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James D. Sterling v. Ohio Casualty Insurance Co.

SC06-1910

PLEASE RISE. HEAR YE, HEAR YE, HEAR YE. THE SUPREME COURT OF FLORIDA IS NOW 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. GOOD MORNING.

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

GOOD MORNING FRIEND, WELCOME TO THE FLORIDA SUPREME COURT AND THE ORAL ARGUMENT DOCKET FOR TUESDAY SEPTEMBER 18th, 2007. FIRST CASE THIS MORNING IS STERLING VERSES THE OHIO CASUALTY INSURANCE COMPANY. ARE YOU READY TO PROCEED? GOOD MORNING MAY IT PLEASE THE COURT I'M GEORGE VAKA WITH VAKA, LARSON JOHNSON AND TAMPA. I REPRESENT THE STERLINGS IN THIS CASE. WE ARE ASKING THE COURT TO QUASH THE SECOND DECISION COUNT OF APPEAL WHICH AFFIRMED A SUMMARY JUDGMENT IN OHIO CASUALTY IN DETERMINED BY THE TRIAL COURT THAT MY CLIENT'S MINOR SON THAT WAS STRUCK AS A PEDESTRIAN WAS NOT INSURED UNDER A POLICY BY INSURANCE COMPANY.

CAN WE GO TO THE HEART OF WHAT WE ARE TALKING ABOUT. DO YOU AGREE THAT IF THIS WERE A CORPORATE INSURER THAT THE LAW IS CLEAR THERE WOULD NO COVERAGE FOR THIS CHILD?

ABSOLUTELY. AND SO THEN YOU'RE BASIC POSITION IS BECAUSE THIS IS A DIFFERENT FORM OF BUSINESS, A PARTNERSHIP, THE DBA THAT THIS SHOULD BE TREATED DIFFERENTLY. IS THAT A FAIR SUMMARY?

THAT'S A FAIR SUMMARY OF ONE OF THE POSITIONS WE'RE TAKING IN THIS CASE.

COULD YOU EXPLAIN TO ME IN A LITTLE BIT MORE DETAIL AS DO WHY. IT SEEMS AS I READ THIS IT IS PRETTY CLEAR WITH REGARD TO THE NOTIFICATION OF THE INDIVIDUAL AND THE BUSINESS POLICY. I'M NOT SEEING MANY THAT ARE MORE CLEAR THAN EXPLAINING THIS. OR AT LEAST ATTEMPTING TO EXPLAIN THIS.

AND SURE.

AND SOME STRUGGLE!!ING WITH THAT THERE IS A DIFFERENCE BETWEEN BUSINESS AND THOSE EMPLOYEES AND THE NATURE OF THE BUSINESS AND THE FAMILY POLICY. -- .

DON'T MEAN TO INTERRUPT. I THINK THERE'S A DIFFERENCE FOR PURPOSES -- CERTAINLY OF STACKING COVERAGE. OF WHETHER A POLICY IS ISSUED TO A CORPORATION OF ISSUED TO AN INDIVIDUAL. AS WE KNOW, THE KEY CLASSIFICATION INVOLVE!!ING ALL OF THIS THE HEART OF COCONUT IS MEAT OF THIS COCONUT IS CLASS ONE OR CLASS 2. CLASS ONE IS FAMILY MEMBERS CLASS 2 IN ANY OTHER LAWFUL OCCUPANT OF AN INSURED PERSON. THE ONLY WAY AN EMPLOYEE OF A CORPORATION WOULD EVER BE ENTITLED TO AN INSURED MOTOR COVERAGE WOULD BE TO THE OCCUPYING AND INSURED VEHICLE. AND THIS COURT I JUST FORMER JUSTICE - - JUDGE BRONEK WE ARGUED THE ROTOTA CASE ALMOST 17 YEARS AGO. AND SO I'M VERY, VERY CLEAR ON THE DIFFERENCE OF THE CONCEPT OF WAIT A SECOND AND CORPORATION CANNOT HAVE A RESIDENT RELATIVE. OKAY. BUT THE STATUTE THE UNINSURED MOTOR STATUTE DOESN'T ADDRESS ITSELF TO CORPORATION OR INDIVIDUALS. IT ADDRESSES ITSELF TO ANY MOTORCYCLE POLICY AND IN THIS CASE WE'RE DEALING WITH THE MOTORCYCLE POLICY THAT'S ISSUED TO AN INDIVIDUAL. SO THAT THE PURPOSE WHETHER IT'S A BUSINESS PURPOSE OR AN INDIVIDUAL PURPOSE IS NOT ONE THAT IS CONTEMPLATED BY THE STATUTE. THAT'S IMPORTANT IN MY MIND AND I THINK IT'S IMPORTANT IN THE LEGISLATURE'S MIND BECAUSE THE STATUTE HAS BEEN AROUND SINCE 1961. THIS IS NOT THE FIRST TIME THERE'S BEEN A DEBATE ABOUT USE. THE LAST TIME THAT THIS COURT ADDRESSED IT WAS BACK IN HERTATO WHICH WAS 17 YEARS

AGO.

LET ME JUST ASK A RELATED QUESTION. BECAUSE, AGAIN, I'M TROUBLED!!!!!!!!!!!!!!!!!!!! TROUBLED -- AND I WILL ALSO ASK YOU ABOUT CONFLICT. BUT IS THERE SOMETHING THAT MANDATES THAT IF THERE IS A NAMED INSURER LIKE HERE THE FATHER THAT THE INSURANCE COMPANY MUST INCLUDE WITHIN CLASS 1 NAMED INSURED RESIDENT RELATIVES. I DON'T KNOW.

THERE'S NOTHING IN THE STATUTE THAT SPECIFICALLY USES THOSE WORDS JUSTICE PARIENTE. AND YOU WOULD AGREE THAT MULLE TPHE HAD THE SON THAT RODE THE MOTORCYCLE AS A RESIDENT RELATIVE UNDER THE NAMED INSURED.

ABSOLUTELY. THE LANGUAGE IN MULLES HAS BEEN REPEATED SO MANY TIMES THERE'S SPECIAL PROTECTION FOR THE NAMED IN FAMILY MEMBERS. THIS STATUTE WE'RE ASKING THE COURT TO CONSTRUE HAS BEEN AMENDED BY MY COUNT 26 TIMES.

IT STILL HAS TO START OUT WHO A CLASS 1 INSURED IS. AND THAT'S WHERE I HAVE THE PROBLEM. AND I ALSO HAVE QUESTION ABOUT WHAT IS EXPRESSLY AND DIRECTLY CONFLICT WITH IN THIS CASE?

I THINK --

THIS IS USUALLY A JUSTICE CANTERO QUESTION.

