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Maria N. Garcia v. Federal Insurance Co.

SC06-2524

NEXT CASE ON OUR CALENDAR, IS
GARCIA VERSUS FEDERAL INSURANCE
COMPANY.

>> GOOD MORNING, MATE PLEASE
THIS COURT, MY NAME IS HUGH
LUMPKIN ALONG WITH MICHAEL
HUBER OF VER PLOEG & LUMPKIN
AND REPRESENT THE APEL LAN,
HOUSEKEEPER AND JUDGMENT DEBTOR,
MARIA GARCIA AND WE ARE HERE
BECAUSE THE 11TH CIRCUIT
CERTIFIED TWO QUESTIONS TO YOU
FOR CONSIDERATION.

THE 11th CIRCUIT WAS UNABLE TO
FIND ANY CLARITY IN THE
ENSURING LANGUAGE CHOSEN BY
FEDERAL, MORE DID THE 11TH
CIRCUIT FIND ANY CLARITY IN THE
COURT'S DECISIONS OR FLORIDA
LAW CONCERNING THE MATTER --

>> I HAVE A PRACTICAL QUESTION
TO ASK YOU.

>> YES.

>> MRS. ANDERSON AS THE
HOMEOWNER, WAS VICARIOUSLY
LIABLE.

AND THE INSURANCE COMPANY
AGREED WITH THAT, IS THAT
CORRECT.

>> THAT'S TRUE.

>> AND THEY PAID -- SETTLED FOR
THE VICARIOUS LIABILITY.

>> YES.

>> ORDINARILY THAT WOULD COVER,
YOU KNOW, SOME -- SOMEONE WHO
IS VICARIOUSLY LIABLE, THEY ARE
LIABLE FOR THE WHOLE THING AND
I KNOW WE ARE REALLY NOT
SUPPOSED TO CONSIDER IT BUT IT
SEEMS THE \$7 MILLION JUDGMENT
THAT WAS ENTERED REALLY IS A --
POTENTIALLY A DOUBLE RECOVERY
BECAUSE THE TORTOISE -- SINCE
THERE WAS FULL COVERAGE AND
VICARIOUSLY LIABLE TORT-FEASOR
WAS COVERED, I'M NOT SURE I

SEE, YOU KNOW, THE IDEA, WELL,
THERE ALSO HAS TO BE COVERAGE
FOR THE NEGLIGENT ACTOR WHO
THIS IS EMPLOYEE.

>> LET ME ANSWER IN THE --
>> MAYBE -- THE HOME ON IS
PROTECTED WHICH IS REALLY WHAT
WE ARE LOOKING FOR AND DOESN'T
THAT ALSO MAYBE SUGGEST WHY
THERE WOULD NOT BE COVERAGE FOR
THE NEGLIGENT TORT-FEASOR.

>> THERE ARE A COUPLE OF
ANSWERS TO YOUR QUESTION, AS A
PRACTICAL MATTER FIRST, THERE
NEEDS TO BE GOVERNING FOR THE
HOUSE KEEP YOUR AS WELL BECAUSE
SHE IS ENTITLED TO A DEFENSE,
IN -- UNDER RIGHTS AND THE
COURT'S DECISIONS AND THE 4th
DISTRICT'S DECISION, THE
INSURANCE COMPANY HAD AN
OBLIGATION TO NEGOTIATE IN GOOD
FAITH ON BEHALF OF THE
HOUSEKEEPER, TOO, ASSUMING THAT
SHE IS AN INSURED SO WHAT THE
DISTRICT COURT'S DECISION DID
AS A PRACTICAL MATTER IS
ELIMINATED A BUNDLE OF RIGHTS
TO WHICH MS. GARCIA WAS
ENTITLED.

NOW, BECAUSE IT FAILED TO
ACCORD MS. GARCIA ANY DEFENSE,
OR FAILED TO NEGOTIATE IN GOOD
FAITH ON HER BEHALF, THEN THERE
IS THE QUESTION OF EXTRA
CONTRACTUAL LIABILITY UNDER THE
FEDERAL POLICY.

>> WOULDN'T SHE ALSO BE COVERED
AS THE DRIVER OF THE -- UNDER
THE AUTOMOBILE LIABILITY
INSURANCE?

SURE SHE WAS COVERED UNDER THE
AUTO POLICY BY PROGRESSIVE IN
FAVOR OF THE OWNER OF THE CAR,
BUT IN THE CASE AS HAPPENSTANCE,
PROGRESSIVE DID NOT RUSH
FORWARD TO DEFEND HER EITHER.
IT ONLY CAME FORWARD WHEN IT
DISCOVERED THAT MS. GARCIA WAS
IN NEGOTIATIONS TO EXONERATE
HER LIABILITY THROUGH A -- AN
AGREEMENT AND EVERYONE FAILED
HER IN THIS CASE INCLUDING
FEDERAL.

SO AS A PRACTICAL MATTER SHE WAS UNREPRESENTED AND UNPROTECTED AND THE PURPOSE OF THIS CLAUSE AND I THINK THIS IS OUR BASIC POINT, IS NOT ONLY TO PROTECT THE VICARIOUSLY RECEIVING PARTY, IF YOU WILL, THE NAMED INSURED, IT IS ALSO TO PROTECT STRANGERS TO THE POLICY.

>> TONED YOU HAVE TO START OUT WITH THE -- BUT DON'T YOU HAVE TO STARTED OUT WITH THE PROPOSITION, FIRST DETERMINE WHETHER OR NOT THE OTHER NAMED INSURED ACTUALLY IS COVERED UNDER THIS POLICY, AND SO, DON'T WE HAVE TO DETERMINE WHETHER OR NOT MS. GARCIA REALLY IS A PERSON INTENDED TO BE COVERED UNDER THIS POLICY.

>> THAT'S THE ESSENTIAL QUESTION BEFORE THIS COURT.

>> TELL ME -- TELL US, THEN, WHAT LANGUAGE THERE IS IN THIS POLICY THAT DEMONSTRATES THAT MRS. GARCIA IS IN FACT COVERED?

>> THE LANGUAGE OF THE POLICY IS VERY SIMPLE.

WITH RESPECT TO LIABILITY, BECAUSE OF ACTS OR OMISSIONS, IN THE UNDERLYING COMPLAIN IN PARAGRAPHS 23 AND 24, AND OBVIOUSLY THE ARCHERS ARE THE MASTERS OF THE ACTION, AND ALLEGED NOT ONLY WAS MS. GARCIA LIABLE FOR FAILING TO DO TWO THINGS, FAILING TO DRIVE THE CAR APPROPRIATELY AND FAILING TO MAINTAIN THE VEHICLE, AND RESPECTFULLY I WOULD SUGGEST THE MAINTENANCE OBLIGATION DOES NOT GENERALLY REST WITH THE MINIMUM WAGE HOUSEKEEPER. IT ALSO ALLEGED IN THIS CASE THAT MS. ANDERSON WHO HAD THE FULL USE OF THE AUTOMOBILE, HAD THAT MAINTENANCE OBLIGATION.

