

CASE #3

JOHN RANDO V. GOVERNMENT
EMPLOYEES INSURANCE COMPANY
(GEICO) (END)

-- PUBLIC POLICY HAS PROTECTED
FLORIDIANS FROM PROVISIONS
DRAFTED BY THE INSURANCE COMPANY
THAT PREVENT THE INSURED FROM
COMBINING OR STACKING DIFFERENT
COVERAGES.

>> THAT ISN'T THE QUESTION.

I AM NOT SURE THE GUY COULD
DISPUTE WHAT YOU ARE SAYING.
THE QUESTION IS WHETHER WE HAVE
A CONTRACT THAT IS ISSUED AND
DELIVERED TO THE STATE OF
FLORIDA.

THAT IS MY UNDERSTANDING.
DO THE PROVISIONS OF FLORIDA LAW
THAT PROTECT PEOPLE WHO BUY
THOSE THINGS APPLY UNDER THIS
SCENARIO?

ISN'T THAT THE ULTIMATE QUESTION
WE'RE DEALING WITH AND THE
ULTIMATE ANSWER?

>> THE FACT THAT FLORIDA LAW
APPLIES AND FLORIDA LAW HAS LONG
HELD THAT YOU CANNOT STACK
ABSENT -- SINCE 1987, INFORMED
CONSENT WHICH THEY DID NOT
OBTAIN, THAT SHOULD BE THE END
OF THE INQUIRY.

>> THEY SEEM TO BE SAYING THAT
BECAUSE THE VEHICLE IS GOING TO
BE IN ANOTHER STATE THAT THE

DOCTRINE DOES NOT APPLY.

WHAT DO YOU UNDERSTAND THE ARGUMENT TO BE?

>> I UNDERSTAND IT TO BE BASED ON SUBSECTION I OF THE UM STATUTE WHICH DIRECT INSURANCE COMPANIES WHICH ARE REQUIRED TO SELL THAT INSURANCE IN CONJUNCTION WITH LIABILITY INSURANCE WHEN THE VEHICLE IS GARAGED OR REGISTERED HERE.

WE ARE NOT CONTESTING WHETHER THEY WERE REQUIRED BUT THEY DID SELL IT, THEY COLLECTED PREMIUMS FROM OUR CLIENTS, DELIVERED THE POLICY TO FLORIDA WHERE IT WAS EXECUTED, WHERE OUR CLIENTS WERE PERMANENT RESIDENTS AND OUR FLORIDIANS AND OUR CLIENTS PAID THE PREMIUMS.

UNDER FLORIDA LAW IF YOU PAID FOR A PREMIUM --

>> THE LAW HAS CHANGED ABOUT THE POLICY IN FAVOR OF STACKING WAR AGAINST STACKING.

THIS COURT HAS ACKNOWLEDGED AS LONG AS THE PERSON WHO SPENDS THE POLICIES PAID TO REDUCED PREMIUM, IT IS NOT AGAINST PUBLIC POLICY.

AS I WAS LOOKING AT THIS ON THE ONE HAND, ON THE OTHER HAND -- I HAVE TO SAY I AM GOING BACK AND FORTH ON MY HANDS.

THE PART THAT TO ME -- YOUR CLIENTS ACTED APPROPRIATELY IN

EVERYTHING THEY DID.

THEY INFORMED JUNO BEACH WHAT WAS GOING ON AND IT SEEMED GEICO ACTED APPROPRIATELY.

IT SAYS IT WAS A DELAWARE RATED POLICY.

IF YOU'RE CLIENTS PAID LESS OF A PREMIUM OR A DIFFERENT PREMIUM, IT CONTAINS A CLEAR NOTICE THAT THERE WAS STACKING.

MY CONCERN IS ALTHOUGH IT WAS SENT TO FLORIDA, FLORIDA LAW WOULD APPLY TO CLEARLY DETRACT FROM THIS POLICY.

GIVE ME IN TERMS OF THAT BALANCE WHICH THE FACTS OF THIS CASE ARE IN FAVOR OF RECOGNIZING THE DELAWARE POLICY HAD THESE PROVISIONS AND IT IS NOT CONTRARY FLORIDA POLICY TO HAVE A VEHICLE GOING TO THE GARAGE IN ANOTHER STATE NOT TO HAVE STACKING OF THAT POLICY.

>> I DISAGREE THAT GEICO ACTED APPROPRIATELY.

THEY DROPPED THE BALL HERE.

AS YOU INDICATED THEY WERE TOLD AND THEY KNEW THAT JOHN RANDO WAS MOVING TO FLORIDA.

POLICY WAS DELIVERED TO FLORIDA WHERE IT WAS EXECUTED.

THEREFORE GEICO AS THE INSURER WITH COUNSEL AVAILABLE SHOULD HAVE KNOWN FLORIDA LAW WOULD APPLY TO THIS POLICY.

THE FACT THAT GEICO DECIDED TO

RATE IT AS A DELAWARE POLICY AND COLLECT LESS PREMIUMS IS GEICO'S MISTAKE.

>> THAT SHOULD ONLY REQUIRE THAT IT APPLIES TO VEHICLES THAT ARE REGISTERED IN A GARAGE IN FLORIDA.

IF WE DON'T HAVE ANY MORE OF THE LEGISLATIVE DIRECTIVES AND PUBLIC POLICY AGAINST STACKING, AGAINST ANTI-STACKING POLICY -- WE DON'T HAVE A PUBLIC POLICY THAT PRESENTS POLICIES FROM NOT BEING STACKED.

WHY SHOULD WE ALL FOR THE CLEAR TERMS?

>> I WOULD DISAGREE WITH YOUR READING OF THE STATUTE.

THERE ARE TWO SUBSECTIONS PAST AT TWO TIMES.

SUBSECTION 1 IS THE THRESHOLD QUESTION OF WHETHER UM INSURANCE IS REQUIRED TO CONSULT IN THE FIRST PLACE.