USUALLY PORE ME IT IS. LET ME ASK THE QUESTION TOO. LET ME ADDRESS THE FIRST QUESTION FIRST. I THINK IF YOU LOOK AT SUBSECTION 9 OF THIS STATUTE, I WOULD AGREE THERE'S NOTHING IN THIS STATUTE THAT SPECIFICALLY SAYS AN INSURED SHALL ALWAYS BE UNLESS THESE CLASSIFICATIONS OF THESE PEOPLE. IN LIGHT -- WHEN YOU GO BACK AND LOOK AT THE DEVELOP OF THE CASE LAW IN THIS AREA AND HOW THE STATUTE WAS AMENDED IN RESPONSE TO DECISIONS BY THIS COURT AND THE DISTRICT COURTS OF APPEAL, OKAY AND YOU GET INTO SUBSEC SHIN THEN THERE'S AN ASSUMPTION THAT RESIDENT RELATIVE OF THE NAMED INSURED QUALIFIED AS AN INSURED PERSON. BECAUSE THE STATUTE ITSELF GO ON TO SPEAK ABOUT AUTHORIZED RESTRICTION. AND I KNOW THIS IS NOT SOMETHING THAT'S FOREIGN TO YOU JUSTICE PARIENTE BECAUSE WE ARGUED A SIMILAR CASE BACK BEFORE YOU WERE EVEN A JUDGE. THE QUESTION IS VERY SIMPLE. IS THIS -- THIS STATUTE DOES SUBSECTION NINE COME TEN PHRAEUT RELATIVE WILL BE INSURED. ABSOLUTELY. IT THEN TALKS ABOUT THE RESTRICTIONS WHICH CAN LAWFULLY BE PLACED UPON THE COVERAGE THAT THEY ARE SEEKING UNDER SUBSECTION 9. SO MY POSITION IS AFTER MULLIS THAT HAS BEEN AROUND FOR 46 YEARS THE LEGISLATURE HAD NUMEROUS CHANCES IF IT SAID WAIT A MINUTE WE DISAGREE WITH THE FLORIDA SUPREME COURT WE WILL GO BACK AND CLARIFY. AND WE WILL SAY THAT RESIDENT RELATIVES CAN NOT HAVE TO BE NAMED INSURED OR DON'T HAVE TO BE INSURED. THAT WASN'T THE ISSUE IN MULLES THE RESIDENT RELATIVE WAS A NAMED INSURED UNDER THE POLICY.

AGREED. WHAT I'M SAYING ONCE THE STATUTE GOT AMENDED I BELIEVE THIS WAS '87 TO INCLUDE THIS LANGUAGE CONCERNING SUBSECTION 9 THE LEGISLATURE HERE ASSUMED BY USE OF THIS LANGUAGE THAT RESIDENT RELATIVES WERE, IN FACT, GOING TO BE INSURED. THAT'S WHAT WE ARGUED THROUGHOUT THIS, IS ONE THE LEGISLATURE HAS MADE THAT DETERMINATION. IF YOU READ THIS LANGUAGE, THERE'S NO REASON TO HAVE THIS LANGUAGE THAT PROHIBITS YOU FROM EXCLUDE!!ING COVERAGE TO RESIDENT RELATIVE UNLESS THE LEGISLATURE ASSUMED THERE COULD BE COVERAGE IN THE FIRST INSTANCE.

WASN'T THAT CONTEMPLATED AS THE FAMILY-TYPE POLICY AND NOT THE BUSINESS POLICY. ISN'T -- IF THIS WERE A FAMILY POLICY WE WOULDN'T BE HERE. IT'S HERE BECAUSE THE NATURE OF THE POLICY, WHICH IS THE DBA FORM AND THE QUESTION IS WHETHER UNDER A BUSINESS POLICY YOU HAVE TO HAVE THE SAME RULES THAT WOULD APPLY TO THE FAMILY POLICY. ISN'T THAT REALLY WHAT THIS --

THAT'S THE WAY THE SECOND DISTRICT FRAMED THE ISSUE. I DISAGREE WITH HOW THEY FRAMED THE ISSUE. THE USE OF THE VEHICLE HAS NEVER, EVER BEEN UNDER ANY VERSION OF THE STATUTE THAT I'VE EVER SEEN A CRITERIA IN DETERMINING --

NO. NO. NO. THIS GOES BACK TO THE NAMED INSURED. IT'S NOT JUST THE GENTLEMAN. IT'S A DBA. IT'S A DIFFERENCE IN FORM OF BUSINESS.

IT'S A CORPORATION OR NOT A CORPORATION. IF IT'S NOT A CORP REUGS THEN YOU HAVE TO WORRY ABOUT RESIDENT RELATIVES.

THAT'S THE ISSUE IS THAT IF IT'S NOT A CORPORATE FORM, THEN DO ALL THE FAMILY RESTRICTIONS AND PROVISIONS APPLY?

AND IT'S OUR POSITION THAT THEY ABSOLUTELY DO. WHAT IS THE LOGIC BEHIND THAT? THE LOGIC BEHIND THAT THERE'S -- THAT WE TAKE THE STATEMENTS FROM ULLES, THE STACKING CONCURRENT FROM TUCKER WHICH F DECIDED WE SAY WHAT TYPE OF POLICY IS THIS IS THIS ISSUED TO A CORPORATION OR NOT. IF NOT, THEN WE DON'T HAVE THE STACKING ISSUES OR EXCUSE ME. WE DO HAVE THE STACKING ISSUE AND THE REDO HAVE THE ISSUE CONCERNING RESIDENT RELATIVE. I FULLY UNDERSTAND IF THIS IS CORPORATE POLICY WE ARE NOT ARGUING THAT. WHY SHOULD WE END UP WITH A SITUATION WHERE IN ESSENCE THE COMPANY MAY SAY TO THE BUSINESS YOU KNOW, LOOK, MR. VAKA THE ONLY WAY CANNOT PROVIDE SO WE'RE NOT GOING TO PROVIDE YOU WITH INSURANCE UNLESS YOU INCORPORATE AND THOUGH YOU CALL US AFTER YOU'VE INCORPORATED THEN WE'LL, YOU KNOW WE'LL PROVIDE THIS POLICY TO YOU SO I THINK THE DIFFICULTY WE'RE HAVING IS THERE'S A RATHER FOR THE BROAD PROPOSITION STILL EXIST TODAY THAT WE CONSISTENTLY FOLLOWED AND SAID THE INSURANCE COMPANIES YOU CANNOT AVOID THE IMPACT OF MANDATORY UNDER INSURED MOTORIST LAW. DON'T TRY TO WRITE THOSE TWO THINGS IN THE POLICY OR WHATEVER. AND THEY STOOD FOR THE BROAD PROPOSITION. AND WE'VE ENFORCED THAT. IN VARIOUS TIMES. JUST BY THE NOMENCLATURE IN THE LANGUAGE THAT YOU CONTINUE TO USE HERE YOU TALK ABOUT A BUSINESS YOU TALK ABOUT RESIDENT INSURED THAT YOU HAVE THE LITTLE FAMILY BUSINESS OVER HERE THAT HAS HOMEMADE PIZZA AND DOING, YOU KNOW GEORGE WHOEVER DOING BUSINESS AS GEORGE'S PIZZA PLACE, THE RESIDENT INSURED IF THE PIZZA HOUSE YOU KNOW KIND OF THING. WHAT IS IT, AGAIN, AS OPPOSED TO IF CLAUSE THAT THE COURTS HAVE PUT ON THAT YOU ARE RELYING ON MULLES THE THIS BROAD THING ABOUT WHERE IT IN THE STATUTE THAT IT ABSOLUTELY MANDATE THAT A BUSINESS POLICY ISSUED FOR BUSINESS PURPOSES SOMEBODY IN WHATEVER FOREMAN DATES IN ADDITION TO ALL THE BUSINESS COVERAGE THAT THERE HAS TO BE EXTENDED THROUGH YOUR FAMILY MEMBERS OF THE PRINCIPLES OF THE BUSINESS. YOUR HONOR, THERE'S NOTHING IN THE UNINSURED MOTORIST STATUTE THAT ADDRESSES BUSINESS OR FAMILY USE. THERE'S NOTHING THAT IS GOING TO SAY.

