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**Juan E. Ceballo v. Citizens Property Insurance Corp.**

**SC06-1088**

WE WILL MOVE TO OUR  
FINAL CASE OF THE MORNING  
CEBALLO!!\$\$!!!!!!!!!!!!!!

CEBALLO, CEBALLO, WHICH IS  
CITIZENS PROPERTY.

>> MAY IT PLEASE THE COURT HE IS THE ZMURT  
JUST YOU GIVE ONE MINUTE, BE  
SURE HE IS READY.

>> CERTAINLY.

>> OKAY.

>> MAY IT PLEASE THE COURT.  
I'M LORIE ROTH REPRESENT THE  
CEBALLO!!\$\$!!!!!!!!!!!!!!

CEBALLOS, AS YOU KNOW, THIS  
CASE INVOLVES WHEN OR NOT THE  
VALUED PROPERTY LAW APPLIED TO  
LAW -- COVERAGE WHEN OR NOT  
INSURERS HAVE TO COME  
OUT-OF-POCKET TO PAY THE COST  
AS THE THIRD DISTRICT RULED.

>> HOW DOES DID THIS CASE GET  
THEIR CERTIFICATE CONSULATE  
WITH ANOTHER OPINION, OPINION.

>> 4th DISTRICT.

>> WHERE IS THE CONSULATE IN  
THOSE TWO CASES?

.  
>> THE CONSULATE IN THOSE TWO  
CASES!!\$\$!!!!!!!!!!

CASES, HAS TO DEAL WITH --  
CONSONANT WHEN OR NOT THE  
VALUED PROPERTY LAW APPLIES,  
AND CONTROLS WITH REGARD TO  
LAW AND ORDINANCE COVERAGE AND  
REQUIRES A SUM CERTAIN TO BE  
PAID FOR THE LAW AND ORDINANCE  
COVERAGE AND OH --

>> DISTRICT TALK ABOUT THAT  
YOU HAVE TO IN THEY 4th  
DISTRICT OPINION AS I READ IT  
THERE IS NOTHING IN THERE THAT  
SAYS THAT YOU ARE ENTITLED TO  
THIS WHEN YOU HAVE -- WEATHER  
WHETHER OF YOU ACTUALLY  
INCURRED THESE SUMS OR NOT.

>> NO, WHAT THE 4th DISTRICT

DECIDED WAS YOU WERE ENTITLED  
TO IT UPON PROOF THAT THE  
VALUE OF THE PROPERTY MORE  
THAN HALF OF THE VALUE OF THE  
PROPERTY WAS REQUIRED IN ORDER  
TO MAKE TOTAL COSTS OF REPAIRS!!\$\$!!!!!!!!!!!!!!  
REPAIRS.

>> THAT IS FOR THE VALUE  
POLICY LOSS SECTION OF IT;  
CORRECT --

>> ORDINANCE THE LAW AND  
ORDINANCE SECTION, IF YOU LOOK  
AT -- IF YOU LOOK AT, FIRST,  
PAGE, IT IS UNDER, NOTE FOUR  
WHERE, THEY ARE TALKING ABOUT  
THE LAW AND ORDINANCE  
PROVISION AN ORDINANCE WHERE  
THE HOME IS LOCATED PROVIDES  
THAT WHAT REPAIRS IN  
ALTERATIONS AMOUNTING TO MORE  
THAN 50% OF THE VALUE ARE MADE  
THEY MUST CONFORM TO THE  
BUILDING CODES IN EFFECT AT  
THE TIME, AND A LOCAL BUILDING  
OFFICIAL DETERMINED THAT THE  
TOTALLY COST OF REPAIRS TO THE  
INSURED BUILDING WOULD EXCEED  
HALF A -- NOT THAT IT HAD NOT  
THAT THEY PAID THOSE COSTS.  
THEN THE COURT GOES ON TO HOLD  
UNDER THE LAW AND ORDINANCE  
PROVISION THAT THE PROVISION  
OF THE POLICY FOR AFFORDS A  
DIFFERENT AN ADDITIONAL 25% IN  
BENEFITS, AND EXCESS OF THE  
FACE AMOUNT OF THE POLICY,  
WHAT THE BUILDING IS DEEMED A  
TOTALLY LOSS AND MUST BE RE!!\$\$!!  
REBUILT.

THE ONE THING WE DO AGREE UPON  
IN THIS CASE, IS THAT THERE  
WAS NO EVIDENCE FROM A  
BUILDING OFFICIAL IN THIS CASE  
THAT THE PROPERTY WOULD HAVE  
TO BE REBUILT AND THAT THE  
VALUE OF REBUILDING WOULD COST  
ONE HALF THE VALUE OF THE  
PROPERTY ITSELF.

THAT WOULD HAVE BEEN 62500  
DOLLARS!!\$\$!!!!!!!!!!!!!!  
DOLLARS.

THAT WAS NOT IT.  
WILL.

>> I SEE FROM THE -- YOU SEE

OPINION MAYBE YOU CAN CORRECT ME IT IS KIND OF LONG THAT THEY QUOTED THE LAW AND ORDINANCE PROVISION IN THE POLICY IN MIRZ WA SO HE MIERZWA SO WE DON'T KNOW IF THAT POLICY REQUIRED THE TELL YOU SPENDTURE OF THE FUNDS BEFORE YOU COULD RECOVER OR NOT.

>> ACTUALLY, WHAT THEY SAY THEY DETERMINED THAT IN FACT, THAT THAT IT HAD TO IF YOU LOOK AT THE ORDINANCE, THEY DETERMINED THAT BY OPERATIONAL LOCAL LAW THE BUILDING IS A TOTAL LOSS IN OUR CASE, THE BUILDING WAS STIPULATED AS A TOTALLY LOSS, AND -- TOTAL LOGS THEY ALSO DETERMINED THAT THE BUILDING CODE IN FOOTNOTE FOUR THAT THE ORDINANCE THAT THE BUILDING OFFICIAL USED A FORMULA TO REACH AN ESTIMATED VALUE AND BASED ON THE VALUE PROPERTY LAW IN FACT, THERE WERE NO COSTS EXPENDED THEY WOULD BE EXPENDED.

>> WHAT YOU SAY IS THE ISSUE OF CONFLICT, WHICH IS THE THIRD DCA SAID YOU HAVE TO EXPEND MONEY FIRST BEFORU ACTUALLY GET IT THAT IS WHAT THE POLICY REQUIRES, AND THE 4th DCA CASE WE DON'T KNOW WHAT THE POHL REQUIRED.

>> -- POLICY REQUIRED.

>> WELL, WELL, THAT IS -- THE POLICY ITSELF IS NOT QUOTED IN THE.

.  
>> THAT IS WHAT I'M --

>> I AGREE WITH YOU THAT THE POLICY ITSELF IS NOT YETTED -- QUOTED IN THE OPINION BUT THE LOGIC --

>> FOR THERE TO HAVE BEEN A CONFLICT, I KNOW IT IS CERTIFICATED SO WE HAVE JURISDICTION ANYWAY BUT FOR THERE TO BE TELL YOU CONFLICT, WE HAD TO KNOW THAT THE 4th DCA CASE SAYS THAT THE POLICY IN THAT CASE SAID YOU HAVE TO

EXPEND THE FUNDS, YOU HAVE TO INCUR THE COSTS AND THE FOURTH DCA SAYING NO DON'T YOU HAVE TO BECAUSE UNDER THE POLICY LAW DON'T YOU HAVE TO.

>> I ADOPT AGREE WITH REGARD TO THE CONFLICT, BECAUSE I THINK THAT THE TWO POSITIONS ARE PATENTLY IRRECONCILABLE ON ONE HAND THE FOURTH DISTRICT SAID VALUE POLICY LAW CONTROLS OVER THE POLICY LANGUAGE ITSELF REGARDLESS WHAT THE POLICY LANGUAGE ACTUALLY SAYS, THE VALUE POLICY LAW CONTROLS. THEN WE GO TO THE THIRD DISTRICT OPINION, THIRD DISTRICT OPINION SAYS THE POLICY CONTROLS OVER THE VALUED POLICY LAW, AND THAT THE VALUED POLE LAW DOESN'T -- POFL LAW DOESN'T EFFECT RESULTS AT ALL.

