>> PLEASE RISE.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
>> THE NEXT CASE ON THE COURT'S
AGENDA IS QBE INSURANCE
CORP. V. CHALFONTE CONDOMINIUM
APARTMENT ASSOCIATION.
>> RAOUL CANTERO FOR THE QBE
CORPORATION.
I'M RESERVING TEN MINUTES FOR
REBUTTAL.
THIS IS THE CASE OR IF I'VE
CERTIFIED QUESTIONS
FROM THE THIRD OF APPEAL AND I
INTEND TO ADDRESS THEM IN ORDER
UNLESS THE COURT SEES TO IT
OTHERWISE.
THE FIRST CERTIFIED QUESTION IS,
DOES FLORIDA RECOGNIZE A BREACH
OF IMPLIED WARRANTY OF GOOD
FAITH AND FEEL OUR DEALING BASED
ON INSURERS FAILURE TO
INVESTIGATE AND ASSESS ITS
INSURED CLAIM WITHIN A
REASONABLE TIME?
WE SUBMIT THE ANSWER TO THAT
QUESTION SHOULD BE NO.
THE COMMON LAW HAS
UNDERRECOGNIZED CAUSE OF ACTION
FOR FIRST PARTY BAD FAITH OF AN
INSURER.
THIS COURT HAS SAID AS MUCH IN
SEVERAL CASES, MANY OF THEM
RESENT ENTERPRISE AND,
RIGHT AND MOST RECENTLY ALLSTATE
INSURANCE V. RUIZ.
>> OUR OPPOSITION SEEMS TO BE
TAKING ATTACK THAT THIS IS
SOMEHOW DIFFERENT.
>> YES, THEY ARE COMING AROUND
IT.
>> WOULD YOU ADDRESS THAT.

>> YESS, THERE'S NO DIFFERENCE WHATSOEVER BETWEEN WHAT THEY WANT TO IMPOSE OF THE COMMON LAW CLAIM AND WHAT IS NOW IN THE STATUTE.
IF I CAN REDO THE STATUTE?
AND I'M SURE YOU'VE READ IT MANY TIMES.
BUT THE IMPORTANT THING ABOUT IT IS THAT IT SAYS THAT IT PROVIDES A CAUSE OF ACTION, A CIVIL REMEDY FOR NOT ATTEMPTING, IN GOOD FAITH, TO SETTLE CLAIMS WHEN ALL THE CIRCUMSTANCES IT COULD HAVE MENTIONED HAVE DONE SO HAVE ACTED FAIRLY AND HONESTLY TOWARDS THE INSURED.
SO REALLY TO CALL THE STATUTE A BAD FAITH STATUTE AND IS THE COMMON PARLANCE, IT'S A MISNOMER.
IT'S NOT A BAD FAITH STATUTE, IT'S A LACK OF GOOD FAITH STATUE.
THE FACT IS WE CANNOT WAIVE IT BECAUSE OF PRE-1982 SPECIFICALLY SAID WE DON'T RECOGNIZE A COMMON LAW CAUSE OF ACTION.
THE STATUE WAS SPECIFICALLY DESIGNED TO REMEDY THAT VOID.
AND THAT'S WHAT THE STATUTE DID.
IN FACT, IN RUIZ, THIS COURT OF THE STATUTE EXTENDED THE JURY OF AN INSURER TO ACT IN GOOD FAITH AND DEAL FAIRLY IN THOSE INSTANCES WHERE AN INSURED SEEK FIRST PARTY COVERAGE.
>> THE COURT BEFORE THE STATUE WENT INTO EFFECT HAD NOT EVER RECOGNIZED IT, THE CLAIM AS YOU SAY FOR FIRST DUTY.
MR. ROGOW, THEY SAID IN A BRIEF

WE ARE AGAINST THE MAJORITY WILL
AT THAT TIME.
IS THERE -- BECAUSE NOW THERE IS
THE STATUTE, WHAT OUR ABILITY TO
SAY WELL WE THINK IT'S A GOOD
IDEA TO HAVE A COMMON LAW CAUSE
OF ACTION BE DIFFERENT BECAUSE
NOW THERE'S A STATUTE THAT'S
ESSENTIALLY REGULATED THIS AREA.
IN OTHER WORDS, WE'RE BEING ASKED
NOT TO SAY YOU WERE WRONG BEFORE
THERE SHOULD BE COMMON LAW CAUSE
OF ACTION.
HOW DO WE LOOK AT THAT ISSUE?
>> IN OTHER WORDS, IF WE WERE
HAVING THIS CONVERSATION IN 1981
BEFORE THE ENACTMENT OF THE
STATUE, I WOULD SAY MAYBE YOU
HAVE A POINT.
THERE'S A THIRD PARTY, MORE
ACTION THERE SHOULD BE FIRST
PARTY COMMON LAW CAUSE OF
ACTION.
THE WERE NOT IN 1981.
THE STATUE WAS SPECIFICALLY
DESIGNED TO REMEDY THAT, TO FILL
THAT VOID.
>> WHAT ABOUT THE PART OF THE
STATUTE THAT SAYS THIS DOES
NOT -- I DON'T KNOW IF THEY USE
PREEMPT, ANY OTHER REMEDIES.
WHAT DOES THAT MEAN?
>> THAT MEANS THAT THEIR
EXISTING, NOT RESIDENCIES SUCH
AS THE THIRD-PARTY BAD FAITH?
>> IS THAT THOSE FIRST ON THIRD?
>> YOU STILL RETAIN THE
COMMON-LAW THIRD-PARTY BAD FAITH
ACTION UNDER THE COMMON LAW.
>> NOW YOU AGREE THAT WHAT WE'RE
TALKING ABOUT IN TERMS OF THE
MONEY HERE, WELL TWO THINGS.

YOU THINK THAT BECAUSE IT WAS
ALL TRIED TOGETHER IT INFECTED
THE DETERMINATION OF THE
DAMAGES.
THE DEALLOCATION FOR THIS BREACH
OF GOOD FAITH OR WHATEVER WAS
$271,000.
>> OFFICIALLY, YES.
>> IS THERE -- WILL THOSE
DAMAGES THE RECOVER UNDER
624.155, WHATEVER THOSE DAMAGES
OUR?
>> YES. THEY ASSERTED OVER
$400,000 IN INTEREST OVER
$13 MILLION ON THE 18TH TO
MAKE THE REPAIRS.
>> IT DELAYED BECAUSE THEY DIDN'T
MAKE THE CLAIM PROMPTLY AND PAY
THAT THEY WERE FORCED TO HAVE TO
GO ELSEWHERE.
AND THOSE WOULD BE DAMAGES
RECOVERABLE UNDER --
>> 4115, YES.
>> LET ME ASK YOU THIS, ONE OF
THE ARGUMENTS AS I UNDERSTAND
THAT THEY'RE MAKING HERE IS I'M
GOING TO THE BIFURCATION
ARGUMENT.
AND THAT IS THAT IN THIS CASE,
THERE REALLY WAS NO LIABILITY
ISSUE, THAT THIS WAS A COVERED
EVENT THAT THE INSURANCE COMPANY
WOULD BE LIABLE FOR ANY REALLY
CAME DOWN REALLY JUST TWO DAMAGES
AND THAT IS WHETHER OR
NOT THE DAMAGES EXCEEDED THE
DEDUCTIBLE.
AND SO, THAT'S THEIR ARGUMENT AS
TO WHY WE REALLY DON'T NEED TO
HAVE A HEARING TO HEAR.
IT SEEMS TO ME THAT WHEN YOU
REALLY STEP BACK AND LOOK AT IT

OR NOT THERE REALLY WASN'T A
LIABILITY ISSUE IN THIS CASE.
>> YOUR HONOR, THE CASES DON'T
TALK JUST IN TERMS OF WHETHER
THERE WAS A COVERAGE
DETERMINATION, ALTHOUGH SOME
CASES TALKED IN GENERAL TERMS,
JUST LIKE WE CAUGHT A BAD FAITH
STATUTE, WE CALL IT THE COVERAGE
CASE AND THE BAD FAITH CASE.
IT'S NOT REALLY THE COVERAGE
CASE.