SUBSECTION 9 WHICH MAKES NO CROSS REFERENCE TO SUBSECTION 1 AND MAKES NO LIMITATION TO SUBSECTION I CLEARLY REQUIRES THAT IF YOU ARE GOING TO SELL INSURANCE TO A FLORIDIAN YOU HAVE TO GET INFORMED CONSENT.

BACK TO WHERE I STARTED, THE POLICY PROTECT YOU OUT SIDE OF THE AUTOMOBILE.

>> I AGREE WITH THAT.

LOOKING AT SUBSECTION 9 WHICH IS

FLORIDA LAW, THAT IS THE KEY IN THIS CASE.

>> THAT AND THE GILLEN V. UNITED SERVICES AUTOMOBILE ASSOC. DECISION WHETHER THIS COURT MADE IT CLEAR THAT IT WAS A PUBLIC POLICY OF THE STATE OF FLORIDA TO HAVE A PRO-STACKING POLICY AND THE GILLEN V. UNITED SERVICES AUTOMOBILE ASSOC. DECISION EXPRESSLY REJECTED THE ARGUMENT MADE THEIR THAT THE CONDITIONS IN SUBSECTION ONE OF THE UM STATUTE WERE A NECESSARY PREREQUISITE FOR THE APPLICATION OF FLORIDA'S PRO-STACKING POLICY.

THAT DECISION OCCURRED IN 1974, 35 YEARS OLD, NEVER BEEN CHALLENGED.

IF YOU LOOK AT THE LEGISLATIVE HISTORY SINCE THEN WITH MANY AMENDMENTS --

>> WHAT YOU ARE SAYING IS THEY ACKNOWLEDGED THE LEGISLATOR LANGUAGE FUNDS THE APPLICATION OF THE STATUTE.

THEY WENT ON TO SAY IN THESE CIRCUMSTANCES THAT THAT PARTICULAR LIMITATION CAME INTO PLAY.

WHY ISN'T A FAIR READING OF THIS OPINION EFFECTIVELY WHEN THESE PEOPLE IN GILLEN V. UNITED SERVICES AUTOMOBILE ASSOC. RELOCATED TO FLORIDA THE POLICY

THAT WAS APPROPRIATELY TREATED
AS BEING ISSUED IN FLORIDA?
ISN'T THAT EFFECTIVELY BUT THEY
WERE DOING HERE?

>> WE HAVE THE SAME FACTS HERE.

>> A CRITICAL DISTINGUISHING
FACTOR HERE IS IN GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. THE VEHICLES CAME TO
FLORIDA AND THE CASE BEFORE US
TODAY, THE VEHICLES STAYED
OUTSIDE FLORIDA AND NEVER CAME
HERE.

THE INSURER UNDERSTOOD THE
POLICY WAS ELSEWHERE.

I SPECIFICALLY ASKED YOU TO
ADDRESS THE RELIANCE IN GILLEN
V. UNITED SERVICES AUTOMOBILE
ASSOC. AND THREE SPECIFIC
FACTORS WHERE THE COURT SAID
FLORIDA HAS A SIGNIFICANT
RELATIONSHIP TO THE INSURANCE
CONTRACT ISSUED FOR THE
FOLLOWING REASONS AND THEY LIST
THREE THINGS.

ONE, COVER VEHICLES FOR A GARAGE
IN FLORIDA AT THE TIME OF THE
ACCIDENT.

TWO, GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. TAKING
AFFIRMATIVE STEPS FOR RESIDENTS
IN FLORIDA AND YOU GOT THAT ONE.
YOU DON'T HAVE THE FIRST ONE.

THE THIRD ONE, THE RISK OF THE
POLICY WAS CENTERED IN FLORIDA
AND ONLY MINIMAL CONTACT WITH

NEW HAMPSHIRE EXISTED IN TERMS
OF ACTUAL RISK.

I DON'T HAVE A THIRD ONE EITHER.

>> I DISAGREE.

WE DO HAVE A THIRD ONE.

UNINSURED MOTORISTS, THE PERSON
IS THE RISK.

BECAUSE YOU CAN BE RIDING YOUR
BIKE, YOU CAN BE TAKING A WALK,
YOU CAN BE IN A BUS OR ON A
MOTOR VEHICLE NOT COVERED BY THE
POLICY.

I SUBMIT WE HAVE TWO AND THREE
FROM GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC..

WE DON'T HAVE ONE BUT WE HAVE
SOMETHING BETTER HERE.

KEEP IN MIND THAT IN GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. THE POLICY WAS DELIVERED
TO THEN NEW HAMPSHIRE RESIDENTS
IN NEW HAMPSHIRE.

UNDER THE RULES, AS A THRESHOLD
MATTER NEW HAMPSHIRE LAW SHOULD
HAVE APPLIED.

THIS COURT HAS SAID REPEATEDLY
TO MAKE AN EXHIBITION TO LEX
LOCI CONTRACTUS YOU HAVE A HIGH
BURDEN TO MEET.

YOU HAVE TO SHOW A PARAMOUNT
PUBLIC POLICY, NOT JUST A PUBLIC
POLICY BUT A PARAMOUNT PUBLIC
POLICY TO PROTECT A FLORIDA
RESIDENT.

IF I MAY FINISH, IN THIS CASE,
BECAUSE THE POLICY WAS DELIVERED

TO FLORIDA TO FLORIDA RESIDENTS,
AS A THRESHOLD MATTER, FLORIDA
LAW APPLIED.

WHAT YOU WOULD BE SAYING IS IF
YOU FOUND DIFFERENTLY IN THIS
CASE WHEN AS A THRESHOLD METAL
DEGREES WILL FOREIGN STATE LAWS
APPLY, WE ARE GOING TO PROTECT
THE FLORIDIAN SIMPLY BECAUSE THE
VEHICLE GETS MOVED TO FLORIDA
EVEN THOUGH UM INSURANCE COVERS
THE PERSON.

WHEN AS A THRESHOLD MATTER
FLORIDA LAW APPLIES AND THE
POLICIES DELIVERED TO FLORIDA,
FOR EXECUTION, WE ARE NOT GOING
TO PROTECT THE FLORIDIAN SIMPLY
BECAUSE HIS VEHICLE WHICH IS NOT
THE INSURED RISK IS LOCATED
OUTSIDE OF THE STATE.

