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Florida Farm Bureau Casualty Insurance Co. v. Eugene A. Cox

SC06-2494

>> WE WANT TO TAKE THE OPPORTUNITY THIS MORNING TO, TO RECOGNIZE THE GROUP THAT ARE WITH US FROM THE, FROM FIRE, FROM THE FLORIDA INSTITUTE OF REHABILITATION AND EDUCATION.

WE'RE GLAD YOU'RE HERE.

WE HOPE THAT THESE ORAL ARGUMENTS WILL BE INFORMATIVE FOR YOU AND WE THANK YOU, SHANNON CUROLIO AND JENNIFER CROWDER FOR BRINGING YOUR GROUP OF STUDENTS WITH US THIS MORNING.

OKAY, THANK YOU,.

ARE YOU READY TO PROCEED? MAY IT PLEASE THE COURT ON BEHALF OF FLORIDA FARM BUREAU.

THE FIRST DECISION IN THIS CASE EFFECTIVELY REWRITES EVERY PRE-2005 PROPERTY INSURANCE POLICY IN FLORIDA TO PROVIDE THAT EXCLUSIONS FROM COVERAGE DO NOT APPLY IN THE EVENT OF A TOTAL LOSS.

THE FIRST DISTRICT'S DECISION IN THE FIRST DISTRICT'S --

>> LET ME ASK YOU.

CERTAINLY AT STATUTE, COULD BE WRITTEN THAT WOULD SUPERSEDE ANY ENSH EXCLUSION, CORRECT?

>> M UNINSURED MOTORIST COVERAGE ACROSS THE BOARD. SO ISN'T IT REALLY, EVEN IF IF WE ACCEPT YOUR PROPOSITION, THIS STATUTE WOULD DO.

ISN'T REAL AWHAT WE HAVE TO DO IS TO LOOK AT WHAT THE

WORDS AND INTENT OF THE
STATUTE IS?

THE IMPACT OF THE QUALITY IS
HERE THAT ADVERSE THE
STATUTORY LAW OF FLORIDA IS
PART OF EVERY INSURANCE
CONTRACT.

>> ABSOLUTELY, YOUR HONOR.

>> LET'S GO WITH THAT.

>> AND EVERY INSURER
ENTITLED TO FORCE THE
EXCLUSION UNLESS IT IS
SUPERSEDED BY STATUTE AND
OUR ESSENTIAL POINT AND
YOU'RE EXACTLY RIGHT S THAT
THE FIRST AND THE FOURTH
DISTRICTS HAVE REWRITTEN THE
VPL TO DO SOMETHING THAT
STATUTE WAS NEVER INTENDED
TO DO.

IT WAS FIRST ENACTED IN
1899.

IT WAS LIMIT TODAY FIRE AND
LIGHTNING LOSSES.

THE HISTORY IS LAID OUT IN
OUR BRIEF.

BEFORE -- NO FLORIDA
DECISION HAD ADDRESSED THE
APPLICATION OF THE VPL TO
MULTIPLE PERIL LOSSES?

THE NARROW STATUTORY
QUESTION, AND YOUR HONOR,
EXACTLY RIGHT, DOES THE VPL
TRUMP FLORIDA FARMS BUREAU'S
EXPRESS WATER DAMAGE
EXCLUSION?

>> HOW ABOUT DEALING WITH
THE ROBINSON DATA UP FRONT.

>> YES, SIR.

>> AND THE ROBIN --
SPECIFICALLY, THAT PART OF
THE ROBINS -- THAT TALKED IN
TURN TERMITE AND DRY ROT
THAT OCCURRED DURING THE
POLICY PERIOD.

>> YES, SIR.

WHAT'S INTERESTING ABOUT
ROBINSON IS THAT THERE IS NO
DISCUSSION OF A TERMITE OR
DRY ROT EXCLUSION.

WHAT THE INSURER ARGUED IN
ROBINSON IS YES, A COVERED
LOSS DESTROYED THE BUILDING
BUT THAT BUILDING WAS NOT

WORTH WHAT WE INSURED IT FOR
BECAUSE IT HAD BEEN DAMAGED
BY DRY ROT AND TERMITES.
THE INSURER IN ROBINSON WAS
DOING EXACTLY WHAT THIS
COURT SAID IN 19 OUR 4 IT'S
FIRST DECISION.

YOUR COVERAGE DEFENSE
PRESERVED EXCEPT AS TO THE
MEASURE OF DAMAGES AND WHAT
THE INSURER SAID IS THAT
BUILDING WASN'T WORTH IT.

IT WASN'T WORTH POLICY
LEVELS AND WHAT THIS COURT
SAID IS WHEN YOU INSURE AND
THERE WAS A COVERED LOSS IT
WAS A COVERED LOSS.

IT WAS FIRE.

COVERED BY THE.

IT WAS INSURER DIDN'T SAY
WASN'T.

INSURER SAID I DON'T WANT TO
PAY OUT THE POLICY LIMITS
THAT I WOULD OTHERWISE HAVE
TO PAY OUT FOR THE VPL IF
YOU LOOK AT THE HEAD NOTE
PAGE 19 OF THE DECISION
THAT'S MADE EXACTLY CLEAR.

AS THE DEFENDANT SECOND PLEA
OF DEPRECIATION BY TERMITES
OR DRY ROT AFTER THE POLICY
WAS ISSUED THE LAW IS THAT A
VALUED POLICY STATUTE SUCH
AS OURS WILL NOT PERMIT A
REDUCTION OF THE AMOUNT OF
INSURANCE SPECIFIED IN THE
POLICY BY REASON OF THE
DEPRECIATION AND VALUE
CAUSED BY WHATEVER,
SUBSEQUENT TO THE ISSUANCE
OF THE POLICY, AND THE
ALLOWANCE OF SUCH REDUCTION
WILL NOT BE THE VALUE FIXES
PURSUANT TO THE TIME OF
INSURANCE.

>> SO WHAT YOU ARE SAYING IS
THAT THE INTERPRETATION
THAT'S PLACED ON THIS IS
ACTUALLY PERVERTED THE
ENTIRE INSURANCE INDUSTRY.
EVEN THOUGH IT MAY BE
DIFFICULT TO APPORTION THE
ACTUAL DAMAGES FROM LOSSES
SOME OF WHICH ARE COVERED,

SOME OF WHICH ARE NOT, THAT THIS STATUTE CANNOT BE READ TO FORCE COVERAGE WHEN IT IS CONCEIT CEDED THAT AT LEAST PART OF THOSE ARE CAUSED BY NONCOVERAGE --

>> THE OVERALL ANSWER IS YES, BUT LET ME QUALIFY THAT BECAUSE AS THE, AS THE FIRST DISTRICT NOTED, AND AS REALLY SHOULD'VE BEEN IT CASE INMERESPLE WELL.

IF A COVERED PERIL WOULD HAVE BEEN DESTROYED THE STRUCTURE, REGARDLESS OF THE OCCURRENCE OF AN UNCOVERED PERIL, THEN, THEN, THE INSURER CAN'T --

>> IS THAT JUST -- IS THAT JUDGE GROSS?

I WAS TRYING TO FIGURE OUT HIS CONCURRENCE IN MURSA AND WAS THAT THAT WHAT HE WAS GETTING AT ABOUT THE PROXIMATE CAUSE OR IS IT THAT IT IS A BUT FOR, WHICH IS THAT IF IT'S DESTROYED, AND OF COURSE, THE PROBLEM IS THESE HAZARDS AREN'T GOING TO BE DESTROYED BY WIND IT IS ALWAYS GOING TO BE A COMBINATION SO A PRACTICAL FACT IS THAT THAT'S NOT GOING TO HAPPEN IN THE CASES IN FRONT OF US. BUT DO YOU -- WHAT DO YOU SEE ABOUT JUDGE GROSS'S ITERATION OF THAT TEST? THAT YOU JUST --

>> I APPRECIATE WHAT JUDGE GROSS WAS TRYING TO GET TO WITH THAT.

TO THE EXTENT THAT IT, IT, IT DIFFERS FROM THE MAJORITY VIEW INMERESWELL.

I AM NOT SURE YOU CAN READ PROXIMATE CAUSE INTO THE STATUTE.

GENERALLY INSURANCE STATUTE ARE IN PLAIN AND ORDINARY LANGUAGE BECAUSE INSURERS NEED TO UNDERSTAND THE PLAIN AND ORDINARY PURPOSE OF THESE STATUTES BUT IT IS A

LITTLE BIT CLOSER I THINK TO
WHAT THE HEART OF THE MATTER
IS AND I THINK THAT'S WHAT
IN JUDGE PAULSON'S DISSENT.

>> JUDGE GROSS SAYS FINALLY
I WOULD SPECIFY THE INSMR SER
ATTRIBUTE!!ABLE TO FLOOD
UNEXCLUDED PERIL UNDER THE
WINDSTORM POLICY, THIS GIVES
SOME EFFECT TO THE EXCLUSION
OF THE POLICY.

SO HE SEEMS TO BE SAYING AS,
WHAT YOUR ARGUMENT S..

>> TO, TO SOME EXTENT, YES,
BUT WHAT IS, IS TO ME
SOMEWHAT INTERESTING ABOUT
MERSWELL IS THERE WAS FLOOD
COVERAGE.