IT'S A LIABILITY AND DAMAGE CASE
FOR BREACH OF CONTRACT AND THEN
THE BAD FAITH CASE.
IN FACT A LOT OF THE CASES FROM
THIS COURT HAS SAID YOU CAN TELL
ENTERPRISES INVEST IF IT DOESN'T
OCCUR THE BAD FAITH ACTION
DOESN'T ACCRUE UNTIL THE
LIABILITY AND EXTENSIVE DAMAGES
HAVE BEEN DETERMINED.
SO IT'S NOT UNTIL WE KNOW WITH
THE BREACH OF CONTRACT DAMAGES
THAT THEN YOU HAVEN'T OCCURRED
BAD FAITH ACTION AND YOU CAN
FILE --
>> IT SEEMS TO ME THAT UNDER
THIS IT'S REALLY TO A
DEFENDANT'S ADVANTAGE THAT IT
NOT BE BIFURCATED.
BECAUSE ONCE IT IS BIFURCATED,
YOU CAN PROTECT AN AWFUL LOT OF
MATERIAL THAT MAY OTHERWISE BE
DISCOVERABLE AS BIFURCATED.
>> IT ALL DEPENDS ON THE JUDGE
THAT HASN'T BEEN DETERMINED.
ONE OF THE ARGUMENTS AS IT IS
NOT BIFURCATED WE GET THAT
DISCOVERY.
SO SINCE WE HAVEN'T HAD THAT
CAUSE OF ACTION AND UNTIL NOW WE

HAVEN'T HAD THE CONJOINED -- WE
HAVEN'T HAD TO REACH THAT ISSUE
OF WHAT'S DISCOVERABLE.
>> CERTAINLY THAT'S GOING TO CUP
IN THE STATUTE DOESN'T ADDRESS
THE BIFURCATION KIND OF THING.
IT'S JUST TOTALLY SILENT ON
THAT.
IT SEEMS TO ME THAT THE ISSUE
THAT FAVORS A PLAINTIFF WAITING
BECAUSE HE CAN GET A LOT OF
JUICY BAD STUFF POSSIBLY THAT
OTHERWISE WAS GOING TO BE
BLOCKED UNTIL HE DECIDES THE
UNDERLYING DISPUTE MET.
>> NOVEL AND THAT IN THIS GETS
BACK TO CARDIFF JUSTICE
PARIENTE'S QUESTION.
THE WHOLE JOINING THE BREACH OF
CONTRACT AND THE BAD FAITH CAUSE
OF ACTION OF PREJUDICE DOES NOT
ONLY BECAUSE OF THE $271,000,
BUT BECAUSE THEY WERE ABLE TO
ARGUE BAD FAITH ARGUMENTS IN
THEIR CONTRACT CASE.
SO AS WE QUOTED IN THE BRIEF,
BOTH AN OPENING AND CLOSING
STATEMENTS, THEY WERE ABLE TO
ARGUE THAT THIS CASE IS NOT
ABOUT HOW MUCH IS OWED IN HOW
MUCH THE DAMAGES WERE COVERED
THIS CASE IS ABOUT AS THEY SAY
DELAY, DELAY, DELAY, DELAY AND
DON'T PAY.
MAKE OBSTACLES AT EVERY TURN.
THEY DIDN'T RETURN OUR CALLS.
>> THAT'S GOING TO BE TIED TO
THAT WHETHER BIFURCATED OR
NOT.
>> NO, YOUR HONOR, THOSE ARE BAD
FAITH KINDS OF ISSUES.
>> THE ISSUE IN THE UNDERLYING

CASE WAS BEFORE THE JURY WAS THE
EXTENT OF THE DAMAGES.
>> IT WAS BOTH.
>> WHAT WOULD HAVE FLOWED
FROM THE BREACH OF CONTRACT?
>> FROM THE BREACH OF CONTRACT
WAS THE EXTENT OF THE DAMAGES.
>> TO ME AGAIN THE REASON THIS
WASN'T PAID EARLIER WAS BECAUSE
THERE WAS A DISPUTE ABOUT
WHETHER THE DEDUCTIBLE HAVE TO
BE SATISFIED FIRST?
>> CORRECT.
>> WAS THAT ISSUE -- WAS THAT A
SPECIAL INTERROGATORY VERDICT IN
THIS CASE, THAT IS WHETHER THE
DEDUCTIBLE HAVE TO BE PAID
FIRST?
WAS THAT EVER DETERMINED?
>> I MAY HAVE MISSPOKEN.
WHETHER DEDUCTIBLE HAD BEEN MET.
>> ALL RIGHT.
SO WHAT THE JURY CAME UP WITH
THE ALMOST $8 MILLION VERDICT,
WHICH IS OF THE FIVE QUESTIONS
THEY HAVEN'T GO WON AN ASK US
ABOUT THAT WE CAN ASSUME THAT
IT'S REASONABLE.
THEN YOU WOULD AGREE THAT THIS
ISSUE, REALLY DIDN'T THINK IT
WAS MORE THAN A MILLION, THAT IS
A PRETTY GOOD BAD-FAITH CASE AT
THAT POINT.
IN OTHER WORDS, IT HAS THE
MAKINGS OF LOOK WHAT THEY DID.
I NEED TO GO OUT, DO WHILE THESE
THINGS ARE, THEY DELAYED,
DELAYED, DELAYED AND THIS WAS
UNDER THE DEDUCTIBLE.
THIS WAS WORTH EIGHT TIMES
THE AMOUNT OF DEDUCTIBLE.
>> WELL, I HAVE TWO ANSWERS TO

THAT.
FIRST, THEY ASK FOR
$11.5 MILLION IN DAMAGES.
THE JURY GAVE THEM SEVEN-POINT
SOMETHING FOR THAT PART OF THE
CASE.
SO THEY DIDN'T GET EVERYTHING
THAT THEY ASKED FOR.
THE SECOND ANSWER IS THAT WE
SUBMIT THAT HAVING A BAD FAITH
KINDS OF ARGUMENTS IN THE CASE
INFECTED THE JURY'S
DETERMINATION OF WHAT THE
DAMAGES WERE.
SO IT'S NOT JUST YOUR DOING
THESE THINGS TOGETHER, IT'S THAT
YOU'RE ALLOWING ONE TO BLEED
INTO THE OTHER.
MISSILE SEVERAL COURSES THAT THE
JURY'S VIEW ON THE EXTENT OF THE
DAMAGES.
>> AND THE DEDUCTIBLE IN THIS
CASE WAS AROUND A BILLION
DOLLARS?
>> 1.6.
>> OKAY, AND THE ACTUAL DAMAGES
THAT WERE AWARDED WITHIN THE
$7 MILLION RANGE.
>> THEN, BASICALLY YOUR
ARGUMENT IS I THAT BAD FAITH
ARGUMENT NOT BEEN THERE THAT
$7 MILLION MAY HAVE BEEN LEFT.
>> CORRECT.
AND JUST TO GIVE A LITTLE BIT
OF CONTEXT, MOST OF THE DISPUTE
WAS AROUND THE SLIDING GLASS
WINDOWS AND DOORS AND WINDOWS
WHICH THEY ALLEGED WERE DAMAGED
BY THE HURRICANE AND WE CLAIMED
WERE NOT.
>> WOULD YOU ADDRESS --
UNTROUBLED BY THE STATUTE WITH