>> WAS THERE ANY ALCOHOL -- ALLEGATION IN THE COMPLAIN THAT MRS. GARCIA WAS ALSO LIABLE VICARIOUSLY.

>> NO.

NO.

AND IN FACT WE CANNOT POSSIBLY WIN THIS ARGUMENT IF THIS COURT'S CONCLUSION, BASED UPON THE LANGUAGE CLOSE EN IS A CONCLUSION THAT IT ONLY PROTECTS PEOPLE BASED UPON VICARIOUS LIABILITY.

>> LET ME ASK YOU, THE LANGUAGE THAT YOU ARE TRYING TO TRAVEL UNDER IS WITH RESPECT TO LIABILITY BECAUSE OF ACTS OR OMISSIONS OF THE NAMED INSURED.

>> YES.

>> I'M HAVING TROUBLE -- AND BE A VOLTS THE 11th CIRCUIT IF THEY THOUGHT IT WAS SO CLEAR, WHY THEY CERTIFIED IT, I DON'T KNOW, EXCEPT THEY LIKE TO CERTIFY INSURANCE QUESTIONS AND SO FORTH, BECAUSE OF -- THINGS NOT ARISING OUT OF, BECAUSE OVER SEEMS TO BE A DIRECT -- THAT IT MUST BE BECAUSE OF THE ACTS OR OMISSIONS IN THE NAMED INSURED AND I'M HAVING A HARD TIME SEEING WHY THAT DOESN'T CLEARLY LIMIT IT TO ONLY WHEN THE PERSON SEEKING COVERAGE IS BEING SUED BASED ON VICARIOUS LIABILITY.

>> AND THANK YOU FOR -- VICARIOUS LIABILITY.

>> THAT IS FEDERAL'S ARGUMENT, BECAUSE OF UNAMBIGUOUSLY AND EXCLUSIVELY MEANS VICARIOUS LIABILITY AND THAT WHAT IS THE COURT SAID IN VULCAN AND REMEMBER THE LANGUAGE THE COURT EMPLOYED AND IN FACT THE LANGUAGE EVERY OTHER COURT WE HAVE FOUND, WHEN HE HAS THE WORDS "ONLY" OR "SOLELY" AND IF I CAN BORROW FROM THE DECISION IN TAURUS, THERE THE WORDS WERE DEFECTIVE AND ANY AND WORDS MEAN SOMETHING, AND EVEN UNDER THE CONSTRUCT THAT YOUR GIVING ME, OF THIS POLICY, LANGUAGE, IT CAN READILY BE SEEN IN PART BECAUSE OF VICARIOUS LIABILITY AND NOTHING IN THE LANGUAGE TELLS US THAT MS. GARCIA'S NEGLIGENCE IS NOT COVERED UNDER THIS TYPE OF PROVISION.

>> THE PROBLEM, THOUGH I HAVE WITH WHAT YOU ARE SAYING IS THAT IT IS NOT LIKE A CLAUSE IN A LONG CONTRACT. IT IS DEFINING WHO ELSE IS COVERED N-AND, THEREFORE, SAYS ANY OTHER PERSON OR ORGANIZATIONALLY WITH RESPECT TO LIABILITY BECAUSE OF ACT OR OMISSIONS, I'M NOT SURE THAT SAYING ANY OTHER PERSON OR ORGANIZATION, BUT ONLY WITH RESPECT TO LIABILITY, BECAUSE OF ACTS OR OMISSIONS IS NECESSARY AND AGAIN THAT I REALIZE IS THE \$7 MILLION QUESTION.

>> WELL, ACTUALLY IT IS NOT A \$2 MILLION QUESTION, SO THAT IS LUMPKIN ON THE RECORD, OTHER CARRIERS HAVE PAID THEIR FAIR SHARE OF THIS JUDGMENT. IF THE COURT PLEASE, LET ME GET BACK TO THAT QUESTION.

EVEN IF YOU READ IT EXACTLY AS YOU ARE STATING IT, AND THAT IS, BECAUSE OF THE LIABILITY, ARISING OUT OF ACTS OR OMISSIONS, EVEN UNDER THAT LANGUAGE AND IF YOU READ THE DISTRICT COURT'S ORIGINAL DECISION ON THE MOTION TO DISMISS, AND THIS IS A MOTION TO DISMISS AND WE HAVE VERY LITTLE IN THE WAY OF A RECORD, THIS CASE QOFERBLY FITS WITHIN THAT LANGUAGE.

BECAUSE -- COMFORTABLY FITS WITHIN THE LANGUAGE BECAUSE MS. GARCIA'S LIABILITY ROSE BECAUSE OF MS. ANDERSON'S FAILURE TO MAINTAIN THE CAR THAT SHE WAS TOLD TO DRIVE. UNDER NO SENSE IN A PRACTICAL WORLD, SINCE YOU ASKED ME A PRACTICAL QUESTION TO BEGIN WITH, CAN IT BE SEEN THIS HOUSEKEEPER SHOULD BE LEFT WITHOUT COVERAGE WHEN HE WAS DOING HER MASTER'S BIDDING AND DRIVING AN AGING VOLVO AND THE CAR WAS POORLY MAINTAINED AND AS A RESULT --

>> DIDN'T YOU JUST INDICATE

EARLIER THAT THAT IS NOT THE WAY THAT THIS COMPLAINT WAS PLED?

THAT IT WAS NOT PLED THAT SHE WAS LIABLE BECAUSE SOMEONE ELSE FAILED TO DO SOMETHING, BUT THAT SHE FAILED TO MAINTAIN IT, AND THAT SHE HAD ACTS OF NEGLIGENCE.

>> YOU ASKED WHETHER OR NOT SHE COULD BE VICARIOUSLY LIABLE FOR THE ACTS OF MS. ANDERSON AND THE ANSWER TO THAT PLAINLY IS NO.

HOWEVER, IF I MAY -- GO AHEAD, JUSTICE.

>> I WAS ASKING YOU ABOUT HOW THE CASE WAS ACTUALLY PLED. I THOUGHT IT WAS PLED AS FAR AS MS. GARCIA IS CONCERNED BASED ON ACTIONS THAT SHE DID. NOT BASED ON ACTIONS OF MS. ANDERSON.

>> IT WAS PLED BASED ON ACTIONS OR FAILURES TO ACT.

ACTS OR OMISSIONS OF BOTH. THE WAY IT WAS PLED IN PARAGRAPH 24 OF THE UNDERLYING COMPLAINT IS MS. GARCIA WAS NEGLIGENT IN THE WAY SHE DROVE IT AND MS. GARCIA WAS NEGLIGENT IN THE MAINTENANCE OBLIGATION, MS. AND SON WAS NEGLIGENT IN THE MAINTENANCE OBLIGATION. MS. ANDERSON NEGLIGENTLY FAILED TO MAINTAIN THE BRAKE PEDAL AS DID MS. GARCIA.