WHY THE DECISION ENDED UP
THE WAY IT DID --

>> PEOPLE HAVE TO PAY THE
TOTAL VALUE OF THE STRUCTURE
ALSO?

BECAUSE IT CONCERNS ME THAT
IF YOU DID HAVE WIND DAMAGE,
INSURANCE, AND YOU HAD FLOOD
DAMAGE INSURANCE, AND BOTH
OF THOSE PERILS CAUSE THE
DESTRUCTION OF THE BUILDING
AND YOU GO DO BOTH OF THOSE
HAVE TO PAY THE TOTAL
AMOUNT?

>> JUDGE, THAT IS A QUESTION
I THINK THANKFULLY THE JUDGE
DOESN'T HAVE TO ANSWER IN
THIS QUESTION I WOULD ASK
THE COURT, THE NATIONAL
FLOOD INSURANCE PROGRAM SMIN
OF THE AMICUS BRIEFS BECAUSE
ANY ISSUE AS TO FLOOD
INSURANCE IS A, IS PREEMPTED
BY FEDERAL LAW.

AS WAS POINTED OUT SMIN OF
THE AMICUS BRIEFS.

>> ASSUMING THERE WAS SOME
OTHER PERIL OTHER THAN FLOOD
I AM JUST TRYING TO SEE IF
THIS STATUTE, AND I DIDN'T
SEE, AND MAYBE YOU CAN POINT
TO A PORTION OF THIS STATUTE
WHICH WOULD REQUIRE SOME
KIND OF SET OFF OR SOMETHING
IF THERE --

>> THE POINT IS THAT THE

STATUTE DOESN'T ADDRESS
MULTIPLE PERIL LOSSES WHEN
ONE IS COVERED AND ONE IS
UNCOVERED.

IT DOESN'T ADDRESS WHAT
SHOULD HAPPEN THEN.

WE SUBMIT COMMON LAW
INDEFINITEY PRINCE PELS
WOULD GOVERN IN THAT
SITUATION REGARDLESS IF
THERE WAS SEPARATE COVERAGE.

>> AS I UNDERSTAND YOUR
ARGUMENT, AND CORRECT ME IF
I'M WRONG, YOUR ARGUMENT IS
THAT IF A COVERED PERIL
RESULTS IN A TOTAL LOSS,
THEN THE TOTAL VALUE THAT'S
OF THE INSURANCE PAYS IF IT,
IF THE COVERED PERIL IS NOT
THE WINDSTORM DID NOT CAUSE
A TOTAL LOSS.

MY QUESTION ABOUT THAT IS I,
MAKE THAT CONSISTENT WITH
THE FACT THAT THE ORDINANCE,
THE, THE, IS WHAT PREVENTS
THE, THE HOUSE FROM BEING
RECONSTRUCTED.

IN MENRY INSTANCES AND SO IT
ISN'T JUST THE WINDSTORM
THAT'S THE TOTAL DAMAGE.
IT'S, IT'S THE FACT THAT THE
ORDINANCE DOESN'T GO OUT.

>> THE, THE FIRST POINT I DO
NEED TO MAKE IS THAT THAT IS
NOT THE CASE HERE AND IT'S
STILL, THE FACTS ON WHICH
ARE BEFORE THE COURT.

>> IT WAS A FACT IN --

>> YES, SIR.

IN FOWLER AS WELL AS THE
FIRE.

THAT RAISE AS POINT BECAUSE
ONE OF THE ARGUMENTS IS THAT
SHOWS UNCOVERED AND
UNCOVERED PERILS AND IT
DOESN'T.

AS A MATTER OF LAW, IF YOU
HAVE AN ORDINANCE SEARCH AS
THE TYPICAL 50% ORDINANCE
AND THAT'S PROBABLY THE ONLY
TIME WHEN YOU ARE GOING TO
DEAL WITH PERCENTAGES OF
DAMAGE UNDER THE VPL AND YOU
HAVE 51%, OF DAMAGE CAUSED

BY A COVER PERIL AND YOU
HAVE A 50%, STATUTE 50%
ORDINANCE THAT'S WHAT IN
FOWLER LED TO IT BEING A
TOTAL LOSS.

BY OPERATION OF LAW, THAT
PERCENTAGE OF LOSS MADE IT A,
A COVERED PERIL AND SO IN
FOULER UNLIKE THE WAY IT HAS
BEEN ARGUED BY THE OTHER
SIDE, THE CAUSE OF THE, OF
THE LOSS WAS THE COVERED
PERIL OF FIRE AND THE REASON
IT WAS A CAUSE OF LOSS WAS
BY OPERATION OF LOSS THAT
CREATED A CONSTRUCTED TOTAL
LOSS.

THE COURT IN THE PIPELINE
BEHIND US AT LEAST ONE
COSTHAT ADDRESSED WHAT A
TOLD LOSS S WHAT A TOTAL
LOSS IS NOT.

WE DO NOT NEED TO ADDRESS
THAT HERE BUT WHAT WE DO
NEED TO UNDERSTAND CLEARLY
IS WHEN AN ORDINANCE CREATES
A TOTAL LOSS BY VIRTUE OF
THE OCCURRENCE OF A COVERED
PERIL, IT'S THE COVERED
PERIL THAT CAUSED THE LOSS
JUST AS IF THE HOUSE
COULDN'T BE REBUILT.

>> WELL, WHAT IF THEN, I
MEAN, WE DON'T HAVE TO GET
IT HERE, IS IT STIPULATED
TOO THAT THE WIND DAMAGE
CAUSED \$11583.93.

I MEAN, I GUESS, WHEN I
THINK OF THESE HURRICANES, I
WONDERED HOW SOMEONE GETS SO
PRECISE THAT THAT'S WHAT THE
WIND DAMAGE CAUSED AS
OPPOSED TO THE FLOOD DAMAGE.
BUT IS THAT NOT -- IS THAT
LIKE THE ACCEPTED NUMBER
THAT WAS ATTRIBUTED TO THE
WIND DAMAGE?

>> JUDGE --

>> THAT'S NOT CONTESTED.

>> THIS WENT OUT ON SOME
REJUDGEMENT AND WHAT THE
RECORD SHOWS WITHOUT DISPUTE
ARE A COUPLE OF THINGS.

>> I'M JUST CURE REQUESTIOUS

ABOUT THE 93 CENTS.

>> THAT'S -- CURIOUS ABOUT THE 93 CENTS.

>> THAT'S CORRECT, YOUR HONOR.

THERE IS NO DISPUTE THE WIND DAMAGE WAS SUBSTANTIALLY LESS THAN 50% OF THE TOTAL DAMAGE TO THE HOPE.

WE OFFERED \$11583.93.

MY ANSWER IS THAT'S WHAT ADJUSTERS DO IN THE EVENT OF LOSSES AND THERE IS A SLAB SITTING IN MISSISSIPPI,

THERE IS A WAY TO FIGURE OUT HOW THIS IS DONE AND IT'S A VERY, VERY INVOLVED --

>> THAT'S WHERE, YOU KNOW, IT GETS INTO PROBLEMS WITH ME.

YOU KNOW, IF YOU HAVE GOT SOME THINGS YOU CAN SHOW HOW HIGH THE WATER WAS, WHAT SHE'S GETTING TO, AND

THERE'S SOME PROOFO THESE THINGS BUT YOU JUST HAVE A VACANT LOT AFTER A STORM FOR

WHATEVER REASON AND YOU DON'T HAVE A CAMERA THERE ROLG SHOWING IT WAS BLOWN AWAY BEFORE THE TIDE CAME,

WHY IS THIS VALUED POLICY LAW NOT DESIGNED THAT WHEN YOU CANNOT ESTABLISH THOSE KIND OF THINGS THAT THE

STATE HAS SAID, INSURED WE ARE NOT GOING TO FORCE YOU TO PROVE EACH PART OF THAT.

THAT IF YOU PROVE IT IS A TOTAL LOSS AND JUST AS THE STATUTE READS IT DOESN'T SAY IFS, AND ANDS, AND WHERES

FOR, LATER ON IT DID BUT AT LEAST AT THAT TIME IT DID NOT.

WHY CAN'T THE STATE AND STATUTE DO THAT?

>> IT'S COVERED PERIL, THAT'S EXACTLY WHAT IT WAS.

>> WELL, WE DON'T KNOW WHETHER IT WAS FLOOD, RISING WATER, OR THE WIND OF THE STORM ACTUALLY TOOK THIS DWELLING AWAY.

IT IS NOT KNOWABLE.

>> JUDGE, I WOULD, I WOULD
RESPECTFULLY.

WE DON'T KNOW WHAT'S
KNOWABLE IN THIS CASE OR NOT
AND WE DON'T KNOW --.

>> WE HAVE TO SET A RULE OF
LAW THAT IS GOING TO APPLY
TO THOSE FOLKS AND WE HAVE
FOLKS WHOSE HOMES, ALL
THAT'S LEFT IS A LOT AND FOR
SOMEBODY TO COME IN AND
DIVINE FROM THE AIR, THIS
WAS 15% THIS AND, YOU KNOW,
TO ME, IT'S JUST, WHY CAN'T
THE STATE HAVE A STATUTE AS
THIS ONE IS, THE VALUED
POLICY, YOUR HOME IS GONE,
WE KNOW THAT IT WAS IN THE
PATH OF SOMETHING THAT'S
COVERED, AND WE'RE NOT GOING
TO MAKE YOU COME OUT THERE
AND ESTABLISH BECAUSE YOU
HAVE THE BURDEN OF PROOF,
THE INSURED WAS.

