAL, BY THE WAY, YOU HAVE ACCESS TO THE PPO NETWORKS HERE IS THE TOLL-FREE NUMBER, YOU CAN GET BETTER RATE, EXPAND YOUR COVERAGE, BECAUSE, REMEMBER, ONE OF THE INTERESTING THINGS ABOUT THIS CASE IS ON THE RECORD BEFORE THIS COURT, IT IS UNDISPUTED.

THE 49th DISTRICT AN HOLY CROSS FOUND THIS, ALLSTATE'S PROGRAM EXPANDS THE COVERAGE FOR INSURED.

THE INSURED PAY LESS OUT-OF-POCKET, SO THE PROVIDER HERE IN THE UNIQUE POSITION OF ARGUING THE INSUREE SHOULD HAVE LESS COVERAGE AND PAY MORE.

NOT TOO OFTEN, WE ARE SAYING, LOOK, GET FULL COVERAGE FOR LESS COST?

>> THAT IS SORT OF BEEN CAUTION ME TO SCRATCH MY HEAD BASE AM READING THE BRIEF OF FLORIDA CONSUMER ACTION NETWORK THEY ARE AGAINST THIS.

I THINK WHAT YOU ARE SAYING,

IT DOES SOUND LOGICAL.

>> UNDISPUTED ON THE RECORD.

IT IS UNDISPUTED ON THIS RECORD.

IF THE COURT WERE TO RULE AGAINST US, THEN MR. WIESNER ARE LIABLE FOR ANOTHER 20%.

>> SO IT IS REALLY CLEAR, NOW, THAT IF HOLY CROSS IS CHARGING ALLSTATE \$50 FOR SOMETHING THAT THEY WOULD NORMALLY CHARGE \$80 FOR.

>> YES.

>> WE PAY \$4.

>> THE SHARE WOULD ONLY BE 2% OF THE \$50.

>> THAT IS CORRECT.

> THAT IS TOTALLY FAIR INTO AND THEY AGREED NOT TO BALANCE BILLS SO THEY CANNOT GO AFTER THEM, IF THE CONTRACT DOESN'T APPLY, WE GOT TO PAY MORE, CERTAINLY GOING FORWARD THE INSURERS PAY MORE.

THE RECORD DOESN'T SHOW US WHETHER THEY WOULD GO AFTER WIESNER FOR \$20.

THAT DOESN'T TELL US THAT.

THE POINT IS, AND PERSPECTIVE BASIS GOING FORWARD, THAT IS PRECISELY WHAT WILL HAPPEN.

THEY PAY MORE.

THERE IS NO DOUBT ABOUT THAT.

THAT IS UNDISPUTED NOW MOST OF THE GRIEF FOR THE CONSUMER'S GROUP IS, I LIKE THIS BASE, BECAUSE THEY RAISE POLICY YOU SHALL SURE, BUT MAKING ALL KINDS OF ARGUMENTS, NOT A SINGLE SHRED OF EVIDENCE HERE THAT WOULD SUPPORT THE ALLEGATIONS THAT THEY ARE MAKING.

THERE IS ONE MORE POINT THAT I WAS STARTING TO MAKE BEFORE I ANSWERED YOUR QUESTION.

THIS IS NOT A ZERO SUM GAME. THE INSURER HERE, I DON'T EVEN KNOW IF THEY KNOW, THEY ARE DOING THIS ON ASSIGNMENT

WHERE THE INSURER, THEY ARE NOT AT STAKE.

>> THAT IS ACCEPTED UNTHE LAW.

I KNOW.

BUT IT IS IMPORTANT HERE BECAUSE IT IS NOT TYPICAL THAT THE PARTY BEFORE THE COURT THAT DOESN'T REALLY KNOW THE PARTY BEFORE THE COURT ALTERNATE BY VIRTUE OF THIS ASSIGNMENT CAN BE IN YOU INJURED BY THE DECISION IF THE COURT AGREES WITH THE POSITION THEY ARE ARGUING.

IF THE INSURED WIN THE CASE, HOLY CROSS WINS THE CASE IN THE NAME OF THE UNSURED NOTHING PREVENTS HOLY CROSS WERE SAYING, GUESS WHAT? YOU OWE US THE DIFFERENCE BETWEEN WHAT YOU PAID US -- THEY COULD GO BACK.

THIS IS WHAT IT IS.

IT DOESN'T SEEM TO ME THAT IS A REASON FOR US --

>> IT IS JUST A POINT.

WHO IS BEING INJURED HERE. THE UNSURED BEING INJURED HERE WHICH IS THE POINT I WAS GETTING TO.

ONE MORE POINT TO ANSWER YOUR QUESTION.

THIS IS INTERESTING PART OF THE CASE.

IS NOT IN THE -- IT IS IN THE THE BRIEF BUT NOT DEVELOPED VERY MUCH.

BEECH STREET SAYS WE KNEW WE WERE DOING FO THIS FOR WORKERS' COMP..

WE HAVE A PROBLEM FOR PIP.

WHY DO YOU DISCRIMINATE AGAINST PIP INSUREANCE?

>> THAT IS WHERE IT WOULD GO BACK.

IF WE SAID THAT INSUREER CAN DO THIS INDIRECTLY, THEN IT GOES BACK TO THE TRIAL COURT TO DETERMINE THE INTENT OF THE PARTY.

WOULD YOU AGREE THAT?

WHETHER BEECH STREET SAY, NO,, NO WHEN I GOT ALL STATE

IN, WE GOT THEM IN.

>> SURE.

THE YOU 49th DISTRICT COURT  
OF APPEALS SPECIFICALLY  
RECEIVED THAT POINT.

>> TO ME, THAT IS A LOT OF  
ISSUES ABOUT FAIRNESS BOTH  
WAYS, ABOUT PEOPLE DOING  
SOMETHING FOR WITH EYES OPEN  
OR WHAT THEY ARE SAYING IS  
THEY ARE TRYING TO SNEAK  
AROUND AND DO SOMETHING  
INDIRECTLY.

>> YES.

IN FAIRNESS, I THINK THE  
RECORD IS UNDEVELOPED  
BECAUSE THERE IS A RECORD  
HERE BEFORE THE COURT, THEIR  
EYES ARE WIDE OPEN.

THEY WERE TOLD, THEY HAVE A  
RIGHT TO DETERMINE MATE.  
THERE IS A LETTER TO THEM IN  
MARCH OF 2000, GIVING YOU A  
VIE CITATION.

>> THESE ARE MEASH MATTERS  
OF CONTRACT ISSUES NOT PIP  
COVERAGE.

IS THEIR ANY PROHIBITION FOR  
EXAMPLE THAT WE HAVE  
BUSINESS OWNER, WE GOT MED  
PAY ON OUR POLICY, IF  
SOMEONE IS INJUREDEN OUR  
PROPERTY WE CALL THE A A  
AMBULANCE.

>> I CAN'T SAY THAT IS IN  
THE BRIEF.

EYE MEAN, WE ARE TALKING  
ABOUT THOSE KINDS OF ISSUES.  
YEAH.

I DON'T KNOW.

I HAVE NOT LOOKED THAT.

I WILL RESERVE THE REST OF  
MY TIME.

I KNOW YOU ARE IN THIS.

IT GOES BACK DO THE VERY  
FIRST QUESTION THAT JUSTICE  
LEWIS ASKED.

IF I GO TO A HOSPITAL AND IT  
IS BLUE CROSS HOSPITAL, I  
GET A MUCH SMALLER AMOUNT  
THAT I HAVE TO PAY, DOES,  
DOES, BASE AM THERE FOR AN  
AUTOMOBILE ACCIDENT DOES THE  
HOSPITAL GET TO CHARGE THE

HIGHER AMOUNT?

>> THE HOSPITAL GETS TO CHARGE WHAT IT AGREED TO CHARGE.

I REPRESENT BLUE CROSS, COINCIDENTALLY, THERE ARE CRON TRACKS.

THERE ARE CONTRACTS.

THERE ARE RATE SCHEDULES.

THE HOSPITAL PROVIDER --

THAT IS WHAT ESTABLISHES A REASON?

>> YES.

AND THAT WHAT IS THE COURT HERE HELD WHICH AGREED TO A RATE SCHEDULE.

BY DEFINITION, THAT IS REASONABLE.

WHAT THEY ARE REALLY ARGUING HERE.

IT IS REASONABLE FOR WORK WITH'S COMP BUT NOT FOR PIP PREFERRED AND THEY THINK PREFERRED SHOULD HAVE LESS COVERAGE AND MORE EXPENSE.

I WOULD LIKE TO RESERVE MY TIME.

THANK YOU VERY MUCH.

>> MR. VAKA.

>> I CAN TELL YOU DIDN'T AGREE THAT ARGUE.

>> THANK YOU.

LET'S GO BACK TO MY QUESTION I POSED TO YOU'RE POSING COUNSEL.

>> YES, SIR.

>> GOY HEAD AND ANNOUNCE.

>> GEORGE VAKA, TAMPA FLORIDA.

>> YOU ARE GETTING INTO HIS.

>> ON BEHALF OF HOLY CROSS, MY RIGHT IS LAURA WATSON ON BEHALF OF THE AMICUS HOSPITAL ASSOCIATION SHE WAS ALSO THE TRIAL LAWYER IN THIS CASE.