AND EACH WERE ALLEGED TO HAVE COMMITTED ACTS OF DIRECT NEGLIGENCE AND IF A JER, WHEN I WAS PREPARING FOR ARGUMENT, HAVING TRIED CASES, IF YOU CRAFT THE VERDICT FORM, ONE OF QUESTIONS SURELY WILL BE WAS THERE A FAILURE ON THE PART OF MS. GARCIA TO MAINTAIN THE VEHICLE, TO THE ARCHERS FANNED THAT IS ANSWERED NO, BUT THE VIRD FORM GOES FURTHER AND FINDS THE ANSWER TO BE YES, WITH RESPECT TO MS. ANDERSON, PLAINLY AN ACT OR OMISSION OF MS. ANDERSON, CAUSED MS. GARCIA IN PART TO HAVE SUFFERED THIS

LIABILITY.

>> YOU AGREE THAT THE COMPLAINT DOES NOT ALLEGE THAT THE -- MS. GARCIA IS VIE CARE YELLS LIABLE FOR THE ACTS OF MS. ANDERSON.

>> PLAINLY NOT.

>> AND YOU ALSO CONCEDE THAT IF WE INTERPRETED THIS CLAUSE TO RELATE ONLY TO VICARIOUS LIABILITY YOU LOSE.

>> YES.

>> AND YOUR ARGUMENT US ALSO YOU CAN SEE IF THE LANGUAGE, BUT ONLY WITH RESPECT TO WERE IN THERE, THEN IT WOULD CLEARLY RELATE TO VICARIOUS LIABILITY.

>> NO, YOU DON'T AGREE WITH THAT.

>> I WOULD SAY IT WOULD CARVE OUT THE POSSIBILITY MS. GARCIA'S SEPARATE NEGLIGENCE WOULD BE COVERED, WHICH WAS THE RESULT OF -- THE COURT FOUND IN CONTAINER.

THAT IS THERE WAS NOTHING IN THE POLICY LANGUAGE THAT A -- PRECLUDED RECOVERY FOR THE ADDITIONAL INSURANCE -- SEPARATE NEGLIGENCE AND THE "SOLELY" WOULD CONFINE IT TO ACTS OF NEGLIGENCE OF THE NAMED INSURED, WHY THE LANGUAGE IS IMPORTANT.

YOU STILL THAT HAVE TO READ THE REST OF THE CLAUSE WHICH RELATES TO ACTS OR OMISSIONS AND IF YOU GO TO ACTS OR OMISSIONS AND I OFFER TO THE COURT THE DECISION FROM EASTERN DISTRICT OF PENNSYLVANIA IN REGIS, KENTUCKY AND DYLAN AND ILLINOIS AND THE AETNA CASE, ACT OR OMISSIONS MEAN NOTHING MORE THAN A DOING OR FAILING TO DO SOMETHING.

THERE IS NOTHING ABOUT THAT LANGUAGE THAT IMPARTS OR REQUIRES NEGLIGENCE AND ONE OF THE THINGS THIS COURT TAUGHT US FOR MAN, MANY YEARS, GO BACK TO ANDERSON AND CTC IS THERE IS BETTER LANGUAGE THAT COULD HAVE BEEN USED TO BRING HOME A

RESTRICTION ON COVERAGE WAS NOT ENDED IN THAT WANTED THE COURT WILL CONSTRUE THAT FAILURE AGAINST THE INSURED'S COMPANY THAT WROTE THE LANGUAGE.

WE HAVE GIVEN YOU --

>> I'M NOT SURE THAT COURTS HAVE GONE SO FAR.

I THINK THEY SAID OBVIOUSLY IF THE LANGUAGE IS AMBIGUOUS IT COULD BE INTERPRETED TWO WAYS.

>> YES.

>> BUT I DON'T THINK THEY'VE SAID IF THERE IS A BETTER WAY TO WORD SOMETHING, THEN THAT MAKES IT AMBIGUOUS.

THERE IS ALWAYS, SEEMS TO BE ALWAYS A BETTER WAY TO WORD SOMETHING.

>> WELL, I TRY.

>> AS WE GET DOWN THROUGH THIS, WE CAN CUT OUT ALL OF THE TALK AROUND THE FRINGESES AND COMES DOWN TO THE SITUATION AS TO WHETHER THE INSURING OR NAMED INSURED,

THIS INSUREING, THE NAMING OF WHO THE NAME INSURED IS THAT STATUS LOST IF THERE IS NEGLIGENCE ON THE PART OF THE PERSON ALLEGED?

I MEAN, DOESN'T IT COME DOWN TO HA?

>> THAT IS THE HEART.

>> THAT IS WHAT WE'RE TALKING ABOUT.

AND WE TALK ABOUT THE VICARIOUS, WE ARE TRYING TO SUPERIMPOSE FLORIDA LAW WITH REGARD TO VIE VICARIOUS LIABILITY.

YOU CAN HAVE NO FAULT TO OBTAIN IDENTIFICATION OF THIS VICARIOUS LIABILITY AND THAT IS WHAT MAKES THIS CASE MORE COMPLEX THAN IT NEEDS TO BE, ISN'T IT?

>> WELL, BE CAREFUL WITH THAT ONLY BECAUSE THERE ARE A LOT OF CIRKS WHERE A NAMED INSURED MAY ASK ADDITIONAL INSURED TO DO SOMETHING.

>> OH, I IT WILL HAPPEN WITH YARD WORKER, YOU GIVE THEM

DEFECTIVE LADDER, SAW, IT HAPPENS ALL OF THE TIME WITH PERSONAL SERVICE KINDS OF PEOPLE.

SO REALLY THE QUESTION COMES DOWN:

DOES THIS CAUSE MEAN THAT IF THERE IS SOME NEGLIGENCE ON THE PART OF THE DYATIONAL INSURED THAT CONTRIBUTES TO THIS, DO THEY LOSE THEIR STATUS AS AN INSURED?

OR MUST THEY BE FREE OF FAULT AND HAVE FAULT EXCLUSIVELY BECAUSE OF THE NAMED INSURED?

ISN'T THAT --

>> IT IS.

I THINK YOU KNOW OUR POSITION ON THAT.

>> I UNDERSTAND.

WE NEED TO KNOW PERIMETERS SO WE DON'T TALK ABOUT THINGSS WHERE WE NEED NOT DO.

IT DOESN'T HAVE TO BE DANGEROUS IN STREW MENTALLY AAT ALL?

>> THAT IS TRUE.

IF YOU GET DOWN TO THE LOG, THAT IS WHAT THE QUESTION THE COURT HAS TO ANSWER.

>> THAT COMES BACK TO THE QUESTION, DOES THIS CAUSE THEN SAY THAT IT MUST BE ONLY BASED ON THE NEGLIGENCE OF THE NAMED INSURED?

>> AND WE WOULD TAKE THE POSITION THAT IT DOES NOT AND CAN MOT.

>> AMBIGUOUS.

>> AT THE VERY LEAST.

WE SET FOURTH ON WHY UNDER FLORIDA.

>> WOULD YOU IT WILL US TO THE EXTENT THAT YOU BELIEVE THAT THIS COURT IN THE PAST HAS ALREADY DECIDED SOME PARTS OF THIS?