PROVE WHAT YOUR LOSS WAS BY
WHEN.

IT'S UNPROVABLE.

IT'S UNKNOWIBLE.

>> I SUPPOSE THE LEGISLATURE
MIGHT BE ABLE TO ENACT SUCH
A STATUTE.

BUT IT DID NOT.

>> WHY IS THE STATUTE NOT
COVER THAT SITUATION.

>> JUDGE, IF I MIGHT.

>> I WAS JUST GOING -- CAN I
JUST ASK.

--

>> WOULD YOU ANSWER MY
QUESTION BEFORE BEFORE WE GO
TO ANOTHER QUESTION.

>> WHY DID IT NOT DO THAT?
SO TELL ME.

>> IN 1904, WHEN THIS FIRST
CONSTRUED THE 1899 VPL,
CHIEF JUSTICE LEWIS, WHAT
THE COURT WAS FACED WITH WAS
A CHAJ TOOL -- CHALLENGE TO
THE CONSTITUTIONALITY OF THE
STATUTE.

AND WHAT THE, AND WHAT THE
ININSURER SAID WAS YOU ARE
TAKING AWAY ALL MY DEFENSES.

YOU ARE GOING TO MAKE ME PAY
OUT REGARDLESS OF WHETHER I
HAVE ANY VALID COVERED
DEFENSES AND WHAT THE COURT
SAID IS THIS.

THE STATUTE, AND THIS IS
PAGE 235 OF THE OPINION, I'M
SORRY, 235 OF THE LAW SITE,
THE STATUTE DOES NOT
UNDERTAKE TO DEPRIVE THE
INSURER OF ANY PROPER
DEFENSE IT MAY HAVE TO AN
ACTION UPON THE POLICY
EXCEPT IN RESPECT TO THE
MEASURE OF DAMAGES.
AND THE AUTHORITY OF CERTAIN
AGENTS AS IT EXISTED AT THE
TIME.

THIS COURT IN ISFIRST
DECISION CONSTRUING THE
STATUTE SAID THE INSURER HAS
COVERAGE DEFENSES.
NOW, IT WASN'T TALKING ABOUT
MULTIPLE PERILS BUT WE HAVE
COVERAGE DEFENSES.
WE DID NOT CAUSE, IT IS
UNDISPUTED THAT OUR COVERED
PERIL DID NOT CAUSE THE
TOTAL LOSS.

>> SO YOU ARE GOING AT THE
BACKSIDE BECAUSE AGAIN THE
BURDEN IS ON THE INSURER TO
DEMONSTRATE THE LOSS AND THE
AMOUNT OF THE LOSS.

THE VPL STEPS IN TO SAY THAT
IF YOU PROVE THE TOTAL LOSS,
WE ARE NOT GOING TO FORCE
INSURERS TO SHOW EVERY DIME
AND EVERY NICK TOOL GET UP
TO A COVERED LOSS ON A
SITUATION I GAVE YOU.

THAT'S WHY I ASK YOU HAD TO
READ THE STATUTE, WHAT PART
SAYS THAT, THAT, THAT YOU
ARE CORRECT, THAT THE
INSURED MUST COME FORWARD,
AND PROVE EACH AND EVERY ONE
OF THOSE ELEMENTS AND THEN
ANSWER JUSTICE PARIENTE'S
QUESTION.

>> CHIEF JUSTICE LEWIS, IT'S
MORE WHAT THE STATUTE
DOESN'T SAY.

THIS IS A LIQUIDATED DAMAGED

STATUTE.

THAT IS ALL IT WAS INTENDED
TO BE.

FOR A COVERED PERIL.

THAT'S WHAT IT SAYS.

IF THERE, IF THERE'S TOTAL
LOSS DUE TO A COVERED PERIL,
YOU PAY.

YOU CAN'T CONTEST VALUE.

THAT'S ALL IT IS.

AND I THINK JUST POLLSTEIN
IS QUITE RIGHT.

IT HAS BEEN STRETCHED TO
LIKE A PIECE OF TAFFY TO THE
POINT WHERE IT IS GOING TO
BREAK BECAUSE CONCERNS OF
VERY VALID PUBLIC ISSUES
THAT YOU RAISE.

BUT THAT DOESN'T MEAN YOU
CAN'T STRETCH THAT STATUE TO
WHERE IT SNAPS.

>> LET ME GET TO MY QUESTION
THE ANSWER IS TO THE
SITUATION WHERE THE INSURED
KNOWS THERE'S A COVERED LOSS
AND THEY SAY IT WAS FROM
WIND DAMAGE, IT'S YOUR
EXCLUSION, WHICH IS EXCLUDES
FLOODS DAMAGE, YOU'VE GOT TO,
IT WOULD SEEM TO ME, THE
BURDEN WOULD GO BACK ON THE
INSURANCE COMPANY TO PROVE
THAT IT WAS THE FLOOD DAMAGE
THAT CAUSED THE TOTAL LOSS
BECAUSE IT'S A DEFENSE, AND
IT'S NOT ON THE INSURED.

WOULDN'T THAT BE THE ANSWER
AS FAR AS THAT IT'S NOT THE
INSURED -- IF IT WASN'T DEE
KNOWN, THEN I DON'T SEE HOW
YOU END UP BEING ABLE TO
PROVE IN THAT SITUATION THAT
IT WAS FLOOD DAMAGE NOT WIND
DAMAGE THAT CAUSED THE LOSS.

>> JUDGE, I'M NOT WILLING TO
CONCEDE PERHAPS THAT MY
CLIENTS' ADJUSTS SKILLS ARE
NOT GOOD ENOUGH THAT THEY
WOULDN'T BE ABLE TO KNOW BUT
I THINK YOU HAVE BEEN A MUCH
BETTER ANSWER AND A MUCH
MORE PRACTICAL ANSWER TO THE
QUESTION THAN I DID.

>> SO LET'S TEST THAT OUT

THEN YOU ARE CONCEDE NOTHING
SHRDS DO NOT HAVE THE BURDEN
OF PROVING THE COVERED LOSS.

>> THE SOME SHRDS ALWAYS
HAVE TO PROVE THE COVERAGE.

>> AND PROVE THE AMOUNT OF
THE LOSS.

>> THE INSURED HAVE TO PROVE
THAT IT IS A COVERED LOSS.

>> AND THE AMOUNT.

>> CHIEF JUSTICE LEWIS,.

>> EASY ANSWER.

>> YES OR NO.

>> THE INSURED HAS TO SHOW
THEY HAVE A LOSS.

>> THEY HAVE TO PROVE THE
LOSS AND THE AMOUNT OF THE
LOSS.

THEN IT'S NOT THE BURDEN OF
THE INSURANCE COMPANY TO
COME FORWARD AND SHOW THAT X
WAS CAUSE BY SOMETHING ELSE.

IT IS ON THE INSURED.

>> I DON'T WANT TO DANCE ON
THE HEAD OF THE PIN.

>> I AM NOT DANCING ON PINS.

I AM ASKING A VERY DIRECT
QUESTION AND ALL IT

DESWRRVVESS IS AN ANSWER.

WE MAY DISAGREE OR AGREE.

I WANT AN ANSWER.

>> I WANT TO BE VERY CLEAR
IN MY ANSWER.

WE ARE LIABLE UPON PROOF OF
LOSS,.

>> WHICH IS?

>> WHICH IS PROOF THAT
YOU'VE HAD A COVERED LOSS.

>> AND?

>> A LOSS DUE TO SOMETHING
THAT'S COVERED IN OUR
POLICY.

>> AND?

>> AND THE INSURED HAS THE
BIRD TOON PRESENT THIS PROOF
OF LOSS WITHIN THE INSURANCE
PROCESS.

THAT'S WHAT INDEFINITEY
INSURANCE IS.

>> AMOUNT?

AMOUNT OF LOSS.

>> IF THERE IS A TOTAL LOSS.

>> YOU ARE TRYING TO AVOID
THE QUESTION.