>> LET'S GO BACK TO THE QUESTION.

WHETHER IT IS RELIGIOUS GROUP OR WHATEVER, IF THE HEALTH CARE PROVIDER, BE IT THE DOCTOR OR THE HOSPITAL AGREES WITH THE GROUP I AM PART OF TO CHARGE ME \$50 TO

FIX A BROKEN ARM.  
I HAVE THE BROKEN ARM.  
I GO TO THAT FACILITY, BUT  
SOMEHOW, SOMEWHERE ELSE, A  
PIP CARRIERS GOING TO BE  
RESPONSIBLE FOR IT.  
IS THEIR ANY STATUTE OR  
REGULATION OR CASE TO THIS  
POINT THAT SAYS THAT THE  
HEALTH CARE PROVIDER CAN  
CHARGE ME MORE FOR THAT  
SERVICE.

>> THERE IS NO CASE?

>> OKAY.

THIS IS TRULY JUST A  
QUESTION OF WHETHER THIS  
PARTICULAR STATUTE PROHIBITS  
IT.

BECAUSE IN ALL OTHER  
CIRCUMSTANCE, THAT CAN BE  
DONE.

I DON'T KNOW IT IS NECESSARY  
A STATUTE, IT IS A QUESTION  
OF WHERE THE STATUTE  
PROHIBITS IT.

I THINK IT IS WHETHER THE  
STATUTE AUTHORIZES IT  
BECAUSE THE FIRST PART OF  
THE STATUTE SPECIFICALLY  
SAYS WHAT YOU HAVE TO DO.  
WELL, LET'S TAKE THE BLUE  
CROSS-BLUE SHIELD EXAMPLE.  
A LOT OF FOLKS HAVE THEM.  
WE WOULD LIKE ALL FOLKS TO  
HAVE ACCESS, BUT JUSTICE  
PARIENTE HAS BLUE CROSS &  
BLUE SHIELD AND SHE HAS AN  
ACCIDENT, JUST BY  
HAPPENSTANCE, DOES THE IN  
SHOWERERANCE CARRIER HAVE TO  
PAY YOU MORE THAN WHAT YOU  
CAN CHARGE HER?

>> I THINK THAT ALLSTATE,  
ALLSTATE'S ARGUMENT WOULD BE  
THAT BECAUSE I HAVE A  
SEPARATE CONTRACT WITH BLUE  
CROSS-BLUE SHIELD THAT I  
CANNOT CHARGE ALLSTATE  
INSURERS ANYMORE THAN WHAT I  
HAVE AGREED TO PROVIDE THAT  
SERVICE WITH TO BLUE  
CROSS-BLUE SHIELD BECAUSE  
ACCORDING TO ALLSTATE MY  
AGREEMENT, MY CONTRACTUAL

AGREEMENT WITH BLUE  
CROSS-BLUE SHIELD IS THE  
REASONABLE RATE.

>> OKAY.

>> THAT IS THEIR ARGUMENT.

>> BUT THERE WOULD BE, SO IF  
THE ORIGINAL INSURERS IN  
THIS CASE WERE PART OF THE  
BEECH STREET NETWORK, THAT  
WOULD BE IN YOUR VIEW, WOULD  
THAT BE A DIFFERENT  
SITUATION THAN IF THEY WERE  
NOT?

>> THAT WOULD BE A DIFFERENT  
SITUATION, BUT THE RESULT IN  
MY OPINION WOULD BE -- WELL  
I GO THERE.

>> THE SITUATIONS COULD BE  
DIFFERENT.

IN OTHER WORD, I AM THE  
INSURED, I GO THERING THERE  
BASE KNOW IN THE AMOUNT THAT  
INSURANCE COMPANIES -- I AM  
SORRY.

THE HOSPITALS CHARGE TO  
UNINSURED OR SOMEONE THAT IS  
NOT THERE, WE ARE ONLY  
TALKING ABOUT A \$10,000  
DIFFERENCE.

>> CORRECT.

>> SO GOY THERE, BECAUSE  
THEY ARE PPO, I WANT TO GO  
THERE.

I WANT TO SAVE MY BENEFITS.  
IF YOU ARE SAYING GOY TO A  
PLACE THAT OTHERWISE WOULD  
BE WITHIN MY NETWORK, THAT  
THAT HEALTH CARE PROVIDER  
CAN STILL CHARGE ME AS IF I  
WERE NOT PART, AS IF I,  
WHATEVER THEY WOULD CHARGE  
THE GOING RATE, WHICH MAYBE  
ANOTHER \$10,000.

>> IF YOU ARE THE INTENDED  
IDENTIFIED THIRD PARTY  
BENEFICIARY OF THE CONTRACT  
THAT THE HEALTH CARE  
PROVIDER HAS WITH SOME THIRD  
PARTY, YOU MOST CLEARLY  
JUSTICE PARIENTE WILL GET  
THE BENEFIT OF THAT CONTRACT.

>> IR RESPECT TO THE PIP.

>> IT DOESN'T MAKE A  
DIFFERENCE.

>> NOW, WE GET BACK TO THIS SITUATION WHICH IS ISN'T THIS REALLY AN ISSUE OF CONTRACT INTERPRETATION? IN OTHER WORDS, IF BEECH STREET CONTRACTS WITH ALLSTATE AND PACIFICALLY WITHIN THE CONTEMPLATION WAS THAT ALLSTATE'S INSURERS WERE IN AUTOMOBILE ACCIDENTS ARE GOING TO GET THE BENEFIT OF THE PPO RATE WITH THE PROVIDERS HOW DOES THAT, HOLY CROSS, YOU KNOW, HOLY CROSS COULD ARGUE, NO, NO, WE NEVER, WHEN WE CONTRACTED WITH BEECH STREET, WE DIDN'T AGREE TO THAT.

THEN THAT WOULD BE A REALLY GOOD CONTRACTUAL ARGUE AM. I DON'T THINK ALLSTATE COULD FORCE IT ON IT.

DOWN THE ROAD, YOU LOOK AT THE CONTRACT DOCUMENTS AND HOLY CROSS WITH THEIR EYES WIDE OPEN SAID, HEY, WANT AS MANY PEOPLE COMING IN, THAT IS FINE WITH US, WHY WOULDN'T THAT BE SOMETHING EVEN OUTSIDE OF SUBSECTION 10 THAT IS PERMISSIBLE? CONTRACT, FREEDOM OF CONTRACT?

>> WELL, IT IS A CONTRACT KAERNING MATTER THAT IS A HOLY STATUTORY CREATURE AND SO WE HAVE TO FIRST LOOK TO THE STATUTE AT LEAST AS WE SEE IT AND THE WAY THE FIFTH DISTRICT SAW IT.

THE STATUTE ITSELF IS SELF-COIN TAD, PIP BENEFITS ARE SELF-CONTAINED PART OF HE OF THE FLORIDA INSURANCE CODE.

THERE IS TWO KINDS OF POLICIES YOU CAN ISSUE.

YOU CAN ISSUE ONE PER YOU ANT TO SUBSECTION 10 WHICH IS ALLSTATE AN NATIONWIDE YOU ON THE OTHER CASE FREELY ADMITTED THAT IS NOT WHAT THEY DID.

AND IF YOU, THEN, THE NEXT QUESTION IS, WHAT HAPPENED

IF YOU DIDN'T ISSUE ONE  
PURSUANT TO THAT STATUTE.  
ONLY THAT THEY WILL GET 100%  
PAYMENT AND DEPENDING ON THE  
POLICY AND THEY MAY GET MORE  
BENEFIT SO THEY MAY HAVE MA  
MADE THE CHOICE THEY MAY GET  
MORE THAN THE 10,000.

>> CORRECT.

>> NOW ON THE OTHER, YOUR  
ARGUMENT THAT THIS COULD,  
THIS IS SORT OF A BACKDOOR  
PPO, LET'S GO BACK TO 1991,  
ALL RIGHT, THE STATUTE AT  
THAT TIME DIDN'T ALLOW THE  
PPO CONTRACTS TO EXIST.

>> CORRECT.

>> WITH THE PIP CARRIERS.  
WHAT DID THAT CONTRACT ALLOW  
CARRIERS TO DO?

>> THE STATUTE, THE 91  
STATUTE.

>> CORRECT.

>> IT ALLOWED INSURANCE  
COMPANIES TO OFFER TWO KINDS  
OF POLICIES, WHAT I REFER TO  
AS SUBSECTION 1 POLICY WHICH  
IS 80% OF ALL REASONABLE AND  
NECESSARILY INCURRED MEDICAL  
EXPENSES WHICH THE INDUSTRY  
REFERRED TO AS USUAL CUST MR  
RY AN REASONABLE, OR IT  
AUTHORIZED THE INSURANCE  
COMPANIES TO CREATE THEIR  
OWN PPO NETWORKS.

THAT WAS THAT THEY WERE TO  
HAVE CONTRACTS DIRECT  
CONTRACTS WITH THE HEALTH  
CARE PROVIDERS AND THAT  
SPECIFICALLY AUTHORIZED THE  
VERY THING THAT ALLSTATE IS  
DOING NOW WHICH IS TO OFFER  
IT AT THE TIME OF SERVICE  
NOT AT THE TIME OF PURP  
CHASE.