SO YOU ARE AGREEING THAT THE POLICY DOESN'T PROVIDE THIS COVERAGE. NO WE ARGUE AS A MATTER OF PUBLIC POLICY THAT IT DOES.

THAT THE RORPATION OF THE LAW; CORRECT?

LET ME ANSWER YOUR QUESTION DIRECTLY. I THINK THIS WILL ALSO ANSWER JUSTICE PARIENTE'S QUESTION ABOUT JURISDICTION. I BELIEVE THE CASE IS TRAVELER VERSUS SPENCER WHICH IS CASE INVOLVE!!ING A PARTNERSHIP THAT WAS SIDED IN OUR JURISDICTIONAL BRIEF. WHERE THE INSURANCE COMPANY TOOK THE VERY SIMILAR POSITION. SOMEBODY WAS ATTEMPTING TO STACK POLICY WAS ISSUED TO A PARTNERSHIP, NOT TO A CORPORATION. OF COURSE, ONE OF THE PARTNERS WAS ASSERTING THAT HE WAS ACTUALLY THE INSURED FOR PURPOSES OF THE POLICY BECAUSE A PARTNERSHIP HAS NO EXISTENCE SEPARATE AND APART FROM THE INDIVIDUAL PARTNERS. THERE THE COURT RULED AND I DON'T REMEMBER IF IT WAS THIS COURT OR THE FIRST DISTRICT COURT OF APEAL. FORGIVE ME I DON'T REMEMBER. FOR PURPOSES OF STACKING THEY RULED SINCE THAT PARTNER WAS A VEHICLE THAT WAS OWNED I BELIEVE BY THE RESIDENT SON, AN AND IN WHICH HE WAS ATTEMPTING TO STACK OVER TO THE PARTNERSHIP'S POLICY THE COURT RULED IT WAS I BELIEVE IT WAS ERROR IN DENYING HIM THE ABILITY TO STACK OVER HIS RIGHT.

BUT THAT WAS -- FIRST OF ALL WAS I THINK THE FOURTH DISTRICT OR WHATEVER IT WAS. IT WASN'T THIS COURT. AND THE PROBLEM WITH SENSOR ANDKY SEE THIS WOULD BE ANALOGOUS A MR. STERLING WHO IS THE NAMED INSURED WAS DRIVING IN ANOTHER VEHICLE AND HE WAS TRYING TO GET THE COVERAGE. AND HE'S THE INDIVIDUAL. IN SPENCER IT WAS THE PARTNER. THE ANALOGY -- THIS IS WHERE I SEE IT GETTING, AGAIN, NOT A PUBLIC POLICY ISSUE AND NOT BY THE ACTUAL POLICY LANGUAGE YOU HAD A PARTNERSHIP OF 10 PEOPLE DOING BUSINESS AS, YES, NAMED INSURED WAS ALL OF THOSE INDIVIDUAL PARTNERS BUT IF YOU THEN SAID IS THAT UNINSURED MOTORIST COVERAGE EXTENDING TO EVERY RESIDENT RELATIVE OF ALL TEN PARTNERS HOMES WITH A CLEAR COMMERCIAL PURPOSE, I'M NOT -- I DON'T SEE WHERE THE PUBLIC POLICY IS IN EXTENDING IT IF THE INSURANCE COMPANY HAS NOT BY ITS PLAIN

LANGUAGE OR EVEN ARGUEABLY AMBIGUOUS LANGUAGE INCLUDED THE RESIDENT RELATIVES AS A CLASS 1 INSURED. I THINK THERE'S A COUPLE OF THING.

SO AGAIN I DON'T SEE THERE'S CONFLICT. IF YOU TALK ABOUT A NAMED, NOT A RESIDENT RELATIVE. I DON'T SEE WHERE THE GOOD PUBLIC POLICY IS IF IT'S NOT EXPRESSLY LISTED, YOU KNOW, IN THE SET. AND I HONESTLY -- I HAVE ALWAYS BELIEVED IN EXTENDING UNINSURED MOTORIST COVERAGE AS MUCH AS LOGICALLY CAN BE POSSIBLE. I DON'T SEE IT HERE. I GUESS THE FIRST THING IS, IF YOU AGREE YOU CAN TREAT THE POLICY DIFFERENT FOR PURPOSES OF A NAMED INSURED THAT'S A PARTNERSHIP THEN I THINK YOU WOULD HAVE TO CONCEDE THAT YOU WOULD ALSO TREAT IT DIFFERENTLY UNDER THE CIRCUMSTANCES OF THIS CASE. WHICH WE DON'T HAVE A CORPORATION, WE DON'T HAVE A SEPARATE BUSINESS ENTITY. THEREFORE WE HAVE A POLICY THAT'S ISSUED TO MR. SPENCER!!!!!!!!!!!!!! SPENCER -- OR MR. STERLING SENIOR. RIGHT. THEN THE QUESTION BECOMES AS A MATTER OF PUBLIC POLICY AS EXPRESSED I DON'T KNOW HOW MANY TIMINGS BY THE COURTS OF THIS STATE INCLUDING THIS COURT IS THE RESIDENT FAMILY MEMBER OF THE NAMED INSURED ENTITLED TO SPECIAL PROTECTION UNDER THE STATUTE AS A MATTER OF PUBLIC POLICY.

AND YOUR ARGUMENT IS THAT IF I OPENED A SMALL BUSINESS THERE'S NO WAY I COULD HAVE VEHICLES JUST FOR THAT BUSINESS AND NOT COVER ALL OF THEM.

NOT IF YOU LIKE UNINSURED MOTORIST COVERAGE THAT YOU WILL COVER YOUR FAMILY.

AGAIN, TO ME -- IT JUST DOES NOT SEEM TO MAKE GOOD SENSE.

JUST QUINCE LET'S GO BACK TO THE STACKING CASES.