>> --

>> IN ISSUE, FOLLOW-UP, QUESTIONS, YOU HAD FROM THE OTHER PANEL MEMBERS THAT IS READING THE FOURTH DISTRICT OPINION IT APPEARS THAT YOUR CLIMBANTS ARE CLAIMING THAT THE TRIAL COURT -- DIDN'T GIVE EFFECT TO THE ADDITIONAL 25%.

>> CORRECT.

>> -- AND THAT, FWUA SAID WELL, THAT IS EXCLUDED. AND -- NOW THOSE ARE THOSE ARE TWO DIFFERENT ISSUES, OKAY, THE ISSUE.

>> -- OKAY.

>> WHERE -- I'M READING FROM THE ENDING OF THE FOURTH DISTRICT OPINION, AND THEY ACTUALLY HAD IT SET OUT, IN A SEPARATE SECTION OF THE OPINION, AND ITS ONLY TWO PAR FRAYS LONG.

>> PARAGRAPHS LONG.

>> RIGHT?

>> ABSOLUTELY.

>> ALL THEY HAD HERE IS THAT FWUA ARGUED THAT THE ADDITION!!\$\$!!!!!!!!!!!!!! ADDITIONAL ORDINANCE -- ALL COVERAGE WAS EXCLUDED BY THE GENERAL EXCLUSIONS IN THE

POLICY.

AND THE FOURTH DISTRICT  
DISAGREES WITH THAT.  
AND ENDS UP SAYING THAT -- NO,  
YOU ARE WRONG, IT IS NOT  
EXCLUDED AND THEY ARE ENTITLED  
TO THAT COVERAGE, AND THEN  
THEY CONCLUDE THAT THE OPENER  
HAS ESTABLISHED BEYOND ANY  
QUESTION ENTITLEMENT TO THE  
ADDITIONAL 25%, THAT IS AN  
ENTIRELY SEPARATE ISSUE AS THE  
INSURANCE COMPANY CLAIMING --  
WELL, JUDGE, THEY HAVE TO  
APPROVE EACH -- PROVE EACH  
ELEMENT SHOWING THEY EITHER  
CONTRACT!!\$\$!!!!!!!!!!!!!!!

CONTRACTED FOR THAT DEBRIS  
REMOVAL OR WHATEVER WHICH IS  
THE ISSUE THAT WAS FACED IN  
THE THIRD DISTRICT, SO I'M --  
I'M NEED SOME HELP FROM YOU,  
TO GUIDE ME HOW, THERE IS --  
BETWEEN THE FOURTH DISTRIBUTOR  
SAYING, NO, WE REJECT THE  
PROPOSITION!!\$\$!!!!!!!!!!!!!!!  
PROPOSITION, THAT THIS  
COVERAGE WAS EXCLUDED THEY'VE  
GOT THE COVERAGE, THEY ARE  
ENTITLED TO THAT COVERAGE.

>> SO --

>> AND THE DECISION.

THIRD DISTRICT THAT SAYS WELL  
WE AGREE YOU HAVE THE  
COVERAGE, ALL RIGHT WHICH IS  
NO DISAGREEMENT WITH THE  
FOURTH DISTRICT DECISION, OUR  
ONLY ADDITIONAL FINDING IS  
THAT YOU HAVE PROPERTY TO GOT  
TO APPROVE YOU HAD THE LOSS.

>> WELL -- THE COVERAGE  
PROVING THAT THEY ARE TALKING  
ABOUT HERE, THAT THAT IS SAT  
EXCLUSIONS BUT THIS IS AN  
ADDITIONAL AMOUNT OF COVERAGE,  
IS EXACTLY THE COVERAGE  
PROVISION WE HAVE IN THIS  
CASE.

IF YOU LOOK AT --

>> I DON'T THINK THERE IS  
DISPUTE ABOUT THAT.

WHAT THE THIRD DISTRICT WAS  
RULING ON, WAS AN ARGUMENT BY  
THE INSURANCE COMPANY, THAT

SAYS, THEY WE AGREE IT GOT  
THEY GOT THE COVERAGE BUT IN  
ORDER TO ACTUALLY GET PAYMENT  
UNDER THE POLICY THEY'VE GOT  
TO DEMONSTRATE THAT THEY GOT  
BILLS OR ESTIMATE, OR WHATEVER  
THAT THEY WERE ARGUING THERE,  
FOURTH DISTRIBUTOR DOESN'T  
ADDRESS THAT ISSUE.

>> THE FOURTH DISTRICT DOES  
ADDRESS THE ISSUE INsofar AS  
THEY SAY THAT THAT THE LAW AND  
ORDINANCE COVERAGE IN THE  
FIRST PARAGRAPH UNDER  
PARAGRAPH A, THEY SAY THAT THE  
LAW AND ORDINANCE PROVISION OF  
THE POLICY AAFORDS AN  
ADDITIONAL 25% IN BENEFITS IN  
EXCESS OF FACE AMOUNT WHEN THE  
BUILDING IS DEEMED A TOTAL  
LOSS AND MUST BE REBUILT.  
THAT IS WHAT WE'VE GOT IN THIS  
CASE.

IT IS THE SAME PROVISION.

AND IT IS ALSO THE SAME  
PROOVENG\$!!\$\$!!!!!!!!!!!!!!!

PROOVENG\$ --

>> FOURTH DISTRIBUTOR DOESN'T  
DISPUTE THAT.

>> THAT IS RIGHT.

BUT THE THIRD DISTRICT DOES  
DISPUTE, THAT THAT VALUE  
POLICY LAW APPLIES AT ALL THAT  
IS WHERE THE CONFLICT IS THIRD  
DISTRICT SAYS, THE POLICY  
PROVISION APPLIES, AND YOU  
HAVE TO COME OUT OF POCKET TO  
PAY THOSE COSTS, AND SUBMIT  
THEM FOR ACTUAL REIMBURSEMENT  
THEN HE VALUE POLICY LAW DOES  
NOT CHANGE THIS RESULT AT ALL  
SO THAT IS WHERE THE CONFLICT  
IS, AND WHAT I SAY, IS IN  
TERMS OF THE DEFICIENCY IN  
PROOF IN THIS CASE THE  
DEFICIENCY IN PROOF IN THIS  
CASE IS NOT WHAT THE THIRD  
DISTRICT REMANDED FOR, WHICH  
IS TO REPAY THE COSTS.

THE DEFICIENCY IN PROOF IS  
THAT WE NEED A BUILDING  
OFFICIAL, OR SOMEBODY ELSE TO  
COME IN AND SAY IT WOULD COST  
MORE THAN 50% TO CONFORM WITH

CURRENT BUILDING CODES IN ORDER FOR THIS PROPERTY TO BE REBUILT.

APPEAR ADDITIONAL 50%.

THAT IS WHAT THE DEFICIENCY IN PROOF IS THAT IS THE REASON FOR A NEED FOR A REMABD, BUT NOT REMAND, BUT NOT FOR TO MAY

-- PAY OUT OF POCKET COSTS, BUT THE TWO THERE ARE TWO SEPARATE ISSUES IN MIERZWA ONE CONCURRENT CAUSE ONE FROM AN ACTUALLY -- CAUSE, SUCH AS WIND, OR WATER, THAT WAS TWO CONCURRENT RISKS, ONE WAS COVERED ONE WAS EXCLUDED.

WE ARE NOT THERE.

WE ARE NOT THERE.

THE ONLY ISSUE IN THIS CASE THAT IS COULD HAVE BEENED BY THE COX CASE WHICH IS ALSO CERTIFICATED TO THIS COURT, AS A QUESTION OF GREAT PUBLIC IMPORTANCE THE ISSUE IN THIS CASE, IS THE FOURTH DISTRICT BASICALLY SAID VALUE PROPERTY LAW COVERS LAW AND ORDINANCE COVERAGE ONCE YOU DETERMINE, THAT THERE IS LAW AND ORDINANCE COVERAGE, IN THE CASE, AND THERE IS A 50% DETERMINATION THAT YOU HAVE TO BUILD UP TO CODE, THEN YOU GET THE 25%, YOU DON'T HAVE TO COME OUT-OF-POCKET, YOU DON'T HAVE TO PAY THE COST.

SO THAT IS THE DISTINCTION AND THE -- IRRECONCILABLE DIFFERENCE BETWEEN THE FOURTH AND THIRD DISTRICT.