IT STILL REQUIRED THEM TO  
MAINTAIN ROSTERS OF ALL OF  
THE PEOPLE WHO WERE PART OF  
THE NETWORK.

>> SO IS THIS CHANGED THE  
1992 AMENDMENT ONLY ALLOWED  
THE PPO POLICY TO BE YOU A  
OFFERED AT THE TIME THAT  
THE INITIAL CONTRACT WAS

ENTERED INTO?

>> NO, THAT IS WHAT THE 92  
VERSION.

>> THAT IS 92?

>> YES.

>> 91 SAID, CUE OFFER THE  
PPO SERVICES AT THE TIME THE  
SERVICE WAS DELIVERED.  
IT ALLOWED THE IN YOU  
SUREANCE COMPANIES TO  
DIRECTLY CONTRACT WITH THE  
HEALTH CARE PROVIDERS FOR  
THE PROVISION OF THESE  
SERVICES ABOUT IT STILL  
REQUIRED THAT THEY MAINTAIN  
ROSTERS OF WHO THE PROVIDERS  
WERE AND THE LIKE FOR THEIR  
INSURE EARS.

IN '92, THE LEGISLATURE  
COMES BACK AND SAYS, WE ARE  
MOT GOING TO LET YOU DO A IT  
THE TIME OF SERVICE.

YOU NEED GIVE CONSUMER THAT  
INFORMATION UPFRONT AND LET  
THEM MAKE INFORMED DECISION  
DO THEY WANT TO BE A PART OF  
THAT NET WORK OR NOT?

>> WHY WAS THAT?

WHY WAS THE CHANGE MADE, DO  
WE KNOW?

>> THERE IS NOT A WHOLE LOT  
IN THE HISTORY THAT WE HAVE  
BEEN ABLE TO FIND THAT  
SUGGESTS EXACTLY WHY.  
I KNOW, THEY ARE ARGUED  
SOME.

WE HAVE ARGUED SOME.

I CAN'T, I CAN'T REALLY GIVE  
A GOOD EXPLANATION.

CAN I TELL THAT YOU IN 1997,  
THIS VERY SITUATION, THE  
STYLE, THE MODEL OF WHAT  
ALLSTATE IS DOING, WHAT ALL  
OF THE OTHER INSURERS  
NATIONWIDE DID, PROGRESSIVE  
DID WAS PROPOSED, IT CAME  
OUT, I BELIEVE IT WAS  
THROUGH A SENATE BILL, THIS  
IS REFERENCE IN THE MOTION  
FOR SUMMARY JUDGMENT IT IS  
REFERENCED IN THE AMISS CUSS  
CASE.

I DIDN'T SPEND A LOT OF TIME  
ON IT BUT THIS VERY MODEL

WAS PROPOSED, IT NEVER MADE IT OUT OF COMMITTEE. SO IT WAS NOT LIKE THE INDUSTRY DIDN'T KNOW WHAT IT WAS DOING.

IT DIDN'T KNOW THAT IT DIDN'T HAVE THE AUTHORITY TO DO THIS.

THEY TRIED TO GET THE LAW CHANGED IN '97 SO THEY COULD DO WHAT THEY ARE DOING NOW.

>> I GUESS WHAT I AM HAVING TROUBLE WITH, HOW YOU HAVE SET UP A SCENARIO WHERE AN INSURED, YOU KNOW, WE HEAR AT MANAGED CARE, MANY OF US, I THINK, ALL OF THESE HORRORS THROUGH MANAGED CARE, YOU NEED TO HAVE PRIMARY CARE, YOU NEED TO GET REFERRALS OUT, BUT THE FACT HERE, AT LEAST, AS FAR AS THEY HAVE BEEN DEVELOPED ARE THAT IT WAS, WE DON'T KNOW, WHETHER THE TWO ORIGINAL INSURERS WENT TO HOLY CROSS BECAUSE IT WAS THE NEAREST EMERGENCY ROOM AND THEY GOT, FOR THEM, THEY GOT THE SAME SERVICE AS IF THEY WERE ALLSTATE INSURERS OR THEY GOT A PLAIN OLD EMERGENCY ROOM SERVICES NOW IT DOESN'T BECOME PART OF THE MANAGED CARE NETWORK, WHY ISN'T IT A BENEFIT TO GO TO HOLY CROSS BECAUSE THEY WANT MORE MONEY BUT TO THE ORIGINAL INSURED THAT INSTEAD OF BEING PAID, YOU KNOW, HAVING TO PAY THE 20% OF THE HIGHER AMOUNT, THEY ARE PAYING 20% OF THE LOWER AMOUNT.

I REALIZE YOU HAVE AN ASSIGNMENT, YOU CAN MAKE THIS ARGUMENT.

I AM NOT SURE HOW THE UNSURED BENEFITS.

I AM SORT OF BIG INTO THE ALLSTATE ARGUE.

>> LETS ME ADDRESS TWO THINGS.

ONE, I BELIEVE IT WAS

ASSERTED THAT THE EVIDENCE WAS IN THIS RECORD THAT THE INSURED SAVE MONEY.

I DON'T BELIEVE THAT IS THE EVIDENCE IN THIS RECORD.

IN FACT, YOU DON'T BELIEVE THERE IS ANY EVIDENCE OF THAT IN THE RECORD.

THE ONLY EVIDENCE IN THIS RECORD IS THAT ALLSTATE AGREED AS PART OF THE JUDGMENT THAT THE AMOUNT IT WOULD PAY WOULD BE THE DIFFERENCE BETWEEN WHAT WAS UCR, THE NORMAL CUSTOMARY SUBSECTION ONE I WILL CALL IT AND THE REDUCED AMOUNT OF THE PPO CHARGE.

THAT WHAT IS THE JUDGMENTS ARE FOR, SO IF THE NORMAL CHARGE WAS 800 AND THE PPO CHARGE WAS 500, THEY PAID THE DIFFERENCE OF 300 IT WASN'T THAT THEY PAID THE REDUCED AMOUNT MINUS THE DEDUCT.

THERE WERE NO SAVINGS FOR THESE.

NOW LET'S GO TO THE BROADER QUESTION THAT YOU WANT TO ADDRESS JUSTICE PARIENTE, WE HAVE TACK IN THE POSITION THAT THOSE MATTERS OF POLICY ARE BEST LEFT TO THE LEGISLATURE.

>> I WANT TO MAKE SURE YOU ARE SAYING THEY ENDED UP PAYING 20% OF THE HIGHER AMOUNT?

>> I AM SAYING THERE IS NO EVIDENCE THAT THEY DID.

>> THEY DID PAY 20% OF THE HIGHER AMOUNT, THEN EVERYTHING SAUL STATE SAID IS DOWN THE DRAIN.

THAT WOULD BE, EVERYTHING THAT HAS BEEN REPRESENTED TODAY IS,, NO THEY WOULD PAY 20% OF THE PPO RATE.

>> THE JUDGMENTS IN THE CASE ARE FOR DIFFERENCE BETWEEN THE UCR CHARGE AND THE PPO CHARGE.

>> WHATEVER RATE PIP WOULD

APPLY?

>> CORRECT.

>> OKAY.

>> THE DIFFERENCE IS WHETHER THESE ARE GREAT VIRTUES WHETHER THERE TRULY IS A SAVING, WHETHER ANY OF THESE THINGS, WE HAVE ARGUED IS BEST LEFT TO THE LEGISLATURE, THE LEGISLATURE WHO HAS DECIDED THIS IN 91 TO AUTHORIZE IT.

THEY TAKE A POSITION, THEY COULD HAVE DONE THIS BEFORE 91, WE TAKE THE POSITION, NO, CUE NOT.

THERE WAS ONE.

THIS IS WHERE THEY ANALYZED THIS SITUATION IN THE CENTRAL FLORIDA CASE.

>> THE THING I KEEP COMING BACK TO, YOU SAY IN THE LAW, WE JUST FAIRLY RECENTLY, WE HAVE RECK RECOGNIZED DISCOUNTS THAT JURIES CAN NOT AWARD, THE FAIR MARKET VALUE OF SERVICES THAT HAVE TO BE, THE DISCOUNTED AMOUNT AND ACROSS THE LAW, WE TEND TO ALLOW THOSE KINDS OF THINGS TO COME IN.

THAT PEOPLE PAY WHAT IS ACTUALLY LOST OR REIMBURSED BY WHATEVER THE COST IS, NOT SOME OTHER NUMBER AND I REALLY RESPECTFULLY AND I HAVE BEEN DOING THIS SINCE THE '70s WHEN THIS JUMPED IN, I HAVE NEVER, NEVER REALLY SEEN AN IDEA IN CASE LAWS ANYWHERE THAT INSURANCE COMPANIES HAVE TO PAY MORE THAN, MORE THAN THE COST OR THE CHARGE THAT THE INDIVIDUAL IS ALLOWED TO MAKE.

>> AND I UNDERSTAND WHY YOU ARE STRUG LIG STRUGGLING WITH THAT.

BUT I THINK THE STRUGGLE IS, WE ARE OPERATING UNDER THE DISCOUNTED RATE.

THE RATE THAT THE HEALTH CARE PROVIDER GIVES FOR

THINGS LIKE ADVERTISING,  
GETTING THEIR NAME IN THE  
BOOK, HAVING THE INCREASED  
FLOW OF PEOPLE.