>> NO, SIR, NOT AT L..
>> INSURED HAS NO BIRD TOON
PROVE AMOUNT OF LOSS.
>> IF THERE'S A TOTAL LOSS
THARBSHTS ARE CROEKT FOR A
TOTAL PERIL.
THAT'S WHAT VPL, LIQUEDADED
DAMAGE.
THE TEST FOR LOSS OF A HOUSE
IN FLORIDA IS WHEN IT'S
LOSES ITS IDENTITY AS THE
RESIDENT AS THE OLD LAFAYT
TEST IF THE STRUCTURE LOSES
ITS IDENTITY.
>> I REALIZE YOU ARE RUNNING
OUT OF TIME BUT I WANT TO BE
CERTAIN THAT I UNDERSTAND
YOUR ARGUMENTS SO I AM GOING
TO SORT OF RESTATE F. IN MY
GARBLED WAY SO THAT IF I
UNDERSTAND YOUR ARGUMENT
CORRECTLY, YOU'RE SAYING
THAT THE PURPOSE OF THE
VALUED POLICY LAW WAS REALLY
TO DEAL WITH A VERY SIMPLE
PROPOSITION.
AND THAT IS WAS THIS, THESE,
RAGING DISPUTES ABOUT WHAT
THE VALUE WAS GOING TO BE OF
THE STRUCTURE, OF, YOU KNOW,
OF WHAT WHATEVER, AND SO THE
LEGISLATURE STEPPED IN AND
SAID, WE'RE GOING TO
ELIMINATE THAT.
IF YOU INSURE A HOUSE FOR
250 THOUSAND, AND THERE'S A
TOTAL LOSS, OF A HOUSE, YOU
GET \$250,000.
EVEN IF THE MARKET AT THE
TIME ONLY VALUED THAT HOUSE
FOR \$75,000.
OR IF THE MARKET VALUED IT
FOR A MILLION.
AND THAT THAT WAS REALLY THE,
THE, THE SIMPLE EXAMPLE OR
NARROW PURPOSE OF THE LAW AS
IT WAS ORIGINALLY CONCEIVED.
AND THAT THE ISSUE IN TERMS
OF WHETHER THERE IS A TOTAL
LOSS OR THESE KINDS OF
THINGS ARE REALLY GOVERNED
BY DIFFERENT PRINCIPLES THAT
THAT WASN'T THE FOCUS OF THE
VALUED POLICY LAW.

AM I --

>> WITH MUCH RELIEF MY ANSWER TO THAT QUESTION IS, YES, YOUR HONOR.

>> I JUST, OKAY.

>> AND, AND, AND THAT'S, THAT'S THE POINT OF JUDGE POLESTA'S DISSSENT.

IT'S THIS IS OLD FROM ANOTHER ERA.

IF IT TAUGHT US SOMETHING IN 2005 THERE IS A MUCH BIGGER PROBLEM AND WE ARE GOING TO ADDRESS.

IT IS NOT RETROACTIVE.

THAT'S NOT THE ISSUE HERE.

THIS WAS ADOPTED FOR A VERY SIMPLE PURPOSE IN 1982.

WHICH WAS AFTER 80-SOME-ODD YEARS OF EXISTENCE WAS WHEN THE STATUTE WAS FIRST EXTENDED BEYOND FIRE AND LIGHTNING, THE LEGISLATURE SPECIFICALLY DECLARED THAT IT WAS GOING TO BE APPLIED TO ALL FORMS OF LOSSES, ALL FORMS OF COVERED, ALL FORMS OF LOSSES, WHERE TOTAL LOSS WAS CREATED BY A COVERED PERIL.

THAT'S WHAT THE LEGISLATURE TOLD US IN 1982.

>> AND THE BIRD TOON ESTABLISH THE TOTAL LOSS, WHICH IS THE AMOUNT OF THE LOSS IS ON THE INSURED, CORRECT?

>> CHIEF JUSTICE LEWIS I DON'T UNDERSTAND THE QUESTION ABOUT PROVING AMOUNT OF LOSS AND CONTEXT OF VPL.

>> TOTAL LOSS.

THE HOUSE WAS DESTROYED 51% BY A COVERED LOSS.

>> OKAY, NOW I UNDERSTAND. S.

>> YOU HAVE THE PROVE BOTH THE CAUSATION AND AMOUNT OF DAMAGE.

>> 5 CENTS OR TOTAL LOSS.

THAT BURDEN IS ON THE INSURED, CORRECT?

>> WITH SOME TREPIDATION I

AM GOING TO SAY YES AND NO
BECAUSE PERCENT SUBJECT NOT
THE ISSUE.

>> UNLESS IT IS A TOTAL LOSS
IS THE ISSUE.

>> WHETHER IT LOSES ITS
IDENTITY AS A STRUCTURE.

>> AND THE BURDEN IS ON?

>> UNINSURED.

>> AND THAT IT IS, THAT
TOTAL LOSS OF, AS A
STRUCTURE, IS STILL
DEPENDENT UPON THE INSURED
SHOWING THAT THAT'S DUE TO A
COVERED PERIL.

>> YES, SIR, BUT THE AMOUNT.

>> AND THAT GOES EXACTLY?

>> JUST WHAT I WAS SAYING
PLACING US IN THE POSITION.

THAT MAY BE WHERE IT IS BUT
WE NEED TO KNOW EXACTLY WE
CAN'T REACH THIS CONCLUSION
ON A FALSE ASSUMPTION.

YOU MAY BE CORRECT THAT
THAT'S THE OUTCOME, BUT WHAT
IT MEANS IS THAT THE INSURED
HAS IN BURDEN TO COME IN AND
DEMONSTRATE WE HAD A WIND
LOSS AND THAT IT'S TOTAL
LOSS WAS DUE TO THAT WIND
COVERAGE.

THAT'S WHAT THIS DISPUTE IS
ALL ABOUT.

>> THE VPL DOESN'T SAY THAT.

>> I UNDERSTAND THAT.

>> ALL THE VPL SAYS THAT IN
THE EVENT OF A COVERED LOSS
THAT, A COVERED PERIL CAUSE
AG TOTAL LOSS, LIQUIDATED
DAMAGES WERE ESTABLISHED.
THAT'S IT SAYS.

>> AND YOU ARE SAY FIGURE IT
IT IS DUE TO TOTAL LOSS, IN
PART DUE TO A NONCOVERED
PERIL THAT THE -- PERIL,
THAT THE VPL DOESN'T APPLY.

>> AGAIN, WITH TREPIDATION,
YES AND NO.

THE VPL WOULD APPLY, IF A,
THE COVERED LOSS WOULD HAVE
A COVERED PERIL WOULD CAUSED
THE TOTAL LOSS REGARDLESS OF
THE OTHER UNCOVERED PERIL OR
B, IF DUE TO LAW AND

ORDINANCE, THE SITUATIONS.

>> WELL, THOSE TWO,
ACCEPTING THOSE TWO.
BUT STILL THE BURDEN OF EVEN
THE PROVING THE LAW AND
ORDINANCE REQUIRES THAT THIS
IS A TOTAL LOSS --

>> INSURED MUST COME IN
DEMONSTRATE TO THE TRIAL JUDGE
IT IS A TOTAL LOSS BECAUSE
THIS ORDINANCE SAYS I HAVE TO
REDO IT; CORRECT?

>> COMMON LAW INDEMNITY
PRINCIPLES --

>> DOESN'T THE STATUTE ALMOST
ASSUME THERE REALLY ISN'T ANY
DISPUTE BETWEEN THE INSURED
AND THE INSURER, ABOUT WHETHER
IT IS A TO THE LOSS THE
STATUTE WANTS TO RESOLVE THE
ISSUE ASSUMING IT IS A TOTAL
LOSS, HOW MUCH DOES THE
INSURANCE COMPANY HAVE TO PAY?
DO THEY HAVE TO PAY THE
MILLION DOLLARS, THAT IT IS
NOW VALUED AT?

>> OR JUST THE AMOUNT SO IT IN
THE IT POLICY?

OR ONE -- AS I WENT THROUGH,
THIS AM I.

>> IT KICKS IN AT THE VERY END
OF THE PROCESS AND SAYS GO, NO
FURTHER, PAY UP THE POLICY
LIMITS TO YOU ABOUT OTHERWISE
BE LIABLE UNDER THE POLICY.

>> THANK YOU YOUR HONORS.

>> MORNING MAY IT PLEASE THE
COURT, I'M LEWIS ROSE BLOOM I
REPRESENT MR. AND MRS. COX,
ALONG WITH GREG SHUMACHER LET
ME FIRST ADDRESS JUSTICE
LEWIS' CONCERN⁹⁹ABOUT WHEN
PARTY BEARS THE BURDEN PROVING
A TOTAL LOSS THE WAY TYPICAL
INSURANCE CLAIM WORKS IS THE
INSURED!!\$\$!!!!!!!!!!!!!!

INSURED, SENDS A APPROVE OF
LEGISLATORS A ALERT FROM AN
ATTORNEY TO AIN INSURANCE
ADJUSTOR SAYS MY HOUSE IS A
TOTAL LOSS, BECAUSE OF
HURRICANE IVAN, AND I THINK IT
IS WIND, AND I WOULD LIKE THE
POLICY LIMITS, AND THE

INSURANCE ADJUSTOR WRITES BACK
SAYS NO, WE THINK MOST OF YOUR
DAMAGE CAME FROM FLOOD AND
THAT IS EXCLUDED UNDER THE
POLICY BUT WE WILL PAY 12,000
AS THERE ARE WE THINK THAT WAS
THE PART THAT WAS CONFERRED BY
WIND.

AND WHAT IT IS GOING TO HAPPEN
IS ON THE INSURED HAS GO TO
COURT, AND BECOME AS THE
PLAINTIFF!!\$\$!!!!!!!!!!!!!!
PLAINTIFF, AND BEARS THE
BURDEN OF PROOF.

SO THAT IS THE SHORT ANSWER TO
THE QUESTION --

>> THE QUESTION IN THIS CASE
IS WHETHER THAT DPL APPLIES TO
A PARTIAL LOSS FROM A COVERED
PERIL!!\$\$!!!!!!!!!!
PERIL; CORRECT?