>> YOU SEE THAT IS STILL THE PROBLEM I HAVE YOU IS THAT THE FOURTH DISTRICT, DOES NOT AS I READ THEIR OPINION ADDRESS WHEN OR NOT YOU ACTUALLY HAVE TO COME OUT OF THE POCKET.

THEY SAY CLEAR THAT -- CLEARLY THAT YOU ARE ENTITLED TO THAT 25%, BUT THEY DO NOT SAY THAT WHEN OR NOT YOU HAVE TO COME OUT-OF-POCKET!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!

OUT-OF-POCKET.  
BEFORE YOU GET IT.

>> WELL, LOOK AT THE LOOK AT

THE FINDING WHERE THEY SAY IT IS AUTOMATIC THAT YOU GET IT. THEY SAY, THE PROOF WAS THAT UP CONTROVERTSIBLE THAT THEY GET IT.

>> I UNDERSTAND YOUR ARGUMENT ON THAT I THINK WE ARE.

>> LET ME ASK YOU THIS BECAUSE WE SPENT HALF YOUR ARGUMENT ON THE JURISDICTIONAL ISSUE, ON HE ON THE MERITS THERE IS NO QUESTION THERE IS NO DISPUTE THAT THE VALUE POLICY LAW APPLIES AS FAR AS THE PAYMENT FOR THE VALUE OF THE HOUSE, AND TOTAL LOSS; RIGHT? AND THE VALUE POLICY WILL LAW SEEMS TO SAY PARAPHRASING THIS APPLIES TO A SECTION OF THE POLICY THAT GIVES A SPECIFIC NUMBER FOR THE VALUE OF THE HOME.

>> NO THAT IS A DIFFERENT PROVISION!!\$!!!!!!!!!!!!!! PROVISION, WHAT IS NORMALLY BROUGHT OF VALUE POHL LAW PARAGRAPH NUMBER ONE, THEN IT HAS ALL THE EXCEPTIONS TO VALUED POLICY LAW, PARAGRAPH ONE, DEALS WITH VALUE POLICY LAW AND IT REQUIRES TWO THINGS, ONE, YOU HAVE TO HAVE A TOTAL LOSS ANY OF BUILDING, WHICH IS FROM A A-CONSERVED PERIL WE HAD IT IS A FIRE LOSS.

IT WAS A TOTAL LOSS THEY AGREED IT WAS TOTAL LOSS.

>> AGREED TO PAY FOR THAT? RIGHT.

>> NO. THEY HAVEN'T.

AND I WILL TELL YOU WHY.

>> -- THE VALUE --

>> OH, ABSOLUTELY THEY PAID -- THE DWELLING, THEY DIDN'T PAY THE LAW ORDINANCE I WILL TELL YOU WHY I THINK IT IS IS COVERINGED IF YOU LOOK THE SECOND CONDITION IS -- UNDER THE POLICY THE TOTAL LOSS SHALL BE THE AMOUNT OF MONEY FOR WHICH SUCH PROPERTY WAS SO INSURED AT SPECIFIED IN THE

POLICY, AND FOR WHICH A PREMIUM HAS BEEN CHARGED AND PAID.

WELL THE AMOUNT SPECIFIED IN THE POLICY IS NOT JUST 125,000 DOLLARS!!\$\$!!!!!!!!!!!!!!

DOLLARS, UNDER ADDITIONAL COVERAGE, AS TO COVERAGE A, WHICH IS DEING -- DWELLING, IT PROVIDES FOR 25% OR BUILDING INCREASE FOR LAW AND ORDINANCE COVERAGE, THAT IS WHERE YOU GET IT.

BUT IT FALLS UNDER DWELLING COVERAGE, COVERAGE A. SO THE AMOUNT UNDER THIS IS THE AMOUNT SPECIFIED IN THE POLICY IS 125,000, A PREMIUM WAS CHARGED AND PAID FOR THE ADDITIONAL LAW AND ORDINANCE COVERAGE, AND YOU SHOULD GET IT.

BUT THERE IS NO DISPUTE OVER THE TOTAL LOSS, OR THE FACT THAT YOU WERE CHARGED AND PAID A PREMIUM FOR THIS COVERAGE, AND PART OF COVERAGE A, WHICH IS DWELLING COVERAGE.

>> ARE THEY TAKING THE POSITION THAT INCURRING, MEANS THAT YOU ACTUALLY HAVE TO HAVE SPENT THE MONEY, OR IS IT THAT YOU HAVE TO THIS IS NOT AN -- AGAIN WHAT IS NOT AT ISSUE IS THEY AGREE THAT IT IS SOME POINT, THEY WOULD BE LIABLE TO PAY OUT BUT THE QUESTION IS WHAT POINT IT IS, IS IT THAT YOU GET READY TO REBUILD YOUR HOUSE YOU FIND OUT YOU HAVE TO DO THESE THINGS DON'T YOU HAVE THE MONEY, YOU SAY WELL HERE IS MY HERE IS THE --

>> NO. THEY TAKE THE POSITION AND THAT IS WHAT THE THIRD DISTRICT FOUND, THAT YOU HAVE TO PRESENT THEM WITH THE COST OUT-OF-POCKET!!\$\$!!!!!!!!!!!!!! OUT-OF-POCKET, YOU HAVE TO GIVE THEM THE COST.

>> YOU AGREE THAT THEIR POLICY REQUIRES THAT.

>> NO.

-- WELL, THE AMICUS HAS TAKEN THE POSITION OUR AMICUS HAS TAKEN THE POSITION THAT THE WORD "INCURRED" UNDER THE POLICY ITSELF ACTUALLY MEANS INCURRED LIABILITY AS OPPOSED TO INCURRED THE COST. THEY JUST -- DOSE POOUT THAT IN THIRD DISTRICT TELL US THAT YOU WOULD GET A WINDFALL IF YOU HAD NOT ACTUALLY PAID OUT THE COST FIRST, AND SOUGHT REIMBURSEMENT!!\$\$!!!!!!!!!!!!!!!!!!!!!! REIMBURSEMENT, PEOPLE CAN'T PAY OUT OF POCKET FOR.

>> HE NOW, WE ARE -- TWO DIFFERENT THINGS, YOU ARE NOT MAKING THE ARGUMENT THAT THIS IS AN AMBIGUOUS TERM?

>> I HAVE NOT MADE -- I HAVE NOT MADE THAT ARGUMENT.

>> I APPRECIATE YOUR BEING FORTHRIGHT ON THAT, ON HE ON THE ISSUE OF THE WHETHER THE VALUE POLICY LAW APPLIES AND IT IS NOT ONE I'M FARM WITH -- FAMILIAR WITH WHAT IS THE UNDERLYING POLICY OF THE VALUE POLICY LAW IN WHY -- WHAT IS IT IS THE LAW AMBIGUOUS, OR --

>> THE LAW, STRAIGHTFORWARD THE STRAW LAW WAS STRAIGHTFORWARD IT WAS WRITTEN THIS LAW PARTICULAR LAW WASWRITTEN BACK IN 1899.

IT HAS BEEN ON THE BOOKS IN FLORIDA SINCE THEN BUT I AM I IT CAME INTO EFFECT LONG BEFORE THAT THE POLICY BEHIND VALUED POLICY LAW WAS, WAS INSURANCE COMPANIES WERE SIMPLY IN ACCEPTING WHATEVER AMOUNT THE INSURED WAS PUTTING ON AS THE VALUE OF THEIR PROPERTY.

AND THEN THEY WERE DOING NO INVESTIGATION AS TO WHETHER PROPERTY WAS WORTH THAT AMOUNT OR NOT.

BUT THEN, AFTER ACCEPTING THE PREMIUMS AND AFTER ACCEPTING COMMISSION!!\$\$!!!!!!!!!!!!!!!!!!!!!! COMMISSIONS, FOR THOSE PREMIUMS!!\$\$!!!!!!!!!!!!!!!!!!!!!!

PREMIUMS, FOR YEARS AND YEARS AND YEARS, THEN THE INSURED WOULD PUT IN A CLAIM AND THEN THE INSURANCE COMPANY WOULD CONTEST THE AMOUNT AND YOU SEE.

>> AN ESTOPPEL ARGUMENT.

>> THAT IS WHAT IT WAS?