THE LOGIC IS SIMPLE. THE COURTS SAID WHEN THEY WERE ADDRESSING STACKING, WHY WOULD YOU LET'S TAKE YOUR EXAMPLE YOU A SOLE PROPRIETOR. YOU HAVE ONE BUSINESS. YOU INSURE YOUR TRUCK FOR PURPOSES OF YOUR BUSINESS. WHY WOULD YOU PAY A SEPARATE PREMIUM ON THAT ENTHUSIASTIC KNOWING YOU WOULD BE ENTITLED TO UNINSURED MOTOR COVERAGE FROM YOUR PERSONAL FAMILY CAR. YOU WOULDN'T PAY A SEPARATE PREMIUM UNLESS YOU COULD ACQUIRE OR STEP UP ALL THE COVERAGE. THAT'S WHAT WE ARE TALKING ABOUT HERE. THERE'S NO REASON WHY MR. STERLING WOULD HAVE GONE OUT AND PURCHASED UNINSURED MOTORIST COVERAGE IF HE'S A SOLE PROPRIETOR UNLESS HE AVAILS HIMSELF AS WELL TO THE FAMILY. THAT'S THE POINT. HIS EMPLOYEE ANYONE OCCUPYING THE BUSINESS VEHICLE.

WELL, THAT MAY BE. WE DON'T KNOW THAT IN THIS PARTICULAR CASE AND WE KNOW FOR SURE ONE THING. UNDER THE LANGUAGE OF THIS ENDORSEMENT IF MR. STERLING WAS THE PEDESTRIAN, WE WOULD BE BACK HERE ANYWAY BECAUSE THE POLICY STILL WOULDN'T PROVIDE COVERAGE TO HIM BECAUSE HE WASN'T OCCUPIED.

BEFORE YOU SIT DOWN I KNOW YOU'RE IN YOUR REBUTTAL. BUT TO ME JURISDICTION IS A FUNDAMENTAL ISSUE HERE. I DON'T SEE WHERE THE CONFLICT IS. THE WAY I READ SPENCER IN THAT CASE THE PLAINTIFF WAS A NAMED UPSEWERED.

THE ISSUE WAS THAT THE NAMED INSURED WASN'T DRIVING THE VEHICLE IDENTIFIED IN THE POLICY. AND THEY DENIED COVERAGE ON THAT BASIS. THIS IS A DIFFERENT ISSUE HERE. THIS IS WHERE THE PLAINTIFF IS NOT A NAMED INSURED AT ALL. WHY DOESN'T THAT DISTINGUISH THIS CASE FROM SPENCER.

BECAUSE SPENCER, AGAIN WE GO BACK TO THE FORM OF THE BUSINESS ENTITY. WE CITED SPENCER FROM THE BRIEF FOR THE PROPOSITION THAT IF IT'S IT'S NOT A CORPORATION WE GO BACK TO TPRPL -- NORMAL IS THIS POLICY ISSUED TO AN INDIVIDUAL.

IN SPENCER IT WAS A NAMED INSURE INSTEAD.

IN SPENCER IT WAS A PARTNERSHIP WAS A NAMED INSURE. HE WAS A PARTNER OF THE PARTNERSHIP.

THE ISSUE WAS WHETHER THIS PARTNER WAS DRIVING A DIFFERENT VEHICLE THAT WAS NOT IDENTIFIED IN POLICY THEREFORE COVERAGE WAS DENIED ON THAT BASIS, WHICH IS A DIFFERENCE BASIS FOR DENIAL THAN THIS POLICY.

THE DIFFERENCE FOR TKPL IN THIS POLICY IS THAT THE PERSON WAS -- THE CHILD WAS NOT AN INSURED.

RIGHT. THE ARGUMENT IN SPENCER WAS A PARTNER WAS NOT AN INSURED. THE ARGUMENT THEY WERE DRIVING A VEHICLE THAT WAS NOT IDENTIFIED IN THE POLICY. THAT WAS THE

REASON FOR DENIAL.

RIGHT. WHICH IF BECAUSE OF THE -- IT WAS NOT A NAMED INSURED HOWEVER.

I THINK THE POINT IS ONE!!!!!! ONE -- ONCE WE CAN SEE THAT THE BUSINESS ENTITY PART IS NOT THE ISSUE, THEN WE GO TO THE PARK -- PART WHERE IS MR. STERLING IN THIS CASE OR WAS MR. STERLING IN THAT CASE THE NAMED INSURED? BECAUSE IF MR. STERLING WAS NOT IF MR. SPENCER WAS NOT THE NAMED INSURED THEN THE EXCLUSION THAT INSURANCE COMPANY WAS RELYING UPON WOULD HAVE BEEN PERFECT I WILL ENFORCIBLE. IT WAS BECAUSE HE WAS THE NAMED INSURED HE INVOKED THE PUBLIC POLICY OF THE STATUTE. PRECISELY WHAT WE ARE ARGUING HERE. WHAT WE ARE SAYING IS NO THAT THE SON IS NOT A NAMED INSURED.

THE SON IS CLEARLY A RESIDENT RELATIVE OF THE NAMED INSURED. I DON'T WANT TO FORGET ABOUT THE ANALYSIS THAT THIS COURT TALKED ABOUT IN FLORIDA VERSUS ALL STATE FIRST IS THE PROVISION UNAMBIGUOUS AND THEN DOES IT SERVE THE UNINSURED MOTORIST STATUTE. IF YOU LOOK AT THE ENDORSEMENT IT MODIFY!!IES THE COVERAGE PROVIDED IN THE BUSINESS AUTO LIABILITY COVERAGE. SECOND, IT TALKS ABOUT WHEN YOU LOOK AT LIMITS OF LIABILITY OR WHEN YOU LOOK AT THE DEFINITION OF UNINSURED MOTORIST IN THIS POLICY, WE CITED THESE THINGS IN OUR BRIEF, BUT YOU LOOK AT THE LIMITS OF INSURANCE WHICH IS PAGE 58 OF THE RECORD. WHICH TALKS ABOUT RESIDENT FAMILY MEMBERS AND THEIR ABILITY TO OBTAIN COVERAGE WHEN THEY ARE STRUCK AS A PEDESTRIAN. WHICH IF YOU FOLLOW THE INSURANCE AGREEMENT WOULD NEVER OCCUR. BECAUSE NO ONE NOT MR. STERLING OR HIS SON OR WIFE OR MOTHER ANYBODY WHO RESIDED IN HIS HOUSEHOLD NONE OF THOSE PEOPLE WOULD BE ABLE TO CLAIM UNINSURED MOTORIST UNDER THIS POLICY UNLESS THEY OCCUPY THE INSURED VEHICLE. THE SECOND PART. YOU'RE WELL INTO YOUR REBUTTAL. THANK YOU YOUR HONOR. LET ME FINISH THIS THOUGHT. IS THE DEFINITION OF UNINSURED MOTORIST WHICH IS CONTAINED AT PAGE 62 OF THE RECORD. AND THIS TALKS ABOUT WHEN IT'S A HIT-AND-RUN DRIVER AND SAYS CAUSE AN ACCIDENT RESULTING IN BODILY INJURY!!IY TO YOU OR ANY FAMILY MEMBER WITHOUT HITTING YOU OR ANY FAMILY MEMBER COVERED AUTO BLAH, BLAH, BLAH. IT GOES THROUGH IT. OUR POSITION IS QUITE CLEAR. LET ME SUM IT UP. BECAUSE I'VE KNOW WE'VE BEEN FOCUSING -- THIS CONTEMPLATE COVERAGE FOR FAMILY MEMBERS THAT IS NOT TO THE OCCUPANCY OF A VEHICLE. THEY TALK ABOUT IT H THE DEFINITION OF UNINSURED MOTORIST. THEY TALK ABOUT IT IN THE LIMITS OF LIABILITY. IF YOU ACCEPT THE ARGUMENT OF THE INSURANCE COMPANY IN THIS CASE, THAT LANGUAGE IS AN ABSOLUTE NULLITY. BECAUSE THE ONLY TIME YOU WOULD EVERYTHING -- EVER GET COVERAGE UNDER THIS POLICY WHEN YOU OCCUPY THE INSURED VEHICLE. WE KNOW THOSE RESTRICTIONS ARE NOT ENFORCIBLE. THE VERY THING OHIO CASUAL TEUR ARGUED IN THE BRIEF WE AGREE THAT RESTRICTIONS THAT PLACE COVERAGE IN RESTRICTED SOLEY TO THE OCCUPANCY OF THE CERTAIN VEHICLE ARE NOT ENFORCIBLE YET THAT'S THE VERY LANGUAGE THEY ARE TRYING TO RELY UPON IN THIS POLICY. WHATEVER TIME I HAVE LEFT I WOULD LIKE TO SAVE. YOU'VE USED IT ALL.

