

>> THE NEXT AND FINAL CASE ON
TODAY'S DOCKET IS CITIZENS
PROPERTY INSURANCE CORPORATION
V. SAN PERDIDO ASSOCIATION, INC.

>> MAY IT PLEASE THE COURT, I'M
BARRY RICHARDS, AND I REPRESENT
THE CITIZENS.

I WOULD LIKE TO RESERVE FIVE
MINUTES FOR REBUTTAL.

IT APPEARS TO ME THAT THERE ARE
THREE ISSUES THAT FACE THE COURT
TODAY.

WHETHER THE GOOD FAITH DIRECTIVE
IN A SUBPARAGRAPH OF THE STATUTE
WE DEAL WITH WAS INTENDED BY THE
LEGISLATURE TO CREATE

I would like to reserve five
minutes for rebuttal.

It appears to me that there are
three issues that face the court
today.

Whether the good-faith directive
in a sub-subparagraph of the
statute we deal with was
intended by the legislature to
create a bad faith exception
from Citizens statutory
immunity, whether the willful
toward exception which is
included in a list of exceptions
specifically set out was
intended to include a bad faith
exception and finally whether
this court intended in the row
case to restrict exact facts.

>> Your argument is the first
District read too much into Roe
as far as restricting a claim
that somebody is immune from
suit through it interlocutory
appeal.

I went back and I was at Mandaco
and Tucker and then Roe.

What is interesting, all three -- in all three there have been proceedings brought to prohibition and in all three the court either didn't discuss the search or accepted as it did in row that search was not available and was making the decision as to whether that type of claim should be added to the restricted list of nonfinal orders that can be reviewed on appeal.

And workers comp we did it and then they took it away.

You characterize Roe as being something that involves different than your case because in your case you are claiming you are immune from suit -- Citizens I mean -- but in Roe it was about the damages.

I reread Roe and Roe has to do with a move to dismiss based on the fact that they said they were at me and from suit that presumably this was a discretionary act and so I don't see bad if your argument is that -- is your argument that we should create another category for just this type of case, or that we should allow CERT review whenever the issue is that someone is immune from suit, that we have to allow that to be brought through a CERT proceeding?

>> My argument, Your Honor, is that we should maintain the principle that this court has adhered to consistent throughout history with regard to Certiorari.

>> I guess what I'm saying is to you, reading all those cases, would seem to militate absolutely against you that we have said and said it and Martin Johnson and Roe, the idea that somebody is going to have to defend and I'm assuming that may be with the works that would happen with Citizens they could win the bad faith case but if that is not enough harm, irreparable harm that is not remedied on appeal to give rise to CERT -- now I realize that the third District just a week ago has decided that just being subjected to the lawsuit by a government entity is enough for irreparable harm and I think that is -- but we have to address that issue now in the context of whether all sovereign immunity claims should be allowed to be brought by CERT would seem to be a complete change in this court's jurisprudence.

>> I think it would be -- and I'm not suggesting that is what the court could do.

And I do not read those cases. I read those cases to create a clear distinction.

If we are talking about sovereign immunity, I mean sovereign immunity underlies all of these but there are distinctions and how sovereign immunity is applied.

If the state of Florida had never waived sovereign immunity so as to effectively transform it into a cap on damages and I

than I think it would be the same.

>> But again I guess that is where -- I understand this is a cap but they haven't -- you can't sue the state like you would sue a private entity because we have created, whether artificially or not, that there are planning levels, decisions and so those are all -- in those situations it is not that there is a cap on damages.

They are not liable, it does not even a defensible liability.

They are immune from any judgments just like you are saying here that Citizens is a state created agency, that the state did not consent to allow it to be for statutory bad faith.

So I don't see intellectually a distinction if anything making government agencies have to go through these lawsuits could be considered more harm than having an insurance company created by the state having to defend actions that are maybe not in the best interest of the Citizens of the state.

>> Your Honor, I don't think you and I are having a disagreement here.

