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Kathleen Miller v. Scottsdale Insurance Co.

MARSHAL: HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. THE COURT WILL CALL THE NEXT CASE FOR THIS MORNING, WHICH IS MILLER VERSUS SCOTSDALE INSURANCE COMPANY. PARTIES READY?

YES, YOUR HONOR. YES. MAY IT PLEASE THE COURT. MY NAME IS CHARLES SCHRO, AND I AM REPRESENTING THE PELL APARTMENTS THE MILLERS. THIS CASE -- THE PLAINTIFFS, THE MILLERS. THIS CASE IS IN FRONT OF THE COURT A CERTIFIED QUESTION FROM THE PRESIDENT LEFT CIRCUIT WHETHER 627.848 FLORIDA STATUTES CONTEMPLATES A SINGLE DATE CANCELLATION FOR THE INSURANCE CONTRACT AS A WHOLE OR WHETHER THE CONTRACT CAN BE CANCELLED AS TO DIFFERENT INSURED AT DIFFERENT TIMES, DEPENDING ON A STATUTORILY REQUIRED NOTICE GIVEN TO THAT INSURED. NOW, THE MILLERS SUBMIT THAT THE STATUTE CLEARLY CONTEMPLATES A SINGLE DATE OF CANCELLATION. IN FACT FIRST IT IS IN THE PLAIN LANGUAGE OF THE STATUTE ITSELF. IF YOU LOOK AT THE MAIN BODY OF THE STATUTE, IT TALKS ABOUT IN THE FINAL STATEMENT, THE INSURANCE CONTRACTS SHALL NOT BE CANCELLED, UNLESS CANCELLATION IS IN ACCORDANCE WITH THE FOLLOWING PROVISIONS. THE INSURANCE CONTRACT. ONE OF THE FOLLOWING PROVISIONS IS SUBSECTION D. IT IS THE ONE THAT DEALS WITH THIRD PARTY NOTICES, WHICH IS WHAT IS INVOLVED IN THIS CASE. AND THAT SAYS THAT ALL STATUTORY REGULATORY AND CONTRACTUAL RESTRICTIONS PROVIDING THAT EITHER THE INSURER OR THE INSURED HAS -- THE SHERRER OR INSURED HAS TO GIVE NOTICE TO SOME THIRD PARTY, INCLUDING GOVERNMENT AGENTS, INSURANCE CARRIERS, MORTGAGEE OR PERSONS DESIGNATED TO RECEIVE NOTICE SHALL APPLY. IT, THEN, GOES ON TO SAY THAT THE INSURANCE COMPANY HAS TO GIVE THE NOTICE UNDER THOSE CIRCUMSTANCES, ON BEHALF OF EITHER ITSELF OR THE INSURED, DEPENDING ON WHO WOULD BE REQUIRED BY THE CONTRACT, AND IT SHALL GIVE THAT NOTICE. FINALLY, IT SAYS, AND WHEN THERE IS A THIRD PARTY NOTICE, IT SHALL DETERMINE AND CALCULATE THE EFFECTIVE DATE OF CANCELLATION FROM THE DAY IT RECEIVES THE COPY OF THE NOTICE OF CANCELLATION FROM THE PREMIUM FINANCE COMPANY. IN OTHER WORDS, WHEN THERE IS A THIRD PARTY NOTICE REQUIREMENT, THE INSURANCE COMPANY HAS TO COMPLY WITH IT, HAS TO SATISFY IT BEFORE THE POLICY IS CANCELLED, AND BECAUSE IT CAN'T COMPLY WITH IT UNTIL IT FINDS OUT FROM THE PREMIUM FINANCE COMPANY THAT THE POLICY IS TO BE CANCELLED, YOU SET A NEW DATE. HERE IT IS UNDISPUTED THAT THE INSURANCE COMPANY GOT NOTICE FROM THE PREMIUM FINANCE COMPANY ON JANUARY 9.

CLEARLY THIS STATUTE IS FOR THE PROTECTION OF THOSE ENTITIES THAT HAVE AN INSURABLE INTEREST AT THE TIME THAT THE CONTRACT IS CANCELLED. CORRECT? I MEAN, GIVEN NOTICE.

YEAH, IN THIS CASE.

OKAY, AND THAT, IN THIS CASE, THE, THE STATUTE IS FOR THE BENEFIT OF THE PREMIUM OR FOR THE MORTGAGEE. -- MORTGAGEE.

YES AND THE INSURED.

THE INSURED CANCELLED THE CONTRACT.

ACTUALLY THE PREMIUM FINANCE COMPANY AS ITS AGENT , CANCELLED THE CONTRACT. THE INSURED HAS IT , AND IF THE COURT WILL REC ALL, THERE IS AL SO A THIRD E NTITY HERE THAT WAS ENTITLED T O NOTICE , ACCOMPANY CALLED SAIL A WAY PRODUCTIONS THAT HAD LIABILITY INSURANCE AS A N INSURED BY ENDORSEM ENT. SO --

ARE THEY MAKING A C L AIM HERE?

THE ONLY PERSON M AKING A CLAIM HERE IS THE INSURED.

RIGHT, BU T IS THE INSURED MAKING A CLAIM, I MEAN, H OW DOES THAT EN TITY , IF - -

WELL, IT IS THE S AME POSITION AS THE MORTGAGE GEE . IN OTHER WORDS SCOTTSDALE HAS CONCEDED .

BUT WHERE DO THEY FIT IN?

NEITHER THE MORTGAGEE NOR THE INSURED IS MAKING A CLAIM. WHAT THE IN SURED IS SAYING IS BECAUSE THE STATUTE SAYS THAT THE POLICY WASN 'T CANCELED UNTIL AT LE AST JANUARY 19 AND THE ACCI DENT OCCURRED ON JAN UARY 13 , THAT IT HAS CO VERAGE . IN OTHER WORDS, IT IS, YOU KNOW, SOMEONE SLIED ON THE PREMISE, YOU KN OWS , THE INSURED'S PREMISE.

YOUR OONENT 'S BRIEF ARGUES THAT THERE , REALLY THEY AG REE WITH THE STATUTE , I THINK , BUT THEY ARE SAYING THERE ARE TWO DIFFERENT POLICIES HERE, THE LIABILITY POLICY AND THERE IS T HE WHATEVER THE OTHE R --

THEY SAY JUST A POLICY FOR THE BENEFIT OF THE MORTGAGEE AND THE PROPERTY POLICY.

THE PROP ERTY POLICY.

LET ME INTERJECT THAT BECAUSE FIRST THING IS VERY INTERESTING, BECAUSE IT IS TELLING AS TO WHAT THE STATUTE SAYS. THEY TAKE THIS POSI TION FOR THE VERY FIRST TIM E IN THIS COURT. THE REASON THE LEFT CIRCUIT CERTIFIED THE QU ESTION THE WAY IT DID IS BECAUSE THROUGHOUT THE FEDERAL COU RT PROCEEDINGS, THEY TOOK THE POSITION THAT THEY WERE PIECEMEAL CANCELLATION ANSWER WE TOOK IT WAS A SINGLE DATE CANCELLA TION. THE FIRST TIME THEY RAISED THIS NEW AR GUMENT IS IN T HIS COURT WHICH IS ANOTHER REASON WHY OUR RE PLY BR IEF IS IMPORTANT , SPECIFICALLY BECAUSE WE HAD THE ONLY OORTUNITY TO ADDRESS THIS BUT LET ME SAY THAT MOST THEORIES ARE CREATED AFTER THE FACT TO WORK BACKWARD TO THE RESULT AND THERE ARE REALLY SERIOUS HO LES IN THAT THEORY. THE FIRST IS IT SI MPLY IGNORES THE RELEVANT STATUTORY LANGUAGE. THE CANCELLATION PROVISION THAT THEY SAY ALIES ONLY TO PROPERTY COV ERAGE AND ONLY TO NORTHSIDE, THIS IS WHAT IT TH RILL SAYS T SAYS , IF WE, THAT IS SCOTTSDALE , CANCEL THIS POLICY , WE WILL GIVE WRITTEN NOTICE TO THE MORTGAGE HO LDER AT LEAST TEN DAYS BEFORE THE EFFE CTIVE DATE CANCELLATION , IF WE CANCEL FOR YOUR NONPAYMENT OF PREMIUM OR 30 DAYS BEFORE THE EFFECTIVE DATE OF CANCELLATION, IF WE CANCEL FOR ANY OTHER REASON.