REGARD TO WHAT THE POLICY MUST CONTAIN FACIALLY.
>> YES, SIR.
>> I DO RECOGNIZE THERE IS NO SEPARATE PARTICULAR RIGHTS CAUSE OF ACTION SET FORTH IN THE STATUTE.
BUT CERTAINLY THE STATUTE HAS SOME MAY THINK.
ALTHOUGH I UNDERSTAND YOUR SAME SUBSTANTIAL COMPLIANCE, IF WE HAVE STATUTES THAT REQUIRE AN INSURANCE COMPANY TO PUT SOMETHING ON THE CONTRACT AND THIS IS NOT UNUSUAL.
I MEAN, WE REQUIRE CERTAIN SIGNATURES OR SIGN-UPS.
AND IF IT HAS NO REMEDY THAT SAY NOTHING.
WHAT IS THE REMEDY?
IS THERE NO REMEDY AT ALL OR ARE YOU SAYING THAT IT'S ONLY REGULATORY?
I'M HAVING A HARD TIME WITH THAT BUT IT MEANS NOTHING TO THE INDIVIDUAL INSURED IF YOU DON'T COMPLY WITH THE STATUTE.
>> YOUR HONOR, THERE ARE ADMINISTRATIVE REMEDIES.
THEY CAN FILE A COMPLAINT WITH THE DEPARTMENT OF INSURANCE.
>> WHAT WILL THAT DO FOR THE INDIVIDUAL?
>> THE STATUTE
ALLOWS THE DEPARTMENT UNDER 624.3 TIMES PER AND THREE TO ENTER CEASE AND DESIST ORDERS WHICH INCLUDE TAKING CORRECTIVE ACTION TO REMEDY THE EFFECTS OF PAST IMPROPER CONDUCT AND ENSURE FUTURE COMPLIANCE.
>> WELL, YOU KNOW, THE WHOLE

PURPOSE OF THIS IS SO PEOPLE
KNOW -- THIS MAY BE A
SOPHISTICATED ONE, BUT I'M
LOOKING AT THIS BECAUSE THAT'S
THE PART OF ALL THE STATUTES
THAT A HOMEOWNER SUPPOSED TO BE
TOLD A CERTAIN TYPE THAT THIS
DEDUCTIBLE IS HIGHER.
IT'S NOT WITHIN YOUR NORMAL
DEDUCTIBLE.
>> YOUR HONOR, I THINK YOU HAVE
A GOOD POINT THERE BUT YOU DON'T
HAVE TO REACH THE QUESTION.
LET ME TELL YOU WHY.
THE CERTIFIED QUESTION HERE IS
WHETHER THE FAILURE TO COMPLY
WITH THE LANGUAGE AND TYPE SIZE
REQUIREMENT MAKES IT VOID OR
GIVES YOU CAUSE OF ACTION.
IT DOES NOT ASK WHAT HAPPENS IF
YOU DON'T HAVE THAT AT ALL.
AND I THINK THAT'S A BIG
DIFFERENCE --
>> YOU CAN DRAW THE SUBSTANTIAL
SHARE.
>> THIS IS STILL IN BIG TYPE.
IN THE CONTAINED THINGS THE
STATUTE DOESN'T EVEN REQUIRE.
IT STANDS OUT FROM THE OTHER
LANGUAGE ON THE REST OF THE
PAGE, WHICH DOES NOT REQUIRE BY
THE STATUTE.
THERE ARE SOME 18-POINT FONT THAT ARE
SMALLER THAN SOME 16-POINT FONT.
WE COULD'VE PUT AN 18-POINT FONT
AND STYLE THAT'S VERY SMALL AND
COMPLIED WITH THE STATUTE HEARD
IF AN INSURER DOESN'T PUT THAT
PROVISION IN IT ALL.
I THINK THAT IS YOUR CONCERN,
BUT HE SURE DOESN'T HAVE ANY
NOTICE OR THERE IS NO ALLEGATION

IN THIS CASE.
IT WAS NO ALLEGATION OR PROOF AT TRIAL THAT THEY DO NOT HAVE NOTICE OF THE DEDUCTIBLE.
>> BUT THE QUESTION AS FAILURE TO COMPLY WITH THE LANGUAGE AND TYPE SIZE.
IT DOESN'T SAY WELL, IT SEEMS TO ME THAT IF WE CONCLUDE THAT

THERE IS NO PRIVATE CAUSE OF ACTION, I DON'T KNOW HOW IT WOULD BE DIFFERENT IF THEY DIDN'T HAVE ONE AT ALL.
IF WE READ THE STATUTE AS SAYING THERE IS NO INTENT TO CREATE A PRIVATE CAUSE OF ACTION, WHETHER IT'S SUBSTANTIAL COMPLIANCE OR NONCOMPLIANCE IT WOULD BE THE SAME RESULT.
HOW WOULD YOU PROVE THAT OUT? YOU TALK TO REPHRASE --
>> NO, NO, NO.
THE DISTINCTION IS HAVING A PROVISION IN THERE LIKE WE DID, BUT THAT DOESN'T COMPLY WITH LANGUAGE AND TYPE SIZE REQUIREMENTS VERSUS NOT HAVING IT IN AT ALL.
>> YOU KNOW IN STATUTORY CONSTRUCTION, IF WE REACH -- IF WE LOOK AT IT AND CITE IS A PRIVATE CAUSE OF ACTION IMPLIED, THE SAME ANALYSIS IS GOING TO EXIST WHETHER THERE IS NO -- IT'S NOT IN THERE AT ALL OR IT'S NOT THERE IN COMPLIANCE.
WHERE WOULD YOU GET THE CAUSE OF ACTION FROM THE ONE WHERE IT'S NOT IN THERE AT ALL?
>> YOU'RE NOT ADDRESSING NUMBER THREE AS MUCH AS NUMBER FOUR ABOUT DECLARING A VOID.