GOOD MORNING, MAY IT PLEASE THE COURT WAYNE TOSKO WITH THE LAW FIRM OF VIRGINIA QUEST AND TOSKO. I WOULD LIKE TO ADDRESS ORIGIN WITH THE STATUTORY ANALYSIS AND I THINK THAT'S WHERE THIS CASE NEEDS TO START IN THE UNINSURED MOTORIST STATUTE REQUIRES A MOTORCYCLE POLICY PROVIDE UNINSURED MOTORIST COVERAGE FOR PERSON INSURED THERE UNDER THE LANGUAGE OF THE POLICY. IT DOES NOT DEFINE OR DOES NOT MANDATE WHO NEEDS TO BE DEFINED AS AN INSURED.

DO YOU AGREE THAT THE NOTICE, WHICH I THINK IS QUITE IMPRESSIVE NOTICE AND POLICY WOULD BE IN VALID AS!!!! AS -- INVALID AS FOR MR. STERLING -- [INAUDIBLE] IT WOULD BE TROUBLESOME IF IT WAS MR. STERLING. WE WOULD HAVE A DIFFERENT ISSUE IN TERMS.

IN OTHER WORDS ATTEMPTED TO EXCLUDE EVEN THE FAMED INSURED IF THE NAMED INSURED WASN'T OCCUPYING THE VEHICLE.

THAT WOULD BE PROBLEMATIC, FRANKLY, YOUR HONOR.

IT WOULD BE IN DIRECT CONFLICT WITH MULLES. I WOULD BE. I KNOW YOU WANT TO TALK ABOUT THE STATUTE. I THINK THAT THE MORE IMPRESENTATION -- IMPRESSIVE ANALYSIS IF IT EXIST IS THERE ANY WAY UNDER THIS POLICY TO READ THAT THERE WAS AN INTENT TO INCLUDE FAMILY MEMBERS IN UNINSURED MOTORIST COVERAGE. WOULD YOU REFER TO THE LAST PART

THAT MR. VAKA READ THAT WAS ON PAGE 62 OF THE RECORD OR 61 WHERE IT SAYS THAT UNINSURED MOTORIST COVERAGE IS AVAILABLE IF THE UNINSURED VEHICLE HIT YOU OR ANY FAMILY MEMBER, COMMA, COVERED AUTHOR THE VEHICLE YOU OCCUPY. WHAT'S THAT FOR REFERENCE?

THAT'S SIMPLY DEFINING WHAT AN UNINSURED MOTOR. THAT'S REFERRING TO THE DEFINITION OF WHAT UNINSURED MOTORIST WOULD BE. THE CRITICAL ISSUE, YOUR HONOR, IS HOW ARE THEY DEFINE!!ING AN INSURED IN THE POLICY. BOTH UNDER THE LIABILITY SECTION AND THE UNINSURED MOTORIST PROVISION IN BOLD TYPE THEY SAY WHO IS INSURED DOESN'T INCLUDE A FAMILY MEMBER. IT SIMPLY INCLUDE THE NAME CONCERNED OF SOMEONE OCCUPYING A VEHICLE. WHETHER YOU LOOK AT THE WHO IS INSURED IN THE INITIAL PART OF THE POLICY OR UNDER THE UNINSURED.

I WANT TO MAKE SURE I UNDERSTAND YOUR ARGUE. MY FAMILY POLICY AND NOT INCLUDE UNDER THE NAMED INSURED MY RESIDENT RELATIVES SO -- IS IT YOUR POSITION THAT TIN INSURANCE COMPANY CAN DO THAT? FRANKLY YOUR HONOR I WOULD ARGUE -- I'M FOLLOWING YOUR ARGUE PL -- ARGUMENT THROUGH. EVEN IF IT IS AN INDIVIDUAL POLICY THAT THE NAMED INSURED DOESN'T INCLUDE RESIDENT RELATIVES THAT'S ACCEPTABLE UNDER THE THERE FLORIDA LAW.

YES, YOUR HONOR. THAT WOULD NOT BE IN CONFLICT IN THE MULLES THAT THE CASES THAT HAVE FOLLOWED MULLES IN TWO POINTS IN MULLES IT WAS A FAMILY POLICY THE FAMILY MEMBER WAS DEFINED SPECIFICALLY AS AN INSURED. MULLES SAID YOU CAN'T EXCLUDE THEM FOR THE TYPE OF VEHICLE AND SO FORTH.

WE ACCEPT YOUR ARGUMENT THEN AND THE INSURANCE COMPANIES FLORIDA UNDER THE AUTHORITY OF THIS CASE WOULD BE ABLE TO MANIPULATE THE DEFINITION OF INSURED AND ELIMINATE A FAMILY AS HAVING PROTECTION FOR YOU AND COVERAGE UNDER A FAMILY POLICY.

I WOULD ARGUE YOU COULD LIMIT IT TO THE BUSINESS POLICY IN THIS CASE. BUT IF YOUR ARGUMENT IS CORRECT, THAT THERE'S NO PROHIBITION AGAINST THE AN INDIVIDUAL POLICY, THAT MEANS THAT IT CAN GO ON ALL INDIVIDUAL POLICIES.