WHO CANCEL ED THE POLICY ?

IN THIS CASE , THE PREMIUM FINANCE COMPANY AND THEN SCOTTSDALE.

AND THEN SCOTTSDALE?

YES. SCOTTSDALE HAS CONC EDED IN ITS BRI EF THAT IT TREATED IT AS A CANCELLATION FOR NONPAYMENT OF PREMIUM. IN OTHER WORDS BY SCOTTSDALE. WHEN IT RECEIVED THE PREMIUM FINANCE COMPANY'S NOTICE.

BUT WAS IT CANCELLED BECAUSE OF A NONPAYMENT OF PREMIUM, OR WAS IT NO LONGER IN EFFECT BECAUSE IT WAS CANCELLED BY THE INSURED?

WELL, IT WAS CANCELLED, YOU KNOW, IT WAS CANCELLED BY THE PREMIUM FINANCE COMPANY, UNDER ITS POWER OF ATTORNEY, BUT IT WAS CANCELLED FOR FAILURE, ALLEGED FAILURE TO PAY A PREMIUM.

I GUESS MY FUNDAMENTAL QUESTION IS, THIS PROVISION THAT YOU JUST READ FROM IN THE POLICY, SPEAKS AS TO THE INSURANCE COMPANY AFFIRMATIVELY CANCELING THE POLICY BECAUSE OF NONPAYMENT OF PREMIUM OR SOME OTHER EVENT AND IN A 30-DAY DIFFERENTIAL.

RATE.

BUT IN THIS CASE WE HAVE THE INSURED CANCELING THE POLICY.

I UNDERSTAND AND WHAT I AM SAYING TO YOU IS YOU ARE ABSOLUTELY CORRECT BUT SCOTTSDALE HAS CONCEDED IN ITS BRIEF THAT IT TREATED THIS AS A CONSOLIDATION LIE SCOTTSDALE FOR NONPAYMENT OF PREMIUM AND GAVE THE NOTICES AND IT HAS CONCEDED ALSO THAT THE POLICY WAS NOT CANCELLED AS TO EITHER NORTHSIDE OR SAIL AWAY, UNTIL AFTER THE INCIDENT, AND IF YOU WANT I CAN FIND YOU --

NO.

-- THAT. IT IS IN A FOOTNOTE IN THEIR ANSWER BRIEF. BUT WHAT I AM SAYING IS IF YOU READ THAT CANCELLATION PROVISION, IT DOESN'T SAY ANYTHING ABOUT NORTHSIDE OR ABOUT THE PROPERTY COVERAGE PART. IT MAKES A SPECIFIC REFERENCE TO THE POLICY, WHICH, OF COURSE, OBVIOUSLY IS THE POLICY AS A WHOLE.

IS POLICY DEFINED ANYWHERE IN THE POLICY?

WELL, YOUR HONOR, THIS WAS A SINGLE DOCUMENT ISSUED UNDER A SINGLE POLICY NUMBER. I MEAN I RESPECTFULLY --

PART ONE AND PART TWO?

THERE ARE DIFFERENT COVERAGE PARTS, UM AND LIABILITY AND SO ON. BUT YOU HAVE ONE POLICY ISSUED UNDER ONE THING, AND I WOULD SAY THAT EVEN IF YOU FIND THE POLICY AMBIGUOUS, REMEMBER WE ARE ENTITLED TO THE BENEFIT OF THE AMBIGUITY, AND I WOULD RESPECTFULLY SUBMIT THAT SOMETHING ISSUED UNDER ONE POLICY NUMBER, YOU KNOW, INSURED IS REASONABLY CONSIDERED TO BE ONE POLICY. SECONDLY --

THERE WAS ONE POLICY NUMBER HERE?

YES FOR THE ENTIRE POLICY COVERAGE FOR BOTH PROPERTY AND COMPREHENSIVE GENERAL LIABILITY. ALSO IF YOU NOTICE THERE IS A REFERENCE IN THE CANCELLATION PAYMENT TO "YOUR" NONPAYMENT, WHICH OBVIOUSLY REFERS TO THE CUBAN CLUB, SO THAT THIS ALIES ONLY TO NORTHSIDE IS SIMPLY WRONG. THE SECOND THING THAT I POINTED OUT IS THAT, THIS FAILS BECAUSE THERE, ALSO, IS ANOTHER THIRD PARTY WHO WAS ENTITLED TO NOTICE AT SAIL AWAY. IN OTHER WORDS -- ENTITLED TO NOTICE AT SAIL AWAY. IN OTHER WORDS THE ARGUMENT OF THE PROPERTY POLICY HAS NO RELEVANCE TO SAIL AWAY AND THE GENERAL LIABILITY COVERAGE WHICH WAS AT ISSUE HERE AND WHO THEY, ALSO, CONCEDED WASN'T CANCELED UNTIL AFTER THE ACCIDENT, SO THAT WHOLE THING EVAPORATES, AND THEN I FINALLY POINTED OUT THAT, IF YOU LOOK AT THE CASE LAW THAT THEY CITE, IT INVOLVES SITUATIONS IN WHICH ONE POLICY WAS CANCELLED BUT WITH A PURPOSE OF REPLACING IT IMMEDIATELY

WITH ANOTHER POLICY, AND WHAT THEY HELD IN THOSE CASES WAS THAT THE SECOND INSURANCE COMPANY COULDN'T TAKE ADVANTAGE OF THE TEN-DAY PROVISION TO BASICALLY GET CONTRIBUTION FOR COVERAGE THAT IT WAS BEING PAID TO PROVIDE. AND YOU KNOW, THERE IS NO RELEVANCE HERE, AND I ACTUALLY TRACED IT BACK TO A CASE CALLED MORGAN THAT IS ALMOST IDENTICAL TO THE ALFRED CASE THAT INTERPRETS 628.848 BUT COMES TO A DIFFERENT RESULT, BECAUSE IN THE ONE CASE YOU ARE TALKING ABOUT REPLACING THE POLICY, AND IN ANOTHER YOU ARE TALKING ABOUT CANCELING IT UNDER THE STATUTE.

LET ME ASK, IF THERE WERE NO PREMIUM FINANCE COMPANY INVOLVED AND THE INSURED WANTED TO CANCEL THE POLICY, AND CANCELED IT ON JANUARY 9, WHAT IS THE OFFICIAL DATE OF CANCELLATION? IS IT WHEN THE INSURED CANCELED IT OR WHEN THE, WHEN SCOTTSDALE GAVE NOTICE OTHERWISE JANUARY 19 THAT THE INSURED HAD CANCELLED IT?

OKAY. WELL, THAT IS AN INTERESTING QUESTION. IT IS NOT THE FACTS OF THIS CASE. UNDER THE CULLEN CASE, EVEN IF THE INSURANCE COMPANY, EVEN IF THE INSURED GAVE NOTICE ON DECEMBER 30, FIRST INNING IT WAS A CASE HERE WITH A PREMIUM FINANCE COMPANY WANTED TO CANCEL A POLICY. IT COULDN'T BE CANCELLED UNTIL THE INSURANCE COMPANY GOT NOTICE, BECAUSE OF THE ADVANCED WRITTEN NOTICE OF CANCELLATION PROVISION. I POINTED OUT THAT WHAT THE CASE LAW HOLDS IS THAT THE INSURANCE, THE INSURER HIMSELF, CAN'T CANCEL HIS POLICY WITHOUT COMPLYING WITH THE STATUTE. NOW, IN THIS CASE, IF THERE WERE --

WOULD THE INSURED HAS TO GIVE NOTICE -- SO THE INSURED HAS TO GIVE NOTICE TO THE MORTGAGEE OR WHO WOULD DO THAT?

JUSTICE CANTERO, I GUESS IF THE INSURED CANCELED IT IT WOULDN'T BE FOR NONPAYMENT OF PREMIUM. THERE MIGHT NOT BE A THIRD PARTY NOTICE PROVISION UNDER THOSE CIRCUMSTANCES, SO THAT IT WOULD REQUIRE ADDITIONAL TIME, BUT IF THERE WERE A REQUIREMENT FOR A THIRD PARTY NOTICE TO SOMEBODY, EVEN WHEN THE INSURED CANCELED HIS OWN POLICY, IT WOULDN'T BE CANCELED UNTIL THAT THIRD PARTY NOTICE REQUIREMENT HAD BEEN FULFILLED.