>> IT IS ALL MATTER OF
STATUTORY INTERPRETATION WE'VE
BEEN TALKING ABOUT A BROAD
CONCEPTS HERE, WHAT IT SEEMS
TO ME, WHAT FARM BUREAU IS
TRYING TO DO IS IS APPLY THE
2005 BPL TO A TWO O 2004
CLAIM.

>> WE'VE BEEN VERY PRACTICAL
STANDPOINT -- IN AN INSTANCE
IN WHICH THE INSURED HAD
BOUGHT FLOOD INSURANCE.
THEN THE AND THE TOTAL
STRUCTURE IS WIPED OUT THEN I
GET DOWN TO A MATTER OF
APPORTION MEANT -- AIMPORTANT
MENMENT BETWEEN FLOOD
INSURANCE AND HOMEOWNERS
INSURANCE.

>> PRACTICAL CAP HERE YOU ARE
BOUND BY -- FLOOD INSURANCE.

>> US THE TRUE I'M NOT INSURE
-- SURE YOUR HONOR, I AGREE HE
WITH YOUR PREMISE THAT THERE
IS GOING TO BE A --

APORTIONMENT BETWEEN FLOOD
INSURANCE CARRIER AND
WINDSTORM CARRIER, THAT IS
ANOTHER CASE, THAT IS IN THE
PIPELINE!!\$\$!!!!!!!!!!!!!!

PIPELINE, AND THERE IS
CERTAINLY ARGUMENTS, BEING
MADE BY THE INSURANCE

INDUSTRY, THAT THEY HAVE SOME
KIND OF SOCIETY OF BUT THAT IS
NOT BEEN DETERMINED YET.
IT SEEMDZ TO ME, SEEMS TO ME
IF INSURED PAYS FULL PREMIUM
FOR 250,000 DOLLAR FLOOD
POLICY, AND PAYS A FULL
PREMIUM FOR A 250,000 DOLLAR
WIND POLICY, AND THE HURRICANE
WIPES THE PROPERTY OFF THE
SLAB AND YOU CAN'T TELL WHICH
CAUSED IT WIND OR WATER THEN
HE IS GOING TO COLLECT BOTH,
NOW WHETHER THERE IS ANY --
ANY SUBBROTHER INVESTIGATION
OR CONTRIBUTION BETWEEN THE
TWO INSURERS I DON'T KNOW.
>> BELIEVE WHETHER HE --
COLLECTS!!\$\$!!!!!!!!!!!!!!
COLLECTS, 250, OR 500, I GUESS
IS THE CASE FOR ANOTHER DAY,
BUT WHAT -- WHAT STRIKES ME IS
THAT YOU HAVE GOT PEOPLE IN
THIS STATE WHO PROCEEDED ON
THE BASIS THAT THEY HAD TO
HAVE A WIND POLICY, AND A
FLOOD POLICY.
AND BOUGHT BOTH OF THOSE.
AND YET IF THE FIRST
DISTRICT'S OPINION IS CORRECT
THEY WERE WRONG THEY ONLY HAD
TO BUY A HOMEOWNERS POLICY.
>> AS A PRACTICAL MATTER AFTER
HURRICANE IVAN WE DID FIND
QUITE A FEW INSUREDS WHO WERE
WRONG THAT SUSTAINED FLOOD AND
WATER DAMAGE IN AREAS THAT
WERE NOT WITHIN THE SO CALLED
FLOODPLAIN!!\$\$!!!!!!!!!!!!!!
FLOODPLAIN.
BUT THAT BUT IT IS TRUE FOR
WHATEVER REASON THE INSUREDS
IN THIS CASE DID NOT HAVE
FLOOD INSURANCE, BUT I THINK,
IN ALL THIS DISCUSSION, WE ARE
LOSING SIGHT ABOUT THE TELL
YOU WORDS OF THE STATUTE.
AND THIS MAGIC LANGUAGE IF ANY!!\$\$!!!!
ANIP WAS ADDED IN 1959, SO THE
CASE MY LEARNED OPPONENT CITED
FROM 1904 IS NOT REALLY WILL
APPLICABLE BECAUSE THE
LANGUAGE WAS NOT ADDED IN 19
TILL 1959.

>> LET ME ASK YOU -- THE REAL
THE CONCERN THAT YOU SEE IS
THE COMMON SENSE ASPECT OF THE
STATUTE.

WAS THE STATUTE REALLY
DESIGNED TO PICK UP THIS KIND
OF LOSS FOR NONCONFERRED ITEMS
THE INSURANCE COMPANY WILL
AGREE AS TO BURDEN OF PROOF IS
NEITHER HERE NOR THERE WE NEED
TO UNDERWHAT IT WIRES TALKING
ABOUT THE STATUTE MAY NOT IF
YOU P\$\$ARSE OUT EACH WORD BUT AS
YOU LOOK IT A WITH COMMON
SENSE ISN'T IT JUST AS JUSTICE
WELLS INDICATED THE STATUTE
REALLY WASN'T TO CONVERT A
POLICY TO COVER THOSE THINGS
THAT WERE NOT COVERED UNDER A
GUISE OF TOTAL PAY THE FULL
FACE VALUE I THINK THAT IS
REALLY THE --

>> EVERYBODY, HAS THEIR
OPINION, IN THIS ISSUE ABOUT
WHAT THE LEGISLATURE WAS
THINKING!!\$\$!!!!!!!!!!!!!!!

THINKING, IN 1959.
INCLUDING LETTING LAIJORS IN
2005 WEREN'T BORN IN 1959.
I DON'T KNOW WHAT THEY WERE
THINKING THEY CONTEMPLATE THIS
PRECISE CASE PROBABLY NOT
PROBABLY -- PROBABLY NOT BUT
THE TASK OF THE COURT IS TO
READ THE LANGUAGE, AS WRITTEN,
AND THE REPLY BRIEF, FARM
BUREAU SUGGESTED WELL, WITH
LIMITATIONS TO THAT RULE, IT
CANNOT LEAD TO AN ABSURD
RESULT.

BUT I WOULD HATE TO BE THE
LAWYER, THAT IS STANDING
BEFORE YOU, AND ARGUING THAT
EIGHT DISTRICT COURTS OF
APPEAL JUDGES, WHO HAVE
INTERPRETED THIS STATUTE IN
FAVOR OF THE INSURED REACHED
AN ABSURD RESULT.

>> ISN'T THE UNDERLYING
THOUGHT THAT -- JUSTICE
ANSTEAD EXPRESSED JUST AS
WELL -- THAT THIS REALLY JUST
A FACE AMOUNT KIND OF ISSUE,
AMOUNT OF POLICY NOT TYPE OF

COVERAGE KIND OF DISPUTE AND THAT WAS NEVER DESIGNED TO COME TO PLAY IN THE CIRCUMSTANCE WHERE THERE REALLY IS NOT COVERAGE FOR -- >> THE ORIGINAL PURPOSE DOES COME INTO PLAY FOR THIS REASON, YES, THE STATUTE WAS ORIGINALLY DESIGNED, TO SET A VALUE, TO PREVENT TO PREVENT THE INSURED, FROM OVER VALUING HIS PROPERTY, AND TO PREVENT THE INSURANCE COMPANY FROM TRYING TO BACK OUT AFTER THEY CHARGED A PREMIUM, BUT THERE IS ANOTHER ESSENTIAL PURPOSE AND THAT IS USING THE WORDS OF THE FIRST DISTRICT IN THE BOSWELL CASE TO PREVENT HAGGLING!!\$\$!!!!!!!!!!!!!! HAGGLING, TO PREVENT LITIGATION ABOUT THE CAUSE OF LOSS AND THIS A PERFECT EXAMPLE.

>> -- AMOUNT --

>> WELL, CAUSE AND AMOUNT, IT IS CAUSE OF LOSS AND AMOUNT -- >> WHERE DOES STATUTORY SCHEME GET INVOLVED WITH THIS CAUSE? AS OPPOSED TO VALUE?

THAT IS, YOU AGREE, THAT AT LEAST ONE ORANGE PURPOSE WAS TO GET OVER THIS THING YOU SAID TO NOT ALLOW THE INSURED TO OVER VALUE IT, OR WHATEVER, THEY AGREE ON A POLICY AMOUNT. AND REGARDLESS WHAT HAPPENS IN THE MARKETPLACE YOU KNOW, TODAY, I'M SURE THAT THERE ARE LOADS OF PEOPLE OUT THERE, YOU KNOW, RUNNING AROUND SAYING, YOU KNOW, WE NEED TO REEVALUATE BECAUSE OF WHAT IS HAPPENED IN THE MARKET. HOW MUCH INSURANCE, WE HAVE ON OUR HOUSE, AND IN CASE OF A TOTAL LOSS.

BUT, THE AT LEAST WAS ONE OF THE PURPOSES, SO I'M INTERESTED IN -- IN YOUR POSITION, THAT THE LEGISLATURE ALSO INTENDED TO DEAL WITH THE CAUSE OR CAUSES OF THE LOSS, THAT IS HOW WHEN DID THE

LEGISLATURE MOVE FROM JUST SAYING, ALL RIGHT, NOT GOING ANY MORE LITIGATION, ABOUT THE VALUE, BECAUSE WE HAVE SAID, YOU FIX THE VALUE, AND THE POLICY, AND THAT IS IT, AND THAT WILL HOPEFULLY, YOU KNOW RESOLVE A LOT OF LITIGATION THAT WAS GOING ON THEN.