>> YOU HAVE DECIDED SOME PARTS OF THIS, AND I ALREADY HAVE A QUESTION SAYING THAT RISING OUT OF JUSTICE PARIENTE MUST NECESSARILY

MEAN SOMETHING DIFFERENT
BECAUSE OF, IF YOU LOOK AT
THE DECISION, THAT LANGUAGE
AS A RESULT OF, THAT IS VERY
SIMILAR, IF NOT A KISSING
COUSIN TO BECAUSE OF.

>> THE SAME AS RISING OUT
OF.

>> RATHER THAN ARISING OUT
OF.

HAS THIS COURT DETERMINED
THAT THIS CAUSE DOES OR DOES
NOT APPLY TO VICARIOUS
LIABILITY SITUATIONS ONLY?

>> THIS COURT HAS NOT
EXPRESSLY HELD THAT.

>> IF COURT HELD THAT THIS
CAUSE IS AMBIGUOUS?

>> THIS COURT HAS NOT
EXPRESSLY HELD THAT.

WHAT THIS COURT DID IN
CONTAINER DAYS WELL THE WORD
OPERATIONS.

IF LIKE ME YOU THINK
OPERATIONS ARE NOTHING MORE
THAN ACT OR OMISSION, I
WOULD SAY YES.

I WOULD LIKE TO RESERVE
THE REST OF MY TIME FOR
REBUTTAL.

THANK YOU.

>> GOOD MORNING.

MATE PLEASE THE COURT MY
NAME IS IRENE PORTER WITH
HICKS AND KNEALE ON BEHALF
OF FEDERAL INSURANCE
COMPANY.

I REALIZE WE ARE ONLY
DEALING WITH THE LANGUAGE
OF THE SURETY AGREEMENT,
THE REASON SKIPPED THE
PRACTICAL ASPECTS OF IT IS
THAT IN A SITUATION WHERE
BOTH THE HOMEOWNER IS BEING
SUED AND THEIR EMPLOYEE, YOU
TAKE OVER THE DEFENSE FOR
THE HOMEOWNER.

IT SEEMS TO ME, AND THAT IS
WHY IN TERMS OF TRYING TO
UNDERSTAND THE REASONABLE
APPLICATION OF THIS, THAT
BEG ABLE TO CONTROL THE
DEFENSE FOR THE EMPLOYEE FOR
WHOM YOU ARE ENSURED IS

GOING TO BE VICARIOUSLY
LIABLE AS AN EMPLOYER
IRRESPECTIVE OF IN STREW
MENTALLY THAT I IT WOULD
MEAN STHAENS THE COVERAGE
WOULD EXTEND TO BOTH.
JUST, AND THAT INSURANCE
COMPANIES WOULD WANT THAT TO
HAPPEN, BECAUSE AGAIN,
VICARIOUS LIABILITY IS GOING
TO, UNDER ALL CIRCUMSTANCES,
BE WHATEVER THE OF THE
NEGLIGENCE WAS, SO WITH THAT
AS A PREDICATE, TELL ME,
FIRST OF ALL, SOMETHING THAT
I HAVE SAID, THAT DOESN'T
MAKE PRACTICAL SENSE?

>> I THINK IT DOESN'T MAKE
-- WELL, --

>> IF I AM THE HEM OWNER, I
DON'T WANT MY EMPLOYEE TO BE
OUT THEREING SOMETHING THAT
IS GOING TO UNDERMINE THAT I
WANT TO BE ABLE TO CONTAIN
MY LIABILITY.

I AM GOING WANT THERE TO BE
A UNIFIED DEFENSE IF
POSSIBLE.

I MEAN, --

>> MANY VICARIOUSLY LIABLE
PARTIES DO LIKE TO DEFEND,
IF IT IS EM LOWEE, I HAVE
SEEN THAT HAPPEN, BUT THAT
IS JUST AS PRACTICAL MATTER
TO PROTECT THEMSELVES
NOTWITHSTANDING THEM, THEY
CAN DEFEND THEMSELVES AN
PROTECT THEMSELVES.

>> BUT THE IDEA YOU, THAT IS
WHY I ASKED, I FIRST THOUGHT
THIS WAS CASE WHERE THIS,
BECAUSE IT WAS OPERATION OF
A VEHICLE THAT IT WAS NOT
COMING UNDER THE HOMEOWNER'S
POLICY, THAT IS WHY THEY
COVERED MRS. ANDERSON FOR
HER VICARIOUS LIABILITY.

>> THEY DID.

>> ALL RIGHT.

>> AND GIVEN, THAT IT WOULD
SEEM THAT THE SAME BASIS
WOULD BE THAT WHATEVER I'M
BEING SUED FOR, I WANT TO
HAVE THAT UNDERLYING PERSON

THERE THROUGH MY SAME
POLICY.

>> NO.

I THINK IT IS THE OPPOSITE.

MRS. ANDERSON BOUGHT A BOL
POL SY FROM FEDERAL FOR
HERSELF AND FAMILY.

WE HAVE ADDITIONAL UNSURED
LANGUAGE, ANY OTHER PERSON
OR ORG ? I BLATION WITH
RESPECT TO LIABILITY BECAUSE
OF YOUR ACTS OR OMISSION,
WHAT THAT DOES IS
MRS. ANDERSON'S RISK WAS
UNDERWRITTEN, A CONTRACT WAS
MADE.

IF SOMEONE ELSE WAS
VICARIOUSLY LIABLE FOR HER
ACT, THERE IS NO INCREASE IN
THE RISK THAT WAS AREA IN
WRITTEN AND THERE IS NO
CHANGE IN THE PREMIUM.

THE OPPOSITE IS WHAT MISS
GARCIA IS TRYING TO IM PES
ON THE COMPANY.

SHE IS SAYING, IF ANYBODY'S
NEGLIGENCE CONTRIBUTED TO AN
ACCIDENT IN AND THE NAMED
INSURERED HAD SOME
NEGLIGENCE, HOWEVER SLIGHT,
OR WAS ALLEGED TO HAVE
NEGLIGENCE THEN EVERY
STRANGER TO THE CONTRACT WHO
WAS NEGLIGENT WHICH RESULTED
IN MRS. ARCHER'S INJURIES
SUDDENLY INSURED UNDER OUR
CONTRACT.

>> IF WE CHANGE THE
CIRCUMSTANCES HERE JUST
SLIGHTLY AND LET'S PUT MISS
GR JE ON A RIDING LAWNMOWER.

>> OKAY.

>> AND THE NEIGHBOR CHILD,
YOU KNOW, COMES OVER TO THE
YARD WHILE ON THE RIDING
LAWNMOWER.

AND THE SAME THING HAPPENS.
WHEN I SAY THE SAME THING,
THAT IS THAT THE RUBBER ON
THE PED APPROXIMATELY OF THE
RIDING LAWNMOWER IS GONE.
WARN, YOU KNOW, TO BE JUST
AS SLIPPERY AS IT POSSIBLY
CAN BE.