BECAUSE I THINK IT IS A MISNOMER TO SAY THIS IS A CANCELLATION FOR NONPAYMENT OF PREMIUM, BECAUSE SCOTTSDALE RECEIVED ALL ITS PREMIUMS UP FRONT. IT IS THE PREMIUM FINANCE COMPANY THAT DIDN'T RECEIVE ITS, IT IS NOT PREMIUM, IT IS A MONTHLY PAYMENT THAT THEY DIDN'T RECEIVE, SO THEY WERE CANCELING ON BEHALF OF THE INSURED.

I AGREE. AND AS I SAY, SCOTTSDALE HAS CONCEDED THAT IT TREATED THIS AS A CANCELLATION FOR NONPAYMENT OF PREMIUM, THAT IT REQUIRED IT TO GIVE THESE THIRD PARTY NOTICES, AND AS I SAY IT IS CONCEDED IN SO MANY WORDS THAT THE POLICY WASN'T CANCELED AS TO MORTGAGEE OR SILENT AWAY, UNTIL AFTER THE ACCIDENT OCCURRED, SO THE ISSUE THEN BECOMES WHETHER IT IS THERE, BUT I THINK YOU MADE A VERY GOOD POINT WITH THE PREMIUM, ONE OF THE ARGUMENTS THAT THEY MAKE IS YOU -- IS, ONE OF THE ARGUMENTS THAT THEY MAKE IS YOU OUGHT TO HAVE THESE THINGS CANCELLED SOONER BECAUSE OTHERWISE PEOPLE ARE GETTING STUFF THAT THEY DIDN'T PAY FOR. THAT ISN'T TRUE BECAUSE THE INSURANCE COMPANY GETS ITS FULL PREMIUM UP FRONT AND IT IS A MATTER OF RETURN, BUT HERE IN THIS CASE THEY CHARGED THE MINIMUM PREMIUM OF 25 PERCENT BECAUSE OF SHORT-TERM CANCELLATION, WHICH WOULD CARRY THE COVERAGE THROUGH JANUARY 27, WHICH IS 14 DAYS AFTER THE ACCIDENT. SO IN OTHER WORDS WE HAVE A SITUATION HERE WHERE WE ACTUALLY PAID FOR SOMETHING WE DIDN'T GET.

THE JUDGE'S ORDER SAYS NO PARTY DISPUTES THAT A VALID CANCELLATION OF THE CUBAN CLUB'S COVERAGE WOULD HAVE OCCURRED ON JANUARY 9, THE DATE SCOTTSDALE RECEIVED THE NOTICE OF CANCELLATION WHERE THE CUBAN CLUB, THE ONLY ENTITY ENTITLED TO

NOTICE OF CANCELLATION. IS THAT NOT CORRECT?

THAT IS CORRECT, AND I THINK THAT ACTUALLY WAS MY RESPONSE TO JUDGE CANTER'S QUESTION, JUSTICE WELLS, AS I SAID, YOU KNOW, IN OTHER WORDS, IF THE CUBAN CLUB HAD CANCELLED THE POLICY IT WOULDN'T HAVE BEEN FOR NONPAYMENT, AND IF THERE WERE NO OTHER THIRD PARTY NOTICE PROVISION THAT IS APPLICABLE, YOU KNOW, THERE WOULDN'T BE ANYTHING TO DEFER CANCELLATION, BUT HERE WE DO HAVE TWO THIRD PARTY NOTICES THAT WERE REQUIRED AND WERE IN FACT, GIVEN, IF YOU LOOK AT DE - 11 PAGE 130, YOU SEE THAT THEY GAVE NOTICE TO SAIL AWAY AND NORTHSIDE, I THINK BY REGISTERED MAIL OR CERTIFIED MAIL, AND --

WERE THOSE NOTICES ONLY REQUIRED FOR NONPAYMENT OF PREMIUM? IS THAT THE ONLY CIRCUMSTANCES UNDER WHICH THOSE THIRD PARTIES WERE REQUIRED TO NOTICE?

NO. ACTUALLY NOT. IN FACT, IT WOULD BE 30 DAYS, IF I, THE PROVISION THAT I JUST READ, IF IT WERE FOR ANY OTHER REASON THAN NONPAYMENT OF PREMIUM. IN OTHER WORDS, THE REASON IT WAS TEN RATHER THAN 30, IS BECAUSE IT WAS FOR NONPAYMENT OF PREMIUM. YOU REMEMBER I READ THE CANCELLATION PROVISION FOR THE PROPERTY COVERAGE PART IN RESPONSE TO AN EARLIER QUESTION, AND IT SAYS THAT THE MORTGAGEE ALWAYS HAS TO GET NOTICE, AND I GUESS THAT ANSWERS THE QUESTION, YOUR QUESTION, ALSO, JUSTICE WELLS, IN THIS POLICY, IF THE CUBAN CLUB HAD JUST WRITTEN AND SAID WE WANT TO CANCEL OUR POLICY, YOU KNOW, IT WOULDN'T HAVE BEEN CANCELLED FOR 30 DAYS BECAUSE THERE IS A 30-DAY THIRD PARTY CANCELLATION PROVISION IN THE POLICY. HERE AS I SAID, ALL THAT NONPAYMENT DOES IS REDUCE IT FROM 30 TO TEN. NOW, THE OTHER THING THAT I POINTED OUT IS THAT EVERY FLORIDA DECISION THAT HAS CONSTRUED SECTION OF 27.848, HAS HELD THAT THE POLICY -- 627.848 HAS HELD THAT THE POLICY HAS NOT BEEN CANCELLED UNTIL THE REQUIREMENT THAT WAS BEFORE IT IN THE CASE HAD BEEN SATISFIED. THE CULLEN CASE AS I PREVIOUSLY TALKED ABOUT, SAYS THAT YOU CAN'T EVEN, THE INSURED HIMSELF, CAN'T CANCEL THE POLICY, WITHOUT COMPLYING WITH THE STATUTE, AND THE ALFRED CASE THAT I CITED INVOLVED A THIRD PARTY NOTICE PROVISION. THAT WAS ONE WHERE IT WAS A TELLING POLICY, THAT YOU HAD TO GIVE NOTICE TO THE CONSUMER AFFAIRS DIVISION BEFORE YOU CAN CANCEL IT, AND THE COURT HELD THAT, BECAUSE NOTICE HADN'T BEEN GIVEN THE POLICY HADN'T BEEN CANCELLED, WHICH IS EXACTLY WHAT THIS THING SAYS, WHICH THIS STATUTE SAYS. IT SAYS THE INSURANCE CONTRACT SHALL NOT BE CANCELLED, UNLESS CANCELLATION IS IN ACCORDANCE WITH THE FOLLOWING PROVISIONS, AND THAT WAS ESSENTIALLY AN IDENTICAL, A SIMILAR PROVISION TO THE PROVISION AT ISSUE IN THIS CASE. IF THE COURT DOESN'T HAVE ANY FURTHER QUESTIONS, I WILL RESERVE THE BALANCE OF MY TIME FOR REBUTTAL, IF I MAY.

CHIEF JUSTICE: THANK YOU VERY MUCH. MR. RUSSO.

MAY IT PLEASE THE COURT. MY NAME IS ANTHONY RUSSO. I REPRESENT SCOTTSDALE INSURANCE COMPANY. IT IS CLEAR THAT A QUESTION HAS DEVELOPED IN THE MIND OF THE COURT ABOUT WHO CANCELLED THE POLICY AND UNDER WHAT CONTRACTUAL PROVISION THAT OCCURRED. SO LET ME, FIRST, ADDRESS THAT QUESTION. IT JUST TAKES A MINUTE. THE POLICY CONTAINS TWO CANCELLATION CLAUSES THAT MAY COME INTO PLAY HERE. THE FIRST ONE IS THE GENERAL CANCELLATION PROVISION. THAT IS FOUND IN THE POLICY WHICH IS ATTACHED AS AN EXHIBIT TO DE - 11. IT IS 071. THAT IS THE GENERAL FLORIDA CANCELLATION PROVISION, AND IT SAYS IF THE NAMED INSURED, CUBAN CLUB, WANTS TO CANCEL THE POLICY IN ITS ENTIRETY, IT MAY DO SO WITH ADVANCE WRITTEN NOTICE, WHICH ARE THE SAME WORDS THAT ARE USED IN THE CULLEN CASE. THAT IMPOSES A DUTY ON THE CUBAN CLUB, TO GIVE WRITTEN NOTICE TO THE INSURED THAT IT INTENDS TO CANCEL, SO THAT IT CAN'T RETROACTIVELY CANCEL AND GET ITS PREMIUM BACK AFTER COVERAGE HAS ALREADY BEEN PROVIDED. NO FURTHER NOTIFICATION RIGHTS ARE REQUIRED TO GO OUT FROM THE INSURER TO ANYONE UNDER

THAT PROVISION , INCLUDING THE MORTGAGEE OR ANY ADDIT IONAL INSURED.