OKAY?

WHICH IS WITH A THAT BOOK  
THAT YOUR HONOR SHOWED US.  
IT HAS THE NAMES OF  
PROVIDERS.

ALLSTATE DOESN'T PROSEUSS  
THAT IN THIS CASE BECAUSE IT  
DOESN'T EXIST.

OKAY?

SO THAT IS THE RATE THAT I  
WOULD BE WILLING TO CHARGE  
JUST LIKE WHEN I WAS DEFENSE  
LAWYER REPRESENTING DEFENSE  
COMPANIES WHETHER THAN  
CHARGE WHAT THE MARKET WOULD  
BASE, I GAVE THE CLIENTS  
DISCOUNT.

I GAVE THEM FOR ONE GOOD  
REASON, THEY SENT ME LOTS,  
THEY WAS THE REASON.

WHAT WOULD OTHERWISE BE A  
REASONABLE HOURLY RATE,  
OKAY, LET'S SAY IT WAS \$150,  
I MIGHT HAVE ONLY BEEN  
CHARGING \$100, OKAY? THAT  
DOESN'T MEAN THAT EVERY,  
EVERY INSURANCE COMPANY  
INSURED WHO WOULD OTHERWISE  
WALK INTO MY OFFICE, WANTED  
ME TO DO A WILL FOR THEM,  
FOR INSTANCE, THAT DOESN'T  
MEAN THAT THEY WOULD HAVE  
GOT IN THE RATE I CHARGED  
ALLSTATE INSURERS TO HANDLE  
THEIR WORK?

>> OKAY, THAT DOESN'T SET  
THEN THE REASONABLE RATE IF  
YOU ARE GOING TO CHARGE \$10.

>> CORRECT.

>> BUT HERE, LET'S GO BACK,  
ASSUME THAT ALLSTATE AND  
HOLY CROSS HAD THE  
AGREEMENT.

THAT IS A DIFFERENT CASE?

>> IT VERY WELL COULD BE.

>> COULD ALLSTATE CONTRACT  
WITH HOLY CROSS OR WAS ANY  
HEALTH CARE PROVIDER TO  
PROVIDE ITS INSURERS  
DISCOUNTED RATES?

>> THE STATUTE CERTAINLY  
AUTHORIZED THEM TO DO THAT.

>> OKAY.

SO THE FIRST SENTENCE THAT  
WE ARE LOOKING AT AS TO  
WHETHER THAT IS A  
PROHIBITION, WHETHER --  
OKAY, NOT A PROHIBITION,  
WHETHER THE FIRST SENTENCE  
INCLUDES WHAT HAS BEEN  
CALLED INDIRECT CONTRACT.  
NOW THIS ISY SAY, I THINK IT  
MATTERS WHAT THE CONTRACTS  
SAY, BECAUSE, NO, NOBODY  
WOULD MAKE YOU HAVE TO HAVE  
AS YOUR REASONABLE RATE WHAT  
YOU WERE GOING TO CHARGE  
YOUR DEFENSE CLIENTS, BUT IF  
HOLY CROSS THROUGH IT  
CONTRACT WITH BEECH STREET  
AND BEECH STREET THROUGH ITS  
CONTRACT WITH ALLSTATE HAD  
ALL AGREED THAT FOR ALLSTATE  
INSURERS THAT THEY WOULD  
CHARGE THAT REDUCED RATE,  
WHERE IS THE DOWNSIDE OF ON  
THAT ONE?

>> WELL, THERE MAY NOT BE.  
THE FACT IN THIS CASE THAT  
ALLSTATE NEVER UNDERSTOOD  
THE TERM CONTRACT TO ME  
INDIRECT CONTRACTS BECAUSE  
THERE IS REQUEST FOR  
ADMISSIONS IN WHICH THEY  
ADMITTED THEY DIDN'T HAVE A  
CONTRACT WITH MY KLEIN WHY  
IT.

>> BE A SENT THE STATUTE,  
LET'S SAY IT IS NOT PIP, IS  
THE UNDERLYING CONTRACT A  
VALID CONTRACT?

>> IT CAN BE.

IT CAN BE.

IT DEPENDS ON THERE'S SOME  
CITATIONS TO ILLEGAL AND  
THOSE TYPE OF THINGS.

>> SO THE REAL QUESTION  
COMES, DOES THE SUBSECTION  
PROHIBIT WHAT OTHERWISE  
COULD BE DONE IN THE CASE OF  
INJURIES AS A RESULT OF  
AUTOMOBILES?

>> NOW, I LOOK AT IT  
DIFFERENTLY.

I THINK THE QUESTION IS,  
DOES THE STATUTE AUTHORIZE  
IT THE WAY IT IS IMPLEMENTED  
HERE?

LET ME GIVE AN EXAMPLE.

I WILL TRY TO RESERVE THE  
REST OF MY TIME.

I HAVE KIDS.

LOTS OF KIDS.

OKAY.

IF MY 15-YEAR-OLD DAUGHTER  
ASKED ME IF SHE CAN GO TO  
FRIEND'S HOUSE AN SPEND THE  
NIGHT.

I SAY YES, YOU MAY.

RATHER THAN GO TO BRK'S  
HOUSE, SHE SPENS THE NIGHT  
AT HER BOYFRIEND'S HOUSE.

ALL RIGHT.

MY USE OF THE TERM MAY WAS  
NOT YOU CAN GO TO YOUR  
BOYFRIEND'S HOUSE.

SHE BETTER NOT COME ARGUING  
TO ME THAT MY USE OF THE  
TERM MAY WAS NOT PROHIBITIVE  
OF HER GOING TO HER BOYEN  
FROM'S HOUSE.

I DON'T THINK THAT IS A GOOD  
ANNAL GY.

>> WELL I SEE IT THAT WAY.

THERE IS AN AUTHORIZATION IN  
THE STATUTE TO DO SOMETHING.  
ALLSTATE CLEARLY ADMITS IT  
DID NOT DO IT.

AND SO THE QUESTION THEN  
BECOMES:

IS THEIR ANOTHER ALTERNATIVE  
WITHIN THE CONFINES OF THIS  
STATUTE, JUST LIKE  
SUBSECTION 2 SAYS, YOU MAY  
INCLUDE THESE EXCLUSIONS.

IT DOESN'T SAY YOU MAY  
INCLUDE OTHER EXCLUSIONS AND  
IN THE INSTANCES WHERE THE  
INSURANCE COMPANIES HAVE  
TRIED TO EXCLUDE.

>> THAT IS NOT THE SAME  
BECAUSE THE QUESTION IS:

IS IT THE UNDERLYING  
AGREEMENT THAT THIS IS WHAT  
I WANT TO PROVIDE THE  
SERVICE FOR?

HAS IT CHANGED WHEN THE SAME  
SERVICE IS INCURED BECAUSE

OF A MOTOR VEHICLE ACCIDENT?  
THAT IS WHAT IT BOILS DOWN  
TO.

IF YOU ASSUME TO FIX A  
BROKEN ARM, A BROKEN ARM IS  
A BROKEN ARM, WHETHER YOU  
FALL FROM A TREE OR IN A CAR  
WRECK, IF DOW THAT FOR X  
DOLLARS BUT THEN THE  
QUESTION IS DOES THE  
UNDERLYING CONTRACT REQUIRE  
YOU TREAT ME FOR THAT BROKEN  
ARM WHETHER IT IS A TREE OR  
AN AUTOMOBILE.

THAT IS UNDERLYING ONE.  
THAT IS WHERE YOU LACK AT  
THE CONTRACT.

BUT THEN THE NEXT STEP IS,  
DOES THIS STATUTE SOMEHOW  
ALTER THAT?

IT SEEMS TO ME THAT IS THE  
ONLY ANALYSIS YOU CAN GO  
SFLUING

>> WELL, THE STATUTE  
MANDATES CERTAIN BENEFITS.  
I THINK WE CAN AGREE ON  
THAT.

>> THAT IS RIGHT.

>> OKAY.

>> INT DOESN'T TELL US WHAT  
THE REASONABLE RATE IS  
NECESSARILY.

IT MAY BE DIFFERENT THING  
FORCE DIFFERENT THINGS.

>> I AGREE WITH THAT.

I DON'T DISAGREE WITH THAT.  
THAT IS NOT WHAT THIS IS.  
REASONABLE RATE QUESTIONS  
ARE FACT ISSUES.

THAT IS NOT WHAT THIS CASE  
IS.

>> WHILE YOU ARE ON THAT,  
YOU KNOW, AND GETTING TO,  
GIVE US YOUR PAY RAID OF  
HORRIBLES, IN OTHER WORDS,  
WHY DOES THE EVIL HERE THAT  
YOU ARE SAYING IF WE  
CONSTREW THE STATUTE IN A  
SRN WAY IN TERMS OF WHAT IS  
THE EVIL NOW THAT IS GOING  
ON THAT YOU ARE SEEKING TO  
PREVENT, OKAY, BY PREVAILING  
HERE.

WHAT -- DO YOU GIVE US THE

PARADE?

>> FROM A A CONSUMER  
STANDPOINT, ALL RIGHT, ONE,  
THE CONSUMERS DON'T KNOW  
THEY ARE INVOLVED IN A PPO.  
NOT IN A TRADITIONAL WAY.  
TWO, THIS COURT RECOGNIZED  
THAT MANAGED CARE, THERE IS  
DAMAGE OTHER THAN ECONOMIC  
AND THAT DAMAGE IS TO THE  
PATIENT POSITION-RELATIONSHIP.