>> WELCOME THREE IS WHETHER THEY CAN BRING A CLAIM AND YOU WOULD SAY NO, THEY CAN'T BRING A CLAIM.
SO I'M ASKING YOU IS HOW YOU WOULD ESTABLISH ONE WHETHER ISN'T ANYTHING IN THERE.
>> SO NUMBER THREE I'M SUREYOU CAN DISTINGUISH IT.
THE LEGISLATURE HAS PROVIDED SPECIFIC STATUTORY VIOLATIONS ANOTHER REMEDY.
THEY'RE ALL LAID OUT IN 624.155.
>> WHAT WOULD BE THE RESULT THAT IS THE FACT THAT AN INSURANCE POLICY, RATHER THAN HAVING IT IN A SMALLER TYPE, ALTHOUGH BOLDED, HAS NOTHING IN THERE THAT WOULD ALERTS -- THAT'S THE REAL QUESTION.
WHAT THEN HAPPENS?
THE CONSUMER STILL HAS NO RIGHT TO ANY KIND OF ACTION AGAINST THE INSURANCE COMPANY.
>> WELL, THERE'S TWO ANSWERS.
THAT'S NOT A QUESTION YOU NEED TO REACH BECAUSE IT WASN'T IN THE CERTIFIED QUESTION.
>> THE THING IS THAT ALL GOES TOGETHER, WHETHER THERE'S NOTHING OR THE TYPE IS 2 INCHES SMALLER OR THE TYPE IS 4 INCHES SMALLER THAN IT SHOULD BE.
I'LL COME IT WORKS TOGETHER SO THE ANSWER WOULD BE WHAT?
>> THAT GOES TO MY SECOND ANSWER TO YOUR QUESTION, WHICH IS AN ANSWER TO QUESTION NUMBER FOUR THE CASES THAT THEY CITE, FOR EXAMPLE, THE UNITED STATES FIRE V. ROBERT, GEICO V. DOUGLAS, THOSE ARE CASES WHERE THE NOTICE

WAS NOT PROVIDED AT ALL.
IT'S NOT THAT THE NOTICES IN A SMALLER FONT.
IT WASN'T THERE AT ALL.
AND IN THOSE THE COURT SAID THAT PROVISION IS VOID.
>> THAT'S PROBABLY THE UNFAIR.
NOT A SECOND CAUSAL ACTION.
YOU STILL CAN ENFORCE THAT PROVISION BECAUSE IT OCCURS AND SURPLUS LINES AND OFFENSE NOTIFICATION KINDS OF ISSUES.
>> YES, BUT IN A CASE LIKE THIS ON THE YOUR HONOR, WHERE IT'S RIGHT THERE, THERE'S NO QUESTION, NO ALLEGATION THAT THEY DIDN'T HAVE NOTICE.
AND BY THE WAY, JUST TO DO SOME CONTEXT JUSTICE LEWIS THIS IS ATTACHED TO THE COMPLAINT, THE POLICY.
THIS IS ON PAGE 18 OF 74, THE FIRST PAGE OF THE EXHIBIT TO THE COMPLAINT TO POLICY.
TWO PAGES LATER ON PAGE 20 OF 74 IS THE DEDUCTIBLE PROVISION ITSELF, ENDORSEMENT.
AND AGAIN IT'S IN BOLDFACE.
IT SAYS THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY AND IF THE FLORIDA DEDUCTIBLE RESIDENTIAL RISK.
>> IN EXCHANGE FOR THAT AS THEY AS THEY GET A LOWER PREMIUM.
>> THEY GET A MUCH LOWER PREMIUM, YES.
AND THEY'RE TOLD IN HERE WHAT TO DEDUCT OFF THE LIST
IT'S ALL ITEMIZED FOR THEM SO THEY KNOW WHAT IT IS.
THE DEDUCTIBLE HERE WAS ABOUT 2%

OF THE --
>> I'M NOT SURE YOU CAN BUY A PRESIDENTIAL POLICY IN FLORIDA ANYMORE WITHOUT --
>> THAT'S NEGOTIATED BETWEEN THE INSURER AND INSURED.
TONIGHT I DON'T THINK YOU WANT TO GO THERE.
>> WHEN I'M TALKING ABOUT NEGOTIATED I MEAN BY THAT HIGHER PRODUCTIVE A THE PREMIUM IS LOWER.
>> YOU CAN BUY A POLICY IN FLORIDA WITHOUT THIS LARGER DEDUCTIBLE.
ISN'T THAT A FACT?
THANK YOU FOR YOUR CANDOR.
>> I'M SAYING IT COULD BE 2%, 4% AND THE LARGER THE DEDUCTIBLE IS THE SMALLER THE PREMIUM CAN BE.
>> I APPRECIATE THAT.
>> IN THIS CASE TO SAY $1.6 MILLION DEDUCTIBLE IS VOID SIMPLY BECAUSE WHAT YOU CAN SEE VERY CLEARLY IS ON THERE, BUT IT WASN'T 18-POINT TYPE, IT WAS 17-POINT TYPE WHICH IS WHERE THEY WANT TO GO.
THAT IS TOTALLY OUTSIDE THE REALM OF WHAT THE LEGISLATURE INTENDED.
>> MR. CANTERO, YOU HAVE A BETTER MINUTE LEFT IF YOU WANT TO SAVE ANY TIME FOR REBUTTAL.
>> MR. ROGOW.
>> ME PLEASE THE COURT.
MR. BRUCE ROGOW FOR CHALFONTE.
THIS CASE INVOLVES CHALFONTE SUFFERING TERRIBLE DAMAGE IN HURRICANE WILMA, WHICH WAS IN 2005.
IN THE AGREEMENT, THERE WAS THE

PROMISE BY THE INSURANCE COMPANY
THAT THEY WOULD DETERMINE THE
VALUE OF THE LOSS.
THE CLAIM THAT WE HAVE FOR THE
APPLIED REACH OF INCUMBENT OF
GOOD DATES AND FAIR DEALING IS
THEY DIDN'T DO ANYTHING.
HOW DO YOU GET TO DETERMINE THE
VALUE OF THE LOSS UNLESS YOU
TAKE SOME STEPS AND THEY HAVE
DISCUSSION BECAUSE THAT THE
LANGUAGE IN THE AGREEMENT.
THEIR POSITION IS WEAKENED TO A
HOWEVER WE WANT.
>> LET ME UNDERSTAND, MR. ROGOW,
WHY IN THE WORLD WITH THIS
INSURER NOT HAVE FILED A 624.155
ON A STATUTORY BASIS?
>> BECAUSE THERE IS NO REASON TO
HAVE TO TO LAWSUITS HERE.
THEY FILED A LAWSUIT TO TRY TO
GET REIMBURSED, TO TRY TO GET
PAID FOR THE DAMAGE THAT
OCCURRED TO THEM AND THEY THEN
ADDED THE IMPLIED BREACH.
>> I UNDERSTAND THAT, BUT IT
COMES BACK TO THE BASIC
QUESTION.
THERE'S TOO MUCH LAW OUT THERE
THAT HAS DISCUSSED THE ISSUE
RELEASED IN THE THE AREA OF
DISCUSSION THAT FLORIDA DID NOT
HAVE A FIRST PARTY TYPE ACTION
AGAINST INSURANCE CARRIERS.
SO MY QUESTION IS THERE
SOMETHING DIFFERENT THAT'S
RECOVERABLE.
NOT THAT I'M LOOKING AT.
HOW WOULD IT BE DIFFERENT?
>> TWO THINGS, JUSTICE LEWIS.
IN RUIZ WHICH YOU QUOTED, I
THINK IT'S IMPORTANT TO