LET ME MAKE SURE I UNDERSTAND. YOUR PO SITION IS THAT THIRD PARTIES SUCH AS MORTGAGE HOLDERS AND LIENHOLDERS AND ALL OF THOSE , ARE NOT OTHERWISE UNDER THESE STANDARD POLICIES , ENTITLED TO NOTICE , IF THE POLICY IS CANCELLED?

THAT PARTIC ULAR PROVISION , THE GENE RAL CANCELLATION PROVISION, STANDING AL ONE, DOES NOT RE QUIRE IT.

IS THERE NOT ANOTHER PROVISION THOUGH IN THE POLICY, THAT READ S TO THAT?

YES. THANK YOU. A GREAT SE GUE , BECAUSE IN THE SAME POLICY AT BA ITS , 065 IS THE MORTGAGEE PROVISION, AND THAT MORTGAGEE PROVISION SAYS IF WE, SCOTTSDALE , CANCEL THIS POLICY FOR NONPAYMENT, W E WILL GIVE YOU , MORTGAGEE , TEN DAYS' NOTICE OF THAT CANCELLATION . WE DID NOT CANCEL THAT POLICY. IT WAS THE CUBAN CLUB , THROUGH ITS --

IS THERE ANOTHER PERIOD OF TIME THAT SAYS IF T HEINSURED CANCEL S IT , WE WILL GIVE YOU NOTE IS?

THAT IS THE P UNCH LI NE. THE PUNCHLINE IS THE FI RS T --

IS OR IS THERE NOT A?

YES.

THERE IS.

THE FIRST STATE CASE , THIS COURT'S DECISION IN FIRST STATE, LOOKED AT THE SAME SET OF CIRCUMSTAN CES WITH IDEN TICAL POL ICY LANGUAGE AND RULED ON THE SAME SET OF FACT S THAT THE MORTGAGE CLAUSE, THE ONE WE JUST DISCUSSED, QUOTE , OPERATED AS AN INDEPE NDE NT CONTRACT OF INSURANCE BETWEEN THE MORTGAGEE AND THE INSURANCE COMPANY AND MADE NOTICE TO THE MORTGAGEE A PREREQUISITE TO CANCELLATION, W HEN THE INSURED CANCELED THE POLICY .

SO YOU ARE TA KING THE POSITION THAT THERE IS A CONTRACT WITHIN, WITH REGA RD TO THE NOTICE , NOT TWO SEPARATE INSURANCECONTRACTS. THAT IS HOW YOU ARE USING THE CONCEPT OF MULTIPLE CONTRACTS .

BOTH WAYS. FIRST OF ALL --

THE FIRST WAY WITH REG ARD TO POLICIES AL WAYS HAVE MULTIPLE KIND S OF COVERAGES.

RIGHT.

ARE WE TO SAY THAT EVE RY POLICY, EVERY SI NGLE CONTRACT THAT HAS MULTIPLE PARTS, CONSTITU TES F IVE SEPARATE CONTRACTS? THAT IS REALLY NOT FLORIDALAW.

WELL , I THINK FLORIDA LAW RECOGNIZES THAT THERE ARE SEPARATE, THERE ARE CERTAINLY SEPARATE CONTRACTUAL OBLIGATION THATIS RUN FROM SCOTTSDALE TO THE NAMED INSURED -

THEY ARE ALL WITHIN ONE CONTRACT THOUGH.

I WOULD SAY THEY ARE SEPARATE CONTRACTUAL OBLIGATIONS.

I WOULD LI KE TO GO TO YOUR SEPARATE ARGUMENT, THOUGH, ON THE MOR TGAGEE, THAT

THAT IS A SEPARATE NOTICE CONTRACT. COULD YOU ELABORATE ON THAT ONE.

YES.

I HAVE SOME INTERESTS IN THAT.

THE , STANDING ALONE , THE GENERAL PROVISION DOES NOT REQUIRE SCOTTSDALE TO GIVE NOTICE TO THE MORTGAGEE. STANDING ALONE , THE MORTGAGEE CANCELLATION CLAUSE, DOES NOT REQUIRE SCOTTSDALE TO GIVE NOTICE TO ANYONE, BUT THIS COURT'S DECISION IN FIRST STATE , CREATED AND IMPOSED UPON INSURERS IN THIS STATE , AN OBLIGATION, A SEPARATE CONTRACTUAL OBLIGATION, TO GIVE MORTGAGEES TEN DAYS' NOTICE FOR THEIR SEPARATE CONTRACTUAL INTEREST, AND THAT IS WHERE , THAT IS THE ORIGIN OF THIS TEN -DAY , THIS TEN-DAY NOTICE THAT SCOTTSDALE SENT OUT. THIS, JUSTICE ANSTEAD, YOU WERE ON THE COURT THEN AND JUSTICE WELLS, YOU WERE ON THE COURT AT THAT TIME THAT TIME. JUSTICE ANSTEAD, I THINK YOU RECUSED YOURSELF BECAUSE YOU SAT ON THE CASE IN THE FOURTH DCA. JUSTICE SHAW WROTE THE OPINION, AND THAT OPINION CHANGED THE WAY INSURANCE COMPANIES CANCEL , AND IT IS A BENEFICIAL COMMERCIAL PURPOSE. A MORTGAGEE HAS GOT TO KNOW WHEN THEIR POLICY IS CANCELLED BECAUSE OTHERWISE THERE IS NOTHING IN THE CONTRACT THAT WOULD GIVETHEM THAT NOTICE, SO IT SERVES A GOOD COMMERCIAL PURPOSE THAT EXISTS FOR THIS WHOLE BENEFIT OF THE MORTGAGEE. THIS COURT SAID IT IS A SEPARATE CONTRACT. IT IS A SEPARATE CONTRACT, AND I NEED TO POINT OUT THAT THIS IS CERTAINLY NOT RAISED FOR THE FIRST TIME ON AEAAL. IF THE COURT WILL LOOK IN OUR RESPONSIVE PAPERS TO THE MOTION FOR SUMMARY JUDGMENT AND THE DISTRICT COURT, WHICH IS DE -16, IF YOU LOOK AT OUR MEMORANDUM IN POSITION AT PAGE 9 AND PAGES 4-TO-6 , ALL OF IT IS LAID OUT. IF YOU GO TO THE TRANSCRIPT OF THE HEARING , PAGES 19-TO-20 AND 26-TO-27 , YOU WILL SEE IT ARGUED EXTENSIVELY BE LOW.

YOU TALKED ABOUT THE TERMS OF THE POLICY , AND YOU TALKED ABOUT THE CASE LAW TO SOME EXTENT . ARE YOU GOING TO ADDRESS THE STATUTE?

YES.

IN OTHER WORDS YOU DON'T DENY THAT IT IS THIS VERY STATUTE THAT COUNSEL HAS PUT UP THERE IN OUR FACES SO TO SPEAK.

RIGHT.

THAT ALIES HERE. IS THAT CORRECT?

YES . JUSTICE ANSTEAD --

HELP ME. HOW ABOUT TURNING TO THE STATUTE. THAT IS AN ACCURATE REPRESENTATION OF THE STATUTE , IS IT NOT?

PART OF IT. AND --

WELL , AND , HOW ABOUT ADDRESSING HEAD ON, OKAY , THE ARGUMENT --

SURE.

-- THAT IS MADE BY YOUR OPONENT, THAT IT IS A VERY STRAIGHTFORWARD SITUATION, THAT IS THAT THIS IS THE PROVISION OF THE STATUTE THAT APPLIES . THAT IS THIS IS WHAT HAPENED HERE. A PREMIUM FINANCE COMPANY , IS IT NOT , ATTEMPTED THE CANCELLATION HERE.

YES.