I THINK IT IS A STRONGER CASE
HERE BECAUSE AS A THRESHOLD
MATTER HERE FLORIDA LAW APPLIES.

>> IN GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. YOU HAD
ANOTHER INSURANCE CLAUSE WHICH
WE ARE NOT TALKING ABOUT IN THIS
CASE.

GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. SEEMS VERY
DISTINGUISHABLE TO ME BUT YOU
DON'T HAVE TO GET TO GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. BECAUSE YOU HAVE A
STATUTORY -- UNDER SUBSECTION 9
WHICH YOU ARE LOOKING AT AND A

STRONGER CASE IS GEICO V.

DOUGLAS, IN ORDER TO HAVE A
WAIVER EFFECTIVE YOU HAVE
COVERAGE.

IT SEEMS LIKE YOU'RE BETTER
ARGUMENT IS ON A STATUTORY
BASIS, NOT A PUBLIC PURPOSE
ARGUMENT.

>> BOTH ARGUMENTS ARE STRONG AND
WE MAKE BOTH OF THEM.

THE STATUTORY ARGUMENT IS VERY
STRONG TOO.

THE LEGISLATURE ENACTED
SUBSECTION NINE IN 1987 AND MADE
NO LIMITATION ON THESE INFORMED
CONSENT REQUIREMENTS.

WE RELIED LOT ON DELAWARE LAW.

>> THAT IS THE ESSENCE OF THE
CASE, WHAT THE LAW CONTROLS.

>> WE ARE GOING TO APPLY
DELAWARE LAW FOR CERTAIN
CIRCUMSTANCES.

>> THE ELEVENTH CIRCUIT COURT OF
APPEALS SAYS IT HAS BEEN
STIPULATED AMONG THE PARTIES
THAT FLORIDA LAW APPLIES.

THE QUESTION HAS TO DO WITH
FLORIDA LAW.

I AM CONFUSED ABOUT THE ANSWER
BY GEICO THAT FLORIDA LAW DOES
NOT APPLY.

IS THAT AN ISSUE?

>> IT IS NOT AN ISSUE.

AND WAS STIPULATED THAT DISTRICT
COURT LEVEL.

>> WE ALL AGREE IF FLORIDA LAW

APPLIES, THE FOCUS IS SECTION 9
OF 627.727 APPLIES.

I AM CERTAINLY UNDERSTANDING
WHEN YOU ARE TALKING ABOUT WITH
PUBLIC POLICY, BUT IF WE
CONCLUDE THAT UNDER FLORIDA LAW,
SUBSECTION 9 APPLIES, GEICO HAS
TO PROVIDE COVERAGE.

>> THEN GEICO LOSES UNDER THE
GEICO V. DOUGLAS DECISION FROM
1995.

>> IN TERMS OF YOUR ARGUMENT --
>> THERE IS NO CROSS REFERENCE
TO SUBSECTION 1.

>> IT IS IN THE SAME SECTION.
DON'T WE HAVE TO READ ONE
SUBSECTION OF A STATUTORY
SECTION IN THE CONTEXT OF THE
OTHER SUBSECTION PARTICULARLY
THE PRELIMINARY SUBSECTION WHICH
SETS FORTH AND IN SHORES
OBLIGATION TO PROVIDE UNINSURED
MOTORIST COVERAGE?

>> YOU HAVE TO READ IT IN
CONTEXT BUT HERE IS THE CONTEXT.
THERE ARE OTHER SUBSECTIONS
WITHIN THE STATUTE THAT DO CROSS
REFERENCE SUBSECTION 1 SUCH AS
SUBSECTION 2.

I WOULD LOOK AT SUBSECTION 6
WHICH TALKS ABOUT THE PERSONAL
REPRESENTATIVES.

WHAT YOU WOULD BE DOING IS
EXCLUDING INSURERS FROM A WHOLE
HOST OF REGULATIONS THAT THEY
WOULD BASICALLY -- THAT IS WHAT

HAPPENS IN THIS CASE.

GEICO WOULD BE UNREGULATED.

IF YOU LOOK AT THE DELAWARE
STATUTE IT IS VERY SIMILAR TO
THE FLORIDA STATUTE.

IT HAS BOTH THESE CONDITIONS
PRECEDENTS HERE.

WHERE IS THE VEHICLE REGISTERED
AND WHERE WAS IT DELIVERED?

IF YOU LOOK AT THE DELAWARE
STATUTE CITED BRIEF THEY DON'T
KNOW WHERE IT WAS DELIVERED.

AND THEIR INTERPRETATION--THAT
IS UNREASONABLE.

ESPECIALLY IF YOU LOOK AT
SUBSECTION 9, THAT HAS NO
EXPRESS LIMITATION.

TO TAKE YOU BACK TO THE DELAWARE
STATUTE, DELAWARE COURTS HOLD
THAT THEY WILL NOT ENFORCE
STAFFING CLAUSES UNLESS THERE IS
AN EXPRESS PROVISION, EXPRESS
STATUTORY PROVISION -- I WOULD
LIKE TO SAY ONE OTHER THING.

THIS IS ANOTHER INSURANCE
CLAUSE.

THEY ALL HAVE DIFFERENT NAMES
BUT ANTI-STACKING POLICY IS VERY
SIMILAR UNDER THE CASE LAW.

I WILL SIT DOWN FOR THE BALANCE
OF MY TIME.

>> THE ONLY QUESTION I HAVE IS
WHY THE ELEVENTH CIRCUIT GIVES
IT --

[TALKING OVER EACH OTHER]

>> ANGELA FLOWERS ON BEHALF OF

GEICO INSURANCE COMPANY.

WHY DID GEICO DO THE RIGHT
THING?

BECAUSE JOHN RANDO, AS HE WAS
REQUIRED TO DO, CONTACTED GEICO
TO OBTAIN A DELAWARE INSURANCE
POLICY FOR A VEHICLE HE CHOSE TO
KEEP REGISTERED IN DELAWARE AND
HE PROVIDED FOR HIS DAUGHTER'S
EXCLUSIVE USE IN DELAWARE.