>> THIS IS NOT -- REALLY,  
NOT AN HMO QUESTION.  
THIS IS, YOU HAVE AGREED TO  
CHARGE A RATE.

I AM SORRY TO INTERRUPT.

THIS IS NOT HMO.

>> HOSPITAL EMERGENCY ROOM  
IS NOT AN HMO.

>> THE REASON I AM SEEKING  
THIS OUT IS BECAUSE THIS  
REALLY IS COMING UNUSUALLY  
STRESSED UP AS CHEVROLET AND  
APPLE PIE AND WITH ALL OF  
THESE DEBATES OUT THERE  
ABOUT THE DELIVERY OF HEALTH  
CARE IN THE COUNTRY AN 40  
MILLION UNINSURED AND ALL OF  
THIS, YOU KNOW, KIND OF  
STUFF LIKE THIS, YOU KNOW,  
YOUR OPPONENT REALLY IS  
OBVIOUSLY PUT THE WHITE HAT  
ON IN ARGUING, YOU KNOW, IT  
HAS BEEN THERE WHILE HE HAS  
BEEN ARGUING.

>> OKAY.

>> I AM TRYING TO SEE  
WHETHER, YOU KNOW, TAKE THE  
WHITE HAT OFF OF HIM HERE.  
I AM HAVING A DIFFICULT TIME

--

>> LET ME DO IT WITHIN THE  
CONTEXT OF THE ENTIRE PIP  
SCHEME, ALL RIGHT.  
IF WE ARE GOING TO HAVE  
MANAGED CARE.  
WE ARE GOING TO BE ABLE TO  
GIVE THESE GREAT BENEFITS  
ONE WOULD THINK THAT WOULD  
BE SOMETHING HE WOULD PUT  
THE WHITE HAT ON AND GET IN  
FRONT OF THE TV CAMERA, GO  
ADVERTISE IT THROUGHOUT THE  
STATE.

THIS IS COMPLETELY DONE IN A SHROUD OF SEC CIRCUMSTANCE NOBODY KNOWS ABOUT IT UNTIL THEY GET TO ACCIDENT.

ONE.

THAT KIND OF RAISES QUESTIONS.

IF THIS IS SUCH A GOOD THING AND THERE ARE ALL THESE GREAT VIRTUES, WHY IS NOT ALLSTATE THROUGHOUT TELLING INSURERS THEY ARE GETTING MORE BENEFITS?

I WILL TELL YOU WHY.

ALL THEY SAID, IF YOU HAVE PIP.

IF YOU HAVE MED PAY, YOU CAN CALL THIS NUMBER.

YOU MAY BE ABLE TO SAVE MONEY.

THAT IS ALL THIS NOTICE SAYS.

>> BUT AREN'T THEY SAYING, IF YOU SHOW UP AT THE MAYO CLINIC, OKAY, OR WHATEVER, THAT IS WHERE YOU END UP GETTING YOUR EMERGENCY CARE, WE ARE GOING TO HAVE TO PAY, TOO, EVEN THOUGH WE DON'T HAVE ANY DIRECT OR INDIRECT RELATIONSHIP THERE, THEY ARE JUST SAYING THAT IF YOU HAPPEN TO GO TO THE ONE THAT WE ARE URGING TO YOU ON BECAUSE, YOU KNOW, WE ARE ALSO SUGGESTING TO THEM, THAT THERE IS SOMETHING IN IT FOR THEM, YOU KNOW, WITH ALL OF THE POTENTIAL CUSTOMERS.

>> ALLSTATE IS ONE TO PUT THIS INTO A DEBATE ABOUT VIRTUES AN NON-VIRTUE, THE BENEFITS OF MANAGED CARE AND MONEY.

I UNDERSTAND THAT IS THE WAY THEY WANT TO PORLY THAT ISSUE.

WE LOOKED AT IT DIFFERENTLY. WE HAVE SAID, YOU KNOW WHAT? ALL THIS IS GOOD TO CONSUMER, I WOULD THINK CONSUME WEIR LIKE TO KNOW, THE PERSON ON THE END OF THE

800 NUMBER IS REFERRING THEM TO ALLSTATE DOCTOR.

ALLSTATE DOESN'T WAVE THE RIGHT TO HAVE IMEs.

>> THAT IS NOT ISSUE IN THE CASE, THOUGH.

>> THAT IS PART OF THE ISSUE JUSTICE LEWIS BECAUSE WHAT WE DON'T KNOW, IT IS NOT JUST THIS HOSPITAL.

OKAY?

WE DON'T KNOW IF AN INSURE CALLS FOR PURPOSES OF REFERRAL TO ARE THOUGH PEEDIST WHETHER THEY ARE BEING SENT TO THE GUY WHO IS ROUTINELY BEING PAID BY ALLSTATE TO SAY ARE NOT HURT.

>> AREN'T WE LOOKING AT CHARGES BY X AND WANTING INSUREANCE COMPANY TO PAY IT.

I DIDN'T UNDERSTAND THIS TO BE LITIGATING JUST THE EVERALL, THE WHOLE PRACTICES WITH REGARD TO THIS.

YOU SEE IT THAT WAY?

>> I THINK THAT IS WHAT THE TRIAL COURT RULED.

I THINK THE TRIAL COURT RULED THERE WAS ONE OF TWO WAY, ONLY ONE WAY YOU COULD PAY BENEFITS REDUCED UNDER THE PIP STATUTE THAT WAS IF YOU COMPLY.

IF YOU DIDN'T COMPLY WITH SUBSECTION 10, CUE NOT PAY A REDUCED RATE.

WHAT ALLSTATE HAS SAID IS, YES WE CAN PAY A REDUCED RATE.

WHAT WE HAVE SAID IS, WAIT A MINUTE, WHO IS THE ONE, THEY WANT TO SAY INSURERS ARE GETING BENEFITS, THAT MAY BE TRUE, IF THE INSURED WAS ABLE TO EXHAUST ALL OF THE BENEFITS.

THAT MAY BE TRUE.

THEY MAY ACTUALLY GET MORE BENEFITS IF THEY CAN CONTINUE THE TREATMENT THROUGH THE PERIOD OF TIME

THAT THE BENEFITS GET EXHAUSTED THAT IS THE ONLY TIME I KNOW FOR SURE THAT THE INSURED WOULD DEFINITELY RECEIVE A BENEFIT BUT IF THEY, IF THE BENEFITS ARE NOT AVAILABLE TO THE INSURED BECAUSE OF IMEs AND THY CAN YOU CUT OFF, THE ONLY PEOPLE WHO ARE SAVING THE VAST MAJORITY OF MONEY IS ALLSTATE THEY ARE NOT PASSING THAT ALONG IN TERMS OF SAVINGS TO THE CONSUMER AN PREMIUM.

>> AS A PRACTICAL MATTER, IF YOU SAY ALLSTATE IS GOING TO HAVE TO PAY THE TWO SUM, THEY WILL HAVE TO PAY THOSE TWO SUM, CORRECT?

ARE THE INSURED THEN REQUIRED TO PAY 20% OF AN ADDITIONALAL 20% BASED ON THIS?

>> NO, YOUR HONOR.

THAT IS THE OTHER THING I WANTED TO POINT OUT. IN SITUATIONS WHERE THERE IS MEDICATION, MEDICAID, ARE STATUTORY PROHIBITIONS AGAINST BALANCED BILLING. THERE IS NO PROHIBITION AGAINST BALANCED BILLING IN THE CASE THEY WANT TO SAY THEY WILL SAVE MONEY, THERE IS NO GUARANTEE WHATSOEVER THAT THE DOCTOR IS NOT GOING TO BALANCE OR THE HOSPITAL IS NOT GOING TO BALANCE THESE PEOPLE.

THAT IS, IF YOU WANT IT IN A NUTSHELL WHAT THE MOST CRUCIAL THING IS, THAT IS THE MOST CRUCIAL PROBLEMS ABOUT THEIR POSITION.

>> ISN'T THAT AN ISSUE WHY THE CONTRACT IS GOING TO BE THE CRITICAL ISSUE?

AS TO WHETHER HOLY CROSS UNDERSTOOD WHAT IT WAS DOING, WHETHER PART OF THE BENEFIT WOULD BE THEN THAT THERE IS ISN'T BALANCED BILLING ALLOWED.

THAT IS WHAT IS MISSING  
BECAUSE WE DON'T HAVE  
CONTRACTS IN THE RECORD?  
>> WELL, THAT IS ONE OF THE  
THINGS.

THE QUESTION IS:

>> DON'T WE SAY THOSE WOULD  
BE ISSUED TO CONSIDER AS TO  
WHETHER THIS IS  
PROPROHIBITED, YOU KNOW,  
CONTRARY TO THE PIP STATE  
STATUTE OR NOT?