AND THAT THE STATUTORY SCHEME SIMPLY HAS CONDITIONS PRECEDENT BEFORE THE POLICY CAN BE CANCELLED, THAT MUST BE FULFILLED, AND ALL OF THOSE WERE NOT FULFILLED, IN THIS CASE, BEFORE THE EVENT OCCURRED. SO I AM, IF I UNDERSTAND THE ARGUMENT OF YOUR OPONENT, IT IS A VERY STRAIGHTFORWARD ONE. THE STATUTE SAYS HERE ARE TEN CONDITIONS PRECEDENT, AND NOT ALL OF THOSE CONDITIONS PRECEDENT OCCURRED, IN THIS CASE. AND SO HOW COULD THE POLICY BE CANCELLED?

WELL, THE, IF THERE IS ONE POINT I HOPE THE COURT TAKES FROM MY PRESENTATION THIS MORNING, IT IS THIS. THAT STATUTE, THE PREMIUM FINANCE STATUTE, REGULATES THE RELATIONSHIP BETWEEN THE PREMIUM FINANCE COMPANY AND THE INSURED ENTITY. IT DOES NOT REGULATE ANY ASPECT OF THE RELATIONSHIP BETWEEN THE INSURED ENTITY AND THE INSURANCE COMPANY. THAT SECOND RELATIONSHIP IS CONTROLLED BY THE CONTRACT, BY OTHER STATUTES.

SURELY IT MUST. IT IS BEFORE US. IT TALKS IN TERMS OF NOTICE TO GOVERNMENTAL AGENCIES, INSURANCE CARRIERS TALKS IN TERMS OF MORTGAGEES, AGENCIES, PERSONS THAT ARE ENTITLED TO NOTICE.

YES.

THIS STATUTE MUST PROVIDE NOTICE.

1-D, ALL STATUTORY REGULATORY CONTRACTUAL RESTRICTIONS APPLY. I AGREE. IF THE CONTRACT, IF A STATUTE, IF A REGULATION, ANYWHERE REQUIRES US TO GIVE NOTICE, LIKE THE FIRST STATE CASE REQUIRES US TO GIVE TEN DAYS' NOTICE, WE WILL ABIDE. THIS STATUTE IS NOT AN INDEPENDENT WELL SPRING OF NOTICE RIGHTS THAT EXIST WHEN YOU FINANCE A POLICY. YOU CAN'T HAVE TWO SETS OF RULES GOVERNING CANCELLATION NOTICES, ONE THAT APPLIES WHEN YOU FINANCE YOUR PREMIUM AND ANOTHER SET THAT APPLIES WHEN YOU DON'T. THIS STATUTE SAYS --

WHY COULD YOU NOT? BECAUSE I MEAN, CERTAINLY THAT OCCURS. THOSE ARE TWO DIFFERENT CIRCUMSTANCES. IF YOU GIVE THE INSURANCE COMPANY AND YOU PAY IT UP FRONT AND IT IS ALL PAID TO THEM, THAT IS ONE CIRCUMSTANCE, BUT IF YOU ARE GENERALLY THESE OPERATE OUT OF THE AGENCY THEMSELVES, WHERE THE POLICIES ARE SOLD, AND THEY ENTER IS THEY ENTER INTO THIS CONTRACT AND SO IT IS A CONTRACT THAT CONTROLS THE RELATIONSHIP OF ALL OF THE PARTIES. WHY IS THAT NOT THE CASE?

THIS STATUTE CONTAINS, IN THIS PROVISION IN THE PARTICULAR SUBSECTION 1-D, AN IMPOSITION, WELL, A COMMAND THAT THE STATUTORY AND CONTRACTUAL AND REGULATORY REQUIREMENTS BE OBSERVED. BUT THEY WOULD BE OBSERVED ANYWAY. WHAT IS MISSING FROM THIS, TO PUT IT IN CONTEXT, IS 1-C, WHICH STATES THAT, WHEN THE PREMIUM FINANCE COMPANY SENDS TO THE INSURED ENTITY OR RATHER TO THE INSURANCE COMPANY, A NOTICE OF CANCELLATION, IT IS RECEIVED WITH THE SAME FORCE AND EFFECT AS IF THE INSURED, HIMSELF, HAD SENT IT. 1-C SAYS --

WELL, AGAIN, EVEN THE INSURED CANNOT CANCEL IT, IF NOTICE IS TO BE GIVEN TO OTHER CERTAIN PERSONS WHO ARE INTERESTED. EVEN IF THE INSURED WERE PAYING THIS DIRECTLY, I MEAN, YOU CAN'T CANCEL THAT, UNLESS, UNTIL THE NOTE CYST TAKEN CARE OF FOR MORTGAGE HOLDERS. IF THERE IS A CONTRACTUAL OBLIGATION THAT THE INSURED IS UNDER AND THEY ARE LISTED ON THE POLICY, CAN YOU?

INSUREDS COME AND GO FROM POLICIES ALL THE TIME.

WHAT. CAN YOU? IF THE INSURANCE COMPANY, ON ITS FACE, LISTS CERTAIN INTERESTED HOLDERS, CERTAIN INTERESTED CERTIFICATES OF INSURANCE THAT WON'T BE CANCELLED, THAT EVEN T

HEINSURED CANNOT CANCEL IT UNTIL THOSE ARE SATISFIED , ISN'T THAT CORRECT?

THAT IS NOT CORRECT.

THAT IS NOT CORRECT. YOU CAN CANCEL IT CONTRARY TO CERTIFICATE OF INSURANCE, LISTED MORTGAGE HOLDERS , AN INSURANCE COMPANY OR THE INSURED CAN UNILATERALLY CANCEL IT , AND IF IS EFFECTIVE WITHOUT NOTICE -- AND IT IS EFFECTIVE WITHOUT NOTICE.

THAT IS WHAT THE CONTRACT SAYS. THIS COURT MODIFIED TO PROTECT MORTGAGE -- MODIFIED TO PROTECT MORTGAGEES , SO THERE IS ADDITIONAL REQUIREMENT OF A MORTGAGEE , BUT ADDITIONAL INSURED , LIENHOLDERS, LOSS PAYEE CANCELLED WITHOUT NOTICE. THAT'S RIGHT -- LOSS PAYEE S , CANCELLED WITHOUT NOTICE. THAT'S RIGHT.

DOESN'T THIS STATUTE REQUIRE NOTICE TO MORTGAGEES? YOU SEEM TO BE SAYING , I AM CONCERNED ABOUT, THAT THE WAY THINGS WENT HERE OR WHATEVER, THAT THE CANCELLATION SHOULD BE EFFECTIVE EARLIER, BUT HYPOTHETICALLY AREN'T THERE JUST A MYRIAD OF SITUATIONS THAT IS WE CAN IMAGINE , WHERE FOR INSTANCE A MORTGAGEE DOES GET NOTICE , AND THE WHOLE PURPOSE OF HAVING THIS IN A STATUTORY SCHEME OR WHATEVER, THAT THE MORTGAGEE , AND THE MORTGAGEE HAS GOT A , NOT JUST A 90 PERCENT INVESTMENT IN THE PROPERTY OR A 99 PERCENT ON TODAY'S MARKET, MAYBE HE HAS 110 PERCENT.

RIGHT .

NOW , IN OTHER WORDS WHERE HE REALLY HAS ALL OF THE INTEREST, AND MERELY SAYS , AS SOON AS THEY GET NOTICE OF THIS THING, WELL , WAIT A MINUTE . YOU KNOW , THE PAYMENT THAT HAD TO GO TO THE FINANCE COMPANY WAS \$1,000 OR SOMETHING. MY GOSH , OUR RISK IN THIS THING IS SO HIGH , WE SENT OVER A CHECK RIGHT AWAY TO COVER THAT , AND WE WILL DO THAT, EVEN THOUGH WE HAVEN'T EVEN HAD A FULL OPPORTUNITY TO EVALUATE YET WHETHER WE ARE GOING TO CONTINUE TO DO THAT, BUT AT LEAST FOR THE RIGHT NOW , WE ARE GOING TO COVER OUR -- WE ARE GOING TO COVER OUR SITUATION HERE WITH THIS BROAD INSURANCE THAT IS WRITTEN . NOW , WHY , SO IF THAT DOESN'T HAPPEN, IN OTHER WORDS IF THEY DON'T GET THAT NOTICE , AND THEY DON'T GET THAT OPPORTUNITY TO DO THAT , THEN ONE OF THOSE CONDITIONS PRECEDENT THAT IS SET OUT IN THIS STATUTORY SCHEME, HAS NOT OCCURRED, AND SO I AM HAVING, AGAIN, I AM HAVING DIFFICULTY WITH SORT OF CREATING THAT IS OUTSIDE OF THIS STATUTORY SCHEME.