YOU PAID FOR THIS MUCH COVERAGE, YOU ARE GOING TO GET IT IF THERE IS A TOTAL LOSS. NOW HOW DOES THAT APPLY OR NOT APPLY TO SOMETHING THAT IS NOT A FACE AMOUNT BUT IS A -- A 25% OF THE TOTAL LOSS.

>> OKAY, BECAUSE IT IS ADDITIONAL COVERAGE FOR THE DWELLING ITSELF.

AND THERE IS A SLEW OF CASES, THAT WHEN AND THIS WAS THE HARD PART I HAD WITH THIS CASE.

WHEN YOU ARE LOOKING AT ALL OF THE CASES THAT COME UP, USUALLY!!\$\$!!!!!!!!!!!!!!

USUALLY, LAW AND ORDINANCE COVERAGE CAME UP AS AN ISSUE WITH REGARD TO WHEN OR NOT THERE WAS A TOTAL LOSS.

INSURANCE COMPANIES WERE TAKING THE POSITION THAT YOU COULD HAVE THE BUILDING WOULD BE DESTROYED, BUT A LAW AND ORDINANCE OF THE MUNICIPALITY WOULD PREVENT THE BUILDING FROM BEING REBUILT AND THEY TOOK THE POSITION THAT UNDER THAT SITUATION, IT WAS ONLY A PARTIAL LAW, THE LAW AND ORDINANCE PROVISION -- THE VALUE-ADDED THE VALLEY PROPERTY STATUTE DIDN'T APPLY AT ALL.

IT WAS A PARTIAL LOSS AND THEREFORE THEY ONLY HAD TO PAY THE ACTUAL LOSSES THERE WERE ACTUALLY INCURRED.

AND THE COURTS UNIFORMLY OVER ALL OVER THE COUNTRY SAID NO, THE ENACTMENT OF THE LAW AND ORDINANCE PROVISION WHICH MAKES YOU MAKES YOU OR PREVENTS FROM YOU REBUILDING MADE IT A TOTAL LOSS BY

OPERATION OF LAW.

>> ALL RIGHT WHAT IS IN THE SINCE I HAVE THE LAW IN FRONT OF ME, WHAT IS THE WORD THAT IS EITHER THAT WE ARE INTERPRETING HERE SAYS SHALL BE IF THE AMOUNT OF MONEY FOR WHICH SUCH PROPERTY WAS SO INSURED SO IS IT THAT THE QUESTION OF WHETHER THE AMOUNT OF MONEY IS THIS 25% MEANS THE AMOUNT -- AND IS THAT -- IS THAT S -- WITH.

>> MONEY SO INSURED IS 125,000, PLUS ADDITIONAL 25.

>> THAT IS STATUTORY INTERPRETATION.

>> CORRECT.

>> QUESTION.

>> THAT IS RIGHT.

AND THAT IS THE ISSUE FOR THIS COURT.

WHETHER THAT SUBSECTION SUBSECTION ONE INCLUDES, INCLUDES LAW AND ORDINANCE COVERAGE BECAUSE YOU HAVE MADE A PREMIUM FOR IT, AND IT IS INCLUDED IN THE PLAIN READING OF SUBSECTION ONE.

>> YOU ARE INTO REBUT -- INTO REBUTTAL --

>> THANK YOU.

>>,,

.  
>> GOOD MORNING PLACE IT PLEASE THE COURT JAMES PRIFAN PRICHD TO REPRESENT CITIZENS PROPERTY INSURANCE BEFORE THE COURT THIS MORNING ON THIS ISSUE.

>> MR. FISHERMAN WOULD YOU KAUK THROUGH ONE QUICK ISSUE ON THE CONFLICT WITH ME.

>> YES, SIR.

>> BE SURE THAT I UNDERSTAND THAT, I'M LOOKING TO IT IS IN ON PAGE THREE.

OF THE FOURTH DISTRICT OPINION.

>> YES, SIR.

>> -- AND IT TALKS IN TERMS OF WHAT IT IS NECESSARY FOR THE FOR THE VPL ELECTRICITY I NEED IT -- ELECT I NEED ONE YOU

HAVE COVERAGE TWO A TOTAL LOSS THEN GOES ON AND SAYS, IF THESE TWO FACTS ARE TRUE, VPL MANDATES THE CARRIER IS LIABLE TO THE OWNER FOR THE FACE AMOUNT OF THE POLICY NO MATTER THIS IS THE POINT HERE, NO MATTER WHAT OTHER FACTS ARE INVOLVED AS TO THE COST OF THE RE-PARIS FOR REPLACEMENT, THEN I TURN TO THE THIRD DISTRICT OPINION IT TALKS IN TERMS OF AND AGAIN ON PAGE THIS IS PAGE EIGHT OF THAT OPINION, IT TALKS IN TERMS OF THE TOTAL LOSS, AND IF THE BUILDING IS DEEMED A TOTAL LOSS CERTAINLY BE DEEMED FOR THE PURPOSES OF LAW AND ORDINANCE THEN GOES ON IN THE FINAL PARAGRAPH AND IT SAYS, HOWEVER, AS PROVIDED IN THE POLICY THEY MAY RECEIVE THAT 25% ONLY, ONLY IF THEY ACTUALLY IN-- INCURRED COVERED EXPENSE, WHEN I VOTED TO ACCEPT JURISDICTION THAT IS WHAT I WAS LOOKING AT.

CAN YOU TELL ME THAT THAT IS THAT DOESN'T CONFLICT WITH ONE ANOTHER?

ONE SEEMS TO SAY TO ME DOESN'T MAKE ANY DIFFERENCE, NO OTHER FACT IS CONSIDERED -- IN THE THIRD DISTRICT SAYS ONLY THE ACTUALLY INCURRED THE EXPENSE THAT IS WHERE I NEED AN EXPLANATION, WHY WE WOULD NOT HAVE IT UNDER THOSE TWO SENTENCES!!!\$!!!!!!!!!!!!!! SENTENCES.

>> OKAY, I CAN RESPOND TO THAT VERY SIMPLY BY SAYING THAT YOU HAVE TO TAKE THE ENTIRE VALUED POLICY LAW AS A WHOLE WITH ALL OF IT'S SUBPARTS IN ORDER TO UNDERSTAND WHAT THE MEANING OF THAT PHRASE WAS.

AND IF I MAY, IN THE FLESHMAN CASE VERSUS VPL EVERY STATUTE MUST BE READ IN LIGHT WITH MEANING DESCRIBED TO EVERY PORTION IN DO YOU REGARD GIVEN TO SEMANTIC OR TEXTUAL INTERRELATIONSHIP BETWEEN IT'S

PARTS WHAT WE HAVE A VALUED  
POLICY LAW FIRST PARAGRAPH  
WHICH SKUNS DISCUSSED WHICH  
TALKS ABOUT THE COVERED LOSS,  
AND A TOTAL LOSS, A COVERED  
CLAIM AND TOTAL LOSS WE HAVE  
NO DISPUTE WITH THAT WE PAID  
THE COVERAGE, A, AMOUNT.  
WHAT WE HAVE A DISPEW WITH IS  
THE TOTAL DISREGARD OF  
PARAGRAPHS TWO THROUGH 8,!!\$\$!!EIGHT,  
WHICH IF YOU LOOK AT THE  
ENTIRE STATUTE, IT TAKES THE  
STATUTE, IT GIVENS THEY  
GENERAL RULE IT GIVES YOU THE  
ACCEPT HE EX EPIONS GIVE IN  
YOU PARAGRAPHS EIGHT THE  
ADDITIONAL OPPORTUNITY TO  
OFFER INDEMOCRATIFICATION AS  
THE DISTINGUISHED FROM THIS  
LIQUIDATED DAMAGE CONCEPT IN  
PARAGRAPH ONE, YOU HAVE GOT  
INDEMOCRAT ANY\$\$!!!!IFICATION  
PROVISION EXPLICIT EXPRESS  
TEMPERATURES IN THE LAW SO IF  
WE LOOK AT PARAGRAPH, FIVE,  
AND IT TALKS ABOUT EXCLUSION,  
OF ANY KIND OF CLAIM, THAT HAS  
NOT BEEN EX SUPPRESSED IN A  
DOLLAR VALUE, AND I MIGHT  
POINT OUT TO THE COURT, IF WE  
ARE TALKING ABOUT STATUTORY  
INTERPRETATION, IT SAYS IT  
TWICE, WITHIN THE SAME  
SENTENCE, YOU MUST HAVE A  
DOLLAR VALUE EXPRESSED IN THE  
COVERAGE, IN ORDER FOR IT TO  
FIT, IT ALSO SAYS IF THAT SAME  
PAR GRAPH --  
>> LET'S GO BACK I'M REALLY  
TRYING TO UNDERSTAND REALLY  
TRYING TO UNDERSTAND THAT  
WOULD MEAN THAT THE 25% IS NOT  
COVERED IN THE VALUE POLICY  
LAW AT ALL.  
>> THAT IS CREAK.  
>> THAT IS WHAT YOU ARE  
SAYING.  
>> THAT IS --  
>> THE QUESTION THAT I'M  
ASKING THAT IS A DIFFERENT  
ISSUE.  
>> OKAY  
>> WHAT YOU ARE SAYING, IS