I WOULD ARGUE THAT FRANKLY, YOUR HONOR.

IS THAT CONTRARY TO THE EXPRESS LANGUAGE OF THE STATUTE EVEN THE SECOND DIRECT KNOWLEDGE THAT IN THE STATUTE THAT THE NO FAULT LAW THEY QUOTE IN THE STATUTE MANDATED THE POLICY THAT IT COVER THE NAMED INSURED RELATIVE RESIDE!!ING IN THE SAME HOUSEHOLD, PERSON OPERATING THE VEHICLE PASSENGERS OF SUCH MOTOR VEHICLE AND OTHER PERSON STRUCK BY SUCH MOTORCYCLE. IN OTHER WORDS THAT COVERAGE BE EXTENDED TO THOSE PEOPLE. TO THE CONTRARY YOUR HONOR --

YOU ARE SAYING YOU COULD MARRY FROM THAT STATUTORY MANDATE.

WHAT THEY SAID WHEN THEY CITED THE LANGUAGE IS THAT THE COURTS IN THE UNINSURED MOTORIST STATUTE AND IN THE FINANCIAL RESPONSIBILITY LAW HAVE NOT DEFINED HOW AN INSURED NEEDS TO BE NAMED AS A FAMILY MEMBER. IT ONLY SAY A PERSON OPERATING OR OCCUPYING A VEHICLE. THEY SAID THAT THE LEGISLATURE WHEN THEY WANTED STHO IN THE WORLD OF PIP SPECIFICALLY REQUIRED THAT AN INSURED BE INCLUDED AS A FAMILY MEMBER. ONLY IN THE WORLD -- ONLY IN P I P COVERAGE BUT NOT IN LIABILITY OR UNINSURED MOTORIST COVERAGE.

ISN'T THAT WHERE MULLES GOES? IT SAYS THAT YOU ARE COVER NOD MATTER WHERE YOU GO THAT ATTACHES TO THE PEOPLE. NOT TO THE VEHICLE.

IT DOES.

THAT'S CONTRARY TO WHAT YOU ARE ARGUING IN THIS. I'M TRYING TO UNDERSTAND WHERE THAT TAKES ME?

I WOULD NOT BE CONTRARY TO MULLES IN THE COURT FOUND A SIGNIFICANT FINANCIAL RESPONSIBILITY SAID YOU INCLUDED FAMILY MEMBERS IN THE DEFINITION OF INSURED. I CITED IN MY BRIEF 324.151 THAT ONLY REQUIRES THAT THE OPERATOR AND THE OWNER OF THE VEHICLE BE INSURED. THE STATUTE DOES NOT REQUIRE THEY BE INSURED. MULLES HAD TO DO WITH A FAMILY MEMBER WHO WAS ALREADY TEE FINED IN THE AS AN INSURED. EVERY CASE CITED BY THE PETITIONER AND EVERY CASE IN MY RESEARCH HAS FOUND THE FAMILY MEMBER

WAS DEFINED AS AN INSURED. THE COURT SAID UNDER THOSE CIRCUMSTANCES ONCE THEY ARE DEFINED INITIALLY AS AN INSURED YOU CAN'T EXCLUDE THEM BECAUSE OF THE VEHICLE THEY ARE DRIVING BECAUSE THEY ARE A PEDESTRIAN BECAUSE THEY WEREN'T LISTED ON THE POLICY AND SO FORTH. THAT'S WHAT MULLES SAID AND ALL THE CASES THAT FOLLOWED MULLES THERE'S NOT ONE CASE THAT WE FOUND IN OUR RESEARCH WHERE THE COURT WAS NOT ADDRESSING THE SITUATION IN BY THE INSURED WAS ALREADY DEFINED AS A FAMILY MEMBER. IT WAS AT THAT POINT MULLES AND ALL THE CASES THAT FOLLOWED MULLES HELD THAT YOU CAN'T EXCLUDE THEM BY TRYING TO LIMIT IT TO A CERTAIN VEHICLE OR MOVING EXCLUSION FOR DEFINITION AND SO FORTH. OUR POSITION IS THAT IN THIS CASE IN THE CONTEXT OF THE BUSINESS POLICY BUT I BELIEVE FRANKLY IT GOES BEYOND THAT. IT WOULD NOT BE IN CONFLICT WITH MULLES HAD TO FIRST ASK THE QUESTION AND ANSWER THE QUESTION ARE THEY REQUIRED TO BE DEFINED AS AN INSURED UNDER THIS POLICY. BUT I THINK THAT THE SENSE OF THE QUESTION IS THAT I'M HEARING IS THAT DO YOU NEED TO GET TO THE PLACE THAT YOU'RE TALKING ABOUT IN ADDITION TO THE BUSINESS POLICIES? I DON'T BELIEVE YOU CAN.

IN ORDER TO DECIDE THIS CASE?

DON'T BELIEVE YOU.

THE SECOND DISTRICT -- THE WAY I READ THE SECOND DISTRICT AND BECAUSE IN DOUGLAS WE WERE REALLY DEALING WITH A FAMILY POLICY AND A VEHICLE THAT WAS NOT COVERED BUT WITH US WE STILL HAD A FAMILY MEMBER. AND WE HELD THERE THAT THERE WAS UNINSURED MOTORIST COVERAGE. IS SECOND DISTRICT DISTINGUISHED DOUGLAS IN THIS CASE ON THE BASIS THAT THIS WAS A BUSINESS POLICY. AND THAT'S THE LIMITS OF THIS CASE; CORRECT?

NO AND I AGREE WITH YOU JUSTICE WELLS THIS IS THE LIMITS OF THIS CASE AND AS RESPONDED TO JUSTICE LEWIS WHO SUGGESTED THAT IF WE RULED IN FAVOR OF OHIO CASUALTY AFFIRMED THE SECOND DISTRICT COURT OF APPEALS DECISION THAT -- DOES THAT MEAN IN FAMILY POLICIES WHERE THEY DEFINE FAMILY MEMBER AS INSURED. DOES THAT MEAN INSURANCE COMPANY COULD REMOVE THAT FROM AUTO POLICIES? WE DON'T NEED TO REACH THAT DECISION IN THIS CASE. THIS BUSINESS POLICY -- AUTO POLICY WHERE THE PEOPLE HAD THEIR OWN PERSONAL AUTO INSURANCE WITH AUTO OWNER AND RECOVERED UNDER IT, UNDER THAT POLICY.