UNDERSTAND AT LEAST THE WAY
UNDERSTAND IT IS THAT THE
CLASSIC BAD-FAITH CLAIM THAT
WE'RE TALKING ABOUT IS WHERE AND
THIS IS THE LANGUAGE THAT THE
COURT USED, THAT'S YOU USE IN
RUIZ.
FLORIDA COURTS HAVE REFUSED TO
RECOGNIZE ABOUT IT BECAUSE THE
FIDUCIARY DUTY THAT EXISTS IS
NOT AN THIRD-PARTY ACTIONS AND
ENSURE IS NOT IMPOSING TO EXCESS
LIABILITY.
THIS IS NOT THE CLASSIC
BAD-FAITH KIND OF CLAIM IN TERMS
OF WHAT THEY WANT TO DO.
>> ARE SELECTIVELY READING PARTS
OF RUIZ.
RUIZ DOES SAY THE STATUTE WAS TO
DEAL WITH CARE CARRIERS.
>> AND ALSO TO SETTLE CLAIMS.
>> I THINK THERE'S BROADER
LANGUAGE IN THERE BUT NOT.
>> IT DOES GO ONE.
>> THE POINT IN RESPONSE TO YOUR
QUESTION WANTED TO DETERMINE WAS
WHETHER OR NOT THEY HAD BREACHED
THE CONTRACT IN TERMS OF NOT
PAYING FOR THE DAMAGE THAT HAD
OCCURRED HERE.THE THRESHOLD.
>> WHAT DOES THIS ADD OTHER THAN
SUING THEM FOR WHAT YOU SAY IS
DUE UNDER THE CONTRACT ARE THEY
BREACHED THE CONTRACT BECAUSE
THE COMPANY HAS NOT PAID WHAT
YOU SAY THEY OWE.
AND ADDED THE ABILITY TO GET
FROM THE COMPANY, THE $271,000
THAT WAS INCURRED.
>> SO WHAT YOU'RE SAYING IS IT
WOULD BE THE SAME ITEMS OF
DAMAGES WHAT WE'RE TALKING ABOUT

THAT WAS INCLUDED HERE, NOT
UNDER STATUTORY REMEDY.
>> YOU'D HAVE TO HAVE THE SECOND
LAWSUIT.
I MEAN, THAT SEEMS TO ME TO BE
SOMETHING THAT IS THE CAUSE OF
ACTION FOR BRIEF OF THE IMPLIED
INCUMBENT.
WE'RE TALKING YOUR CONTRACTUAL
TERROR THAT GIVES DISCRETION.
IF IT GIVES DISCRETION THE
CONTRACT IS BOUND BY THE IMPLIED
CONTRACT IMPLIED COME OF IT.
SO RATHER THAN WAIT TO FINISH
THIS LAWSUIT AND THEN SUE THEM
FOR YEARS LATER BECAUSE THIS
CASE IS 35 YEARS OLD.
>> I DON'T THINK YOU HAVE TO
WAIT.
THERE'S NOTHING THAT SAYS YOU
CANNOT FILE A 155 AT THE SAME
TIME YOU FILED YOUR COMPLAINT.
I STILL SEE THAT IN THE LAW.
>> BUT AS THEY SAY, YOU COULDN'T
TRY IT.
>> IT MAY SAY THAT THE MINIMALS
THAT'S THE CASE.
>> THAT'S A LOT THERE WERE LIGHT
AND IT MAKES MUCH MORE SENSE TO
DO IT THE WAY WE DO WHICH IS TO
BRING THEM ALL TOGETHER.
AND OF COURSE WHAT WE HAVE OUR
FEDERAL COURTS ALTHOUGH THEY ARE
SPLIT FINDING YET THIS IS SO,
YOU CAN DO IT THIS WAY.
>> IT SEEMS TO ME THAT WHAT
MR. CANTERO WAS SAYING IS WHEN
YOU DO IT IN THIS FASHION BY
BRINGING THE BREACH OF CONTRACT
IN THE BAD-FAITH CLAIM THAT YOU
ARE REALLY TEEN TEEN THE DAMAGES
PORTION UNDER THE BREACH OF

CONTRACT BECAUSE OF ALL THE
SUPPOSEDLY BAD DEALINGS THAT THE
INSURANCE COMPANY HAD WITH ITS
INSURER.
AND THAT'S ONE OF THE REASONS
YOU SHOULDN'T BRING THESE CLAIMS
TOGETHER.
>> WELL, TWO THINGS.
I DO WANT TO BUY INTO IT EXCEPT
THE NOTION THAT THIS IS A BAD
FAITH CLAIM.
BUT I UNDERSTAND WHAT HE'S
SAYING.
BUT THIS IS A LITTLE DIFFERENT
OR A LOT DIFFERENT FOR A
BAD-FAITH CLAIM AND THERE WAS NO
PREJUDICE HERE.
LET ME TELL YOU, HOW DO YOU
AVOID PREJUDICE?
THE TRIAL COURT TAKES CARE OF
IT.
THE TRIAL COURT CAN DECIDE --
>> WE'RE SLIPPING INTO NOT
ANSWERING THE FIRST QUESTION,
WHICH IS WHETHER ANY, THERE
WAS A DEPENDENT ACTION TO
DEALING IN BAD FAITH.
AND I HAVEN'T READ EACH AND
EVERY ONE OF THE CASES THAT'S
BEEN CITED, BUT MY UNDERSTANDING
IS THAT THE WHOLE REASON THE
624.155 INTO EFFECT IS BECAUSE
THERE WASN'T ANY, NOT REMEDY.
SO YOUR ATTEMPT TO SAY I DON'T
WANT TO CAUSE BAD FAITH, I'D
RATHER CALL IT A LACK OF GOOD
FAITH.
IT'S A LITTLE DISINGENUOUS.
THE ISSUE IS WHAT INDICATION
THERE IS A COMMON LAW CAUSE OF
ACTION AGAINST YOUR OWN
INSURANCE COMPANY FOR SOMETHING

OTHER THAN BREACH OF CONTRACT
FOR DAMAGES OWED AT COMMON LAW.
>> BECAUSE THIS IS PART OF THE
BREACH OF CONTRACT CAUSE OF
ACTION AT COMMON LAW.
THE IMPLIED COVENANT OF GOOD
FAITH AND DEALING IS PART OF
THAT.
IT IS IN SUBSTANCE DIFFERENT
FROM THE STATUTORY CAUSE OF
ACTION AND WHAT THE LEGISLATURE
HAS ESTABLISHED.
WHEN I LOOK AT ALL THIS IT SEEMS
TO ME WHAT I AM HEARING IS I
JUST DON'T SEE THERE IS A
SUBSTANTIAL DIFFERENCE BETWEEN
WHAT THESE CAUSES OF ACTIONS
ARE, AND IT SEEMS YOU ARE TRYING
TO SUPPLANT IN A WAY WHAT THE
LEGISLATURE HAS DONE THAT GO
ALONG WITH THAT THROUGH THIS
IMPLIED CAUSE OF ACTION.
COULD YOU TRY AND HELP ME
UNDERSTAND THIS DISTINCTION IN
THE REAL-- WHAT THE REAL
DIFFERENCE IS?
>> THE STARTING POINT FOR THE
REAL DIFFERENCE IS THAT THIS IS
A CONTRACT CLAIM, NOT A TORT
CLAIM.
I THINK THAT IS A VERY IMPORTANT
ASPECT OF THIS, NUMBER ONE.
NUMBER TWO, THERE WERE NO
PUNITIVE DAMAGES THAT COULD BE
SOUGHT IN THE SITUATION BECAUSE
THIS IS STRICTLY A CONTRACT
CLAIM AND 155, AND THE WHOLE
STATUTORY SCHEME, ALLOWS FOR THE
POTENTIAL OF PUNITIVE DAMAGES.
IT IS A MUCH DIFFERENT KIND OF
CLAIM AND IT IS WRAPPED UP
WITHIN THE CONTRACT ITSELF.