THAT AND IT IS NOT EXPRESSED IN HERE, THAT A 25% IS NOT COVERED AT ALL WHILE BOTH OF THESE COURTS SEEM TO SAY THAT IT IS, THE THIRD DISTRICT SAYS IT IS ONLY IF YOU ACTUALLY EXPEND IT THE FOURTH SAYS IT IS IRRELEVANT.

>> LET ME CLARIFY WHAT OUR POSITION IS WITH REGARD TO JURISDICTION IN THE COURT DOES NOT TALK ABOUT THE VALUE OF THE ORDINANCE IN LAW, BENEFIT THAT IS BEING PAID TO THAT PARTY.

THEY ONLY SAY IF YOU HAVE A TOTAL LOSS ORDINANCE AND LAW BECOMES AVAILABLE IN THE RECORD, IN THAT CASE, IT WAS CLEAR, THAT THAT PARTY HAD INCURRED!!\$\$!!!!!!!!!!!!!!

INCURRED, THOSE LOSSES.

>> -- I'M NOT WAIT A MINUTE, I'M LOOKING FOR THAT, BUT IT DOES NOT SAY INCURRED THERE. IT SAYS WITHOUT REGARD --

>> NO.

?

NO MATTER WHAT OTHER FACTS ARE INVOLVED AS TO THE COST OF REPAIRS OR REPLACEMENT.

>> CORRECT.

>> THAT IS WHAT IT SAYS SO IF CORRECT.

>> -- IS THERE SOMEPLACE ELSE TELL US THAT IS INCURRED.

>> YES IF WE LOOK AT PAGE 779 OF THE OPINION, AND WOULD BE FOUND UN-- UNDER FOOTNOTE NINE.

THE OWNER HAS ESTABLISHED BEYOND ANY QUESTION ENTITLEMENT TO ADDITIONAL 25% IN BENEFITS, UNDER ORDINANCE AND LAW IN THAT SITUATION.

>> BUT -- IN GET -- JUSTICE LEWIS' QUESTION IN MY HEAD AND THAT IS IS AS YOU YOUR POSITION, OR NOT THAT A 25% IS PART OF THE FACE VALUE OF THE FACE AMOUNT OF THE SNOEFL IS IT 25% --

>> THE POSITION THAT IT IS NOT PART OF THE FACE VALUE OF THE

POLICY, VERY SIMPLY, BECAUSE PARAGRAPH FIVE EXPRESSLY STATES THAT THIS DOES NOT THE VALUE POLICY LAW DOES NOT INCLUDE ANY CLAIM COVERAGE OR CLAIM, IN WHICH THE DOLLAR AMOUNT, IS NOT DIRECTLY STATED IN THE POLICY, AS A DOLLAR AMOUNT, SPECIFICALLY, APPEAR LIKE TOBL THAT STRUCTURE WHAT WE ARE TALKING ABOUT IS SOMETHING THAT IS EXPRESSED IN A PERCENTAGE, THAT IS SEPARATE AND APART FROM THE LIQUIDATED DAMAGE AMOUNT THAT WE HAVE UNDER COVERAGE A, NOW WE ARE TALKING ABOUT AN INDEMOCRAT ANY\$\$!!!!IFICATION CONCEPT FOR THE ORDINANCE AND LAW COVERAGE WHICH IS EXPRESSLY AUTHORIZED IN SUBPARAGRAPH 8.

THAT IS WHY I'M SO CONCERNED, THAT WE ARE TAKING THIS STATUTE APARTPIECE MEAL NOT LOOKING AT IT IN CON TENTH, AND IN A RE-- RELATIONSHIP TO WHAT IS BEING ACCOMPLISHED HERE.

>> TO MAKE SURE YOU ARE TALKING ABOUT NOT -- BECAUSE PARAGRAPH FIVE YOU ARE NOT TALKING ABOUT THE PAEFL YOU ARE ACTUALLY IN THE VALUE POLICY LAW, IN ADDITION TO THE -- THE FIRST PART THAT TALKS ABOUT THE AMOUNT OF MONEY, SUBSECTION TALKS ABOUT WHEN IT DOESN'T THIS -- THAT THIS SECTION DOES NOT APPLY AS TO PERSONAL PROPERTY.

>> EXCEPT INSURANCE.

>> YOU ARE SAYING THIS SECTION MEANS THE WHOLE 627.702.

>> THAT IS CORRECT YOUR HONOR IT GOES SPECIFICALLY, ON TO TALK ABOUT ANY COVERAGE, OR ANY CLAIM THAT IS NOT EXPRESS!!\$\$!!!!!!!!!!!!!! EXPRESSED IN DOLLAR AMOUNT DOES NOT FALL WITHIN THIS STATUTE.

>> DO WE KNOW WAS THAT SUBSECTION ADDED LATER BECAUSE -- IT HAS BEEN REPRESENTED THAT THIS THE LAW

HAS BEEN IN AN IN EXISTENCE,  
SINCE, BEFORE THE LAST  
CENTURY, WERE THESE SECTIONS  
ADDED AT DIFFERENT TIMES DO WE  
KNOW.

>> I DON'T KNOW SPECIFICALLY  
WHEN THIS SECTION WAS ADDED  
BUT SUBSTANTIALLY PREDATES  
THIS LOSS.

AND THIS CASE.

>> I KNOW BUT IT IS PROBABLY  
SUBSTANTIALLY AFTER 1899.

>> YES YOUR HONOR.

>> AND THEN, THE SUBSECTION 8.  
WHICH TALKS ABOUT THE  
ENDORSEMENT THAT CAN PEADED  
IS IT YOUR POSITION, THAT THE  
ENDORSEMENT HERE, FOR THE 25%,  
IS AN ENDORSEMENT OF  
CONTEMPLATED IN SUBSECTION 8.

>> PRECISELY THE LANGOCASE I  
CITED IN FEE OF THE BRIEF  
ALMOST ALL ON 4s WITH THIS YOU  
ARE TALKING ABOUT EQUIVALENT  
OF TREJSD PLACEMENT COST  
COVERAGE IT IS A SITUATION,  
WHERE YOU ARE ADDING SOMETHING  
ADDITION!!\$!!!!!!!!!!!!!!!

ADDITIONAL,OVER AND ABOVE THAT  
LIQUIDATED DAMAGE AMOUNT IN  
COVERAGE A, YOU ARE ADDING  
SOMETHING ADDITIONAL THAT IF  
THEY ROW BUILD IF THEY INCUR  
THE COSTS WHICH I DON'T I  
DISAGREE WITH COUNSEL'S  
REPRESENTATION!!\$!!!!!!!!!!!!!!!

REPRESENTATION, THAT I THAT I  
-- DISPUTED THE READING OFFOI  
IN KURD" I THINK -- THINK  
INCURRED MEANS BECOME LIABLE  
FOR IF THEY SAY TO THE  
CONTRACTOR GIVE IN THE A  
CONTRACT THEY SIGN THE C THEY  
GAVE IT TO THE INSURANCE  
COMPANY THE INSURANCE COMPANY  
IS IN AINGS PO, TO HONOR IT.  
TO LOOK AT IT, AND TO ADJUST  
IT.

>> ALL RIGHT SO YOU ARE  
ACTUALLY -- SO THAT IS THAT --  
CERTAINLY IN TERMS OF BEING  
CONCERNED, ABOUT HOW THESE  
THINGS GO I'M THINKING OF  
SOMEBODY HAVING A HOUSE -- IN

LUB!!\$\$!!!!