AND MISS GARCIA, YOU KNOW,
DOESN'T REALIZE SHE
SHOULDN'T BE HANDLING THAT
WITH SUCH A SLIPPERY GAS, SO
SHE RUNS INTO THE LITTLE
NEIGHBOR BOY AND IT ALL
HAPPENS ON THE PREMISES OF
THE HOMEOWNER.

NOW, ALMOST INSTINCTIVELY, I
THINK WE WOULD ALL SAY,
SURELY, THAT IS GOING TO BE
COVERED BY THE HOMEOWNER'S
POLICY.

NOW OBVIOUSLY, WE GOT TO
LACK AT THE LANGUAGE THEN,
BUT THE HOMEOWNER IS
RESPONSIBLE FOR THE
MAINTENANCE OF THE LAWNMOWER
THAT THEY PLACED IN THE
HANDS OF, OKAY, THE EMPLOYEE
MISS GARCIA TO MOW THE
GRASS, ALL RIGHT?

OF COURSE, AND IN OUR CASE,
YOUR CASE, YOU HAVE GOT THE
AUTOMOBILE AND IT IS AWAY,
BUT WHY WOULDN'T, IN THAT
TYPE HYPOTHETICAL WOULDN'T
THE HOMEOWNER BE SENTENCED?

[AUDIO DIFFICULTY]

[AUDIO DIFFICULTY]

[AUDIO DIFFICULTY]

[AUDIO DIFFICULTY]

EVEN IF THEY WERE NOT
CONNECTED WITH HER.

>> ABSOLUTELY.

>> THAT IS EXACTLY WHAT
WOULD HAPPEN.

THIS CASE NOT ONLY
MRS. ANDERSON WAS SUED AND
THE OWNER FOR FAILING TO
MAINTAIN AND MRS. GARCIA,
BUT THEY SUED THE PUBLIC
SUPERMARKET, THEY SUED
GALAXY, THE OWNER OF THE
PREMISE FOR ALLOWING THE
DANGEROUS CONDITION WHERE
THE ACCIDENT COULD HAPPEN.
ALL OF THE SUDDEN, IF WE
SPREAD THE LANGUAGE WITH THE
STRANGE CONSTRUCTION THAT IS
BEING URGED PUBLIX, GALAXY
WOULD BE ADDITIONAL INSURED
ANYONE ELSE WHOSE ACTS
CONTRIBUTED TO THIS INJURY

WOULD HAVE COVERAGE, WE HAVE NOT IN SPECKED THE PREM CIRCUMSTANCE WE HAVE NOT CHARGED A PREMIUM.

THAT WOULD BE ABSURD.

>> THAT IS A LITTLE BIT OF A STRETCH, DON'T YOU THINK? REALLY, I MEAN, IT WOULD BE SOMEONE THAT IS USING SOMETHING OR WITH A THEY ARE DOING IS BECAUSE OF THE NEGLIGENCE OF THE NAMED INSURED.

CERTAINLY PUBLIX IS NOT USING THAT VEHICLE, BUT THE PROPERTY OWNER, BUT MRS. GARCIA IS IN A DIFFERENT CATEGORY, HER NEGLIGENCE OPERATES WITH THE NEGLIGENCE OF THIS --

>> BUT THIS IS AN AUTOMOBILE POLICY.

IF WE USED THE LANGUAGE AS BROADLY, IT COULD APPLY TO ANY SITUATION.

WE DIP ENSURE THIS AUTOMOBILE.

IT WASN'T SOMETHING WHERE YOU INTENDED TO INSURE ANYTHING IN CONNECTION WITH THE AUTOMOBILE.

>> AGAIN, THAT IS WHAT I SAID, THOUGH, YOU BURR BECAUSE OF THIS NATURE OF THIS POLICY COVERING MRS. ANDERSON FOR THE VICARIOUS LIABILITY OF HER EMPLOYEE.

SHE WOULDN'T BE, YOU KNOW, IF THERE WAS, IF SHE WERE NOT IN THERE BECAUSE OF -- IT DOESN'T MATTER THAT WHETHER RECOVERING FOR HER OWN ACTS OR FOR VICARIOUS LIABILITY.

SHE IS COVERED.

>> YES.

>> AND AS FAR AS THE VICARIOUS LIABILITY, SINCE THAT IS THE WHOLE, THAT IS HE WHOLE PIE, YOU ARE ENSURING THAT RISK. IN OTHER WORDS, VIE VICARIOUS IS 100%.

NOT A JOINT.

WE ARE ENSURING THE RIS OF
COURSE OUR INSURED ENTERS
INTO RELATIONSHIP THAT MAKES
HER VICARIOUSLY LIABILITY.

WE'RE ENSURING HER

LIABILITY.

THAT IS TRUE.

AND THERE IS ANOTHER REASON.

>> DO YOU AGREE THAT, IF
ONLY VICARIOUS LIABILITY,
HER LIABILITY US THE SAME AS
THE LIABLE OF THE NEGLIGENT?

>> SHE IS 100% LIABLE FOR
THE DAMINGS THAT ARE CAUSED
BY HER AGENT, THAT IS TRUE.

>> WELL, WHAT YOU ARE
RESPONDING TO IS A BIG TENT
TYPE OF THEORY IN WHICH
ANYED DAY THIS FITS WITHIN
THE TENT OF LIABILITY SIMPLY
BECAUSE YOUR ENSURED IS ONE
THAT FITS IN THAT TENT, THAT
THE COVERAGE EXTENDS TO
EVERYONE LIKE THE PUBLIC.

THAT IS -- I MEAN, BECAUSE
AS I UNDERSTAND WHAT YOU ARE
SAYING IS THAT THE
OPPOSITION SAYS BECAUSE YOUR
INSURED WAS A CONTRIBUTING
FACTOR THROUGH VICARIOUS
LIABILITY TO THIS ACCIDENT,
THEN THAT MAKES EVERYBODY
ELSE THAT WAS A CONTRIBUTOR
TO THE ACCIDENT ALSO INSURED
UNDER THIS POLICY.

>> THAT IS THEIR
INTERPRETATION.

I THINK THAT THEY HAVE
ARGUED AS TO MRS. GARCIA,
THE SAME ARGUMENT WOULD
APPLY TO FOR HIS VEIL UR TO
MAINTAIN THE VEHICLE AN
APPLY TO ANY --

>> CANE ASK ONE QUESTION.

>> SURE.

>> WHY, I MEAN, LET'S TALK
ABOUT THE REASONS FOR THIS.

IF, IF YOU HAD -- YOU CAN
ONLY BE VICARIOUSLY, IF YOU
ARE VICARIOUSLY LIABLE, ARE
YOU ADDITIONAL SECURED?

WHY DO YOU NEED TO BEDATIONAL
INSURED BECAUSE THAT RISK IS

COVERED ANYWAY?

WHAT IS THE REASON TO HAVE
AN ADDITIONAL INSURED?

>> THIS IS INTO THE POLICY
WHERE SOMEBODY WAS ADDED ON.

>> WE UNDERSTAND THAT.

>> THEY HAD REASONABLE
EXPECTATION OF COVERAGE.