I UNDERSTAND 155 TALKS ABOUT THE FAITH AND FAIRNESS AND HONESTY BUT THE GENESIS FOR ALL OF THIS WAS EXPOSING THE INSURED TO EXCESS LIABILITY.
THAT IS WHERE IT ALL STARTED FROM, SO WHAT I AM SAYING IS--
>> THAT IS IN THE THIRD PARTY CONTEXT.
>> THAT IS RIGHT.
>> THAT IS WHAT I'M TALKING ABOUT, A THIRD-PARTY CONTEXT.
>> WHAT HAPPENED OF COURSE IS THE INSURED WOULD BE EXPOSED TO EXCESS LIABILITY IF THE INSURANCE COMPANY DID NOT SETTLE THE CLAIM IN GOOD FAITH, SO

THERE YOU HAVE THE SITUATION THAT WE ARE TRYING TO AVOID BY FOCUSING ON, UNDER THE CONTRACT MUST THE INSURANCE COMPANY, AND THIS IS THE PHRASE, DETERMINE THAT LAW AND MUST DO IT IN A TIME THAT IS TIMELY, SO THAT THERE CAN BE SOME AGREEMENT BECAUSE THERE ARE ONLY THREE WAYS TO COLLECT ON YOUR INSURANCE POLICY.
>> BUT ISN'T THAT VERY THING SOMETHING THAT IS LITIGATED IN THE STATUTORY CAUSE OF ACTION?
>> COULDN'T YOU FILE IT IN THE 155 ACTUALLY?
AND I AM SAYING I GUESS YOU COULD DO THAT BUT THAT DOESN'T MEAN YOU CAN'T DO IT THIS WAY AND THAT IS WHAT WE ARE TALKING ABOUT.
>> YOU COULD.
YOU COULD.
THE VERY THING YOU ARE LITIGATING COULD BE LITIGATED

UNDER THE STATUTORY CAUSE OF ACTION.
>> TO THE GREAT DETRIMENT OF THE INSURED AND THE GREAT DETRIMENT OF THE JUDICIAL ECONOMY, TO THE GREAT DETRIMENT OF PUBLIC POLICY WHERE YOU HAVE TO HAVE A SEPARATE LAWSUIT AFTER THE FIRST ONE WAS LITIGATED.
>> LET'S GO BACK TO WHAT JUSTICE LEWIS SAID.
I WILL LOOK BACK AT RUIZ.
I THINK WHAT WE WERE DOING BEEN WITH THE IDEA THAT WE DISCUSSED THERE ONE WAY TO DEAL WITH IT WAS TOO BIFURCATED BUT TO BIFURCATED BUT I DON'T READ ANYTHING WE HAVE SAID AND ANYTHING IN THE STATUTE THAT WOULD SAY THAT THEY COULD NOT BE FILED AT THE SAME TIME AND THEN THE JUDGE MAKES A DECISION AS TO WHETHER IT WILL GO TOGETHER OR THEY WILL BE BIFURCATED.
AM I MISSING SOMETHING IN OUR CASE LAWS?

>> YOU NEED MERE DETERMINATION FIRST BEFORE THE 624 CLAIM, BUT LOOKING BACK.
>> ARE YOU SAYING YOU CANNOT BRING THE 624 ACTION FOR THE COVERAGE DETERMINATIONS BEING MADE?
>> THAT IS WHAT THEY ARE SAYING.
THAT IS WHAT THEY ARE SAYING.
>> THEY ARE SAYING THAT YOU CANNOT HAVE COMMON LAW CAUSE OF ACTION AND THEN THE NEXT QUESTION IS IF YOU CAN BRING IT, YOU HAVE TO BIFURCATE IT.
>> IF YOU CAN BRING IT EITHER WAY OR EVEN IF THERE IS ONLY ONE

WAY, THEN IT DOESN'T HAVE TO BE BIFURCATED IN A SITUATION WHERE THE COURT CAN CONTROL WHETHER OR NOT THERE IS GOING TO BE ANY PREJUDICE.
THAT IS THE ARGUMENT FOR BIFURCATION.
YOU TRY THE CONTRACT CLAIM AS TO HOW MUCH YOU ARE ENTITLED TO RECEIVE FOR THE DAMAGE YOU HAVE INCURRED, AND THEN YOU GET INTO WHETHER OR NOT THEY DETERMINED THE LAWS PROPERLY OR AGGRESSIVELY ENOUGH.
YOU ARE GOING TO SOMEHOW POLLUTE THAT CLAIM BUT MY RESPONSE TO THAT IS AND THIS ISWHY THERE NEEDS TO BE NO BIFURCATION AND WHY THE ANSWER TO QUESTION TWO CLEARLY SHOULD BE NO.
IT'S BECAUSE THE TRIAL JUDGE DECIDES IF THE EVIDENCE IS COMING IN IT'S GOING TO BE PREJUDICIAL, IF IT IS MORE APPROPRIATE THAN PRECEDENTIAL.
THE ARGUMENT, THE TRIAL JUDGE CAN CONTROL THE ARGUMENT.
>> WOULDN'T THERE BE-- THIS EVIDENCE IS COMING IN BUT THIS IS ONLY APPLICABLE TO THAT PORTION OF IT?
I MEAN IT IS VERY DIFFICULT WHEN YOU HAVE GOT THESE CLAIMS THAT YOU ARE TRYING TOGETHER AND IF THEY SHOULD HAVE BEEN TRIED SEPARATELY.

>> NOT REALLY IN THE SITUATION JUSTICE QUINCE BECAUSE FAILING TO DETERMINE THE VALUE OF THE LAWS IS RELATED TO WHAT THE ULTIMATE LOSS IS.
IF I HAVE A CAR ACCIDENT AND IN

A COUPLE OF YEARS I WILL CHECK IT OUT AND SEE HOW MUCH LOSS YOU HAVE, BY THE TIME THE VALUE OF THE LOSS IS DETERMINED IT IS GOING TO CHANGE THE PICTURE BECAUSE RAIN, OR WHATEVER IT MAY BE, MAY HAVE AFFECTED THE CAR SO WHAT I'M SAYING IN THE SITUATION, THIS SITUATION, WE ARE TALKING ABOUT THIS CASE, IT IS NOT DETERMINING THE VALUE OF LAWS BY TAKING THE POSITION THAT THEY DID WHENEVER WE GET TO IT.
>> YOU MEAN YOU CAN WAIT FIVE YEARS AND THEN MAKE A DETERMINATION?
HE SAID THAT IS THE WAY IT WORKS.
>> AND THAT, WHEN YOU BRING YOUR BREACH OF CONTRACT CASE, WHEN THEY HAVEN'T ADJUSTED THE LAWS?
>> WE BROUGHT THE BREACH OF CONTRACT CASE.
>> GOING BACK TO THIS DISTINCTION, BECAUSE IF WE DON'T GET THE FIRST QUESTION ANSWERED, THE ISSUE OF BIFURCATION BECOMES IMPORTANT OR BECOMES MOOT IN THIS SITUATION.
WHAT I'M HAVING TROUBLE WITH IS UNDERSTANDING HOW THE COMMON LAW, IF WE DIDN'T ALLOW A CAUSE OF ACTION AGAINST AN INSURANCE COMPANY WHO HAD UNINSURED MOTORIST COVERAGE FOR THE PERSON, AND THEY DIDN'T PAY PROMPTLY AND THE PERSON WAS EXPOSED TO EXCESS LIABILITY OR UNDERINSURED MOTORIST, AND THEY COULDN'T GET THEIR OWN COVERAGE BECAUSE THE INSURANCE COMPANY WAS STALLING, THAT IS AS MUCH AN