BUT TO SAY JUST, IT CAN'T  
EVEN BE EXAMINED IS WHAT I  
AM HAVING TROUBLE WITH.  
IT DOESN'T MATTER WHAT THE  
CONTRACTS SAY, IT DOESN'T  
MATTER IF THIS IS ONE OF  
GEORGE VAKA'S THINK CLIENTS  
YOU CONTRACTED WITH, IF IT  
COMES IN ANOTHER WAY, YOU  
WILL CHARGE THE FULL RATE.  
THERE IS CONTRACT  
INTERPRETATION QUESTION.  
I THINK IT IS FROM THIS  
POINT, I REALIZE I AM OVER  
MY TIME.

IF I CAN RESERVE A MINUTE  
INSTEAD OF THE FOUR I TRIED  
TO RESERVE FOR REYOU BUTAL.  
THE LEGISLATURE MADE VERY  
CLEAR WHAT THEY WERE  
AUTHORIZING AUTO INSURERS  
LIKE ALLSTATE TO DO.

THAT IS THEY WERE REQUIRING  
ALLSTATE TO GO INTO DIRECT  
NEGOTIATIONS WITH MY CLIENT,  
THE HOSPITAL, OR PHYSICIANS,  
OR CHIROPRACTOR, WHOEVER THE  
HEALTH CARE PROVIDERS ARE  
IDENTIFIED IN THE STATUTE,  
AN CREATE THEIR OWN NETWORKS  
IF THEY WANTED TO DO THIS.  
OKAY?

THAT IS EXACTLY WHAT THE  
STATUTE SAYS, THERE IS NO  
DOUBT ABOUT THAT.

AND THEY HAVE ELECTED NOT DO  
THAT.

AN SO THEN THE QUESTION IS:  
AND THIS IS AGAIN POINTED  
OUT IN THE AMICUS BRIEF,  
PEOPLE LIKE BEECH STREET ARE  
NOT REGULATED.

THEY ARE NOT THIRD-PARTY ADMINISTRATORS.

THEY ARE NOT TYPICAL PPOs.

OKAY IN THEY ARE NOT REGULATED PERIOD.

THAT IS WHY WE HAVE SAID, YOU KNOW, YOU CAN HAVE THIS DEBATE ON WHAT IS BETTER OR WHAT IS NOT, BUT THAT DEBATE IS BEST LEFT WHERE THEY CAN EXAMINE ALL THOSE THINGS, WE PRESUME THE LEGISLATURE DID THAT, NOT ONCE, NOT TWICE, BUT THREE TIMES.

>> I HAVE, AND I KNOW YOU WEIGH ALSO, ABOUT ARE YOU SAYING AGAIN, IF THEY ENTER INTO THE CONTRACT DIRECTLY WITH HOLY CROSS BUT WITHOUT THE OTHER PARTS OF THE STATUTE, THAT IS WITHOUT LETTING INSURED KNOW THAT THAT STILL IS PERMISSIBLE OR NOT PERMISSIBLE?

>> IF THEY ENTER INTO DIRECTLY WITH HOLY CROSS, THE DEPARTMENT OF INSURANCE UNDER THE STATUTE HAS THE ABILITY TO LOOK AT CONTRACTS.

UNDER THE CONTRACTS THAT EXISTS WITH BEECH STREET THEY ARE NOT UNDER THE JURISDICTION OF THE DEPARTMENT OF INSURANCE, THEY ARE NOT INSURANCE COMPANIES.

THEY HAVE NOT DIRECT LIEN TERED INTO ANYTHING WITH HEALTH PROVIDERS.

>> YES, THEY COULD DO THAT IN THE SAME COULD OCCUR FOR INSURED WHICH IS FIND THEMSELVES IN A MANAGED CARE NETWORK THEY DIDN'T KNOW ABOUT IT.

>> BUT THERE ARE PROTECTIONS IN LIVE IN THE HEALTH INSURANCE AND WORKMAN COMPENSATION FIELD, THAT IS WHAT WE SAID.

WHEN THE LEGISLATURE HAS WANTED TO AUTHORIZE THIS, THEY HAVE PUT IN PLACE

WHATEVER CHECKS AN BALANCE  
THESE LEGISLATURE SEEMS FIT  
TO ALLOW THESE THINGS TO  
OCCUR.

THEY DIDN'T DO THAT IN THIS  
SITUATION.

WHAT THEY SAID IS WE'LL HAVE  
THIS CHECK AN BALANCE, YOU  
WILL HAVE CONTRACT DIRECTLY,  
THE DEPARTMENT OF INSURANCE  
WOULD HAVE THE ABILITY TO  
REVIEW THOSE CONTRACTS.

EITHER THE DEPARTMENT OF  
PROFESSIONAL REGULATION IN  
TERMS OF DIRECT CONTRACTS  
WITH THE PHYSICIANS OR THE  
HEALTH CARE PROVIDER WAS  
ALSO HAVE THE ABILITY TO DO  
THAT, WE DON'T HAVE THAT  
PROTECTION IN THE CASE.

THERE IS NO PROTECTION FOR  
THE CONSUMER THAT WAY.

THANK YOU.

>> THANK YOU.

>> MR. GOD ZY

>> THANK YOU, YOUR HONOR.

>> WOULD YOU PICK UP WHERE  
YOUR OPPONENT HAS LEFT OFF?

>> I WILL ADDRESS THAT IF KI  
START, PERHAPS, TO ANSWER  
YOUR QUESTION.

THE HOLY CROSS CONTRACT  
AGREE NO BALANCED BILLING.  
IF THE CONTRACT DOESN'T  
APPLY, THE INSURED PAYS  
MORE.

THE ANSWER TO YOUR QUESTION,  
JUSTICE PARIENTE, ON THE  
RECORD BEFORE THE COURT, THE  
LOWER COURTS, HOLY CROSS  
FOUND THAT INSURERS HAD  
GREATER COVERAGE AN PAID  
LESS AN IF HOLY CROSS WIN,  
THEY HAVE LESS COVERAGE AND  
PAY MORE.

THAT IS UNDISPUTED FACT.

>> WHAT ABOUT THE ISSUE THAT  
THE ORIGINAL INSURERS WERE  
RESPONSIBLE FOR MORE THAN  
20% OF THE REDUCED AMOUNT?

>> NOT ON THE RECORD.

THE NEXT QUESTION.

I DON'T WEAR WHITE HAT.

I DO REPRESENT CHEVY AND

CADILLAC AN MY MOTHER, BUT  
LET ME SAY WHAT THIS CASE  
NOT ABOUT.

IT IS NOT ABOUT MANAGED  
CARE.

IT IS ABOUT FREEDOM OF  
CHOICE.

THE INSUREERS HAVE BEEN  
CHOOSING TO GO ANYWHERE.

>> WELL, THE WORKER'S  
COMPENSATION AND THE  
REGULATION OF THE DEPARTMENT  
OF INSURANCE PROTECTION OF  
FLORIDA CITIZENS.

>> AND THAT THAT REGULATORY  
SCHEME IS IN PLACE BUT HERE  
THIS IS ALL OUTSIDE.

>> I AM GLAD HE DID.

I DIDN'T MEAN TO PUT YOU  
OFF.

I WANTED TO ANSWER THE OTHER  
TWO QUESTIONS FIRST.

>> BEFORE MY CLIENT WENT  
DOWN THIS PATH.

BEFORE THE OTHER INSURANCE  
COMPANIES WENT DOWN THIS  
PATH.

WHO DID THEY CHECK WITH?  
THEY CHECKED WITH THE OFFICE  
OF INSURANCE REG LAYS.

THEY SAID HERE IS WHAT WE  
WANT TO DO?

IS THIS A PROBLEM?

CAN WE DO IT?

FINALLY, THE INSURANCE BOTH  
IN TESTIMONY AND LITIGATION  
AN AT THE TIME SAID NO  
PROBLEM.

>> THAT IS IN OUR RECORD?

>> YES, THAT IS IN YOUR  
RECORD.

IT IS IN THIS RECORD.

IT IS IN YOUR RECORD NOT  
ONCE BUT TWICE FOR BOTH  
CASES.

>> I AM CONCERNED ABOUT THE  
ADMISSIBILITY OF THE  
DEPOSITION IN ANOTHER CASE  
ON THE, WERE YOU USING IT AS  
STATUTORY CONSTRUCTION, I  
THINK THAT IS A BIT OF A  
STRETCH.

>> ADP IS PART OF THE  
NETWORK IS RELATED TO THIS.

NOW I WILL START TO THE QUESTION THAT YOU STARTED WITH AND REPEATED SEVERAL TIMES BECAUSE I SEARCH ORAL ARGUMENT FORCE WORDS OF COMMON GROUND, OBVIOUSLY, WE ARE TRYING TO GET THE PROPER RESULTS HERE.

US WHAT THE COMMON GROUND? THE COMMON GROUND HERE IS SIMPLY A LITTLE BIT OF THE GLASS HALF FULL OR IS THE GLASS HALF EMPTY?

CAN I DO WHAT ALLSTATE DID? OR HAS THE LEGISLATURE PREEMED THE FIELD AND SAID, YOU MAY NOT DO IT?

HENCE ANALOGY.

THERE IS CURFEW.

I AGREE WITH YOU.

YOU CAN'T VIOLATE CURFEW.

CAN'T DO THINGS WITHOUT YOUR PARENT'S CONSENT BECAUSE YOU ARE UNDERAGE.

THE LEGISLATURE HAS NOT, AS CONFIRMED BY THE DEPARTMENT OF INSURANCE.