LUBEL THEY NOW GET CITED BY,  
HE CODE ENFORCEMENT, OR HAVING  
A NUISANCE THEY NEED TO START  
TO REMOVE THE RUBBLE.

>> RIGHT.

>> -- IS THAT -- IF YOU GOT  
CITED AND YOU HAVE THAT IS  
THAT --

>> THERE IS DEBRIS REMOVAL  
COVERAGE, THERE IS LANDSCAPING  
REPAIR COVERAGE AND THERE IS  
ORDINANCE AND LAW COVERAGE.

>> ALL OF WHICH MAY HAVE SOME  
BEARING ON THAT.

THE ORIGINAL MOTION IF THE  
COURT WILL RECALL AT THE TRIAL  
LEVEL WAS FOR SUMMARY JUDGMENT  
AS TO ALL THREE OF THOSE  
COVERAGES, TWO OF WHICH HAVE  
BEEN DECLINED BY THE TRIAL  
COURT.

AND HAVE NOT A WORD HAS BEEN  
SPOKEN ABOUT I COUNSEL ABOUT  
ANY OF THAT, GOING RIGHT BY ON  
THE SAME TEST ON THE SAME  
BASIS!!\$\$!!!!!!!

BASIS, THAT THEY WOULD BE  
ENTITLED TO HERE, NOT  
MENTIONED THERE

>> SO WE ARE CLEAR INCURRED  
YOU ARE SAYING IS A BROADER  
TERM UNDER YOUR POLICY.

>> ABSOLUTELY.

>> ON BEHALF OF THE INSURANCE  
COMPANY, MISS ROTH SHOULD BE  
HAPPY WITH THAT CONCESSION.

>> I AM.

>> WE ARE IN AGREEMENT.

>> I'M STILL HAVE A PROBLEM  
WITH YOUR PREDICATE ARGUMENT.

>> I APOLOGIZE.

>> BEING LOO BEING BAG BACK AT  
FOURTH DISTRICT OPINION IN  
CONCLUDING PARAGRAPHS OF THE  
MAJORITY PIN IT TALKS IN TERMS  
OF IT IS EXPRESSED AS A  
PERCENTAGE THEY ARE INCLUDING!!\$\$!!!!!!!!!!!!!!!!!!!!

INCLUDING THAT PERCENTAGE  
COVERAGE AS PAST OF THE PAEFL  
VOEFL VPL, YOU KEEP SAYING  
THAT IT IS NOT I'M HAVING  
DIFFICULTY ACCEPTING YOUR  
PREMISE I'M TRYING TO WORK

THROUGH THIS, BUT DO THEY NOT SAY THAT?

>> IT IS UNDER, UNDER THE HEAD NOTE 8,!!\$\$!!EIGHT, YOU HAVE THE PAGE RIGHT THERE IN FRONT OF YOU. BECAUSE THAT SPECIFICALLY THIS LAW THE ORDINANCE AND LAY COVERAGE.

>> YES.

>> AND IT TALKS UNDER THAT POLICY WAS ALSO, 25%, RIGHT?

>> YES, SIR.

>> THEN THEY GO ON AND SAY TO RESOLVE THAT THAT IF THE BUILDING IS A TOTAL LOSS, IT SHOULD CERTAINLY BE A TOTAL LOSS FOR THE PURPOSES OF THIS COVERAGE AS WELL.

>> RIGHT AND THEN.

>> -- I SUPPOSES THAT IT IS GOING TO BE REBUILT.

BUT THE OTHER SIDE OF THE COIN IS IF YOU HAVE A STRUCTURE THAT IS BUILT TODAY, AND IT BURNS DOWN THAT ITS -- AFTERNOON WHEN BUILT REBUILT TOMORROW, THERE IS NO INCURRING OF ADDITIONAL COSTS AS A RESULT OF THE ENFORCEMENT OF ORDINANCE AND LAW COVERAGE, THE PROBLEM IS THAT THE PLAINTIFFS IN THIS CASE THE EP!!\$\$!! EPILON, WANTS AUTOMATIC ENTITLEMENT TO ADDITIONAL 25%.

>> I UNDERSTOOD YOUR ARGUMENT BEFORE IT WAS NOT PART OF THAT BECAUSE IT WAS PERCENTAGE.

>> THAT IS MY ARGUMENT.

>> THE FOURTH DISTRICT SAYS THAT IS WRONG.

>> WELL --

>> HELP ME UNDERSTAND.

>> OKAY.

>> --

>> I'M NOT IN AGREEMENT WITH THE FOURTH DISTRICT ON THAT POINT.

>> OKAY.

>> I WOULD ALSO POINT OUT TO THE COURT THAT I THINK THE FOURTH DISTRICT WAS SPENDING MOST TIME ON THE BODY OF THE POLICY, AND NOT SO MUCH TIME ON THE ORDINANCE AND LAW AND

IT WAS AN AFTER THOUGHT IN THIS PARTICULAR CIRCUMSTANCE, WHERE THAT COVERAGE WAS DENIED BY THE CARRIER, IN OUR SITUATION WE DIDN'T DENY COVERAGE, WE ARE ONLY TALKING ABOUT THE VALUE OF THE BENEFIT.

>> OKAY.

>> -- YOU ARE SAYING THAT THE FOURTH DISTRICT WAS WRONG WHEN THEY EVEN PROVIDED THAT BENEFIT.

>> YES, SIR.

>> THAT IS WHAT YOU ARE SAYING.

>> YES.

>> THEY DID IT THOUGH, AND NOW, THE THIRD DISTRICT IS SAYING, THAT WE ARE GOING TO DO IT, TOO BUT ONLY IF YOU EXPEND IT.

>> THAT IS NOT EXPEND EXPEND IS --

>> INCURRED BETTER WORD AT LEFT ON THE FACE OF THIS WE HAVE A CONFLICT BETWEEN THE TWO THEY BOTH MAY BE WRONG, MAYBE IT DOES AIN'T PLY AT ALL IS WHAT YOU ARE ARGUING, BUT LEAST ON THE FACE, THAT THESE TWO CAN'T STAND --

>> I UNDERSTAND YOUR ARGUMENT, AND IP.

>> IT IS NOT I'M TRYING TO MAKE SURE I UNDERSTAND YOUR ARGUMENT THAT IS WHAT I WANT TO DO.

>> YIM OF THE OPINION THAT THE MIERZWA COURT OAKING AT ONLY COVERAGE LIVE ORDINANCE AND LAW REALLY NOT FOCUSED ON WHAT THE COURT IS NOW NOW UKSINGING ON THAT DICTA, THEY DEALT WITH A THEIR MAIN BODY, AT MADE THEIR MAIN RULING THREW IN ORDINANCE IN LAW AS AFTER THOUGHT.

>> IT WAS CLAIM.

>> YES, SIR.

>>IT IS A CLAIM SO IT IS NOT DICTA THIS IS HOLDING -- WITH REGARD TO THAT COVERAGE.

>> HOLDING, THE HOLDING SAYS

THERE IS COVERAGE, IT DOESN'T SAY THE VALUE OF THE COVERAGE. AND MY POINT IS COVERAGE, IS NOT AN ISSUE IN OUR CASE.

>> WELL IT SAYS, THAT THE RESOLUTION TO THIS CLAIM IS PARTIALLY RELATED TO DECISION ON THE -- ISSUE IF BILLING TOTAL LOSS FOR PURPOSES OF VPL, IT IS CERTAINLY BE DEEMED AT A A TOTAL LOSS FOR PURPOSE OF THIS ORDINANCE, OR LOSS COVERAGE.

>> AND THAT IS WHY THE COURT, IN THE FIRST DISTRICT COURT OF APPEAL!!\$\$!!!!!!!!!!!!

APPEAL, IN THE COX DECISION, STARTED BACKING AWAY FROM THAT DECISION EVEN THOUGH THEY SAID THEY WERE DUTY POUND TO FOLLOW IT.