WELL, LET ME ANSWER TWO POINTS. FIRST , THEY DID RECEIVE NOTICE. THEY DID GET THEIR TEN DAYS' NOTICE, AND THE POLICY COVERAGE AS TO THE MORTGAGEE WAS PROTECTED UNTIL THEY HAD THEIR NOTICE AND THEY HAD AN OPPORTUNITY, THERE IS A CONTRACTUAL, IN THE MORTGAGEE CLAUSE, ALSO PROVIDES AN OPPORTUNITY FOR THE MORTGAGEE TO REINSTATE THE MORTGAGE FOR ITS OWN BENEFIT.

BUT THE INSURED WOULD STILL HAVE BEEN ONE OF THE PERSONS PROTECTED, NOT JUST MORTGAGEE. IF THE MORTGAGEE HAD ACTED, IS THAT NOT CORRECT?

THAT'S NOT CORRECT , BECAUSE THE MORTGAGEE HAS A SEPARATE CONTRACT.

SO IF THE MORTGAGEE HAD GONE AHEAD AND PAID THE \$1,000 FEE THAT I AM TALKING ABOUT, THAT WOULD NOT HAVE IN URD TO THE BENEFIT -- INSURED TO THE BENEFIT OF THE OWNER INSURED.

I BELIEVE THE MORTGAGE CLAUSE ITSELF SAYS YOU MAY REINSTATE THIS INSURANCE FOR YOUR SOLE BENEFIT.

WE ARE NOT TALKING ABOUT REINSTATEMENT. WE ARE TALKING ABOUT CANCELLATION AT THE

OUTS ET , ARE WE NOT? ARE YOU TALKING ABOUT REINSTATEMENT?

REMEMBER THE MORTGAGEE CLAUSE SPEAKS IN TERMS OF WHEN WE THE INSURANCE COMPANY, CANCELS THE POLICY FOR NONPAYMENT, WE WILL GIVE YOU, MORTGAGEE , TEN DAYS' NOTICE.

DOES THIS STATUTE SPEAK TO REINSTATEMENT , OR DOES IT SPEAK TO CONDITIONS PRECEDENT TO CANCELLATION ?

THE STATUTE , THE CONTRACT SPEAKS TO REINSTATEMENT. THE STATUTE SAYS WHATEVER CONTRACT PROVISIONS EXIST AS TO CANCELLATION , PER CYST ANIMUS BE ENFORCED - - PERSISTS ANIMUS BE ENFORCED .

ANSWER MY QUESTION ON THAT. THE FIRST PART OF THE STATUTE SECTION D , SPEAKS TO STATUTORY REGULATORY OR CONTRACTUAL CONDITIONS ON THE INSURED.

RIGHT.

CANCELING.

YES.

WHAT SUCH CONTRACTUAL RESTRICTIONS IN THIS POLICY ARE THERE ON THE INSURED CANCELING THE POLICY WITHOUT GIVING NOTICE TO THE MORTGAGEE ?

I DON'T BELIEVE THERE ARE ANY. I DON'T --

THEN IF I READ THE STATUTE THERE, THEN IT SAYS SUBJECT TO THAT, THEN , THE INSURED, IN ACCORDANCE WITH SUCH PRESCRIBED NOTICE , IS REQUIRED TO GIVE SUCH NOTICE TO THE MORTGAGEE .

WELL, IF THE INSURED IS NOT REQUIRED BY THIS INSURANCE CONTRACT, THEN YOU CAN'T FIND ANY DUTY THERE. YOU MAY FIND ONE IN THE MORTGAGE AGREEMENT OR SOME OTHER DOCUMENT WE ARE NOT LOOKING AT. THIS STATUTE, I BELIEVE, ALSO REQUIRES THE INSURED TO GIVE WHATEVER NOTICE IT IS REQUIRED TO GIVE , UNDER THE CONTRACT AS WELL. AND I THINK THIS COURT'S DECISION IN FIRST STATE, IMPOSED THAT DUTY ON MY CLIENT, A DUTY WHICH MY CLIENT EXECUTED , AND WE -- A DUTY WHICH MY CLIENT EXECUTED AND WE HELD OPEN AN ADDITIONAL TEN DAYS TO PROTECT THE MORTGAGEE.

CHIEF JUSTICE: JUSTICE QUINCE HAS A QUESTION.

I NEED YOU TO EXPLAIN PLAIN IF THE -- EXPLAIN IF THE MORTGAGEE GETS NOTICE AND DECIDES TO PAY THE PREMIUM OR PAY THE PREMIUM FINANCE PERSON, SO THAT THE POLICY IS NOT CANCELED , WHAT IS BEING INSURED ?

THE MORTGAGEE 'S INTEREST IN THE PROPERTY. IF THERE IS A MILLION DOLLAR PROPERTY AND THEY HAVE A \$500,000 MORTGAGE, IT IS THEIR INSURABLE INTEREST .

SO THE OTHER PART , BUT THE POLICY ITSELF , SO , AS A PREMISE POLICY , CORRECT, THAT IS NO LONGER BEING COVERED, IF IN FACT , THE MORTGAGEE COMES IN AND PAYS THE PREMIUM OR PAYS THE PREMIUM FINANCE COMPANY?

PAYS , WELL , YES . THAT'S CORRECT. ONLY IT WOULD PAY A PREMIUM TO HAVE ITS MORTGAGEE INTEREST PROTECTED.

SO IT CANNOT COME IN AND PAY WHATEVER THE OUTSTANDING MONEY IS TO THE PREMIUM FINANCE COMPANY. IF IT COMES IN AND PAYS THAT , DON'T YOU HAVE THE ENTIRE COVERAGE,

THEN , TO CONTINUE?

I THINK THE INSURANCE COMPANY WOULD BE HAPPY TO TAKE THE ENTIRE PREMIUM AND REINSTATE THE COVERAGE , BUT THAT SEPARATE CONTRACTUAL ARRANGEMENT COULD BE REACHED , I AM SURE.

AGAIN ARE WE ONLY TALKING ABOUT REINSTATING THE COVERAGE, OR ARE WE TALKING ABOUT NOT CANCELING THE COVERAGE?

WELL , LET'S LOOK AT THE EXACT LANGUAGE OF THE PROVISION, WHICH IS AT 065 , SAYS IF WE DENY , WELL , ACTUALLY SUBSECTION D SAYS IF WE DENY YOUR CLAIM , MEANING THE INSURED'S CLAIM , BECAUSE OF YOUR ACTS , SAY ARSON IN A FIRE SITUATION , OR BECAUSE YOU FAIL TO COMPLY WITH TERMS OF THIS PART, THE MORTGAGE HOLDER WILL STILL HAVE THE RIGHT TO RECEIVE LOSS PAYMENT, IF THE MORTGAGE -- LOSS PAYMENT, IF THE MORTGAGE HOLDER PAYS ANY PREMIUM DUE.

THAT IS ANOTHER CLAUSE. YOU ARE PULLING THINGS OUT OF, THAT IS A CLAUSE ON A DEFAULT BY AN INSURED UNDER AN INSURANCE CONTRACT, AND IT IS A NO-HARM KIND OF CLAUSE. SO GO BACK AND ANSWER THE QUESTION WITH REGARD TO THE PAYMENT OF THE PREMIUM . THAT IS WHAT SHE IS ASKING.

IF THE MORTGAGEE PAYS THE PREMIUM, THE PREMIUM WHICH COVERS ALL WHAT I'M BEING INSURED , THEN YOU STILL HAVE PREMISE LIABILITY INSURANCE, CORRECT ?

IN THAT HYPOTHETICAL SITUATION, I THINK IF THE MORTGAGE HOLDER WANTED TO PAY THE ENTIRE PREMIUM AND IT WANTED TO DO THAT , IT HAS NO INTEREST IN IT, I GUESS IT COULD HAVE REINSTATED , IF THE POLICY WAS CANCELLED, IT COULD BE REINSTATED. IF IT WAS IN THE TEN-DAY NOTICE SECTION OF TIME WHERE IT COULD CONTINUE THE COVERAGE , AND IT WOULD NOT CANCEL. THAT IS THE BEST WAY I KNOW HOW TO ANSWER YOUR QUESTION , JUSTICE.