>> I HAVE A QUESTION ON A
HYPOTHETICAL.

WE DIDN'T HAVE TWO OTHER
VEHICLES IN FLORIDA, MR. JOHN
RANDO WAS INJURED IN FLORIDA BY
AN UNINSURED MOTORISTS AND
RESIDED IN FLORIDA, WOULD HE GET
THE BENEFIT OF \$300,000 OF THE
DELAWARE POLICY UNDER THE
CURRENT LAW?

>> IF HE WERE A DELAWARE
RESIDENT --

>> FLORIDA RESIDENT --

>> THE ONLY POLICY WHICH
PROVIDES COVERAGE -- HE WOULD BE
COVERED FOR INJURIES IN FLORIDA
OR ANY OTHER STATE HE TRAVELED
TO.

THE UNIFORM APPLICATION --

>> IT IS NOT THE IDEA THAT THE
DELAWARE POLICY CAN'T APPLY IN
FLORIDA.

WE ONLY GET THEM TO -- WE GET
THEM TO -- WHETHER SUBSECTION 9
CAN REASONABLY BE CONSTRUED TO
APPLY IN THIS CIRCUMSTANCE THAT

THE POLICY IS DELIVERED IN
FLORIDA AND ALL GEICO HAD TO DO
WAS GET THE FORM TO HAVE THE
CONSENT AND THIS IS A CASE THAT
GEICO -- ISN'T THAT WHAT IT
BOILS DOWN TO?

>> GEICO TAKES A DIFFERENT
APPROACH TO THIS CASE.
FROM GEICO'S PERSPECTIVE
SUBSECTION 9 HAS NO RELEVANCE TO
THIS CASE.

WE BEGIN WITH THE FACT THAT
THERE IS A DELAWARE INSURANCE
POLICY, NO QUESTION ABOUT THAT.
IN ADDITION TO JOHN RANDO
CONGRESSIONAL THE SUMMARY
JUDGMENT WOULD APPLY TO FLORIDA
LAW.

[TALKING OVER EACH OTHER]

>> THAT DOESN'T MEAN FOR A
STATUTORY LAW APPLIES.
THAT MEANS FLORIDA LAW APPLIES.

WHAT IS THE FIRST STEP IN
CONSTRUING A CONTACT?

>> FLORIDA LAW INCLUDES STATUTE.
WHY AM VERY SYMPATHETIC TO YOUR
ARGUMENT BUT DELAWARE LAW SHOULD
CONTROL THIS OTHER THAN FLORIDA
LAW.

I DON'T SEE HOW WE CAN GET THERE
WITH A STIPULATION -- IF I CAN
JUST FINISH.

I DON'T SEE HOW WE CAN GET THERE
WITH THE STIPULATION THAT THE
CIRCUIT SAID WE GOT THERE.
WAS IT STIPULATED THAT FLORIDA

LAW WOULD APPLY?

>> YES.

HERE IS HOW FLORIDA LAW APPLIES.
THE INSURANCE CONTRACT COMES TO
COURT.

LIKE ANY CONTRACT, AS WRITTEN,
UNLESS THERE IS A STATUTE WHICH
IS GOING TO BE IMPOSED AS A
MATTER OF LAW INTO THE LANGUAGE
OF THE CONTRACT FOR IT VIOLATES
SOME PUBLIC POLICY.

THE COURT TAKES DELAWARE
INSURANCE POLICY AND THE FIRST
QUESTION --

>> THE INSURANCE POLICIES
INCORPORATE ALL FLORIDA STATUTE
HAVING TO DO WITH POLICIES.

>> ONLY WHEN THE FLORIDA STATUTE
APPLIES AND UNDER SUBSECTION 1
UNDER THE PLAIN LANGUAGE OF THE
STATUTE IT DOES NOT APPLY TO THE
CONTRACT.

THE PLAIN LANGUAGE OF 7627.727
STATES THAT UM INSURANCE MUST BE
INCLUDED IN ANY POLICY ISSUE IN
THE STATE OF FLORIDA IS THE
POLICY IS DELIVERED IN THE STATE
OF FORD AND THE VEHICLE IS
REGISTERED IN A GARAGE IN THIS
STATE.

IT IS UNDISPUTED.

THEY CAN NEVER SATISFY NUMBER 2.
THE VEHICLE WAS NOT REGISTERED
IN THIS STATE AND NEVER CROSSED
THE BORDERS OF THIS STATE.
SO THE UM STATUTE DOES NOT

APPLY.

>> THAT IS ONLY ONE SECTION OF THE STATUTE.

THE POLICY DID HAVE AN UNINSURED MOTORIST COVERAGE.

IT IS A POLICY THAT CONTAINS THAT COVERAGE THAT IS ISSUED AND DELIVERED TO A FLORIDA RESIDENT, WHY WOULD STATUTES THAT INTERPRET UNINSURED MOTORIST COVERAGE BECAUSE IT IS A STACKING PROVISION AFTER IT IS ISSUED THAT WE ARE TALKING ABOUT, SOME DELAY THAT THEY APPLY, WHY WOULD THOSE STATUTES NOT APPLY?

DOES NOT SUBSECTION 1.

WE KNOW THAT WAS ISSUED WITH THAT COVERAGE.

>> WE HAVE NOT STIPULATED THAT ANY PART OF THE STATUTE APPLIES.

>> YOU HAVE TO.

THAT IS VERY DISINGENUOUS FOR YOU TO SAY WE STIPULATE THAT FLORIDA LAW APPLIES, WITH WHICH I AGREE TOTALLY, THAT INCLUDES THE STATUTES.

I CAN'T ACCEPT THAT AS A LEGAL ARGUMENT, LEGITIMATE LEGAL ARGUMENT.

>> I AM NOT DISAGREEING WITH ANYTHING BEING SAID.

I AM LOOKING AT THE LANGUAGE OF THE STATUTE.