APPLIED BREACH OF DUTY AND
FAIRLY AS SAYING, WELL, YOU ARE
DISAGREEING ON THE VALUE OF THE
LAWS, SO YOUR IDEA THAT WE CAN
SOMEHOW PICK AND CHOOSE WHICH
WOULD BE THE ACTIONS UNDERSTOOD
IN COMMON LAW AND WHICH ARE ONLY
624 CAUSATIVE ACTION SEEMS TO ME
WE WE ARE GOING TO RECOGNIZE ANY
KIND OF IMPLIED IT WOULD BE IN
THE FIRST PARTY CASE, AND WE
NEVER DID.
MY CONCERN IS THAT YOU SAY THIS
ONE SHOULD HAVE BEEN-- THIS IS
AN IMPLIED BREACH BUT THERE ARE
OTHERS WHERE THEY JUST IGNORE
HOW MUCH THE VALUE OF THE CLAIM
WAS AND DON'T PAY ANYTHING OR
DON'T PAY TIMELY AND THOSE WOULD
HAVE TO GO THROUGH 624.
I DON'T UNDERSTAND THAT
DISTINCTION THAT YOU ARE MAKING.
I UNDERSTAND IT IN THIS WAS THIS
CASE AND THAT WAS THAT CASE, BUT
IN THE LEGAL CONTEXT OR IN FAVOR
TO ALL INSUREDS.
>> THE STARTING POINT IS, THERE
WAS ALWAYS A BREACH OF CONTRACT
CAUSE OF ACTION THAT THE INSURED
HAD AND EVERYONE WILL AGREE WITH
THAT.
COMMON LAW CAUSE OF ACTION.
THIS IS JUST AN ASPECT OF THAT
COMMON LAW CAUSE OF ACTION AND
IT DEALS WITH THE SITUATION THAT
THIS CASE FOCUSES UPON.
IF THE INSURANCE COMPANY HAS
DISCRETION AS TO WHEN IT IS
GOING TO DETERMINE THE LAWS IT
HAS GOT TO EXERCISE THAT
DISCRETION IN A WAY CONSISTENT
TO THE GOOD FAITH AND FAIR

DEALING.
THEY TALK ABOUT, THAT MEANS
REASONABLE EXPECTATIONS AND
REASONABLE EXPECTATIONS DON'T
COME INTO PLAY.
>> HOW WAS IT DIFFERENT IF I AM
STRUCK BY AN UNINSURED MOTORIST
AND I AM SEVERELY INJURED AND MY
INSURANCE COMPANY DOESN'T PAY MY
$100,000 IN UNINSURED MOTORIST
COVERAGE?
>> IN THOSE CASES YOU HAVE TO
LITIGATE FIRST WHETHER OR NOT--
>> STILL THE QUESTION IS, NOW
YOU GO TO THE SECOND ISSUE.
WHY WOULDN'T I HAVE AS MUCH OF A
COMMON LAW IMPLIED CONTRACT
ACTION AS IN THIS SITUATION?
>> YOU WOULD, BUT DOES THAT MEAN
THAT YOU CANNOT BRING BACK THAT
CAUSE OF ACTION IN THIS CASE,
YOUR BREACH OF CONTRACT CASE?
I AM NOT SURE I AM FOLLOWING
YOU.
>> THE FIRST QUESTION WAS DO WE
RECOGNIZE THE COMMON LAW ACTION
FOR EITHER BAD FAITH OR LACK OF
GOOD FAITH IN THE DEALINGS
BETWEEN AN INSURANCE COMPANY,
WHO IS OWING FIRST PARTY
BENEFITS, AND I THOUGHT AGAIN,
WHERE WE STARTED FROM, THERE WAS
NOT A COMMON LAW CAUSE OF ACTION
WHICH IS WHY 624.155 CAME INTO
BEING TO GIVE FIRST PARTY
CONTEXT THAT KIND OF PROTECTION.
>> THAT IS RIGHT.
THAT IS AN IMPORTANT
DISTINCTION.
THERE IS A DIFFERENCE HERE
BETWEEN BAD FAITH AND GOOD FAITH
AND FAIR DEALING.

>> LET'S CHANGE THE EXAMPLE.
LET'S CHANGE IT TO INDIVIDUAL
MEDICAL BENEFITS.
THERE IS NEVER, TO MY KNOWLEDGE,
A FLORIDA CASE THAT IS PERMITTED
A SEPARATE CAUSE OF ACTION,
SEPARATE FROM JUST THE BENEFITS,
FOR PAYMENT-- INDIVIDUAL.
I KNOW THE EMPLOYEE STUFF IS
FEDERAL COURTS, BUT IF THOSE
WERE ATTEMPTED AND NEVER ALLOWED
TO PROCEED, HISTORICALLY, THE
FLORIDA LAW, IT IS NOT AN
AUTOMOBILE.
IT IS A FIRST PARTY BENEFITS
SITUATION.
IS THERE A CASE IN FLORIDA?
I KNOW THERE IS NONE OF MY
CASES, THAT EVER ALLOW THAT TYPE
OF CLAIM.
I AM NOT AWARE.
THAT IS THE POINT WE GET TO
BECAUSE THAT IS WHERE THIS SEEMS
TO STEM FROM IS THE FLORIDA
COURTS.
IT MAY NOT HAVE BEEN THE PRECISE
HOLDING ON THE PRECISE FACTS BUT
CERTAINLY A RECOGNITION AND WE
NEVER ALLOWED ONE OF THOSE.
THAT JUST HAPPENED TO BE WHAT
THE STATUS OF FLORIDA LAW WAS.
>> IN THE INSURANCE CONTEXT?
>> YES.
AND I MADE MY..
I MADE IT HERE AS BEST AS I
COULD MAKE IT AND I WANTS TO
ADDRESS A COUPLE OF OTHER
THINGS.
ONE, IT MUST CONTAIN PROVISION
UNDER THE DEDUCTIBLE.
CLEARLY IT MUST HAVE SOME FORCE
AND THE CASES HAVE TALKED ABOUT

AND INSURED MUST CLEARLY KNOW
WHAT IS BEING COVERED AND THERE
IS A DIFFERENCE BETWEEN A
WINDSTORM AND A HURRICANE.
A WINDSTORM YOU CAN HAVE A
THUNDERSTORM AND A WINDSTORM CAN
RAISE THE ROOF OF MY HOUSE AND
YOU HAVE DAMAGE, SO THAT IS AN
IMPORTANT DISTINCTION.
IT IS NOT JUST THE 18 POINTS
VERSUS THE 16 POINTS.
IT IS A MANDATORY STATUTORY
LANGUAGE, MUST CONTAIN--
IT DOESN'T CONTAIN IT.
WHAT IS THE REMEDY FOR IT?
I THINK QUESTION THREE IS NOT
THE PROPER QUESTION.
THE QUESTION IS WHETHER OR NOT
THERE IS AN INDEPENDENT ACTION
FOR THAT.
WHAT WE ARE TALKING ABOUT IS, IF
THERE ARE REMEDY FOR FAILURE TO
COMPLY WITH THAT?