IT HAD NOT SAID YOU MAY NOT DO THE FOLLOWING.

UNLESS YOU DO XY Z.

>> BUT IS IT TRUE, THERE WAS AN EARLIER VERSION OF THE BILL?

>> YES, THE EARLIER VERSION WAS AMENDED TO EXPAND CHOICES AN OPPORTUNITIES.

>> THE ONE THAT NEVER PASSED?

>> OH, THAT IS IMPROPER LEGISLATIVE HISTORY.

WHO KNOWS WHY?

>> JUST TRYING TO GIVES CONTEXT OF WHAT WAS GOING ON HERE.

I AM STILL SOMEWHAT, I THINK THE HARDEST HURDLE FOR ME, FOR YOUR SITUATION IS THAT THEY DON'T USE THE WORD DIRECT AND INDIRECT.

>> THAT IS PRECISELY IT.

THE LEGISLATURE KNOWS HOW TO USE THE WORD DIRECT OR INDIRECT IF E WANTED IT WOULD HAVE START OFF WITH

PROHIB BIG, THE IMPLICIT  
POINT IN YOUR FIRST QUESTION  
AND MR. VAKA AND MYSELF, THE  
LEGISLATURE DIDN'T DO THAT.  
THE LEGISLATURE DIDN'T DO  
THAT.

>> THE FIRST SENTENCE IS  
MEANINGLESS.

>> NO, IT IS NOT  
MEANINGLESS.

>> WHY ISN'T IT MEANINGLESS?

>> WE AGREE WITH THE READING  
OF IT.

AIM RUNNING OUT OF TIME.

>> ANSWER THE QUESTION,  
PLEASE.

>> THEY MAY CONTRACT.  
IT CLARIFIES.

THERE WAS A DEBATE BEFORE  
ABOUT THE MEANING OF THE  
AMENDMENT.

IS A COMMENTED EARLIER.

IT DOESN'T SAY YOU MAY ONLY  
DO IT DIRECTLY AND ADMIT OR  
ASK, ASK WE HAVE DIRECT  
CONTRACT.

WE HAVE A DIRECT CONTRACT.

NO, WE HAD A CONTRACT  
THROUGH BEECH STREET.

THAT WAS OURS.

WE OUTLINED THAT FROM DAY  
ONE.

>> WE ARE NOT HEADED LIKE  
TALKING ABOUT STEERING YOUR  
INSURERS TO THE CERTAIN  
REPAIR SHOP.

THAT IS WHERE YOU GOT TO GO.

BECAUSE IT GIVE MEAS  
DISCOUNT.

>> IT IS FREEDOM OF CHOICE.

YOU WOULD AGREE THAT WOULD  
BE INVALID?

>> I NEVER LOOKED AT THAT.

I WOULD BE SWALLOWING HARD I  
SUSPECT.

I NEVER LOOKED THAT  
QUESTION.

>> HOW CAN WE BE CERTAIN OF  
THAT ASSURANCE ON THE  
RECORD?

>> BECAUSE THE RECORD BEFORE  
THE COURT IS THAT COMPLETE  
FREEDOM OF CHOICE THEY CAN  
GO WHEREVER THEY WANT IF

THEY HAPPEN TO USE SOMEONE  
IN THE BEECH STREET PROVIDER  
NETWORK.

>> RENEWAL NOTICE THAT YOU  
SAY INDICATES THAT  
INFORMATION?

>> YES.

> AREN'T YOU STEERING THEM  
TO THESE PEOPLE BY TELLING  
THEM, LOOK, CALL THIS  
NUMBER, YOU CAN GET POSSIBLY  
A DISCOUNT?

>> THAT IS UP TO PATIENT.  
THE PATIENT CAN USE THE  
REGULAR DOCTOR.

>> YOU STARTED OFF YOUR  
ARGUMENT ABOUT HOSPITAL  
GETTING THIS GREAT BENEFIT  
61.6 MILLION ALLSTATE  
CUSTOMERS.

>> ACCESS?

>> OR ACCESS TO THEM.  
IF THEY ARE NOT BEING  
DIRECTED HOW THEY ARE THEY  
GETTING BENEFIT?

>> THAT IS CONSIDERATION.  
YOU ARE ASKING NOW IN  
SOMEWHAT -- IS THIS ARTICLE  
CONTRACT CASE, NOT A  
STATUTORY CASE.

IF YOU AGREE WITH OUR  
READING IN THE HOLY CROSS  
READING OF THIS STATUTE, THE  
STATUTE DOES NOT BAR THIS,  
THEN IT IS CONTRACT CASE.  
YOU ARE SAYING WAS THEIR  
SUFFICIENT CONSIDERATION  
BECAUSE IF YOU ARE NOT  
STEER, IF YOU ARE NOT  
GUARANTEEING, WE ARE NOT GAR  
REASON TEEING THEY GO THERE,  
ALLSTATE HAS SAID, THE  
RECORD REFLECTS IS, WE HAVE  
INFORMED THE INSURER, THE IN  
SHIRES WILL MAKE CHOICE.  
OKAY.

YOU AGREE ON THE ANALOGY  
WHICH IS THAT JUST BECAUSE,  
AGAIN, YOU WITH ALLSTATE  
HAVE A REDUCED RATE FOR YOUR  
HOURLY RATE.

THAT DOESN'T BECOME THEN THE  
REASONABLE RATE FOR WHAT YOU  
MIGHT CHARGE OUR QLINLTS?

>> SOMEONE WITH WHOM I HAVE  
NO CONTRACT WITH?

>> RIGHT.

> IT MAY BE EVIDENCE OF IT.

I DON'T, I DON'T, I THINK, I  
THINK, JUST IN LAWYER  
CONTEXT, LET'S SAY I HAVE A  
STANDARD RATE.

LET'S SAY I HAVE CERTAIN  
WERE FERED QLIBTS.

CLIENTS, NOT ATYPICAL, THERE  
IS A NEW CLIENT VERSUS A  
FOUR-YEAR RELATIONSHIP WITH.  
I WOULD HAVE SOME CONCERN, I  
THINK, IF, YOU KNOW, MY RATE  
WAS 300% DIFFERENCE BETWEEN  
THE STANDARD RATE.

>> SO THAT WOULD BE  
REASONABLE AND CUSTOMARY.  
BUT HERE AGAIN, YOU WANT TO  
MAKE SURE, IF HOLY CROSS,  
VIS-A-VIS BEECH STREET NEVER  
INTENDED FOR ALLSTATE  
INSURERS TO GET ADVANTAGE OF  
A DISCOUNTED RATE WHICH IS  
BELOW REASONABLE AND  
CUSTOMARY.

>> IT IS CONTRACT QUESTION.

>> OH I.

THAT IS STILL OPEN.

>> NOT A STATUTORY QUESTION.

THAT IS STILL AN OPEN  
QUESTION ON THE RECORD.

THE 4th DISTRICT RULED IT.  
FROM MY STANDPOINT, I AM  
TIED TO THE RECORD.

THE 4th DISTRICT HAS SAID,  
THAT IS AN OPEN QUESTION TO  
BE DECIDED ON REMAN TO THE  
TRIAL COURT FOR THE COUNTY  
COURT AND RERESPECT THAT.  
WE DIDN'T APPEAL THAT.

DOES THE STATUTE PROHIBIT  
THIS RIGHT OUT OF THE BOX?  
THAT WAS THE WAY IT WAS  
POSTURED?

>> IF THE COURT HAS A  
QUESTION, THIS IS MY FIRST  
TIME IN FRONT OF THIS  
SUPREME COURT.

>> YOU HAVE COME IN AT AN  
ACTIVE TIME.

>> IT IS A VERY NICE COURT.  
THANK YOU VERY MUCH.

>> I DO HAVE ONE OTHER QUESTION.

>> OH, YES.

>> SINCE THIS IS THE PIP STATUTE THAT WE ARE TALKING ABOUT, THE PIP STATUTE REALLY HAS CHANGED HOW THESE THINGS WERE DEALT WITH BEFORE 1971, HOW SHOULD WE CONSTREW THIS?

SHOULDN'T YOU HAVE TO HAVE OR SHOULD YOU HAVE TO HAVE SOME EXPRESS OR GRANT OF AUTHORITY BY THE LEGISLATURE TO ACT IN THE AREA AS OPPOSED TO BEG ABLE TO ACT BECAUSE THEY DID NOT SAY YOU COULDN'T?

>> NO.

THIS HE IS GOES BACK TO THE CENTRAL QUESTION THAT CHIEF JUSTICE CLEARLY ASKED OUT OF THE BOX.

I CAN NOT FIND, PRANKLY, LOOKING UNDER ANY OTHER CASE IN THIS COURT OR ANY OTHER COURT, NOW, I MUST CONFESS, THERE IS A LOT OF LAW.

A PROHIB BIG, YOU ARE TALKING ABOUT A PREEMPTION PROIN BITION, THE UNITED STATES HAS SPOKEN OUT BUT THEY ARE RARE ANIMALS OF THE LEGISLATIVE BODY.

THAT IS WHAT YOU ARE REALLY TALKING ABOUT.

MR. VAKA'S ARGUMENT WANTS TO TAKE WHAT HE SAYS IS AN AUTHORIZATION AN FLIP IT AROUND TO BE IF NOT AUTHORIZED, IT IS NEGATED AN PROBIB ITED.