IT SAYS STATUTE APPLIES TO POLICIES ISSUED FOR DELIVERY IN

THIS STATE ON SPECIFIED VEHICLES
WHICH ARE REGISTERED --

>> THE STATUTE SAYS WHEN YOU
MUST ISSUE IT YOU HAVE ALREADY
ISSUED A POLICY WHICH -- MAYBE
YOU DIDN'T HAVE TO.

UNDER FLORIDA LAW MAYBE YOU
DIDN'T HAVE TO BUT GEICO DID.
WHY DID NOT THE PROVISIONS
RELATING TO THAT COVERAGE TO
PEOPLE WHO BOUGHT THE COVERAGE,
OUR RESIDENTS OF FLORIDA AND HAS
NO RELATIONSHIP TO THE VEHICLE,
RENO GOING BACK TO STATE FARM IT
COVERS.

YOU SEEM TO BE SAYING SOME OF
THAT YOU CARVE OUT SUBSECTION 1
AFTER YOU HAVE ISSUED A POLICY
WHICH HAS THE COVERAGE.
WHY NOT LOOK TO THE TERMS OF THE
FLORIDA STATUTES AFTER YOU ISSUE
THAT COVERAGE TO SEE WHAT
HAPPENS?

>> THE REASON THE FLORIDA
STATUTE BEGINS WITH REQUIRING
INSURANCE PROVIDED TO A VEHICLE
REGISTERED IN THIS STATE IS
BECAUSE THAT IDENTIFIES THE
RISK.

WE DISAGREE WITH THE POSITION
THAT THE INSURED IS THE RISK
UNDER UM POLICY.
THE RISK IS DETERMINED BY WHERE
THE VEHICLE IS REGISTERED OR
PRINCIPALLY GARAGED.

>> WITH REGARD TO ENTER

INSURANCE CONTRACTS THIS COURT WITHOUT QUESTION HAS REJECTED THE LOCATION OF THE RISK AS DETERMINING FLORIDA LAW.

I HAVE WRITTEN SEVERAL TIMES THAT LOCATION OF THE RISK -- I REPRESENT A SINGLE MINORITY. LAST TIME WE RODE ON WHAT LAW APPLIES, IT WAS A 6-1 OPINION, VERY RIGID, VERY STRONG.

>> EACH OF THESE IDENTIFIES THE FACT THAT THE VEHICLE WAS LOCATED IN FLORIDA.

IN ADDITION TO THE FACT THAT THERE WERE RELEVANTS INVOLVED. YOU CAN'T FORCE THE TWO ELEMENTS IN TERMS OF EVALUATING WHETHER FLORIDA HAS AN INTEREST IN INSURING THE VEHICLE.

DELAWARE LAW, ALL STATES REQUIRE VEHICLES REGISTERED IN THEIR STATE CARRYING INSURANCE POLICY UNDER THEIR STATE LAW.

THIS POLICY CONTAINS AN EXPRESSED CHOICE OF LAW PROVISION.

IN SUBSECTION 6 IN GENERAL CONDITIONS THE POLICY IS EXPRESSLY SAID, IF THERE'S ANY LANGUAGE IN IT THAT DOES NOT COMPLY WITH THE STATUTES OF DELAWARE --

>> THAT IS DIFFERENT FROM SAYING DELAWARE LAW CONTROLS. THIS IS NOT A TRUE CHOICE OF LAW PROVISION IN THE POLICY.

>> THIS COURT RECOGNIZED IN
NUMEROUS CASES THAT WHEN
INSURANCE POLICY ENCROACHES
UNDER ANOTHER STATE'S COVERAGE
IT HAS THE NAME DELAWARE
INSURANCE POLICY OR NEW YORK
INSURANCE POLICY, THAT
REPRESENTS THE INSURED IN
UNDERSTANDING THAT THAT WOULD
APPLY.

>> I COME BACK -- I AM
SYMPATHETIC TO YOUR CHOICE OF
LAW ARGUMENTS BUT I DON'T SEE
HOW WE CAN DO AS THIS COURT
ANYTHING BUT ACCEPT THE
STIPULATION THE ELEVENTH CIRCUIT
SAID OCCURRED.

HOW WE GET AROUND THAT?

>> THE STIPULATION WAS ASKED TO
FLORIDA GENERAL LAW, CONTRACT
INTERPRETATION LAW.

NOT THAT EVERY FLORIDA STATUTE
APPLIES.

THERE WAS NO WAIVER IN DISTRICT
COURT OR ELEVENTH CIRCUIT COURT,
THE UM STATUTE APPLIED --

>> IF THE ELEVENTH CIRCUIT
UNDERSTOOD THAT THAT WAS
STIPULATED THERE WOULD BE NO
QUESTION TO CERTIFY.

>> CORRECT.

WE ARE HERE BECAUSE THE ELEVENTH
CIRCUIT APPLIED TO CONTRACT
INTERPRETATION, THE STATUTE WAS
UNCERTAIN, WHETHER OR NOT THE
DISTRICT COURT SAID THE UM

STATUTE SHOULD NOT APPLY BECAUSE
OF WAS NOT REGISTERED OR GARAGED
IN FLORIDA.

>> TELL ME WHY THESE ARE NOT
SIGNIFICANT FACTORS.

JOHN RANDO REMAINED THEN NAMED
INSURED.

THE POLICY WAS DELIVERED TO
FLORIDA.

IT WAS EXECUTED IN FLORIDA.

THE ONLY WAY TO GET AROUND
SAYING THAT THERE FOR GEICO
SHOULD HAVE COMPLIED WITH
SUBSECTION 9, YOU DON'T HAVE TO
UNDER THE PLAIN LANGUAGE OF THE
STATUTE, APPLY SUBSECTION 9
UNLESS THE VEHICLE IS REGISTERED
IN FLORIDA.

THAT IS WHERE THE INTERPRETATION
COMES IN BECAUSE I DON'T KNOW IF
IT IS 100% CLEAR THAT SUBSECTION
9 HAS TO DELAY FACTS IN
SUBSECTION 1.

GO FURTHER ON THAT.