THEY ALSO WENT INTO THE FACT THAT THEY SAID THE POWER IF THE POWER OF LEGISLATURE WERE OURS INSTEAD, CONSIDERATIONS LIKE EASE OF ACTUARIAL ANALYSIS THE ECONOMICS OF THE INSURANCE INDUSTRY, AND EVEN OUR OWN NOTIONS OF FAIRNESS MIGHT WELL LEAD US TO INTERPRETATION OF THE 2004 STATUTE NOT UNLIKE WHAT THE STATUTE HAS REQUIRED SINCE IT WAS SIGNIFICANTLY REVISED IN 2005!!\$\$!!!!!!

2005, EVERYBODY IS MOVING AWAY FROM THIS TYPE OF ANALYSIS.

THERE ARE SERIES OF CASES I CITED TO YOU IN SUPPLEMENTAL AUTHORITY, THE CHANCE CASE, WHICH JUST CAME DOWN, A COUPLE WEEKS AGO, IN WHICH THE COURT HAS STAYED A RULING PENDING THE OUTCOME OF THIS AND COX ON -- RELYING MORE ON THE SYSTEM ABAYTYPE AN AL VAS VANGUARD DOLMAN AS CASE ANOTHER FIRST DISTRICT CASE THE ADDITIONAL COVERAGE THEY DETERMINED, WERE NOT COVERED WERE NOT COVERED BY THE VALUE POLICY LAW. AND THEY FOLLOWED THE MIERZWA ANALYSIS!!\$\$!!!!!!!!!!!!!! ANALYSIS.

SO THESE COURTS ARE NOT VERY COMFORTABLE WITH WHAT HAPPENED IN THE MIERZWA CASE AND THEY ARE STARTING TO CHIP AWAY AT THOSE ANALYSES.

>> YOU -- I MEAN, SO IT SEEMS TO ME, THAT YOUR POSITION WOULD BE THAT SINCE A CERTIFICATED CONFLICT AND SINCE MIERZWA IS AT LEAST IT IS CERTAINLY CONFUSING, THAT YOU WOULD URGE US TO RESOLVE THE TAKE THE KEEP THIS CASE.

>> YES YOUR HONOR ACTUALLY, EVEN THOUGH I'M NOT.

>> -- LONG AND SHORT OF IT --

>> EVEN THOUGH I'M NOT REALLY COMFORTABLE WITH JURISDICTION.

>> -- STATE IS WAITING OR.

>> SAID WE HAVE JURISDICTION.

>> YES, SIR -- MA'AM.

>> I DON'T KNOW IF YOU ASKED, DID YOU ASK THE THIRD DISTRICT TO CERTIFICATE.

>> I DID -- CERTIFY.

>> I DID NOT IN ANY EVENT WE'VE GOT JURISDICTION SO YOU THE TWO OF YOU NOW WE'VE GOT TWO THAT YOU BOTH AGREE, WE HAVE JURISDICTION.

>> WE WORKED THROUGH THAT ONE.

>> WE SHOULD ACCEPT.

>> SORRY IT TOOK SO LONG.

>> AND THEN YOU BOTH AGREE OR NOW THAT INCUR MEANS SOMETHING LESS THAN HAVING THE EXPENSE AND NOW WE JUST GET BACK TO WHETHER SUBSECTIONS 5 AND 8,!!\$\$!!

EIGHT, REALLY TRUMP THE INITIAL STATEMENT, AND REALLY HAVE TO BE CONSIDERED, IN A STATUTORY CONSTRUCTION ANALYSIS WHICH NEITHER THE THIRDDOR THE FOURTH DID IT THE THIRD DIDN'T DO IT AT ALL.

>> YOU BRING UP A VERY IMPORTANT POINT, BECAUSE.

>> I DO?

>> YES, MA'AM.

>> THANKS.

>> YOU ARE BRINGING UP HERE THAT THE -- STATUTES -- READ AS A WHOLE SHOULD BE ANALYZED AS DISTINGUISHED FROM THE EP!!\$\$!!

EPILONARGUMENT SAYING THE  
STATUTE TRUMPS THE POHL THIS  
IS NOT A STATUE VERSUS POLICY  
ARGUMENT THIS IS AN ANALYSIS  
OF THE STATUTE, TAKING INTO  
CONSIDER!!\$\$!!!!!!!!!!!!!!  
CONSIDERATION, ITS ENTIRETY!!\$\$!!!!ITY  
IN CONTEXT.

>> I THINK SAYING IN FAIRNESS  
THE STATUE EITHER THE THIRD  
DISTRICT INCLUDED THE STATUTE  
APPLIES TO THIS TYPE OF  
COVERAGE, AND THE FOURTH --  
DOES NOT APPLY TO THIS TYPE OF  
COVERAGE THE FOURTH DISTRICT  
CONCLUDED IT WILL DID APPLY WE  
ARE REALLY A TRUMP I THING WE  
GO TO TO THE SAME PLACE.

>> OKAY.

>> THE FINAL ANALYSIS IF WE  
LOOK AT A CASE LIKE LANGHORNE  
CASE, IN WHICH THIS IS BY  
ANALOGY NOW NOT ORDINANCE IN  
LAW CASE, BUT TO EXTENDED  
REPLACEMENT COST COVERAGE CASE  
YOU ARE LOOKING AT A  
SITUATION, WHERE THE UNDER!!\$\$!!!!!!!!!!  
UNDERLYING COVERAGE IS PAID  
THE QUESTION IS DID THEY  
INCUR, OR DID THEY COME AND  
PAY OUT, THOSE ADDITIONAL  
COSTS, SO THEY COULD BE PAID  
BACK, FOR THAT EXTENDED  
REPLACEMENT COST COVERAGE, THE  
COURT MADE THE SAME ANALYSIS  
THAT WE ARE TALKING ABOUT,  
THEY SAID THAT PARAGRAPH 8,!!\$\$!!  
EIGHT, DOES NOT CONFLICT WITH  
PARAGRAPH ONE OF THE VALUED  
POLICY LAW, AND THAT THE  
ENDORSEMENT IN THAT CASE WHICH  
IS VERY MUCH LIKE THE  
ENDORSEMENT THAT WE ARE  
DEALING WITH HERE, WHICH IS AN  
ENDORSEMENT THAT SPECIFIES  
SPECIFIED OF IT'S OWN TERMS  
THAT THIS IS FURTHER  
INDEMOCRAT IF I XAIGS OF THE  
INSURER SAYS SPECIFICALLY THAT  
THE CARRIER CAN BY APPROPRIATE  
RIDER OR ENDORSEMENT OTHERS  
PROVIDE INSURANCE INF,,,,,,,,,  
TO REBUILD AND REPLACE THE  
PROPERTY.

SO, IF WE LOOK AT THE ARGUMENT WHERE, SOMEBODY'S HOUSE IS BUILT TODAY AND IT'S BURNT BY FIRE AND IT'S, DEMOLISHED AND IT'S REBUILT THERE IS NEVER GOING TO BE UNDER THAT SCENARIO AN ORDINANCED IN LAW COVERAGE AS WE READ THE POLICIED ASED WE READ THE STATUTE.

AS DISTINGUISHED FROM THE POGSD WIDTH THEY HAD GET 12 5ED PERSD OF COUGHEDRAGE A BECAUSE IT'S A TOTALED LOSS, ALL I CAN EN TITLEMENT WE'RE ALL HERE AT A TIME WED NODED THERED'S A CRISIS IN THE PROPERTY INWITH WE'RE TALKING ABOUT IS GIVING AWAY 25% OF EVERY ADDITIONAL POLICY.

EVERY TOTAL LOSS MATTER. >> WE'RE NOT HERE TO MAKD A POLICY DECISION.

>> NO.

>> WOOERD HERE TO MAKE AD STAT TORD KROUXD, SOUND ANALYSIS AS THERE LAW COMPELS THE PAYMENT OF ADDITIONAL 25% OR NOT.

>> I UNDERSTAND THAT, AND I FULLY APPRECIATE THAT, BUT THAT IS GOING TO BE THE PRACTICAL RESULT BECAUSE YOU'RE GOING TO HAVE HUNDREDS OF THOUSANDS OF POLICIES OUT THERE ON THE STREET AND WHEN YOU HAVE, HEAVEN FORBID YOU HAVE ANOTHER TOTAL LOSS SITUATION OF AN IVAN OR ANDREW SOMETHING OF THAT NATURE OR FIRE LOSSES OR ANYTHING ELSE YOU'RE LOOKING SITUATION WHERE YOU'RE GOING TO HAVE A, LINE OF PLAINTIFFS COMING TO DOOR OR CLAIMANTS OR INSUREDS OR POLICYHOLDERS COMING TO THE DOOR LOOKING FOR 100% OF THEIR COVERAGE A, 25% OF THEIR ORDINANCE IN LAW WHETHER THEY INCUR ANY OF THOSE COSTS OR NOT, WHETHER ANY CITY OFFICIAL

SAYS YOU MUST IMPROVE YOUR PROPERTY TO THE LEVEL OF CURRENT BUILDING CODE OR NOT.