ISN'T, YOU SEEM TO BE MOVING AROUND ON THIS, BECAUSE CERTAINLY THE MORTGAGE HOLDER'S REQUIRE LIABILITY INSURANCE AS WELL , AND THERE IS AN INTEREST BECAUSE THERE IS A CLAIM AGAINST THE PROPERTY IF IT IS NOT INSURED. THE INSURED HAS NOTHING THERE.THEY OWN THE PROPERTY AND THERE IS A CLAIM. THEN IT BECOMES AN ADDITIONAL LIEN ON THE PROPERTY THAT THE MORTGAGE HOLDER HAS TO DEAL WITH, SO IT SEEMS LIKE WE ARE MAKING IT UP AS WE GO ALONG. WE REALLY NEED TO STICK TO THE STATUTE AND WHATEVER THE CONTRACT IS PROVIDING , AND THAT IS THE QUESTIONS, AND JUSTICE BELL'S QUESTION IS GOING TO THOSE KINDS OF AREAS, SO COULD WE GO BACK TO WHAT DOES THIS CONTRACT PROVIDE AND WHAT IS THE STATUTE?HOW DO THEY RELATE?

HERE IS HOW THEY RELATE. THAT CONTRACT, THAT STATUTE SAYS TO ALL THE PARTIES INVOLVED, THAT THE EXISTING STATUTORY REGULATORY AND CONTRACTUAL RESTRICTIONS THAT EXIST AS TO CANCELLATION, STILL APPLY. LOOK TO THE CONTRACT , AND THIS IS THE KEY TO THE ELEVENTH CIRCUIT'S QUESTION. LOOK TO THE CONTRACT FOR THOSE REQUIREMENTS. YOU LOOK TO THE STATUTE OR WRATH TO THE CONTRACT, AND WHAT YOU FIND IS -- RATHER TO THE CONTRACT , AND WHAT YOU FIND IS THE GENERAL CANCELLATION CLAUSE WHICH ALLOWS THE NAMED INSURED TO CANCEL THIS WITH ADVANCE WRITTEN NOTICE. THAT IS JANUARY 9. DONE AND OVER. OR TO THE MORTGAGEE CLAUSE AS INTERPRETED BY THIS COURT IN FIRST STATE, WHICH PERMITS OR WHICH IMPOSES , RATHER, ON MY CLIENT AN OBLIGATION TO GIVE THE MORTGAGEE TEN DAYS' NOTICE WHICH WE DID, FOR THAT SEPARATE CONTRACTUAL RIGHT. THAT SEPARATE CONTRACTUAL RIGHT WAS NOT SET BY THIS COURT IN FIRST STATE , TO INCLUDE THE NAMED INSURED , WHO , AFTER ALL , ELECTED NOT TO PAY THE PREMIUM THROUGH ITS AGENT , SENT A NOTICE OF CANCELLATION TO THE INSURANCE COMPANY , MY CLIENT , AND UNDER THE CONTRACT , IS PERMITTED TO CANCEL THE ENTIRE CONTRACT WITH THAT WRITTEN NOTICE , AND

THERE IS A STATUTE 1 -C NOT UP HERE , THAT SAYS WHE N THAT NOTICE OF CANCELLATION IS RECEIVED , IT IS EFFECTIVE THE SAME AS IF IT HAD COME F ROM THE INSURED HIMSELF. I MEAN, WHAT ELSE DOES IT TAKE TO CANCEL THE POLICY TO THE NAMED INSURED? THERE IS --

IN OR DER TO R ULE IN YOUR FAVOR , WE WOULD HAVE TO SAY THAT THERE ARE T WO CONTRACTS HERE, THAT THE REQUIREMENT THAT INSURER PROVIDE TEN DAYS' NOTICE TO THE MORTGAGEE IS A SEPARATE CONTRACT?

I THINK THE KEY TO THE LEFT CIRCUIT'S QUESTION IS THIS, YOUR HONO R. IT IS -- TO THE LEFT CIRCUIT'S QUESTION IS THIS, YOUR HONOR. THEY HAVE ASKED WHETHER THIS STATUTE IMPOSES A SI NGLE CANCELLATION DATE, AND T HEANSWER IS NO. THE PLAIN TERMS OF THIS STATUTE 1-D , REQUIRE THE COURT TO LOOK TO EXIS TING STATUTORY CONTRACTUAL REQUIREMENTS. THAT IS STEP ONE. STEP TWO I S THE CONTRACT HERE PER MITS DIFFERENT CANCELLATION DATES, BECAUSE UNDER FIRST STATE , THERE IS A SEPARATE CONTRACTUAL INTEREST THAT GETS AN EX TRA TEN DAYS.

CHIEF JUSTICE: I WANT TO REMIND YOU YOUR TI ME HAS EXPIRED.DO YOU HAVE ANY OTHER? AARENTLY WE HAVE A NEW SYSTEM, AND IT IS NOT SHOWING FOR THE JUSTICES THEIR LIGHTS. GO AHEAD. I JUST WANTED TO --

THE I S SUE THAT COUNSEL HAS PRESENTED WITH REGA RD TO THE PREMIUM , IS THAT REALL Y AN ISSUE THAT IS PROPERLY BEFORE US?

WHICH QU ESTION ?

THE ARGU MENT THAT HAS BEEN MA DE IS THAT THERE IS A MINIMUM PREMIUM FOR CANCELLATION. IS THAT AN ISSUE THAT IS REALLY BEFORE US? AS I UNDERSTAND HIS ARGUMENT IS THAT , NO MA TTER WHAT , T HAT YOU HAVE COVERA GE FOR A CERTAIN " X" PER IOD OF T IME BECAUSE THERE IS A MINI MUM PREMIUM THAT IS CHARGED B Y THE CARRIER FOR THIS. IS THAT PROPERLY BE FORE US TO EVEN DISCUSS?

NO, IT IS NOT BECA USE IT WAS NEVER ARGUED BELOW , AND , TWO , THE RECORD SHOWS THAT THE POLICY PREMIUM WAS REFUNDED AS OF JAN UARY 1 , WHICH THAT IS WHAT IS IN T HERECORD. THERE IS A PREMIUM CANCELLATION TICKET W HICHSHOWS THAT.

BUT THEY DI DN'T CHAR GE THE MINI MUM PREMIUM THOU GH?

MY CLIENT ATE THE CO STS FOR ALL COVER AGE BE YOND JANUARY 1 FOR ALL PARTIE S.

SO THEY DIDN'T FO LLOW T HECONTRACT ON THAT CANCELLATION THEN, HUH?

THEY ARE TRYING TO BE GOOD GUYS.THANK YOU, YOUR HONOR. THANK YOU.

CHIEF JUSTICE: THANK YOU .

AN SWER MY SPECIFIC --

CHIEF JUSTICE: LET'S LET HIM GET BACK UP. GET THE --

ANSWER MY SPECIFIC QUESTION. THE FIRST PART OF T HESTATUTE , SUBSECTION D , SPEAKS TO CONTRACTUAL RESTRICTIONS ON THE INSURED NOT BEING ABLE TO CANCEL AND THUS GIVING NOTICE TO IN THIS CASE THE MORTGAGEE. POINT TO ME A PROVIS ION IN THIS POLICY , WHERE THERE IS A CONTRACTUAL LIMITATI ON ON THE INSURED , GIVING SPECIFIC NUMBER OF DAYS' NOTICE TO THE MORTGAGEE BEF ORE CANCELING, THE INSURED CANCELING THE POLICY.

OK AY. THE ANSWER IS, IF YOU H AVE TO READ ON, IT SAYS CANCEL THE CONTRACT M UST SE E THAT THE INSURER SATISFIES RESTRICTIONS. SO IF THE PREMIUM FINANCE AGENCY IS THE ONE THAT CANCELS, I BELIEVE THAT THE STATUTE ALSO ALIES TO RESTRICTIONS ON THE INSURER. IN OTHER WORDS THAT ARE IN THE POLICY BY ITS PLAIN LANGUAGE.