IF I AGREE WITH YOU THAT THIS
STIPULATES SUBSECTION 9 APPLIES,
WITH THIS SET OF CIRCUMSTANCES,
NAMED IN SHORT TO RESIDE FULL
TIME IN FLORIDA, POLICY BEING
DELIVERED IN FLORIDA EXECUTED IN
FLORIDA AND SUBSECTION 9,
APPLYING TO UNINSURED MOTORIST
COVERAGE, WE ARE NOT SURE, WE
ARE APPLYING FOR SUBSECTION 9.

>> THE POLICY CONTAINED
ANTI-STACKING POLICY, SUBSECTION

9 RECOGNIZES IT IS NOT AGAINST
FLORIDA POLICY FOR UM INSURANCE
TO BE ISSUED FOR WITH THESE
LIMITS OF LIABILITY PROVISION.

>> I HAVE TO GO BACK AND LOOK AT
DELAWARE LAW.

IF THEY HAD SAID EXPRESSLY,
THERE HAD BEEN A CONVERSATION
WHERE THEY OFFERED INFORMED
CONSENT UNDER SUBSECTION 9 AND
JOHN RANDO SAID WE WOULD LIKE TO
HAVE STACKING.

WOULD THERE HAVE BEEN A WAY OF
PAYING INCREASED PREMIUMS OR
DECREASE PREMIUMS TO HAVE GOTTEN
THIS STACKING PROVISIONS OF THAT
POLICY?

>> I WON'T SAY FOR SURE.

I ONLY KNOW THAT IT REFERS TO
THE DELAWARE STATUTES.

>> THAT SEEMS TO ME THE STEPS IN
GEICO THE NEXT TIME OR ANY OTHER
INSURANCE COMPANY IS YOU ARE TOO
CLOSE TO FLORIDA HERE.

WHEN WE ARE DOING UNINSURED
MOTORIST COVERAGE WE NEED TO
DISCUSS SUBSECTION 9.

THAT WOULD BE THE LAW THAT WOULD
BE MERGED.

>> WHAT GEICO DID HERE IS WHEN
THIS DELAWARE POLICY WAS
INITIALLY ISSUED AND FOR
NONPAYMENT OF PREMIUM, BE IN
SHORT DIDN'T RECEIVE IT AT THEIR
DELAWARE ADDRESS AND JOHN RANDO
RECEIVED A NOTICE OF

CANCELLATION, RECALLED TO
INQUIRE WHY DELAWARE POLICY
WASN'T BEING KEPT UP.

IT WAS AT THAT TIME THAT A
POLICY GETS ISSUED AND SENT TO
HIM IN FLORIDA.

IT IS AT THAT TIME THAT GEICO
SPECIFICALLY INQUIRED, WHERE IS
THE VEHICLE REGISTERED?

JOHN RANDO RESPONDS IN DELAWARE.
WHO IS THE PRIMARY OPERATOR OF
THIS VEHICLE?

JOHN RANDO REPLIED BY DAUGHTER
IN DELAWARE.

YOU WANT TO KEEP THE DELAWARE
POLICY?

>> YOU ARE ABUSING THESE FACTS
VERY LOOSELY AND DISINGENUOUSLY
TO THINK THAT NORMAL INSURERS,
LAY CITIZENS OF FLORIDA
UNDERSTOOD ALL THE UNDERWRITING
ISSUES THAT ARISE IN CONNECTION
WITH THOSE ANSWERS AND SOMEHOW
THIS RECORD, I WILL LOOK AT IT,
THAT THIS GENTLEMAN UNDERSTOOD
ALL THE ISSUES AND UNDERSTOOD
HOW MUCH THE PREMIUMS AND ALL
ABOUT THE REJECTION, ACCEPTANCE.
YOU MAKE THIS HUGE LEAP THAT THE
AVERAGE CITIZEN DEALING WITH AN
INSURANCE COMPANY TOLD THEM THE
TRUTH AND YET THEY WANT TO
STIFFEN THEM AFTER THEY TELL THE
TRUTH ABOUT EVERYTHING GOING ON,
THEY DIDN'T TRY TO HIDE
EVERYTHING AND THEY PAY THE

PREMIUMS FOR IT AND YET THEY ARE
UNAWARE OF WHAT THEIR RIGHTS MAY
BE AND THEY LOSE AT THE END.

IF ALL THAT IS IN THIS RECORD
THEN I WILL GO ALONG WITH YOU
THAT THEY KNEW ALL ABOUT THIS
AND THIS WAS JUST -- THESE
CLAIMANTS ARE JUST ABSURD TO
MAKE THIS CLAIM.

>> I THINK JOHN RANDO UNDERSTOOD
THAT BECAUSE HE REGISTERED A CAR
IN DELAWARE HE WAS REQUIRED BY
DELAWARE LAW TO PURCHASE THE
DELAWARE AUTOMOBILE --

>> THAT IS IN THIS RECORD THAT
HE UNDERSTOOD EVERYTHING ABOUT
ALL THE NUANCES?

>> IT IS THE RESULT OF THE
ACCIDENT THAT JOHN RANDO
SUFFERED BRAIN INJURY AND HE WAS
UNABLE TO TESTIFY AS TO HIS
RECOLLECTION OF THE CONVERSATION
THAT OCCURRED.

WHAT IS ALSO IN THIS RECORD --

>> THERE IS NO EVIDENCE OF
ANYTHING WITH REGARD TO THE
DISCUSSION WITH THE INSURER.

IS THERE AN INSURANCE AGENT --

>> WITH EXTEMPORANEOUS RECORDS
TRACKING THE CONVERSATIONS WITH
JOHN RANDO WHEN HE CALLED ON
EACH OCCASION TO NEGOTIATE THE
INSURANCE POLICY.

THERE IS NO DISPUTE IN THIS
RECORD --

>> INFORMED CONSENT REQUIRED BY

SUBSECTION 9 IN ORDER TO ISSUE A POLICY THAT DOES NOT REQUIRE STACKING WAS NOT OBTAINED.

>> THERE WAS NO FLORIDA INFORMED CONSENT FORM EXECUTED.

>> WE KNOW HE GOT STACKING FOR THE TWO POLICIES THAT HE DID HAVE.