BUT NOW WHEN DID THEY MOVE FROM SAYING WELL, NOW, WE ALSO ARE PUTTING SOME PROVISIONS IN HERE ABOUT APPORTION MEANT OR CAUSE, OR WHATEVER, AND WHEN HE DID THEY DO THAT WHAT DID THEY DO.

>> THEY SAID -- SET THE VALUE ISSUE IN 1899 WE THEY ORIGINALLY ENACTED THE LAW THERE WOULD BE NO MORE ARGUING ABOUT VALUE.

>> ISN'T THAT REALLY THE NAME WHEN WE TALK ABOUT VALUE VALUED POLICY LAW THAT IS REALLY WHOA WE ARE TALKING ABOUT ARE WE NOT LIQUIDATED DAMAGES OF YOUR --

>> IF THE HOUSE WAS TOTALLY DESTROYED BY FIRE THEY DIDN'T WANT TO HAVE AN ARGUMENT WHETHER THE HOUSE WAS WORTH 20,000 OR -- 18,000 SO THAT WHEN INTO THE DISPUTE WHETHER YOUR HOUSE IS TOTALLY DESTROYED!!\$\$!!!!!!!!!!!!!! DESTROYED, OR IT IS ONLY PARTIALLY DESTROYED, OR, WHAT PROVISIONS ARE IN THIS VALUED POLICY LAW THAT DEAL WITH RESOLVING THAT ISSUE?

>> FIRST LET ME NOTE THAT NAED TO VALUE I'M QUOTING FROM THE BOSWELL CASE, THAT JUDGE BENTON QUOTED IN HIS OPINION, HE SAID THE VALUE POLICY, \$\$ LAW'S PURPOSE QUOTE TO SIMPLIFY!!\$\$!!!!!!!!!!!!!! SIMPLIFY, AND FACILITATE PROMPT SETTLEMENT OF INSURANCE CLAIMS WHAT TOTAL LOSS OCCURS I REALIZE.

>> I REALIZE ORIGINALLY IN VALUE CONTEXT BUT CERTAINLY APPLIES IN THE CAUSE

ASSUMPTION PROCESS -- CAUSE!!\$\$!!!!!!!
CAUSATION PROCESS.

>> WAS ADDED IN 1959, AND THE LANGUAGE -- AND THIS WAS ORIGINALLY INTERPRETED BY MIRASWI. A, IN THE PRESENT OF TOTAL LOSS OF ANY STRUCTURE IN THE BY SURET AS TO A, COVERED PARALLEL THE INSURED'S LIABILITY IF ANY UNDER THE POLICY FOR SUCH LOSS, SHALL BE IN THE AMOUNT OF MONEY FOR WHICH SUCH PROPERTY WAS SO UP INSURED AS SPECIFIED IN THE POLICY AND FOR WHICH PREMIUM IS PAID NOW WHAT THE MIRSWCOURT SAID WHICH THE COX COURT AGREED SUBSEQUENTLY THE COURTS FROM THE FIRST DCA AND THOSE ARE CASES FILTERING THROUGH THE SYSTEM, SAID, THAT THE KEY WORD A A, AND THE KEY WORD IF ANY MEANT THAT IF THERE WAS A LOSS FROM A COVERED PERIL, ON THE SURET'S LIABILITY OR RESPONSIBILITY IF ANY WAS FOR THE WHOLE THING.

>> ASK YOU A QUESTION, I WOULD LIKE TO UNDERSTAND YOUR POSITION, UNDER YOUR ARGUMENT, IF THERE IS A TROPICAL STORM AND SOMEONE HAS A HOUSE ON THE BEACH, AND THE TROPICAL STORM THE WIND NO OBJECTION OUT A WINDOW -- KNOCKS OUT A WINDOW THE SYMPTOM SURGE GOES TO THE TOP OF THE HOUSE THIS IS NOW COVERED UNDER THE HOMENERS FOR THE ENTIRE LOSS OF THE HOUSE EVEN THOUGH THE WIND PART WAS BREAKING ONE WINDOW?

>> WELL, THAT WAS THE EXAMPLE I THINK USED BY ONE OF THE AMIKE\$!!!AS BRIEFS, IT WOULDN'T BE COVERED AT ALL, BECAUSE, YOU HAVE A TWO PERCENT HURRICANE DEDUCTIBLE!!\$\$!!!!!!!!!!!!!!!!!!!! DEDUCTIBLE, AND ASSUME IT IS A FANCY HOUSE ON THE BEACH INSURED FOR 800,000 DOLLARS --

>> YOU GOT A 16,000 DOLLAR DEDUCTIBLE SO IT IS --

>> BUT A TOTAL LOSS THE DEDUCTIBLE DOESN'T APPLY KNEW

TOTAL SFLOOS THERE IS NO CLAIM
IF YOU DON'T MEET THE
DEDUCTIBLE!!\$\$!!!!!!!!!!!!!!!!!!!!
DEDUCTIBLE.

>> YOU MEET MET DEDUCTIBLE IT
IS A TOTAL LOSS YOU MET THE
DEDUCTIBLE!!\$\$!!!!!!!!!!!!!!!!!!!!
DEDUCTIBLE.

YOU ARE SAYING, THAT IF ANY
PERCENTAGE ATTRIBUTABLE TO THE
COVERED LOSS, AND IT IS A
TOTAL LOSS, THEN YOU ARE
RESPONSIBLE TO THE WHOLE THING
THE DEDUCTIBLE DOESN'T APPLY.

>> RESPECTFULLY DISAGREE IS,
MEAN THAT IS NOT THE FACTS OF
THIS CASE, BUT I BELIEVE THE
DEDUCTIBLE WOULD APPLY, AND AS
A PRACTICAL MATTER THIS CALLED
WHAT THE INSURANCE INDUSTRY
HAS BEEN CALLING THE SINGLE
SHINGLE ARGUMENT, AND ONE THAT
NEEDS TO BE ADDRESSED.

AND THAT IS IF THE WIND BLOWS
OFF ONE SHINGLE, AND THEN, THE
TITLE -- TIDAL SURGE WIPES THE
HOUR -- US WHO AWAY WHY SHOULD
WINDSTORM CARRIER BE LIABLE.

>> -- I UNDERSTAND NOT MEETING
DEDUCTIBLE NOW A TOTALLY LOSS
SO NOT A -- TWO DOLLAR LOSS IT
IS KNEW 200,000 DOLLAR LOSS.

>> WELL -- I HAVE TO
RESPECTFULLY DISAGREE YOUR
HONOR IT DOES HAVE TO MEET THE
DEDUCTIBLE!!\$\$!!!!!!!!!!!!!!!!!!!!
DEDUCTIBLE, BUT -- LET'S --.

>> I'M NOT SURE THAT MAKES A
DIFFERENCE SAY MEETS.

>> PUT THAT ISSUE ASIDE LET'S
SAY IT DOES MEET THE
DEDUCTIBLE IT IS A REAL FANCY
STAINED GLASS WINDOW YOU STILL
HAVE VERY -- AND, YES, OUR
POSITIONS IS THE LAW AS IT WAS
WRITTEN, BEFORE 2005, THAT
WOULD BE A TOTAL LOSS CLAIM
CONFERRED BY THE VPL BUT AS A
PRACTICAL MATTER.

>> WHERE DOES THAT FALL INTO
FOR WAY PREMIUM HAS BEEN
CHARGED, AND PAID?

>> WITH A COVERED PERIL \$\$
INSURER'S LIABILITY IF ANY.

>> DON'T WE HAVE TO GIVE SOME MEANING TO THAT LAST PHRASE, BECAUSE IT IS NOT A DEPENDENT CLAUSE THAT COMES BEFORE IT UNDER THE POLICY FOR SUCH TOTAL LOSS, SHALL BE IN THE AMOUNT OF MONEY FOR WHICH SUCH PROPERTY WAS SO INSURED AND AS SPECIFIED IN THE POLICY, THAT LEGISLATURE COULD PUT A PERIOD RIGHT THERE, BUT INSTEAD IT SAYS AND FOR WHICH A PREMIUM HAS BEEN CHARGED AND PAID, WHAT MEANING DO WE GIVE TO THAT PHRASE, UNDER YOUR ARGUMENT?

>> WELL, IT OBVIOUSLY REFERS TO IT GOES BACK TO THE ORIGINAL 1899 CONCEPT, THAT THE VALUE -- YOU RECEIVE THE VALUE THAT THE PREMIUM FOR WHICH THE PREMIUM IS CHARGED, THEY INSURANCE COMPANY CAN'T CHARGE YOU A 3,000 DOLLAR PREMIUM FOR 500,000 DOLLAR COVERAGE, AND THEN TRY TO PAY YOU 400,000.

BUT THE INSURANCE INDUSTRY SAYS WELL WE DID NOT CHARGE A PREMIUM, FOR WATER DAMAGE, IN THE POSSIBILITY OF COVERING IT WOULD NOT BE FIRST INSURANCE COMPANY THAT MISREAD A STATUE.

>> I GUESS IN REERMS OF HE HAD -- TERMS OF READING TO IT ME THAT CLAUSE AT THE END THAT JUSTICE CONTARO -- CONTERRO RELATE!!\$\$!!!!!!!!!!!!