I think that my job is to illustrate to you what the distinction is.

As this court pointed out in Roe, the problem with saying you get in interlocutory review of a denial of a motion to dismiss simply because it is sovereign immunity -- if sovereign

immunity has a general concept, very frequently is an extra couple he intertwined with the facts of the case so number one the court has to determine what the facts are before determines whether or not it is for example operational level or planning level.

And in addition it is not -- if it is an issue of a cap you have to determine whether or not it is a cap.

>> I understand that would you are saying.

>> What the court has consistently said is that in a case in which it is clear that there is immunity from suit period, not intertwined with the facts at all, no determination has to be made, that they denying interlocutory review you have done something that this court has never permitted.

>> But where is that?

You see I look back to see that holding because I reread your brief and what I see is quite the opposite is that the idea of forcing a state agency to have to defend a case is not irreparable harm under CERT review.

>> Well, we are talking about this rationality.

It certainly is not irreparable harm if your right can be effectively remedied on a final appeal.

But nobody can argue that it is irreparable harm if you have the right not to have to defend the lawsuit because you have lost it

when you have to go through an entire lawsuit to get the final appeal.

>> Mr. Richard historically, I mean historically going back, as long as I have practiced law, the act of having to defend a legal action, even going back to contributory negligence, that you can't get searched jurisdiction simply because under an allegation that I have to defend the lawsuit.

>> Of course.

>> Now here we go one step and I do understand the distinction you are making in your argument, but here, we have allegations and as I understand it in the pleadings, one allegations of bad faith but there are also allegations of willful tort.

Is that correct?

>> That is correct.

>> So we are going to have circumstances even here where you have to flush out what the facts are of a willful tort.

Do you not?

>> I don't think so, not in this case?

>> Why not?

>> May I first -- I have learned long ago not to have the court wait for a moment.

>> We will wait.

>> If I could just cap off that last issue because you have estimate to questions.

This court has consistently held both before and after Roe that where the immunity and bear with me for a moment and let's assume this.

The immunity is from being sued and you lose that right if you are forced to go through a trial and you are entitled to have in interlocutory review whether it is by CERT, Prohibition or whatever.

Now the court said that not only in Tucker in which they explained that was the reason that in Belleair involving visitation rights and in Martin Johnson involving what the court has said time and again is what the lower District courts have said where you have a discovery order that results in the cat out of the bag.

The only basis for that holding which this court has been consistent with was, if we don't give your interlocutory review you have lost an important right there retrievably because it is too late at the end of the game. The court has consistently held that.

That is the distinction here.

Now you have gone to the other two issues, which I think are serious issues in this case.

>> Can I just go back because before you go on to those which I think are important, would you then -- are you asking the court to hold that we add this particular type issue, immunity where there is no disputed facts and an issue of law to the list of non-final orders?

Or are you saying that we should specifically carved out and say a search is available.

>> You certainly can add it to

the list as you did once before
but I think CERT is available.
The purpose of CERT, it is very
core -- is very core is to
ensure that a person can be
heard when a right would
otherwise be retrieved ugly loss
before you get the final feel.

>> And how do you possibly
compare grandparent visitation
in Belleair to having a
state-created entity having to
defend allegations of bad faith
so that the court actually can
see what it comes up to an in
trial and really no if this bad
faith under Aguilera or a
garden-variety?

>> You are leading me to those
issues which I will get to but
I'm not trying to compare the
substance of grandparent
visitation with the substance of
our immunity.

What I'm saying I am saying is
that the reason that this court
held that there would be
Certiorari review in the
grandparent case and the reason
it has held that the Certiorari
review in the cat out of the bag
discovery case, the only reason
that the grandparent in that
respect is no different than
anything else -- the only reason
was that you would otherwise
irretrievably lose the right.
When it is over you have lost
it.

That is the only reason for the
cat out of the bag.

>> That is the reason assert is
not allowed if it is the mere
issue I have to defend myself or

participate in litigation.