HE MUST HAVE WANTED STACKING. SECOND OF ALL, WE KNOW THAT GEICO WANTED TO LIMIT THE STACKING OF THE POLICY, THEY COULD HAVE DONE SO BY GETTING THIS.

>> THE TESTIMONY OF GEICO COULD NOT ISSUE HIM A FLORIDA POLICY FOR A VEHICLE REGISTERED IN DELAWARE.

THAT IS PROHIBITED UNDER THE INSURANCE LAWS FOR ONE STATE TO ISSUE A POLICY WHEN THE RISK DOESN'T RESIDE --

>> I THINK WE GO BACK FULL CIRCLE.

THEY HAVE AN ISSUE WITH DELAWARE POLICY BUT I ASKED EARLIER WOULD IT HAVE BEEN PROHIBITED UNDER DELAWARE LAW TO HAVE ISSUED THE DELAWARE POLICY THAT DIDN'T ALLOW STACKING?

TO THE BEST OF MY KNOWLEDGE BASED ON THE STATUTES CITED IN THE BRIEFS IT WAS REQUIRED UNDER DELAWARE LAW THAT IT -- IT WOULD BE PROHIBITED UNDER DELAWARE LAW.

SO GEICO PATRICIA WILL WHERE
THIS ARGUMENT BECOMES SOMEWHAT
MORE CONVOLUTED, IF GEICO DID
WHAT THEY EVER SUPPOSED TO DO
WHICH WAS TO GET INFORMED
CONSENT AND JOHN RANDO SAID I
WANT STACKING OF THAT VEHICLE,
YOU ARE SAYING THAT UNDER
DELAWARE LAW THEY HAVE BEEN
PROHIBITED FROM OFFERING THAT
THIRD POLICY.

>> THE TESTIMONY OF THE
UNDERWRITER --

>> YOU ARE SAYING THAT IF WE
ORDER THIS UM COVERAGE TO BE
PAID FROM THIS DELAWARE POLICY
WE WILL BE ORDERING COVERAGE
THAT IS PROHIBITED UNDER
DELAWARE LAW?

IS THAT WHAT YOU ARE SAYING?

>> I HAVE CITED TWO CASES IN THE
BRIEF AND INCLUDED A STATUTE
HERE.

I AM NOT REPRESENTING THAT THERE
IS NO OTHER DELAWARE STATUTE
WHICH WOULD PERMIT STACKING.
I CITED THE DELAWARE STATUTE
WHICH SAID THERE COULD NOT BE
STACKING HUNDRED THE
CIRCUMSTANCES LISTED THERE WHICH
ARE THE ONES INCORPORATED --
THAT IS VERY DIFFERENT --

[TALKING OVER EACH OTHER]

>> WHAT I ASKED IS WHETHER --
THAT THE POLICY COULD HAVE BEEN
WRITTEN WITH A STACKING

PROVISION, A LEGAL
RESPONSIBILITY TO BE PART OF
DELAWARE POLICY AND DELAWARE
PROHIBITED IT.

IT IS NOT AN ISSUE ABOUT
ENCOURAGING IT OR PROHIBITING.
IT WOULD BE HAVING A POLICY THAT
WOULD BE VOID UNDER DELAWARE
LAW.

>> I CAN'T SAY IT IS PROHIBITED
UNDER DELAWARE LAW.
I AM JUST RELIED UPON STATUTES

--

>> I AM SURE THAT IF THERE WAS
SUCH A STATUTE FOR A PROVISION
WE WOULD HAVE HEARD ABOUT IT BY
NOW BECAUSE THAT WOULD MEAN THAT
WHAT WE WOULD BE ORDERING WOULD
BE SOMETHING THAT WOULD BE
AGAINST DELAWARE'S PUBLIC POLICY
AND I AM SURE WE WOULD HAVE
HEARD OF THAT.

THAT WOULD PROHIBIT GEICO FROM
HAVING INCLUDED A STACKING
PROVISION.

>> I HAVE FOCUSED ON THAT AS
BEING THE PERTINENT ISSUE FOR
THAT DISCUSSION.

>> THAT WAS NOT CERTIFIED BY THE
ELEVENTH CIRCUIT.

>> IT WAS ADMITTED BY PLAINTIFF
THAT THIS ENFORCED DELAWARE LAW
AND STOPPED THERE IN TERMS OF
THE KEY FOR DELAWARE LAW.

THE DISTRICT COURT JUDGE IN THIS
CASE -- SUBSECTION ONE OF 6627.

THE POLICY MUST BE ISSUED AND
DELIVERED IN THE STATE OF
FLORIDA OR REGISTERED --

>> FULL CIRCLE AROUND WHAT WE'RE
REALLY DOING, WE ARE BEING ASKED
-- THE FLORIDA STATUTE 627 AND
SEE IF 9 IS INDEPENDENT OF 1.

>> IN THE FIRST INSTANCE,
WHETHER THE STATUTE IS TRIGGERED
UNDER SUBSECTION 1 AT ALL, AND
IF THE STATUTE IS NOT TRIGGERED
COULD WE STILL SOMEHOW APPLIES
SUBSECTION 9?

THE QUESTION IS WHETHER OR THE
STATUTE IS TRIGGERED AT ALL.
THANK YOU.

>> THANK YOU FOR YOUR ARGUMENT.
REBUTTAL?

>> YOU HIT THE NAIL ON THE HEAD.
THE ISSUE IS BETWEEN SUBSECTION
1 AND SUBSECTION 9.

I SUBMIT THAT THERE ARE TWO
REASONS SUBSECTION 9 OPERATES
INDEPENDENTLY.

FIRST, IF YOU LOOK AT THE ENTIRE
STATUTE THERE ARE OTHER
SUBSECTIONS THAT CROSS REFERENCE
SUBSECTION 1.

THIS SUBSECTION DOES NOT.
THE LEGISLATURE COULD HAVE
EASILY PUT THAT IN.

OR IT COULD HAVE EASILY SAID
THIS ONLY APPLIES TO VEHICLES
GARAGED IN FLORIDA.