RELATED FOR WAY PRESUME HAS BEEN CHARGED AND PAID I DON'T -- CAN BE INTERPRETED TO SAY THAT IT IS FOR THE CONFERRED PERIL AND -- COVERED PERIL MY PROBLEM THAT I HAVE IN THIS CASE IS THAT CERTAINLY THOUGHT THE DE MINIMIS IF WE EXPECT THAT THE WIND DAMAGE WAS AROUND 11,000 OF 65,000 DOLLARS FACE AMOUNT, WHILE THAT IS NOT DEMINIMUM MIS, IT WOULD IT WOULD SAY THAT EACH THOUGH YOU HAVE A EXCLUDED PERIL WHICH IS IS THE GLAD DAMAGE, THAT CAUSED THE REST

OF IT, THAT THE AND THE
PREMIUM WAS BASED ONLY ON THE
COVERED PERILS THAT YOU ARE
ESSENTIALLY GETTING COVERAGE
FOR A LOSS FOR WAY PREMIUM WAS
NOT CHARGED, AND I'M HAVING
DIFFICULTY WITH THAT, NOW THE
ONE THE JUSTICE LEWIS EXAMPLE.
HOUSE IS BLOWN AWAY AND NOBODY
CAN TELL WE DON'T HAVE THAT
BEFORE US, AND THAT AS FAR AS
WHERE BURDEN COMES BUT WHEREAS
A -- SPECIFIED AMOUNT THAT WE
KNOW COMES FROM WIND, I DON'T
SEE HOW YOU GET TO SAY BUT I
PAID THE PREMIUM, FOR 65,000
DOLLARS!!\$\$!!!!!!!!!!!!!!
DOLLARS, OF LOSS.

>> WELL, THE ANSWER TO THAT
QUESTION, LIES WITHIN YOUR
INTERPRETATION OF THE STATUTE,
IF YOU INTERPRET THE STATUE AS
FARM BUREAU DOES YOU ARE GOING
TO REACH THE CONCLUSION THAT
YOU ONLY SHOULD HAVE PAID A
PRIM FOR WHATEVER WAS CAUSED
BY WIND BUT IF YOU INTERPAT
THE TIME IT AS A MIRSWA COURT
OR COX COURT OR THE ONDICOURT
YOU HAVE TO ASSUME THE PREMIUM
SHOULD HAVE TAKEN THAT INTO
ACT.

>> DON'T YOU THINK THAT BY
SAYING, LIABILITY OF ANY, YOU
AGREE THAT THAT SAYS THAT THE
COVERAGE DEFENSES ARE RETAINED!!\$\$!!!!!!!!!!!!!!
RETAINED?

THAT IF THERE IS A DEF TO THE
POLICY -- DEFENSE.

>> I INTERPRET THAT TO MEAN
LIKE YOU DIDN'T PAY YOUR
PREMIUM, OR YOU.

>> YOU MIGHT INTERPRET THAT IT
WAY BUT I INTERPRET TO IT MEAN
THAT IF I HAVE AN EXCLUSION
FOR FLOOD, AND IT IS THE FLOOD
DAMAGE, THAT CAUSED THE
MAJORITY OF THE LOSS, I DON'T
LOSE MY RIGHT TO ESTABLISH
THAT DEFENSE WHICH IS THAT IT
IS -- MOW MAYBE WHETHER A
COVERED I HAVE TO PROOF IT IS
A COVERED PERIL BUT I WILL
JUST TAKE UNIVERSITY MY WAY

THAT IT IS OCCLUSION FOR FLOOD
SO IT IS SOMETHING THE
INSURANCE COMPANY HAS TO
ESTABLISH, THAT IS SOMETHING
THAT I RECONTAIN THE ABILITY
TO SAY -- RETAIN TO SAY FLOOD
CAUSED A MAJORITY OF THIS
LOSS.

>> ACTUALLY THE STATUTE DOES
LIST DEFENSES THAT THE SURER
CAN MAKE, AND THEY ARE
FRAUD -- IT SAYS IN THE
ABSENCE OF ANY CHANGE
INCREASING THE RISK WITHOUT
THE \$INSURER'S CONSENT AND IN
THE ABSENCE OF FRAUDULENT OR
CRIMINAL FAULT ON THE PART OF
THE INSURED THOSE ARE THE
DEFENSES LISTED IN THE
STATUTES ARE THE STATUTE
DOESN'T LIST THE DEFENSE I
THINK ON EXCLUDED PERIL,
CONTRIBUTED TO THE TOTAL LOSS,
YOU HAVE TO REMEMBER WHAT THE
INSURANCE COMPANY WANTS HERE,
ALTHOUGH THEY HAVE CONCEDED
THAT IF EITHER THE EXCLUDED
PERIL OR THE COVERED PERIL
COULD HAVE CAUSED THE TOTAL
LOSS, THEN THEY RESPONSIBLE
BUT WHAT THEY WANT TO DO
THOUGH IS THEY WANT TO
APPORTION LIKE THE 2005
STATUTE READS, SO IF WE TURN
THE FACTS AROUND, AND SAY
WELL, THERE WAS A THAT MORE
THAN 50% WAS CAUSED BY WIND,
THEY STILL DON'T WANT TO PAY!!\$\$!!!!
PAY --

>> BUT THAT MAY BE A DIFFERENT
CASE, BECAUSE HERE, ARE WE NOT
ARE YOU CONTESTING 11,000 THAT
THAT WAS IS A CORRECT AMOUNT
FROM THE WIND DAMAGE SO IF
WELL, THAT THIS WAS A
LEGITIMIZE ON THE PLEADING SO
WE HAVE TO ACCEPT THE
PLEADINGS -- WHAT THEY PLED
THAT IS THEY DETERMINED THAT
TO BE THE AMOUNT --

>> BUT IF YOU ARE SAYING THAT
NOW WE HAVE A SITUATION WHERE
EITHER ONE COULD HAVE CAUSED
THE TOTAL LOSS, I THOUGHT I

HEARD!!\$\$!!!!!!!!!--

SAY THEN THEY WOULD BE RESPONSIBLE FOR THE FULL 65,000.

MAYBE THAT WAS --

>> WELL HE SAID IF EITHER COULD, BUT WHAT I -- I DON'T UNDERSTAND ON THEIR POSITION, WHAT IS WOULD HAPPEN IN A CASE, AND WHILE I ADMIT THAT THIS IS A FACT SPECIFIC CASE, IT'S IMPACT MAY BE OBVIOUSLY BEYOND THE REACH OF THIS ONE CASE, WHAT I DON'T UNDERABOUT FARM BUREAU'S POSITION WHAT WOULD HAPPEN IN THE CASE WHERE THERE WAS A TOTAL LOSS AND THE INSURANCE COMPANY DETERMINED THAT 51% WAS CAUSED BY WIND, BY WATER, AND 49% BY WIND. OR VICE VERSA.

I THINK, LET'S -- LET'S TAKE IT --

>> I GUESS -- WE HAVE TO -- CROSS THAT BRIDGE IN THAT CASE, AND DETERMINE -- BUT I KEEP COMING BACK TO MY CONCERN, WHEN IS THAT THE CENTRAL QUESTION HERE IS WHETHER THE -- POLICY LAW IS APPLICABLE!!\$\$!!!!!!!!!!!!!!!!!!!! APPLICABLE, IN A SITUATION IN WHICH THE COVERED PERIL, DID NOT CAUSE THE TOTAL LOSS. AND ISN'T THAT I MEAN WE CAN'T HE ESCAPE THAT QUESTION HERE. AND MISERA REALLY WENT WROTE A LOT ABOUT A LOT OF THINGS, BUT IN MISERA WAS A CONSTRUCTIVE TOTAL LOSS SITUATION IF I REMEMBER CORRECTLY.

>> IT WAS.

>> BY REASON OF THE FACT IT WAS OVER 50% WINDSTORM, AND THE ORDINARY NAPS WOULDN'T LET IT BE ORDINANCE WOULDN'T LET IT BE RECONSTRUCTED IS THAT.

>> IS CORRECT.

>> YOUR SITUATION IT STIPULATE OWED.