That has a general proposition with which you agreed historically.

It has always been non-sufficient so rather than creating all these things that this is the right thing to do, why wouldn't we just rather than saying that is what the law has always been because in my view it is not, but if this is me to put it in the provision so it is clear.

>> I don't disagree and you did that in the Tucker case I think the court can certainly do that. If the court is prepared for me to do so let me talk about those first two issues because those are the issues that opposing counsel shouldn't even consider. I think it is essential to consider it because as both of your honors have recognized, it is at the basis for deciding whether or not my client has immunity from suit.

>> Let me just ask you about that before you continue on. Are those not issues that should have stood out of the trial court determination before we would make that determination about whether or not it falls under an exception to the immunity or not?

>> Well, in this case the trial court made that decision and we think it was erroneous. The fifth District thought it was erroneous and reversed it. Two out of the three judges in the first District thought it

was not erroneous and affirmed it.

>> Well, two out of three judges thought that it should wade in there was no irreparable harm so there is no problem with it going you know, and to trial and the irony in this of course which I think is a procedural problem, if we don't address the fifth District issue than then when it goes back actually the trial court would be bound to follow the Fifth District and you could dismiss the case. So you may get it but do you know what I'm saying?

>> I will take it any way I can get it.

[LAUGHTER]

>> I think that it is clear and I think the Fifth District's reasoning was reasonable reasoning.

The legislature did not intend to create an exception for either a willful tort.

>> An exception for bad faith.

>> You see, that is where the problem lies.

I agree with you is for a statutory bad faith.

I mean I think there is a reasonable argument to say that statutory bad faith on the first party, first party but again you have Aguilera which is a work comp case and if an entity acts so terribly and does things that are beyond the pale, and I don't know -- then that could be a local tort.

If it has been pled then don't they get a chance to develop

that factual record?

>> Yes they do.

There is a specific list of exemptions for exceptions from the statutory immunity and they think if the plaintiff properly pleases and makes a prima facie case that they fall within one of those exceptions and it cannot be dismissed.

>> You cannot again take CERT. Under those circumstances you would not be able to take the third.

>> Absolutely.

>> But that is inconsistent. That position is inconsistent because of CERT is available, it is available it is available.

>> I don't think it is inconsistent Your Honor because this court has carved out the narrow circumstances under which CERT is available and that is when you lose the right absolutely and forever before you can get the final appeal.

>> But here is the problem. If there is bad faith of alleged and local tort and they in they can proceed on one there is even less irreparable harm because you have to defend yourself anyway.

>> Of course Your Honor. That is not an usual circumstance but the fact is if they don't -- as in this case if they have not fled or if after it is pled to the court determines and issues the dismissal or strikes for summary judgment so everything is removed from the case, except

for bad faith, then they are entitled to that point of the if the court does not dismiss it Certiorari.

They do not have to go to trial on the cause of action that the legislature has said they cannot be sued for.

That is the whole point.

If there's another cause of action for which they can be sued I agree with you.

There is no basis for CERT.

>> Mr. Richard you are down to three and a half minutes.

You can continue but you are in your rebuttal.

>> There is one point that I think needs to be made here.

The very clear purpose of Citizens is to create a funding mechanism to pay claims and nothing else.

The legislature went to extraordinary lengths to protect those funds which are just paid by all of the -- in the state of Florida and part of the way they did that is they said we are not going to allow it to be used for litigation or to be used for paying for bad faith or to be used to pay for anything except a very small list.

It is not consistent with that purpose to save the Citizens will be required to defend a lawsuit all the way up to final judgment on something that they have been given immunity on.

>> But it is also inconsistent to say you have no remedy and the legislature has said you have the duty of good faith.

I mean that is inconsistent.
So that is a phantom duty.
So it is theirs and not
enforceable.

To me, I understand what you are
saying and I think that is part
of it, but I think that it needs
to operate as an insurer.