I STILL WANT TO BRING THE COURT
BACK TO GILLEN V. UNITED

SERVICES AUTOMOBILE ASSOC..
WHEN THE LEGISLATURE ENACTED
SUBSECTION 9 IN 1987 THIS COURT
MADE IT CLEAR IN GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. THAT WAS NOT GOING TO TIE
THE APPLICATION OF FLORIDA'S
PRO-STACKING POLICY STRICTLY TO
THE STATUTES.

SOME MAY DISAGREE WITH THE
DECISION.

SOME MAY HAVE DECIDED
DIFFERENTLY AND I UNDERSTAND
THAT, BUT --

>> DO I HAVE TO AGREE WITH YOU
ON GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. TO RULE WITH
YOU?

>> NO.

I HAVE GIVEN YOU TWO REASONS.
YOU CAN SAY I THINK GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. IS WRONG BUT GO WITH THE
FIRST REASON.
BUT THE MORE APPROPRIATE REASON
IS EVEN IF YOU OR ANY MEMBER OF
THE COURT DISAGREED WITH THE
REASONING OF GILLEN V. UNITED
SERVICES AUTOMOBILE ASSOC. IT
HAS BEEN A PRECEDENT FOR 35
YEARS.

GO BACK AND LOOK AT THE
LEGISLATIVE HISTORY AND WE
SUBMITTED SUPPLEMENTAL
AUTHORITY, THE LEGISLATURE
PASSED AN ANTI STACKING

STATUTES.

WE REPUDIATE THIS.

1980 IT REPEALED THE
ANTI-STACKING POLICY FOR UM
INSURANCE ALONE AND REVIVE THE
PRIOR CASE LAW.

THE LEGISLATURE PUT ITS STAMP --

>> WAS THAT CASE LAW ALWAYS
PREDICATED ON AN UNDERSTANDING
OF THE STATUTE AND WHAT THE
STATUTE REQUIRED?

TWO SELLERS BASED HOLDING ON THE
COURT'S UNDERSTANDING OF THE
STATUTORY PROVISION?

>> THIS COURT DID NOT IN GILLEN
V. UNITED SERVICES AUTOMOBILE
ASSOC..

IN GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. THE POLICY WAS
DELIVERED TO NEW HAMPSHIRE
RESIDENTS IN NEW HAMPSHIRE AND
IF YOU STRICTLY -- IF THIS COURT
STRICTLY APPLIED THE STATUTE IN
GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. GILLEN V.
UNITED SERVICES AUTOMOBILE
ASSOC. -- THIS COURT DID NOT DO
SO.

THE LEGISLATURE WAS REVIVING THE
JUDICIARY PRO-STACKING POLICY.
IF YOU DECIDING THE CASE IN 1974
YOU MIGHT DISAGREE BUT THAT IS
NOT WHERE WE ARE.

>> THE GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. COURT WAS
FOCUSED ON ONE OF THOSE TWO

THRESHOLD REQUIREMENTS IN
SUBSECTION 1.

THEY WERE FOCUSED ON THE ONE
OTHER THAN THE ONE THAT IS AT
ISSUE HERE.

>> CORRECT.

IT WOULD BE PERVERSE TO --
>> LET ME ASK A QUESTION THAT IS
BESIDE THE POINT.

UNDER YOUR UNDERSTANDING OF THE
APPLICATION OF THE STATUTE, IF
THE DAUGHTER IN DELAWARE HAD
BEEN IN AN ACCIDENT IN DELAWARE,
WOULD SHE HAVE OBTAINED THE
BENEFIT OF THIS INTERPRETATION
YOU ARE ADVANCING IN TERMS OF
STACKING?

>> YES, AND I WOULD LIKE TO
ANSWER IN RESPONSE TO THE
QUESTIONS ABOUT THE STIPULATION
BEFORE.

THE STIPULATION DID NOT COME OUT
OF THIN AIR.

IT CAME OUT OF THE LEX LOCI
CONTRACTUS.

GEICO REALIZED THE POLICY WAS
EXECUTED IN FLORIDA.

THIS COURT THREE YEARS AGO
REAFFIRMED LEX LOCI CONTRACTUS
RULE.

SOMETIMES THAT RESULTS IN
BIZARRE RESULTS BUT IT IS A
RIGID RULE.

THE FACT IS THIS COURT
REPEATEDLY SAID LEX LOCI
CONTRACTUS APPLIES, IF A POLICY

IS EXECUTED HERE, FLORIDA LAW
WOULD APPLY TO THIS POLICY.
SO YES, TO ANSWER YOUR QUESTION.
FLORIDA LAW GOVERNS.
THE STIPULATION DIDN'T COME OUT
OF THIN AIR.

>> COULD I ASK ABOUT ONE OTHER
AREA, SUBSECTION 1.

AS I READ THIS SUBSECTION, IT
COULD NOT IN MORE CLEAR TERMS
TALK IN TERMS OF UM COVERAGE IS
MANDATORY UNDER CERTAIN
CIRCUMSTANCES BUT THIS STATUTE,
IS THERE A CASE THAT SAYS THIS
STATUTE SOMEHOW DEFINES
EVERYTHING ABOUT UNINSURED
MOTORIST COVERAGE?

>> NO.

>> I WAS NOT AWARE OF ONE BUT I
AM MISSING THIS ARGUMENT ON HOW
SUBSECTION 1 TAKES FLORIDA LAW
OUT OF EVERYTHING WHEN THE
POLICY IN FACT HAS UM COVERAGE.

>> I AGREE WITH YOU AND THAT IS
WHAT GILLEN V. UNITED SERVICES
AUTOMOBILE ASSOC. TEACHES.
SUBSECTION 1 IS NOT THE END ALL
OF EVERYTHING.

I AM WELL OVER MY TIME BUT I AM
ANSWERING QUESTIONS.

ANY FURTHER QUESTIONS?

>> THANK YOU FOR YOUR ARGUMENTS
HERE TODAY.

THE COURT WILL TAKE ITS MORNING
RECESS FOR TEN MINUTES.

>> PLEASE RISE.