WELL, THERE'S -- EVEN THOUGH WE DON'T BASE IT ON EMPLOYMENT THERE'S AN EARNINGS LIMITATION THAT THE FAMILY MEMBERS WILL BE DRIVING A VEHICLE THAT THEY WANT TO EXTEND THE COVERAGE. BUT DO YOU SEE ANY -- WHEN WE GET TO A COMMERCIAL POLICY BETWEEN THE CORPORATION AN INDIVIDUAL, A PARTNERSHIP AS LONG AS IT'S NOT A FAMILY POLICY, DO YOU BELIEVE THE SAME RULE SHOULD APPLY THAT ARE NOT EXPRESSLY LISTED AS A CLASS 1 INSURED THEN THERE WOULD NOT BE AN UNINSURED MOTORIST COVERAGE AND THE FAMILY MEMBERS?

YEAH. I BELIEVE SIMPLY STATED IN A COMMERCIAL POLICY IT PROVIDES AN EMPLOYER AN OPPORTUNITY FOR UNINSURED MOTORIST COVERAGE THAT THEY OTHERWISE COULDN'T WHY OCCUPYING THE VEHICLES. AND IT'S LISTED AS THE BUSINESS COMMERCIAL AUTO POLICY THAT INSURES THAT COMMERCIAL OR BUSINESS VEHICLE. AS A SECOND DISTRICT COURT OF APPEALS POINTED OUT IT PROVIDES A BUSINESS WITH AN OPPORTUNITY TO PROVIDE ESSENTIALLY THAT BENEFIT SO TO SPEAK TO THEIR EMPLOYEE WHILE IN THE VEHICLE.

BUT YOU KNOW THERE'S SO MANY BUSINESSES THAT JUST ANSTEAD POINTS OUT THAT ARE NOT A CORPORATION, YOUR MOM AND POP BUSINESSES SOMETIMES WHAT THE BUSINESS VEHICLE AND WHAT'S A PERSONAL VEHICLE MAY EVEN BE BLURRED. SO IS IT YOUR POSITION THAT IF STERLING HAD PUT OHIO CASUALTY AND THE VEHICLE TOGETHER WOULDN'T UNDER YOUR POLICY IN -- ENSURE HIS!!!!!! HIS -- INSURE HIS FAMILY MEMBERS AS WELL AS NAMED MEMBERS.

NOT THE WAY OURS IS WRITTEN.

UNDER YOUR POLICY YOU WOULDN'T HAVE MR. SPERLING GETTING UNINSURED MOTORIST COVERAGE. [INAUDIBLE] CORRECT. CORRECT. YOUR HONOR. PERHAPS HE'S COULD BUY A POLICY THAT WOULD DEFINE A FAMILY MEMBER UNDER THIS TYPE OF BUSINESS POLICIES. I HAVE SEEN BUSINESS POLICIES I BELIEVE THAT ISSUE HAS BEEN ADDRESSED PREVIOUSLY AS FAR AS WHETHER THE CORPORATION, FOR EXAMPLE, CAN HAVE FAMILY MEMBERS BECAUSE THERE'S

FAMILY MEMBERS DEFINED UNDER THE BUSINESS POLICY. YOU COULD HAVE A CORPORATE -- OR A BUSINESS POLICY THAT DEFINE A FAMILY MEMBER AS AN INSURED. AND THEY CAN PURCHASE THAT TYPE OF A POLICY OR PURCHASE A SEPARATE PERSONAL POLICY OR TRY TO COVER IT. I'M SURE THAT COULD BE COVERED AND THEY COULD PROVIDE THE UNINSURED MOTORIST THE COVERAGE. THAT'S WASN'T THE CASE HERE. IT WAS A COMMERCIAL POLICY IN A COMMERCIAL VEHICLE IN THIS CASE IN WHICH THEY SPECIFICALLY DID NOT INCLUDE THE FAMILY MEMBERS AS INSURED UNDER THAT POLICY LANGUAGE.

WHAT ABOUT THE LANGUAGE OF THE LIMIT OF INSURANCE? THE REFERENCE TO FAMILY MEMBERS THERE? WAS THAT ANOTHER PROVISION THAT YOU TALKED ABOUT A LOT ABOUT. THROUGHOUT THE PETITIONER BRIEF THEY SAY THERE'S CONFLICTING DEFINITION OF INSURED. THE LIMIT OF INSURANCE IS JUST WHAT IT IS. IT ESSENTIALLY TELLED THE INSURED REGARDLESS OF HOW MANY CLAIMS THE LIMIT THEY WILL HAVE THE 300,000 I BELIEVE UNDER THIS POLICY. REGARDLESS OF HOW MANY ACCIDENTS OR INSURANCE ARE INVOLVED. IT'S LIMITING.

WHY THE FAMILY MEMBERS THERE?

IT'S SUPPERFLOUS, YOUR HONOR. IT WOULDN'T TRIGGER BECAUSE THEY ARE NOT DEFINED AS AN INSURED TO BEGIN WITH. IF THEY WERE DEFINED AS INSURED THEN THE FAMILY MEMBER WOULD APPLY. BUT OTHERWISE.

SUPERFLOUS OR CONFUSE!!ING. AS WELL AS THE DEFINITION I READ OF YOUR POLICY -- [INAUDIBLE]

BUT, AGAIN, YOUR HONOR, I WOULD SUBMIT UNDER POLICY IT TALKS IN TWO PLACES ABOUT WHO IS AN INSURED, VERY CLEAR DEFINITION, AND THEN LATER IN THE POLICY ON -- ON THAT ENDORSE IS JUSTICE LEWIS NOTIFIED THIS IS BUSINESS POLICY DESIGNED TO PROVIDE UNINSURED MOTORIST COVERAGE FOR YOUR EMPLOYEE WHILE OCCUPYING A LISTED VEHICLE.

THANK YOU. CAN WE GO BACK. LET'S TALK JUST A MINUTE. I THINK MR. VAKA SAID WHILE IMPRESSIVE DOES -- DOES THAT NOTIFICATION JUST FOR AN INDIVIDUAL BUYING WOULD THAT BE SUFFICIENT FOR A WAIVER FOR A LIMITATION ON THE RIGHT EVEN THOUGH IT'S QUITE IMPRESSIVE DOES IT REALLY MEET THAT CRITERIA?

AS IT WOULD APPLY TO --

AS IT WOULD APPLY TO NAMED INSURER. I THOUGHT IT ENTIRELY THROUGH BUT PROBABLY NOT. ONLY BECAUSE THEN YOU START TO GET INTO A CONFLICT WITH MULLES AND THE OTHER CASES THAT WE'VE TALKED ABOUT. I'M NOT GOING TO PRETENET THAT WOULDN'T -- PRETEND THAT WOULDN'T CREATE A PROBLEM IN TERMS THAF. THAT WOULDN'T BE AN ISSUE FOR THIS COURT IN THAT TAELED. WE SUGGEST WE DON'T NEED TO OVERTURN MULL SE THAT'S NOT IN CONFLICT.