>> LET ME GIVE THE COURT -- THE FACTS OF THE FOWLER CASE FROM THE SECOND DCA, WHERE IT WAS FIRE LOSS, THAT CAUSED

LESS THAN HALF THE VALUE OF
THE BUILDING DAMAGED A 10,000
DOLLAR POLICY THE FIRE LOSS
DAMAGE WAS LESS THAN 5,000
DOLLARS!!\$\$!!!!!!!!!!!!!!
DOLLARS.
BUT IT WAS DECLARED A TOTAL
LOSS BECAUSES OF A LAW
ORDINANCE THAT PREVENTED
REBUILDING BUT IN KAIS -- CASE
UNLIKE \$TODAY'S MODERN POLICIES
LAW AND ORDINANCE WAS EXCLUDED
AND THE COURT STILL SAID THAT
THE FIRE INSURANCE CARRIER HAD
TO HAVE PAY FOR THE TOTAL
LOSS, AND THAT IS EVEN THOUGH,
EVEN THOUGH, THE COVERED PERIL
CAUSED LESS THAN HALF THE
DAMAGE, AND THE EXCLUDED PERIL
CAUSED MORE THAN HALF THE
DAMAGE.
SO, AND ALSO, GET BACK TO THE
OLD TERMITE CASE, THE ROBINSON
CASE YES THE TERMITES CAUSED A
DIMINUTION IN VALUE, BUT IN
DICTA, MY LEARNED O PEN ENT
LEFT OUT ONE OF THE KEY WORDS
SAID COULD COME FROM TERMITES
OR FROM ANOTHER CASUALTY.
SO THIS IS A SITUATION WHERE
WE HAD ANOTHER CASUALTY SO IF
ARE THERE OTHERS, OTHER KINDS
OF LOSSES THAT WE NEED TO BE
THINKING ABOUT?
THIS CASE HAS VAST
RAMIFICATIONS!!\$\$!!!!!!!!!!!!!!
RAMIFICATIONS, IT IS NOT JUST
THIS CASE.
SO THERE ARE OTHERS YOU
MENTIONED THE LAW AND
ORDINANCE ARE THERE OTHER
KINDS OF COVERS WHERE THIS --
OF HIS COVERED MAY NOT BE
COVERED WERE IT -- HAPPENED BY
ITSELF WE LOOK AT PART OF THAT
WHAT YOUR ARGUMENT IS WE NEED
TO JUST BE AWARE
>> THAT ARE LOTS OF EXCLUSIONS
MOST POLICIES HAVE EXCLUSION.
>> THE TERMITES.
>> BUT AS PRACTICAL MATTER I
MADE A JURISDICTIONAL ARGUMENT
IN MY BRIEF AS A PRACTICAL
MATTEr WHATEVER PRESCRIBE ROSE

BECAUSE OF THE MIRSWCASE IS GONE WITH EXCEPTION OF THE CASE THAT STILL REMAIN FROM THE 2004 SEASON THE 2005 LEGISLATURE COMPLETELY OVERHAULED THE LAW, THEY GOT NOW PERCENTAGE APPORTION MEANT COULD YOU CAN APPORTION BETWEEN, FIRE AND TERMITES, OR WIND AND WATER, AND WE THINK OF COURSE, IN I'M MY TIME WE THINK THE BEST REASON TO SUPPORT THE BEST ARGUMENT FOR OUR POSITION, IS THE 2005 LEGISLATION ITSELF WHY IN THE WORLD WOULD THEY CHANGED IT IF IT IS SO CLEARLY STATES WHAT FARM BUREAU SAYS.

>> COULD BE ARGUMENT FOR BOTH SIDES, I THINK.

>> YOU HAVE USED UP GO AHEAD THANK YOU, YOU HAVE USED UP ALL YOUR TIME WITH OUR QUESTION LET ME GIVE YOU SOME TIME TO -- A COUPLE MINUTES HERE TO GIVE YOUR THOUGHTS -- TO CONCLUSION.

.
>> WERE A MR. RUSE BLOOM DIDN'T MENTION IF ANY LANGUAGE WAS ADDED IN 1959. THAT WAS AT A TIME WHEN THE P\$\$!!!! PPL OM COVERED FIRE. SO THERE WAS NO ISSUE AS TO MULTIPLE PERILS, IT ONLY COVERED!!\$\$!!!!!!!!!!!!!! COVERED, FIRE.

IN 1982 I BRIEFLY ALLUDED TO THIS I BELIEVE THIS IMPORTANT, WHEN THE VPL WAS EXTENDED BECAUSE JUSTICE ANSTEAD I BELIEVE QUESTION WAS WHEN DID THE LANGUAGE CHANGE TO GO BEYOND THE CONCEDED APPLICATION ONLY TO VALUE AND BECOME CAUSATION THE ANSWER IS IT DIDN'T, THE WORDS IF ANY WERE ADDED IN 1959, IT ONLY COVERED FIRE, IT DIDN'T CONFER ANY OTHER PERILS.

IN 1928 WHEN LEGISLATURE EXPANDED BPL TO CONFER ALL PERILS THIS EXACTLY WLA THEY SAID POLICY LIMITS WOULD BE

REQUIRED TO BE PAID, THIS IS FROM THE FB LEGISLATIVE HISTORY IF THERE IS A TOTAL LOSS OF A BUILDING AS A RESULT OF ANY COVERED PERIL.

AND THAT IS THE STATUTE AS IT EXISTED IN 2004.

>> THEY DIDN'T ACTUALLY USE THAT LANGUAGE, THAT SAID AS A RESULT OF, HOWEVER.

>> I'M SORRY YOUR HONOR.

>> THE LANGUAGE IN THE TELL YOU STATUTE ACTUALLY STATUTE DOESN'T SAY SAYS A RESULT OF.

>> ACTUALLY --

>> THAT IS EXACTLY WHAT THE STATUTE SAYS.

AND AGAIN THE WORDS ARE IMPORTANT.

AND I'M NOT GOING TO LEAVE ANY IMPORTANT WORDS OUT.

>> ALL RIGHT.

>> IN THE EVENT OF A TOTAL LOSS OF ANY BUILDING STRUCTURE OR MOBILE HOME, MANUFACTURED BUILDING LOCATED IN THE STATE, AN INSURED BY ANY INSURER AS TO A COVERED PERIL, IN THE ABSENCE OF ANY CHANGE INCREASE!!\$\$!!!!!!!!!!!!!!!

INCREASING THE RISK WITHOUT THE INSURER'S CONSENT IN ABSENCE OF FRAUDULENT CONDUCT OR TRIM CLL FAULT ON THE INSURED -- THE INSURER'S LIABILITY IF ANY REMEMBER ADDED IN 1959, AND EXPANDED IN 1928, TO MEAN ONLY AS TO COVERED PERIL ANY UNDER THE POLICY FOR SUCH TOTAL LOSS.

CH THAT IS THE LOSS CAUSED BY COVERED PERIL GOING BACK TO THE BEGINNING, SHALL BE IN THE AMOUNT OF MONEY FOR WHICH SUCH PROPERTY WAS SO INSURED AS SPECIFIED IN THE POLICY FOR WAY PREMIUM HAS BEEN CHARGED.

>> ALSO, YOUR POSITION, THAT THE LANGUAGE, IN FOR WHICH A PREMIUM HAS BEEN CHARGED.

>> OF COURSE.

>> ALSO, RELATES TO THE FACT IF YOU HAVE THE VALUED POLICY LAW, YOU KNOW EXACTLY, WHAT YOUR RISK IS, IN TERMS AT

LEAST OF THE VALUE OF A TOTAL LOSS, AND THAT YOU WOULD UNDERWRITING WOULD CHARGE A PREMIUM ACCORD --

>> I KNOW AT THE END OF THE DAY, IF WE GET TO THE POINT OF A TOTAL LOSS CAUSED BY A COVERED PERIL MY DAMAGES ARE FIXED.

AND OF COURSE THAT IS TAKEN INTO ACCOUNT IN THE PREMIUM, THE LAST POINT I WOULD LIKE TO MAKE IS DISCUSSION OF PERCENTAGES AS I SAID BEFORE, CAN BE A LITTLE MISLEADING. BECAUSE PERCENTAGES ARE IMPORTANT ONLY WHEN WE ARE DEALING WITH A LAW AND ORDINANCE SITUATION WHERE THE SPECIFIC PERCENTAGES IS COVERED!!\$\$!!!!!!!!!!!!!!

COVERED, IN THE ORDINANCE. WHAT THE QUESTION IS, WAS THE STRUCTURE A TOTAL LOSS DID IT LOSE IT'S IDENTITY IT CAN LOSE IDENTITY AS IT DRINKABLED IN FOWLER BECAUSE IT COULDN'T BE REBUILT.

>> THEN YOU DO AGREE, WITH MR. ROSENBLIUM THAT THIS LAW AND ORDINANCE IF KEY INTERPRET THIS WAY EXCLUSION IN POLICY THE LAW AND ORDINANCE AND THE COVERAGE, THAT THE VALUE POLICYHOLDER LAW THEN CAN NOT APPLY BECAUSE PREMIUM HAS BEEN PAID, WITHOUT ADDITIONAL PROTECTION.

>> JUDGE FILL OF THE QUESTION HOW O LAW AND ORDNANTS OPPOSITE PRAITS HAS BEEN ARGUED TO THIS COURT, THAT SECOND PART OF CASE, STILL PENDING A DECISION, THE IMPORTANT PART OF FOWLER, IS THAT THERE WAS A FIRE, AND BY OPERATION OF LAW JUST THE SAME AS IF IT WERE 50% ORDINANCE, ALTHOUGH WASN'T WASN'T THAT SO SIFT INDICATED, IN OTHER WORDS 51% DAMAGE WHICH HIM ON THES TIME YOU'RE GOING LOOK AT THIS, YOU HAVE APPEAR ORDINANCE THAT SAYS AT 50%,

YOU CAN'T REBUILD, THEN YOU
HAVE THENNAU TOTAL LOSS, FOUL
WARES SORT OF A COMMON LAW
PRECURSOR TO THAT THAT IS ALL
IT SFWHOOSHGS THANK YOU.
>> THANK YOU VERY MUCH WE WILL
TAKE THE CASE UNDER ADVISEMENT
THE COURT WILL TAKE ITS
MORNING RECESS.