BUT AS FAR AS THE F IRSTPROVISION, YOU AG REE THERE IS NOTHING THIS POLICY THAT RESTRICTS THE INSURED , C U BAN OR AS I GO K NEE FOR -- ARE A AN ASSIGNEE , THE FINANCE AGENCY CANCELING THE POLICY UPON WRITTEN NOTICE , SE NDING A LETTER SAYING THE POLICY IS CANCELLED AS O F THIS DATE .

THERE IS NOTHING SPECIFIC. AS I SAID WHAT I THINK IS IMPORTANT , REMEMBER I MENTIONED ABOUT THEIR ANSWER BRIEF, THE SPECIFIC REFERENCE IS FOOTNOTE 4 ON PAGE 11 , WHERE SCOTTSDALE SAYS THAT , EVEN THOUGH THE INSURED, THRO UGH ITS FINANCE AGENCY TECHNICALLY CANCELLED, IT HAS TR EATED IT AS A CANCELLATION BY SCOTTS DALE FOR NONPA YMENT OF PREMIUM , FOR PURPOSES OF THESE PROCEEDINGS, SO I THINK THAT WHAT WE ARE REALLY DEA LINGWITH HERE, YOU KNOW , BY THEIR CONCESSION , IS YOU KNOW , A CANCELLATION BY T HEINSURANCE COMPANY FOR NONPAYMENT OF PREMIUM. THAT HAS BEEN THE WA Y ALL OF THE WAY THROUGH.

I THOUGHT THAT , G OINGBACK TO THAT QUE STION , HE IS RAISING THE QUESTION , IF THE INSURED , LET'S ASSUM E THAT THEY PA ID THE POLL SA NE THE INSURED HAS MAD E, INITIALLY PAID FOR THE WHOLE Y EAR AND THEY WANT TO CANCEL IT. DOES, IS THERE ANY THING IN THIS POLICY THAT PROVIDES THE NOTICE THAT IS G OING TO GO TO A MORTGAGEE? HAVE YOU READ TO US THAT THERE WAS? A TEN DAY AND A 30-DAY.

I BELI EVE THE ANSWER IS THE MORTGAGEE CLAUSE, IF WE SCOTTSDALE, CANCELS THIS POLICY, BUT THEN IT G OES BACK AND TALKS ABOUT IT WILL CANCEL AT THE REQUEST OF THE NAMED INSURED, SO I THINK THAT TO ME THEY W O RK TOGETHER, AND THAT YOU WOULD NEED 30 DAYS' NOTICE. I THINK THAT IS WHAT I ARGUED ON THE FIRST ONE.

THAT IS WHAT YOU ARGUED.

BUT WH AT I AM SAYI NG, THERE IS NOTHING THAT SAYS IN SO MANY WOR DS THAT THE INSURED CAN'T WRITE A LETTER AND SAY IT CANCELS ITS POLICY, BUT I THINK WHEN YOU ADD THE TWO AND READ THE TWO TOGETHER IN PARI MATERIA , THAT YOU WOULD HAVE A 30 -DAY PROVISION FOR CANCELLATION, BECAUSE OTHERWISE THE MORTGAGEE WOULD BE OUT OF LUCK JUST LIKE THAT .

THAT WOULD BECOME IMPORTANT, AS FAR AS ANY REFUND OF PREMIUM IS CONCERNED , CORRECT? WOULD THEY REFU ND THE PREMIUM?

THE REFUND OF PREMIUM, I POINTED OUT HERE A T HAT BECAUSE OF THE CIRCUMSTANCE THE MIN IMUM PREMIUM , W E ACT UALLY PAID THROUGH T HEDATE THE ACCIDENT , BUT THE POINT I MADE PRINCI PLY IN THE BRIEF, IS WHEN YOU ARE INTENDING THE STATUTE, IF YOU SAY THAT YOU HAVE PIECEMEAL CANCELLATIONS AS INDIVIDUAL INSUREDS GET NOTICE THERE, IS NO WAY I N MOST CASES THAT YOU CAN CALCULATE A RET URN PREMIUM. INSURANCE POLICIES INCLUDING THIS ONE ONLY HAVE CALCULATIONS FOR CANCELING THE ENTIRE POLICY , AND H ERE YOU ARE TALKING ABOUT THE PROPERTY COVERAGE WOULD ONLY ALY UP TO THE E X TENT OF THE MORTGAGE, WHICH WAS LESS THAN IT, YOU KNOW , I M E AN, SO THAT HOW IN THE WOR LD DO YOU EVER CALC ULATE A PREMIUM , IN OTHER WORDS IN AD DITION TO THE STATUTE SAYING IT A NDCASE LAW, YOU HAVE TREMENDOUS PRACTICALPROBLEMS, IF YOU END UP USING PIECEMEAL CANCELLATIONS. NOW, I WANT ED TO ADDRESS THE MORTGAGEE SITUATION A LITTLEBIT. SCOTTSDALE CONC EDES THAT THEY JUST HAVE A STAN DARD MORTGAGEE CLAUSE.

THE RE COR D HERE REFLECTS A REFUND OF PREMIUM?

WHAT IT REFLECTS IS THAT THEY CHARGED A SHORT RATE PREMIUM, 25 PERCENT, EVEN THOUGH THE POLICY WAS IN EFFECT FOR LESS THAN 25 PERCENT OF THE YEAR. THAT IS WHAT IT SHOWS. IT IS THE CANCELLATION TICKET WHICH IS THE LAST PAGE OF THE POLICY. ACTUALLY IF YOU DID IT ON A PRO RATA BASIS, IT WOULD COVER UNTIL JANUARY 27. WHAT I WAS GOING TO SAY, THOUGH, IS THEY HAVE A STANDARD MORTGAGEE CLAUSE. THE STATUTE SPECIFICALLY REFERS TO NOTICE TO A MORTGAGEE IF IT DOESN'T REFER TO THIS SITUATION, WHAT IN THE WORLD DOES IT REFER TO? I MEAN, IS IT CLEARLY, YOU KNOW AS I INTEND, TO GIVE MORTGAGEES NOTICE BEFORE POLICIES ARE CANCELLED. THE OTHER THING THAT I WOULD POINT OUT IS THAT SAILAWAY WAS INSURED UNDER THE COMPREHENSIVE GENERAL LIABILITY COVERAGE, WHICH MEANS THAT IT WAS SUBJECT TO THE GENERAL CANCELLATION PROVISION, NOT THE MORTGAGE CANCELLATION PROVISION. THEY HAVE CONCEDED THAT SAILAWAY CONTINUED TO HAVE COVERAGE. SO THAT THAT CANCELLATION PROVISION --

WHAT KIND OF COVERAGE DID THAT CONTINUE TO HAVE?

THE SAME COVERAGE THAT THEY ALWAYS HAD. THEY WERE AN ADDITIONAL INSURED.

NOW, YOU MENTION THAT GENERAL CANCELLATION. WHAT IS THAT? WHAT IS THE TIME PERIOD ON THAT?

THE COMMON CONDITION IS WHAT IT IS CALLED, FLORIDA CHANGES. THAT IS THE BASIC ONE, AND THEN THERE IS A SPECIFIC ONE FOR THE, YOU KNOW, THE PROPERTY COVERAGE PART.

WHAT DOES IT SAY IN THE GENERAL ONE?

IT BASICALLY SAYS THAT YOU, THAT YOU CAN CANCEL IT BY GIVING NOTICE TO THE FIRST NAMED INSURED, AND THE PROBLEM HERE IS, SINCE SAILAWAY WAS ADDED BY ENDORSEMENT, IT IS, AND THE POLICY DOESN'T SPECIFY WHO IS THE FIRST NAMED INSURED, YOU DON'T KNOW, ARGUABLY IT COULD BE THEM, OR IT COULD BE CUBAN CLUB OR WHOEVER ELSE, AND AS I SAY, THEY HAVE CONCEDED. THAT IS NOT A CONTENTED ISSUE THAT SAILAWAY STILL HAD COVERAGE PAST THIS ACCIDENT. WELL, YOU KNOW, BUT THE CONVERSE OF THAT IS, IF SAILAWAY NEEDED NOTICE BECAUSE THEY MIGHT HAVE BEEN, SO DID WE NEED NOTICE, AND THEREFORE WE ARE COVERED. UNLESS THE COURT HAS ANY FURTHER QUESTIONS THAT, CONCLUDES MY PRESENTATION. THANK YOU VERY MUCH FOR YOUR ATTENTION.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE A MORNING RECESS OF 15 MINUTES.

MARSHAL: PLEASE RISE.