WHY WOULD YOU ENSURE
SOMEBODY WHO IS VICARIOUSLY
LIABLE FOR YOUR INSURED?

BECAUSE IT IS A RISK YOU
HAVE UNDERWRITTEN, THAT
PERSON HAS A COMMON LAW
CLAIM AGAINST YOUR UNSURED.

YOUR INSURED IS LIABLE FOR
THAT ANYWAY.

>> AGAIN, WHY DOES THAT
ADDITIONAL PERSON BECOME A
NAMED INSURED.

ALL THE REASONS YOU ARE
SAYING IS FOR THE NAMED
INSURED?

THAT SORT OF SEEMS TO BE IN
CONFLICT.

>> I AM SORRY, THE PERSON
BECOMES ADDITIONAL INSURED.

>> RIGHT.

FOR NOTHING?

WHY, I MEAN, WHY?

YOU DON'T NEED THAT COVERAGE
BECAUSE ALL YOU ARE SAYING
IS THEY ARE ADDITIONAL
INSURED BUT ONLY FOR THE
LIABILITY OF THE NAMED
INSURED ANYWAY?

WHY, WHY DO YOU EVEN INCLUDE
THEM IN AS A NAMED UNSURED
THIS HE RISK IS COVERED?

WHY DO WE INCLUDE THE NAUMED
IN SURED?

>> WHY DO YOU HAVE THAT?

>> WHY DO WE HAVE PROVISION?

>> RIGHT.

IS COMMON PROVISION THAT IS
DEVELOPED IN THE INDUSTRY.

IT IS AUTOMOBILE.

>> THAT IS NOT AN ANSWER.

WHAT IS IT DESIGNED TO
COVER?

> IT IS DESIGNED TO COVER
SOMEONE WHO IS BEING HELD
LIABLE FOR THE INSURED.

THAT PERSON HAS COMMON LAW

EN DEM TY CLAIM AGAINST THE INSURED AND THE INSURED LIABILITY THAT CAUSED THOSE DAMAGES.

>> YEAH, THE CLASSIC EXAMPLE.

>> A CLASSIC EXAMPLE WOULD BE, WELL, LET'S LOOK AT THE FLORIDA CASE THAT USES THIS LANGUAGE AND, I FORGOT THE NAME AT THE MOMENT.

OLIVER VERSUS UNITED STATES FIDELITY AND GUARANTEE COMPANY.

THE OWNER OF A VEHICLE IN STRUSED HIS VEHICLE TO A PARKING SERVICE, THE VALLET SERVICE, THE DRIVER OF THAT SERVICE DROVE THE VEHICLE INTO A PEDESTRIAN.

THE COMPANY'S POLICY HAD THIS LANGUAGE.

UM, ANY OTHER PERSON FOR LIABILITY BECAUSE OF THE ALASKAS OR ADMISSION OF THE NAMED INSURED, THE COURT HELD THAT LANGUAGE WOULD PROTECT THE OWNER OF THE VEHICLE WHO HAD LIABILITY IN PUTED UPON HIM UNDER FLORIDA DOCTRINE AND HE BECAME INSURED.

THAT MAKES SENSE.

BECAUSE IT IS THE INSURED UPPERWRITTEN RISK THAT IS BEING COVERED.

THE ACT OF THE EMPLOYEE OF THE NAMED INSURERED, IN THAT CASE WAS ADDED TO THE POLICY AND WAS INSURED AND IT WAS A BUSINESS, THAT WAS TAKEN INTO ACCOUNT OF.

THE SAME HAS BEEN APPLIED BY EVERY COURT THAT HAS LOOKED AT THIS LANGUAGE.

NOW, AN AUTO OWNER, THIS COURT TOLD INSURERS, LOOK TO THE INDUSTRY TAN DAD, LACK AT OTHER LANGUAGE THAT OTHER CORTS ARE USING INTERPRETED BY COURTS AS LIMITING, CARRYING OUT INTENT.

WE LOOKED AT ALL THE COURTS AROUND THE NATION THAT HAVE

OUR LANGUAGE THAT HAVE INTERPRETED IT AS VICARIOUS LIABILITY AND NOT COVERING INSTANCES OF JOINT NEGLIGENCE.

THEN, WE HAVE CASES IN FLORIDA, THREE CASES IN FLORIDA, WHICH HAVE LESS LANGUAGE WHICH SAY WITH RESPECT TO ACTS OR OMISSION AND THE COURT STARTED TELLING US GO LOOK AT THAT CASE, GO LOOK AT THAT LANGUAGE, IF YOU WANT TO LIMIT TO VICARIOUS LIABILITY, THUSE LANGUAGE.

>> LET ME ASK YOU ANOTHER HYPOTHETICAL, SEE IF IT WOULD PROVIDE COVERAGE? IF A, A PARTNER AT A LAW FIRM SAYS I AM GOING TO HAVE A CHRISTMAS PARTY AT MY HOUSE AN INVITE EVERYONE IN THE LAW FIRM.

EVERYBODY COMES OVER. AND SOMEBODY GETS HURT IN THE HOUSE AND THEY SUE THE LAW FIRM FOR NEGLIGENCE. WOULD THAT LAW FIRM BE COVERED UNDER THE PARTNER'S HOMEOWNER INSURANCE?

>> YES, IT WOULD.

>> IT IS UNDER THIS PROVISION?

>> YES.

>> BECAUSE THE LAW FIRM'S LIABILITY IS BECAUSE OF THE ACTS OR OMISSION OF AN AGEENCE, I AM ASSUMING THERE WAS NEGLIGENCE IN MAINTAINING THE PREMISE, NOW IT WOULDN'T COVER EVERY OTHER PERSON.

>> WHAT IF IT SERVED ALCOHOL THAT CONTRIB BAUTED TO THE PART, PLUS ALCOHOL BEVERAGE, WOULD THERE BE COVERAGE UNDER THAT?

DOES THAT CHANGE?

>> I AM SORRY, THE LAW FIRM SERVED ALCOHOLIC BEVERAGE?

>> RIGHT.

>> NOT THE SENIOR PARTNER WHO IS IN FACT THE AGENT OF

THE LAW FIRM? I MEAN, IN THAT CASE, HIS ACT, THE LAW FIRM IS VICARIOUSLY LIABILITY FOR IT BECAUSE THE LAW FIRM HAS TO ACT THROUGH AGENT, WE WOULD BE MANAGE AGE GEP.

WELL, IF THE LAW FIRM WAS SUED BECAUSE OF VICARIOUS LIABILITY AS WELL AS OWN NEGLIGENCE, THIS WOULD BE COVERAGE, AT LEAST IN PART, IT WOULD BE VICARIOUS? OR WOULD THERE?

>> NO.

AND I GUESS I DON'T UNDERSTAND THE HYPOTHETICAL.

>> HE SAID HE HAS PROPERTY.

>> IT MAKE AS DIFFERENCE.

IF THERE IS NOTHING, THE LAW FIRM DOES NOT WRONG, THERE IS NO ACT OF NEGLIGENCE IT IS PURELY VICARIOUS BECAUSE OF THE OWNER.