WOULD THERE BE -- LOOKING FOR WHAT ARE THE TENTICALS OF THIS? WHAT ARE THE RAMIFICATIONS THAT WE SHOULD AGREE THAT WE'RE LOOKING TO WHATEVER A BUSINESS POLICY IS A HOME MAKER THAT MAKES COOKIES OUT OF HER HOME. SHE DOES BUSINESS WITH THAT. WOULD THAT ENABLE INSURANCE COMPANY TO THEN IN A POLICY LIMIT HER TO HER AND THE VEHICLE? IF SHE'S PURCHASE!!ING A COMMERCIAL POLICY, NOW THERE ARE COMMERCIAL POLICIES OR BUSINESS POLICIES THAT DO DEFINE INSURED AS A FAMILY MEMBER. AND THOSE HAVE COME UP IN THE A NUMBER OF CASES WHERE THEY HAVE BEEN DEFINED AS A FAMILY MEMBER IN TEB -- TERMS OF CORPORATION AND THE QUESTION CAN A CORPORATION HAVE FAMILY MEMBERS? WOW COULD ISSUE THE SAME POLICY TO AN INDIVIDUAL HOME MAKER MAKING COOKIES AM -- AT HOME OR THE PIZZA DELIVERY GUY WHICH WOULD DEFINE FAMILY MEMBERS AND THEN THEY WOULD BE COVERED UNDER THAT BUSINESS POLICY. SO IT -- I DON'T SAY WHERE IT WOULD CREATE THAT KIND OF A PROBLEM. THEY WOULD HAVE THAT COVERAGE. I GUESS IF THIS IS POSSIBLE, THEN, I USE MY PRIVATE CAR FOR BUSINESS PURPOSES IS THAT THEN THE PORTION OF THE TIME THAT I WOULD USE IT FOR COMMERCIAL THEN THEY COULD INCLUDE THAT IN MY OWN PRIVATE POLICY, BECAUSE I DO AND AS WE AS LAWYERS AND A LOT OF FOLKS DO USE THE SAME VEHICLE FOR BOTH. AND SO IF IT PLACED TO COMMERCIAL USE, THEN YOU'RE THEORY WOULD BE IS THAT, YES, YOU COULD LIMIT THE NAMED INSURED WITH REGARD TO THAT COMMERCIAL USE OF YOUR FAMILY VEHICLE.

YOU COULD. YOUR HONOR, IT WOULD NOT CONFLICT WITH THE STATUTE OR ANY OF THE CASE LAW.

THANK YOU.

YOU'VE USED UP YOUR TIME. I WILL TIVE YOU A MINUTE A 2 1/2 TO GET YOUR THOUGHTS TOGETHER. WE TEND TO TAKE A LOT OF TIME WITH OUR QUESTIONS.

I APPRECIATE YOUR QUESTIONS. IT KEEPS ME ON MY TOWS. JUSTICE CANTERO LET ME GIVE YOU A BULLET POINT. ONE OF THE CASE WE CITED IN THE JURISDICTIONAL BRIEF WHICH YOU SAY THERE'S EXPRESS AND DIRECT CONFLICT IN STATE FARM 1977 DECISION WE LIFTED A QUOTE OUT OF THAT CASE. IN WHICH THAT COURT STATED SINCE MELLU SE VERSES TATE FORM AN AS LONG AS THEY RESIDENT OF THE HOUSEHOLD FALLS WITHIN THE FIRST CLASS OF INSURERS. AS SUCH THEY ARE COVERED BY UNINSURED PROT -- MOTORIST WHEREVER AND WHENEVER PWOD!!!!!!!!!!!!!! PWOD -- BODILY INJURY OCCURS. THAT'S ONE OF THE INDICATED WE CITED AS DIRECT CONFLICT WITH THE DISTRICT DISTRICT'S DECISION WHICH SAID THAT THE RESIDENT FAMILY DID NOT HAVE COVERAGE. AND IT'S YOUR POSITION ON THAT IT'S A MATTER OF PURE PUBLIC POLICY IN STATUTE NOT AS A RESULT OF THE POLICY.

I WOULDN'T HAVE CITED THIS CASE UNLESS THAT CASE AT ANY TIME SAY WHAT THE POLICY LANGUAGE HAD SAID. BECAUSE THE ARGUMENT HAD BEEN MADE THAT ALL THE CASES WE RYED UPON ALL INCLUDED THAT WITHIN IN THE LANGUAGE OF THE POLICY AND I KNOW WHEN I WAS LOOKING FOR JURISDICTION TO COME TO THIS COURT I LOOK AT CASES THAT DID NOT TELL ME WHAT THE POLICY LANGUAGE WAS. I CAN'T TELL YOU THAT, THAT WAS NOT INCLUDED JUST THAT THE DECISION OF THE FIRST DISTRICT DID NOT REFERENCE THE POLICY LANGUAGE. SO I WAS LIE -- RELYING UPON THIS STATE OF LAW BY THE FIRST DISTRICT.

WITH RESPECT TO YOUR QUESTION CONCERNING COMMERCIAL USE OF A PERSONNAL VEHICLE I BET YOU IF YOU LOOKED AT YOUR PERSONAL VEHICLE POLICY YOU WILL SEE EXCLUSION FOR LIABILITY FOR THE COMMERCIAL USE OF YOUR VEHICLE UNDER A PERSONAL POLICY. WHAT THIS HAPPENS IS THIS IS MR. STERLING GOES TO AN INSURANCE AGENT AND SAID I WANT TO INSURE THE VEHICLES AND HE'S TOLD THAT YOUR COMMERCIAL POLICY NEEDS TO BE INSURED UNDER A COMMERCIAL POLICY. THAT'S FOR THE INSURANCE COMPANY'S CONVENIENCE NOT MR. STERLING. YOUR PERSONAL CARS WE WILL PUT UNDER YOUR POLICY AND WE WILL PUT THIS FLATBED TRUCK UNDER THIS POLICY. THAT'S HOW THAT GETS WRITTEN. IN TERMS OF WHETHER HE WANTS TO GET A POLICY THAT DEFINES INSURED TO INCLUDE RESIDENT FAMILY MEMBERS, CERTAINLY THERE'S NO EVIDENCE IN THIS RECORD THAT SUCH AN OFFER WAS EVER MADE IN TERMS OF THE NOTICE, I THINK WE GO BACK TO FLOEZ. UNDER 11:00 SECTION ONE OF THIS STATUTE MY CLIENT GET UNINSURED MOTORIST STATUTE UNLESS HE DOES ONE THING UNLESS HE SPECIFICALLY REJECTS. THIS IS CLEAR HE DIDN'T REJECT IT. THE NEXT QUESTION IS, DID HE PURCHASE THE POLICY UNDER SUBSECTION 9. YES, HE DID. THE THIS RESTRICTION AUTHORIZED UNDER SUBSEC 9 IT'S NOT. THANK YOU FOR YOUR TIME. IF THE COURT HAS NO FURTHER QUESTIONS FOR ME I WILL BE SEATED.

THANK YOU VERY MUCH.

THANK YOU.

WE'LL TAKE THE CASE UNDER ADVISEMENT. THANK YOU VERY MUCH. VERY GOOD ARGUMENT.