It seems to me that is what they
created, an insurance company.

>> Not really.

They created a funding
mechanism.

>> You have a policy that looks
just like any other insurance
policy, that is what you have
and it has got to you in insure
and looks identical to a State
Farm policy.

It is just that it is Citizens
involve.

It is not a bond or some other
contract.

>> In direct response to your
question, the issue that you
raise, I think that for all the
reasons stated by the fifth
District in our brief that good
faith provision which is often
another provision can't be read
to create a new exception to the
list but in addition to that,
that same line also requires
them to act in a fashion that is
not negligent and you can't say
from that there for negligence
is now permitted because it
clearly is not permitted.

So I'm just suggesting that
reference is sufficient.

Thank you.

>> May it please the court.

My name is Richard Beckish and I
represent San Perdido

Association.

>> Did you plead first party bad faith cause of action?

Did you separately plead a willful tort under the Aguilera that their actions went the aunt just one insurance companies are prone to do and not pay valid claims and alleged outrageous conduct?

>> I am sorry I don't have a copy of your complaint, but can you tell me that whether you alleged both?

>> No Your Honor.

What please pledge was that bad faith under 624-155 that conduct constituted a willful tort.

>> Can you give us, has the record been established, developed enough to tell us what are the allegations the specific allegations of what Citizens didn't do other than didn't pay a valid claim?

>> Well Your Honor I can tell you this because I was the attorney for San Perdido through the proceedings.

>> It has to be in the record.

What you pled.

>> I believe the complaint is in the record.

I can't tell you that for a 100% fact.

I think that it is.

But the allegations were that, what they were held liable for an underlying breach of contract claim was multiple breaches of contract.

First of all, when the plaintiffs in this case and in the sister case, the "Perdido

Sun" case, when they invoked the appraisal clause Citizens refuse to go for appraisal.

Just outright refused.

>> And that is pled in the complaint?

>> Yes.

And then there was another breach later on but after the court had ordered appraisal, appraisal had been done and then an amount determined that Citizens did not pay the appraisal amount within that time allocated by statute and instead try to force the litigants to sign a general release.

>> Did you then file your notice and give them whatever -- the 60 days to remedy the breach?

>> Oh yes.

That was filed years ago Your Honor.

>> When you are geared to the trial court in this case, did you argue based on that they allow allows a statutory bad faith case against Citizens or did you argue -- or did you say in this case because of the actions of Citizens, it is just not your ordinary bad faith or bad faith plus?

>> Both actually.

I argued as bad faith plus because what we argued was in this case it was a willful tort because under 624.155 you are allowed punitive loud punitive damages if and only if they conduct in particular is willful.

It says that directly in the

statute and yes I argued that willful conduct for instance presenting identical rejection letters and the two, you know for the two cases.

They were litigated together: "Perdido Sun" and Sanford.

>> Absent the statutory bad faith claim, before that statute was enacted, what type of claim could be brought against their own insurance company?

Was there any cause of action for willful tort against your own insurance company?

>> No Your Honor.

There was no bad-faith.

>> Truthfully, and this is where I have a hard time --

I understand that there is competing policies which is a duty of good faith in and you don't want Citizens as state created company to be doing terrible things to its vulnerable homeowners but on the other hand, you have got this fund and you have a legislative determination that their there are only specific exceptions and you argue as a matter of law that the willful tort exception subsumes a statutory bad faith which a creature of statute I think is a stretch that I don't see from a statutory obstruction point of view how you can make that.

>> Well Your Honor the Garfinkel case -- here is where I think they erred.

What Citizens -- the exception in Citizens enabling statute says is not common law willful

tort.

It is just willful tort.

The distinction there being that if okay yes there was no first party bad faith and common law prior to the enactment of 624-155.

We admit that but Florida has a whole laundry list that we have in our brief of statutory torts.

The question that arises then is, is 624.155 bad-faith a tort?

It doesn't matter whether it is common.

It is codified.