IF THE REMEDY FOR FAILURE TO
COMPLY IS NOTHING THEN THE
STATUTE HAS NO MEANING, SO I
THINK IN THE SITUATION THE
DEDUCTIBLE CANNOT BE APPLIED AND
WHETHER OR NOT YOU RAISE THAT
ISSUE AFTER YOU GET THE JUDGMENT
AND THEN THE INSURANCE COMPANY
SAYS OKAY, OFFSET THE
DEDUCTIBLE.
YOU SAY NO, YOU CAN'T OFFSET THE
DEDUCTIBLE BECAUSE YOU DID NOT
COMPLY WITH THE MANDATORY.
THIS IS AN INTERESTING ONE AND
OF COURSE IT INTERESTS ME.
PAYMENT WITHIN 30 DAYS UPON
ENTRY OF A FINAL JUDGMENT.
THAT IS THE LANGUAGE, THE PLAIN
LANGUAGE OF THE CONTRACT, AND

THEY ARE SAYING--.
>> LET ME ASK YOU ABOUT PLAIN LANGUAGE.
IS THAT PLAIN LANGUAGE OR ARE YOU RELYING ON THAT?
>> THE PLAIN LANGUAGE IN THEIR CONTRACT IS.
>> I AM TALKING ABOUT FINAL JUDGMENT.
YOU RELY ON THAT THAT AS A TERM OF ART OR A FINAL UNDERSTANDING?
>> BOTH, BOTH.
I THINK THEY ARE IN THE SITUATION.
LAWYERS IN PRACTICE KNOW ENTRY OF A FINAL JUDGMENT IS WHEN THAT TRIAL COURT ENTERS THE FINAL JUDGMENT.
THAT IS THE TIME OF WHICH IT IS APPEALABLE.
THEY CERTAINLY COULD HAVE WRITTEN IT IN A DIFFERENT WAY.
>> THE CONCEPT OF FINAL JUDGMENT-- I MEAN IF YOU ARE APPEALING IT AND IS THE JUDGMENT REALLY FINAL BECAUSE IT CAN'T BE CHANGED?
>> SILVERSTRONE TALKS ABOUT, AND THAT IS A LAWYER MALPRACTICE CASE, STATUTE OF LIMITATIONS RUNS FROM WHEN ITIS FINAL TO THE WAY YOU DESCRIBED IT JUSTICE QUINCE BUT THAT IS A MUCH DIFFERENT SITUATION THAN THIS BECAUSE IT IS THEIR LANGUAGE, ENTRY OF A FINAL JUDGMENT.
THAT IS INSURANCE COMPANIES LANGUAGE.
THEY INCLUDED THAT LANGUAGE, PAY WITHIN 30 DAYS OF AN ENTRY OF A FINAL JUDGMENT, AND THE CONCERN IS, SURE WE WANT TO TAKE IT UP

ON APPEAL AND IF WE HAVE ALREADY
MADE THE JUDGMENT WHAT HAPPENS?
IF THEY WIN AN APPEAL THEY CAN
FILE A SUIT FOR UNJUST
ENRICHMENT AND TRY TO RECOUP THE
MONEY, PUT A LIEN ON THE
BUILDING BUT THEY HAVE CHOSEN
THAT LANGUAGE AND THEY ARE
HOISTED ON THE LANGUAGE THEY
CHOSE, AND THAT IS THE ONLY
MEANING, ENTRY OF A FINAL
JUDGMENT ON THE FACT THERE IS A
PRECEDENT AVAILABLE, THEY HAVE
WRITTEN IN THE CONTRACT UPON
ENTRY OF A FINAL JUDGMENT OR
SUPERCEDED OR APPEALED WHEN
THESE PROCESSES ARE OVER.
THEY COULD HAVE EASILY DONE THAT
AND THEY DID NOT DO THAT, SO
THAT LANGUAGE I THINK MEANS THE
LAST QUESTION MUST BE ANSWERED
IN OUR FAVOR.
SO OUR POSITION ON THIS SIMPLY
IS, FIRST QUESTION SHOULD BE
ANSWERED YES, THAT THERE IS AN
IMPLIED EVIDENCE OF GOOD FAITH
AND FAIR DEALINGS THAT CAN BE
BROUGHT IN THE LAWSUIT, THE
ORIGINAL LAWSUIT, AND TWO, THERE
IS NO REASON TO BIFURCATE IT.
IF THERE IS CONCERN ABOUT
PREJUDICE, THAT IS A MATTER THAT
CAN BE TAKEN UP WITH THEIR TRIAL
COURT EVIDENTIARIES.
IT MUST CONTAIN NOTICE FOR
EVIDENTIARIES.
THIS MEANS YOU CAN APPLY THE
DEDUCTIBLE AND FOUR, ENTRY OF A
FINAL JUDGMENT MEANS JUST WHAT
IT SAYS.
>> THANK YOU VERY MUCH.
MR. CANTERO.

>> THANK YOU YOUR HONOR.
I WOULD LIKE TO ADDRESS THE
FINAL JUDGMENT ISSUE FIRST.
CERTAINLY BY SAYING FINAL
JUDGMENT, YOU CAN'T SAY THAT
INSURANCE COMPANY KNOWINGLY AND
VOLUNTARILY WAIVES THIS RIGHT.
ESSENTIALLY WAIVE ITS RIGHT TO
AN APPEAL,BECAUSE WE ALL KNOW,
ONCE YOU PAY OUT THE JUDGMENT IT
IS GOING TO BE EXTREMELY
DIFFICULT, IF NOT IMPOSSIBLE, TO
GET BACK.
THAT IS THE WHOLE PURPOSE OF THE
SUPERSEDEAS BOND.
THE BOND GUARANTEES THE JUDGMENT
SO THAT BOND, THAT APPEAL, IS
AFFIRMED THE INSURED IS
ABSOLUTELY PROTECTED.
IF THERE IS NO BOND POSTED, THEN
THEY CAN EXECUTE THE BOND.
>> WHAT DO YOU MEAN IF IT IS
FINAL?
>> ACCORDING TO SILVERSTRONE,
UPON THE APPEAL, OR IF THERE IS
NOT AN APPEAL, UPON THE
EXPIRATION FOR THE TIME FOR THE
HEARING OR AT THE DETERMINATION
FOR REHEARING.
>> YOU DO FOLLOW THE STRICT
CONSTRUCTION OF THE LANGUAGE.
THIS ONE SAYS FINAL JUDGMENT.
>> IT SAYS FINAL JUDGMENT YOUR
HONOR, BUT A JUDGMENT IS NOT
FINAL UNTIL APPEALS ARE
EXHAUSTED AND IN A FEW MOMENTS I
HAVE LEFT, LET ME SAY THIS
PROVISION HAS BEEN AROUND FOR A
LONG TIME.
NO COURT IN THE COUNTRY HAS EVER
SAID-- NO COURT EVER HAS SAID
THIS PROVISION WAIVES YOUR RIGHT

TO POST A SUPERSEDEAS BOND AND WAIVES THE RIGHT TO AN APPEAL.
>> THANK YOU FOR YOUR TIME.
>> THANK YOU BOTH FOR YOUR ARGUMENTS.