WHEN I WAS IN LAW SCHOOL MANY YEARS, THERE IS A FAMOUS TEACHER THAT USED TO SAY, WHEN YOU ARE ADVISING CLIENTS WHEN THE COURTS ARE ADVISING, THEY WANT TO GET PREDICTIVE NATURE TO THE LAW.

WHAT BUSINESS WOULD LOOK AT THAT STATUTE THAT SAYS YOU MAY DO, THIS MAY DO THAT. YOU MAY DO THIS, YOU MAY DO

X, YOU MAY DO Y, READ NIGHT,  
YOU MAY NOT DO ANYTHING  
ELSE.

THAT IS NOT WHAT THE  
LEGISLATURE DID.

THEY COULD HAVE DONE THAT.  
MAYBE THERE COULD BE  
CONSTITUTIONAL CHALLENGE, I  
DON'T KNOW.

>> PIP IS GOING TO GO AWAY?

>> THANK YOU VERY MUCH.

THANK YOU VERY MUCH.

PLEASURE.

>> MR. VAK ACTION WILL GIVE  
YOU A FEW MINUTES HERE.

YOU HAVE EXHAUSTED ME,  
ACTUALLY.

>> WE HAVE DONE OUR JOB, I  
TAKE IT.

>> I APPRECIATE THE  
OPPORTUNITY.

MISS WATKINS REFERRED KNOW  
AN APEN DIGS OF'S BRIEF THAT  
SHE FILED WITH THE COURT.

IN THAT APPENDIX IS AN  
ATTACHED AN ORDER IN THE  
ACTION THAT MR. GODFREY WAS  
REFERRING TO ABOUT ADP.  
WHERE ADP FILED JUDGMENT  
ACTION IN FRONT OF THE  
DEPARTMENT OF INSURANCE  
ASKING WHAT THEY WERE DOING  
WAS OKAY.

THAT WAS ATTACHED AS THE  
ORDER DISMISSING THAT SAYING  
IT WAS INAPPROPRIATE FOR D  
TOY MAKE ANY COMMENT ABOUT  
IT.

>> YEAH, THEN YOU WOULD SAY  
AS FAR AS THE KINDS OF  
EVIDENCE THERE THEIR ARE  
ATTEMPTING TO PUT IN ABOUT  
THE, THESE ARE NOT REALLY  
THE KIND OF ADMINISTRATIVE  
DETERMINATIONS THAT WE FIND  
TO BE PERSUASIVE?

>> ALSO, WE POINTED THIS OUT  
IN OUR BRIEFS.

WOULD YOU ONLY DEFER TO THAT  
IF THERE WAS SOME AC BUY GU  
DY IN THE STATUTE.

I DON'T THINK THERE IS ANY  
AT ALL.

WE ARGUED THE STATUTE IS

CHRIS CALL CLEAR.

WE ARE THROWING IT IN BOTH DIRECTIONS ARE ON WHAT IT IS.

AND, AND I APPRECIATE APPRECIATE MR. GOD GRYS POSITION BUT CAN'T USE THE AUTHORIZATION MADE AND THEN SOMEHOW ARGUE PROHIB BIG, BUT I BELIEVE IT WAS IN THE LAST ARGUMENT JUSTICE CANTERO HAD ASKED MAYBE IT WAS THE ONE BEFORE THAT, WHAT ABOUT WHEN WE CONSTREW THE WORDS IN THE SAME STATUTE, WE HAVE TO CONTINUE TO CONSTREW THEM ON THE SAME WAY.

THE WORDS ON THE STATUTE PARTICULARLY IN SUBSECTION 2 WHICH SAYS INSURERS MAY INCLUDE CERTAIN EXCLUSIONS IN THEIR POLICIES, HAS BEEN CONSTRUED, IT HAS BEEN CONSTRUED NOT TO AUTHORIZE EXCLUSIONS THAT ARE HOT THE ONES THAT WERE LISTED.

ALL WE ARE DOING IS WE ARE SAYING, MAY MEAN THESE SAME THING WITHIN THE CONFINES OF THIS PART OF THE STATUTE AS IT DOES IN SUBSECTION 2, THE COLONIAL PENN OUT OF THE 49th DISTRICT IN WITHIN THAT PROPOSITION WITHIN THE PERIMETERS OF THE PIP STATUTE.

WE BLEERX WE THINK YOU HIT THE NAIL ON YOUR HEAD WITH YOUR QUESTION MR. GODFREY ABOUT AUTHORIZATION. THIS IS A PURE CREATURE OF STATUTE.

THE INSURANCE IS DIFFERENT FROM EAR OWN TYPE OF CONTRACT IN WILT IS THE MOST HEAVILY REGULATED AREA OF CONTRACTS THAT I KNOW OF WITH EXPENSE OF SECURITYS, ALL RIGHT?

THIS STATE HAS EVERY RIGHT, THE U.S. SUPREME COURT HAN THE UNITED STATES CONGRESS HAVE GIVEN THAT RIGHT TO

STATES TO REGULATE THESE  
TYPE OF CONTRACTS.

SO IT IS NOT A PURE FREEDOM  
OF CONTRACT ANALYSIS AND AS  
LONG AS THE STATE HAS THE  
ABILITY TO REGULATE IT IT  
NEVER WILL BE.

THE ISSUE IN THE CASE, AT  
LEAST, AS WE SEE IT, COULD  
THEY HAVE DONE THIS BEFORE  
THE STATUTE WAS ENACTED?  
WE SAY NO.

WHY WOULD THE LEGISLATURE GO  
THROUGH, IF THIS WAS  
AUTHORIZED ALL ALONG, WHAT  
WAS THE PURPOSE OF THE  
STATUTE?

WHY WOULD THEY DO IT IN '91  
AND WHY CHANGE IT IN '92?

>> I THINK THE PURPOSE OF  
THE STATUTE OVERALL WAS TO  
ALLOW THERE TO BE, AS I  
THOUGHT IT SAID EARLIER, FOR  
THERE TO BE 100% PAYMENT OF  
PIP OVER AN ABOVE THE 10,000  
DOLLARS.

THAT IS OVERALL PURPOSE OF  
THAT STATUTE.

>> IT INSURERS FOR AS LONG  
CASE REMEMBER.

I KNOW THERE WERE DECISIONS  
OUT OF THIS COURT.

I WANT TO SAY SMITH VERSUS  
USAA WHICH DEALT WITH  
BENEFITS.

INSURANCE COMPANY CAN  
PROVIDE BENEFITS BROADER  
THAN THE MINIMUM REQUIRED BY  
YOU A STATUTE SO TO SUGGEST  
IN SOME FASHION THEY WERE  
NEEDING CLARIFICATION IN  
ORDER TO GIVE THIS BENEFIT  
TO INSURED THAT I HAVE A  
HARD TIME BELIEVING THAT WAS  
THE PURPOSE.

IF AS THEY SAY THEY CAN  
OPERATE THIS PART OF THE  
STATUTE THEN, TO ME, THERE  
IS ONLY ONE CONCLUSION, THAT  
MEANS THE LEGISLATURE PASSED  
ONCE, BUT TWICE, THERE WAS  
NO LEGISLATION, THERE WAS NO  
REASON TO DO SO WHATSOEVER.  
THE PRESUMPTION IS AGAINST

THAT.

SO WE THAT PRESUMPTION, YOU KNOW, AGAIN, I MOW WE COME BACK TO, WELL, ISN'T THIS A MATTER OF CONTRACT?

NO, IT IS NOT.

I THINK YOU HAVE TO LOOK AT THIS, WHY CAN THE LEGISLATURE DO THIS?

I THINK THEY DID IT FOR A VARIETY OF REASONS, GOOD PUBLIC POLICY REASONS.

AND WHICH IS THEIR DOMAIN.

THAT IS THEIR THING.

THEY MAKE UP THE LAW, WE AS LAWYERS TRY TO INTERPRET THEM.

YOU TRY TO APPLY THEM, BUT THE QUESTIONS THAT ALLSTATE WANTS ANSWERED ISN'T THIS A GOOD THING?

ISN'T THIS GREAT FOR CONSUMER IN THE PROPER PLACE FOR THOSE ARGUMENTS TO HAVE BEEN HEARD AND WERE THEY HURT US IN THE CAPITOL BUILDING NOT HERE.

>> WHEN WILLING'S CONFLUING DECISIONS OF SUCH MAGNITUDE IS THEIR LEGISLATION BEING PROPOSED BY SOMEBODY TO TRY TO TAKE THIS CLEAR STATUTE MAYBE MAKE IT MORE CLEAR.

>> I AM UNAWARE OF ANY TO ALLOW THE SUNSET FOR US TO REVERT.

>> NOT DOING ANYTHING.

>> THANK YOU SO MUCH.

>> YOU HAVE EXHAUSTED IT. IT IS WONDERFUL WAY TO FINISH OUR WEEK WITH WORTHY LAWYERING WE THANK YOU FOR THE QUALITY OF THE ARGUMENTS AND THE INFORMATION PRESENTED AND YOU DO US ALL PROUD BY BEING SUCH GOOD LAWYER, WE THANK YOU FOR THAT.

>> WE'LL STAND IN RECESS.

>> THANK YOU VERY MUCH.

>> PLEASE RISE.....