PLUS DEBRIS REMOVAL.

PLUS LANDSCAPING WHICH HAVE BEEN TOTALLY DISREGARDED BY COUNSEL'S ARGUEMENTS.

SO UNDER THE SECOND QUARTER DISTINGUISHING BETWEEN WHAT IT COSTS WHEN WE AGREE UPON A VALUE UP FRONT IN LIQUIDATED DAMAGE AMOUNT FOR WHAT THE LOSS IS FROM, WHAT THE STATUTE SPECIFICALLY AUTHORIZED US TO DO WHICH IS GIVE THIS, ADDITIONAL ENDORSEMENT, TO HELP, THE POLICYHOLDER REBUILD THE PROPERTY.

THOSE ARE COMPLETELY DIFFERENT CONCEPTS AND RESPECTFULLY, WE BELIEVE THAT THE THIRD DISTRICT WAS CORRECT IN ITS RULING BELOW AND WE ASK THAT IT BE AFFIRMED.

THANK YOU, YOUR HONOR.

>> THANK YOU.

ORAL ARGUMENT CERTAINLY HELPED IN THIS CASE.

YES?

>> THANK YOU.

MIGHTY PLEASE ADDRESS PARAGRAPH 8?

BECAUSE PARAGRAPH 8 DOES NOT DEAL WITH THIS ISSUE AT ALL.

IF I COULD EXPLAIN IT

BECAUSE I'VE READ IT NOW TEN TIMES AT LEAST.

AND YOU THINK I UNDERSTAND WHAT IT'S ABOUT BUT I THINK I CAN DEMONSTRATE TO YOU WHY IT DOESN'T APBLEW TO LAW AND ORDINANCE COVERAGE.

PARAGRAPH TALKS ABOUT INDEMNIFYING INSURED BETWEEN THE INSUREABLE VALUE OF THE INSURED PROPERTY AT THE TIME OF THE LOSS.

WHICH IS WHEN THE FIRE OCCURRED.

AND THE AMOUNT ACTUALLY EXPENDED WITH NEW MATERIALS.

THIS HAS TO DO WITH A  
CATASTROPHIC MARKET  
INFLATION PROVISION.  
YOU KNOW THAT WHEN A  
HURRICANE HITS, MATERIALS GO  
THROUGH THE ROOF.  
WE ALL KNOW THAT.  
THIS IS EXTENDED REPLACEMENT  
COVERAGE TO COVER THE COSTS  
AND INCREASED VALUE OF  
MATERIALS WHEN THEY GO UP AS  
A RESULT OF THE CATASTROPHIC  
EVENT.

>> HOW ABOUT HE DEALING WITH  
LANGUAGE IN 4th DISTRICT'S  
OPINION?

SAYS THE PURPOSE OF THIS  
PARTICULAR PROVISION IS TO  
COVER THE INCREASED COST OF  
RECONSTRUCTION CAUSED BY  
CHANGES IN LOCAL BUILDING  
CODES ADOPTED AFTER THE  
ORIGINAL CONSTRUCTION  
BUILDING.

>> EXACTLY.

I'M SORRY.

I'M READY.

>> YOUR OPPONENT REPEATEDLY  
BROUGHT UP THE IMAGE OF, IF  
THE BUILDING CODE HASN'T  
CHANGED, YOU KNOW BECAUSE OF  
THE FACT THAT THE, FLORIDA  
IS PROBABLY A GOOD EXAMPLE  
THAT, WE HAVE AN ENORMOUS  
AMOUNT OF NEW CONSTRUCTION.  
AND SO, IF YOU DON'T HAVE  
THE CHANGE IN LOCAL BUILDING  
CODES, THE HOUSE WAS  
FINISHED SIX MONTHS AGO,  
ABSOLUTELY NO CHANGE.  
IT'S STILL YOUR POSITION,  
THAT, YOUR IS IT AL 25%?

>> NO.

>> OH SO YOU --

>> NO.

THAT'S THE POSITION WHAT  
I'VE TRIED TO STOP FOR A  
MINUTE SO I UNDERSTAND.  
YOU WOULD AGREE EVEN THOUGH  
YOU HAVE THAT COVERAGE, ALL  
RIGHT, YOU WOULD HAVE TO  
MAKE A DEMONSTRATION IN THE  
TRIAL COURT OR WHEREVER,  
THAT THE BUILDING CODE HAS

CHANGED?

>> ABSOLUTELY.

AND I HAVE MY BRIEF.

>> WHY WOULD IS YOU HAVE TO  
MAKE THAT SHOWING IF IT'S  
AUTOMATIC?

IT'S JUST ANOTHER 25% AND  
NOW, 125% ?

>> BECAUSE YOU STILL, THE  
CONDITION PRECEDENT IS NOT  
THE PAYMENT OF COST.

THE CONDITION PRECEDENT IS  
SHOWING THAT THE BUILDING  
CODES HAVE CHANGED.

NOW, WITH REGARD TO THIS  
PROPERTY, THIS PROPERTY WAS  
BUILT IN 195 A VERY GOOD  
ASSUMPTION, -- 59.

FLORIDA BUILDING CODES  
DIDN'T COME INTO EFFECT IN  
THE '70s.

WE KNOW THEY HAVE CHANGED  
WE'RE HAPPY TO HAVE REMAND  
TO MAKE THAT SHOWING.

--

>> THAT WHATS YOUR OPPONENT  
OUTLINED THERE WERE ACTUALLY  
THREE?

>> YOUR HONOR, HE CONFUSED A  
COUPLE OF DIFFERENT ISSUES  
OKAY?

WE'RE HERE BECAUSE THE TRIAL  
COURT GRANTED SUMMARY  
JUDGMENT FOR THE PLAINTIFFS  
WITH REGARD TO LAW AND  
ORDINANCE COVERAGE.

THE COURT DENIED SUMMARY  
JUDGMENT AS TO THE SEPARATE  
COVERAGES FOR THE LANDSCAPE  
THAT WAS NOT AN APPEALABLE  
ORDER.

HOWEVER IT WAS A PARTIAL  
SUMMARY JUDGMENT WITH REGARD  
TO THIS SEPARATE COVERAGE.

SO IT WENT TO THE THIRD  
DISTRICT AS A IT PARTIAL  
SUMMARY JUDGE ISSUE.

IT HAS COME UP ON THAT  
SEPARATE ISSUE.

WE DON'T ADDRESS THE OTHER  
TWO COVERAGES BECAUSE IT WAS  
AN APPEALABLE ORDER.

IT WASN'T BEFORE THE THIRD  
DISTRICT AND IT ISN'T HERE.

>> THIS ISSUE OR ASPECT OF  
IT IS STRICTLY THE CHANGE IN  
THE BUILDING CODE?  
CONCLUDE DEBRIS RECOVERY OR  
ANY OF THAT?

>> IT CAN'T BECAUSE IT  
WASN'T AN APPEALABLE ORDER  
AS THAT ISSUE.

PARAGRAPH FIVE, BY THE WAY  
DEAL WITH APPURSUANTNANT AND  
OTHER STRUCTURES SUCH AS  
OUTBUILDING.

>> YOU HAVE WITH OUR HELP  
GONE BEYOND YOUR TIME.

I THANK BOTH OF YOU.

ORAL ARGUMENTS IN THIS CASE  
ARE ENLIGHTENING FOR ALL OF  
US AND WE THANK YOU FOR YOUR  
CANDOR DURING THE ARGUMENTS  
AND RESPONDING TO OUR  
QUESTIONS TRYING TO FIND

WHAT THIS CASE IS REALLY B

WE THANK YOU THE CASE UNDER  
ADVISEMENT.

THE COURT WILL STAND IN  
RECESS.

>> PLEASE RISE