IS IT, DOES IT MAKE A DIFFERENCE IF THERE IS ACT OF NEGLIGENCE ON THE PART OF THE LAW FIRM?

SEPARATE AN APART FROM THE LAND OWN NENSHIP.

THAT IS WHAT WE HAVE HERE.

THAT IS WHAT WE HAVE.

>> WHAT ELSE COULD THE LAW FIRM HAVE DONE WHICH WAS NOT ATTRIBUTABLE TO THE ACTS OF AGENT AND EMPLOYEE AND THEREFORE VIE CARRIER, IN THAT HYPOTHETICAL.

>> WELL, THE LANDOWNER, JUSTICE, HIS LAWYER FIRM DOESN'T OWN HIS HOME.

SO THE QUESTION AGAIN, PLEASE, BECAUSE IT IS THE SAME THING.

IT IS A QUESTION OF VICARIOUS OR IF YOU CAN DO ONE THING WRONG, THAT YOU ARE NO LONGER VIE CARRIER, IT IS NO AT VICARIOUS SITUATION, IT IS A JOINT SEVERAL, IS THEIR COVERAGE UPPER THAT?

FOR THE LAW FIRM?

>> IT DEFEND ON WHAT THE

ULTIMATE LIABILITY IS.
IF THE LAW FIRM DOES, IN
FACT, HAVE VICARIOUS
LIABILITY FOR THAT PORTION
OF THE DAMAGE IS ATTRIBUTABLE
TO THE AGENT'S
NEGLIGENCE, THERE IS COVERAGE
FOR, THAT BUT THERE IS NO
COVERAGE FOR THE DAMAGES
ATTRIBUTABLE TO THE LAW FIRM
SEPARATE AN INDEPENDENT
NEGLIGENCE.

>> IN THAT SITUATION, THERE
COULD BE A DUTY TO DEFEND.
I GUESS.

>> IN THE HYPOTHETICAL GIVEN.

>> OH, YES.

>> YES.

>> WELL, INVOLVED THAT.

>> WHETHER IT BE A DUTY TO
COVERAGE AND JUSTICE LEWIS
SAYS THERE WOULD BE A DUTY
TO DEFEND BECAUSE -- BECAUSE
THERE WAS VICARIOUS
LIABILITY ALLEGED AGAINST
THE LAW FIRM, YES.

>> HOW WOULD YOU DISTINGUISH
THAT FROM THIS CASE?

WHY WOULDN'T MISS GARCIA FOR
THAT PART OF THE BAD BRAKE,
WHATEVER IT IS, FOR WHICH
SHE MAY BE RESPONSIBLE?

>> BECAUSE THERE WITH A NO
RELATIONSHIP.

NO BASIS FOR A CLAIM OF
VICARIOUS LIABILITY ALLEGED.

>> AND THEY HAVE CONCEDED
THAT.

AND LIABILITY BECAUSE OF
ACTS OR OMISSION IS THE VERY
DEFINITION OF WHAT WE
LAWYERS AND JUDGES
UNDERSTAND OF THE CONCEPT OF
IMPUTED LIABILITY WHICH WE
CALL VICARIOUS LIABILITY.
INSURANCE COMPANY SHOULDN'T
HAVE TO USE A LEGAL TERM
THAT A PERSON BUYING A
POLICY MAY NEVER HAVE HEARD
OF OR EVEN UNDERSTAND TO
EXPRESS ITS INTENT, INSTEAD,
WE USED PLAIN LANGUAGE WHICH
DOES THAT.

WE HAVE USED UP A LOT OF

TIME WITH QUESTION, IF YOU WANT TO BRING YOURSELF TO A CONCLUSION.

WILL GAVE MINUTE TO DO THAT.

>> WELL, IN CONCLUSION THEN, THIS COURT SHOULD FIND THAT THERE IS NO AMBIGUITY, IT IS IMPLEMENTED TO VICARIOUS LIABILITY BASED ON THE PLAIN LANGUAGE, BASED ON THIS COURT'S DECISION IN AUTO OWNERS TO USE THAT LANGUAGE, BASED ON THIS COURT'S DECISION AN CONSOLIDATION CALL, AND ALL THE DECISION AROUND THE COUNTRY WHO HAVE INTERPRETED THIS LANGUAGE AS LIMITED TO VICARIOUS.

THANK YOU.

>> MAY IT PLEASE THE COURT, LET ME GO THROUGH.

>> WOULD YOU GO BACK TO HER. I THINK THAT IS THE ESSENCE OF WHAT THE ARGUMENT IS ABOUT, IT IS A QUESTION ABOUT WHETHER YOU NEED TO HAVE THESE ALLEGATIONS OF VICARIOUS RESPONSIBILITY, DUE TO THE NEGLIGENCE OF WHOMEVER THE, LAND OWNER, WHATEVER IT IS, THEN, THE QUESTION, IF THERE ARE ALLEGATIONS, THEN, OF SEPARATE NEGLIGENCE OR ONLY SEPARATE NEGLIGENCE THEN, YOU ARE NOT ADDITIONAL INSURED AS I UNDERSTAND THE POSITION.

>> THAT IS PLAINLY FEDERAL'S POSITION.

OUR POSITION SIMPLY IS BECAUSE IT IS NOT UNAMBIGUOUSLY CONVEY THE MEANING OF VICARIOUS LIABILITY.

KIT MEAN SOMETHING SHORT OF PROX ATE CAUSE BETWEEN AND APROX ATE CAUSE IN THE LEGAL CERTAIN, THESE POLICIES ARE NOT WRITTEN FOR LAWYERS AND JUDGE, THEY ARE WRITTEN TO BE INTERPRETED BY PEOPLE WHO BY THIS THE OR NARD RAILROAD PERSON ON THE STREET.

SO ASCRIBING A MEANING OF
VICARIOUS LIABILITY BECAUSE
OF IS SOMETHING THAT,
PERHAPS, LAWYERS AND JUDGES
CAN AGREE ON IS ONE INTERPRE-
TATION OF THE LANGUAGE, BUT
NOT THE ONLY ONE COMPELLED IN
INTERPRETATION OF THE LANGUAGE,
THERE IS NO INCREASE IN
PREMIUM OR RISK ISSUE HERE.
THIS IS UMBRELLA LIABILITY
POLICY.

IT ALSO HAS PRIMARY
COVERAGE.

IT IS SINGLE POLICY THAT
PROVIDES BOTH BENEFIT, IT IS
BROADLY WRITTEN TO ENSURE
STRANGERS TO THE INSURING
RELATIONSHIP.

>> BUT ALSO, JUSTICE WELLS'S
POINT THAT IS THE DEFENSE
ANYONE WHO TOUCHES UPON, WHY
IS THAT?

THAT IS THE WAY AS BEEN
CHARACTERIZED AS TO GARCIA'S
POSITION.

IT RELATES TO IMPART, THE
FAULT OF THIS LADY NOT
MAINTAINING THIS VEHICLE.

>> IF THERE IS ANY FAULT IT
WOULD BE DESCRIBED THE
FAILURE OF FEDERAL TO DRAFT
LANGUAGE THAT LIMITS ITS
RISK TO THE SITUATIONS IT
NOW COVERS, THIS IS POST-CLAIM
UNDERWRITING AT ITS BEST, THE
POLICY WRITING WAS WRITTEN
TO ENSURE BROAD SPECTRUM OF
PEOPLE WHO ARE RESPONSIBLE NOT
LIKE PUBLIC BLIX, PUBLIC HAS
NO NEXT XUS, THAT IS A PUP
TENT, IT NOW IT IS RINGLING
BROS. BARNUM AND BAILEY,
THIS TENT HAS LIMITS TO IT.
IT WAS BORN BY THE LANGUAGE
OF THE POLICY AND BY COMMON
SENSE.

>> YOUR ARGUMENT THAT IS
BECAUSE OF IT MEANS THE SAME
AS ARISING OUT OF?

THAT IS WHAT YOU ARE SAYING?

>> THAT IS ONE REASONABLE INTER-
PRETATION.

>> OKAY.

THE OTHER COURT, I KNOW THAT
A LOT OF COURTS HAVE
INTERPRETED BECAUSE OF,
RISING OUT OF AS ANY OF THEM
EQUATED TO?

>> NOT EXACTLY.

THEY HAVE COME CLOSE.
BY THE WAY, IN THE A LOT OF
COURTS HAVE INTERPRETED
BECAUSE OF WITH COMPUTER-
ASSISTED RESEARCH FEDERAL
UNEARTHED ABOUT FIVE CASE,
NONE OF WHICH ANALYZED THE
LANGUAGE BY CITING TO ANY
PRECEDENT THAT BECAUSE OF
MEANS VICARIOUS LIABILITY.
IN FACT, IF YOU LOOK AT THE
LONG ISLAND CASE WHICH THEY
SIDE TO, NO WHERE IN THAT
DECISION DOES IT EVEN SAY
THAT VICARIOUS LIABILITY IS
THE ONLY INTERPRETATION OF
THIS POLICY LANGUAGE, IT
ONCE INTERPRETATION, THAT I
CONCEDE FOR THE COURT, IT IS
NOT THE DRIVEN
INTERPRETATION, IT IS
CERTAINLY NOT THE MAN ON THE
STREET INTERPRETATION.

>> WOULD YOU AGREE IF THERE
ARE TWO INTERPRETATIONS BUT
THE INTERPRETATION IT IS
ONLY FOR VICARIOUS LIABILITY
IS MORE REASONABLE THAN WE
DON'T KNOW GO THE, IF IT IS
ONLY IF THEY ARE EQUALLY
REASONABLE INTERPRETATIONS?

>> IF THE COURT PLEASE,
THERE IS NO WEIGHING
INVOLVED.

IF YOU LOOK AT THE 11th
CIRCUIT'S DECISION.

WE'LL NOT HAVE A YOU ARE
JURY DECIDE, AND BECAUSE I
CAN SORT OF SEE YOUR
ARGUMENT, BUT FRANKLY,
AGAIN, I KEEP ON COMING BACK
TO IT, AND BECAUSE SEEMS
PRETTY VONG THAT IS LIMITED
TO BECAUSE OF THE ACTS OR
OMISSIONS, I CAN'T GET
BEYOND THAT EVEN THOUGH I
SEE SOME OF THE PROP, I
THOUGHT THE PUP TENT AND

RINGLING BROS. WAS A GREAT ORAL ARGUMENT ANALOGY, I COME MEN YOU FOR IT, BUT I STILL SEEM TO GO BACK TO THAT IT IS THE MORE REASONABLE IN TERM TATION IS THE ONE THAT FEDERAL IS ADVANCING.

>> HERE THESE PROBLEM WITH IT.

THERE'S SO MANY DIFFERENT WORDS WE CAN USE TO DEFINE THE LIMIT OF LIABILITY UNDER INSURANCE POLICY.

I HAVE DRAFTED INSURANCE POLICY.

I HAVE READ HUNDRED, IF NOT THOUSANDS IN MY PRACTICE CAREER.

IF YOU LOOK AT THE VARIOUS OF THAT EXACT LANGUAGE BECAUSE OF, YOU WILL SEE THAT THERE ARE SHADES OF GRAY IN EVERY DECISION THAT THE COURTS HAVE COME DOWN WITH WITH EXCEPTION OF THOSE FEW THAT FEDERAL HAS FOUND FROM OTHER JURISDICTION, NEVER FROM THIS COURT, NEVER FROM THE STATE OF FLORIDA, OLLY VERY, FOR EXAMPLE, FOUND THE POLICY TO BE AMBIGUOUS BECAUSE OF THE PRESENCE OF AN EXCLUSION ON THE POLICY, SO OLIVER NEVER SQUARELY ADDRESSED ISSUE OF BECAUSE OF, NO FLORIDA COURT HAS.

HOWEVER, IN REGIS, THE LANGUAGE WAR, I KNEW THIS QUESTION MIGHT COME UP, AS THE RESULT OF, AS THE RESULT OF, TO ME, IS THE SAME AS BECAUSE OF.

AND THAT COURT FOUND ARISING OUT TO BE THE THE KISSING COUSIN THE TRUE SENSE OF ARISING OUT OF TO USE THE WORDS THAT WERE AT ISSUE INJUSTICE CAN TARE ROW'S OPINION.

RAILROAD, AS WELL, THAT ARISING OUT OF IN TORRES WERE WORDS USED IN

EXCLUSION.

WE'RE HERE DEALING WITH
COVERAGE GRANT, COVERAGE
GRANTS ARE CONSTRUED BUT
HERE THERE IS ADDITIONAL
BURDEN ON THE INSURANCE
COMPANY BECAUSE THE INSURED
CLAUSES ARE TO BE MORE
PROUDLY CONSTRUED FWOR
REASONS: FIRST, YOU GOT TO
PROTECT THAT ADDITIONAL
INSURED, MORE IMPORTANTLY,
YOU GOT TO PROTECT MEMBERS
OF THE PUBLIC WHO YET RUN
OVER BY RIDING LAWN MORE,
WHO GET INJURED BECAUSE THE
HEDGE TRIMMER EXPLODED AND
PUT A LITTLE BOY'S EYE OUT.
VIEW EXHAUSTED YOUR TIME.
BRING YOUR FINAL THOUGHTS TO
A CONCLUSION.

>> IF THE COURT PLEASE, I
BELIEVE THIS LANGUAGE TO BE
AM BIG OUR, EVEN IF YOU
APPLY THE PLAIN AND
UNDISTILLED LANGUAGE BEFORE
YOU, IN MEMORY, YOU WOULD
NONETHELESS FIND THAT MISS
GR SEE A COVERED PERSON
BECAUSE SOMEONE GAVE HER A
CAR TO DRIVE THAT DID NOT
WORK PROPERLY.

>> THANK YOU.

>> THANK YOU FOR THE
PRESENTATION.
THE COURT WILL TAKE ITS
MORNING RECESS.

>> PLEASE RISE.