Remember, what is a tort?

A tort is a breach of duty by one against another which causes damage.

That is it.

That is the definition from Prosser and Keet on what is a tort.

Now, the duty can arise by common law or by statute.

There is nothing that says that 624.155 is bad faith just because it is codified isn't a tort.

It is a tort.

It is a breach of the duty of good faith by the insured when, under all the circumstances, they refuse to settle a claim in good faith.

>> What are some other willful towards that exist?

What about defamation.

Would that be a willful tort?

>> Sure.

Defamation to willful tort, and intentional assault could be a willful tort.

>> I'm just having a hard time

understanding that an ordinary statutory bad faith cause of action is intended to be within the very willful exceptions of a tort.

Let me take you back actually to a friendly argument or a friendly question which is, I don't see how this type of order is or should be reviewable by CERT, and could you address Mr. Richard's argument that we have traditionally allowed CERT review when somebody, when the harm alleged is that they are going to have to defend a lawsuit?

>> Yes.

I would agree with Your Honor's analysis.

Case after case from this court has said that merely having to defend a lawsuit and decide the issue of immunity on plenary review is not the kind of harm that rises to the level which would allow Certiorari review.

>> Are you familiar with the supplemental authority that was filed by the amicus?

>> Yes, the third District Court of Appeals and it just ignores this court's holding in Roe. Inroad this court specifically said that is not the kind of irreparable harm that allows for Certiorari review.

>> Isn't there a distinction like Mr. Richard indicated?

If you have here, if the statutory cause of action is not an intentional -- the immunity statute, wouldn't Citizens lose its right to have to not to

defend a lawsuit by virtue of the statutory immunity?

>> Well, Your Honor, what you have to look at here is that the Roe court, this court looked at inroad is a balance here.

It has to be struck.

Yes it would be more efficient and to possibly deal with it on an interlocutory review.

>> It would be a lost right.

It never could be regained.

>> But do they really lose the right?

According to Roe, this court in Roe, they said because 768.208 immunity and the traditional analysis of losing subject matter jurisdiction no longer applied and we would agree with Miami-Dade counties amicus brief that the immunity that we are discussing here is not sovereign immunity.

It is statutory immunity and the waiver of immunity is much much broader here than it was under 768.28.

>> But the argument goes that if you can decide an issue as a matter of law, and this issue because you haven't given me anything that there is something unique about this case versus others and this is -- are you familiar with Aguilera having to do with workers compensation and we can sue them as a willful towards?

It is a horrible allegation there.

That is the case I am referring to.

There for the argument goes that

if you can't resolve any issue involving immunity from suit as a matter of law interlocutory, before the case goes to trial, even a sovereign immunity issue because either way, I'm not getting that distinction.

You ought to do it.

There is less resources that are extended if we know now, and say we disagree with your statutory interpretation argument and agree with the fifth District, then why wouldn't it be decided as a matter of law at the earliest possible opportunity by the appellate court?

>> Well, because Your Honor, if you allow interlocutory review of what we claim is simple statutory immunity, for instance even under analysis of Citizens own statute, you can have all kinds of fact specific arguments raised under the immunity -- be exemptions from immunity in their own statute.

For instance, remember you have to have successfully concluded a breach of contract claim before you even get to bad-faith.

Well, it wouldn't take a very imaginative litigator to argue well, that reach that you have alleged in your complaint, that is in the kind of breach that the legislature intended to put outside of our immunity.

And get an interlocutory appeal then.

>> Lawyers can make all kinds of arguments.

>> But my point is they would be fact specific.

>> It seems like to me that the question we have here is something that really is a question of law and whether that statutory bad faith claim you are making is something that is accepted?

I have a hard time understanding your argument as well as a statutory cause of action but is still a tort.

And if I could go back to that, does the legislature refer to the court it has created?

>> Your Honor, in our brief.

>> What page is that on?

>> Our brief.

>> I know the legislature will from time to time talk about tort causes of action but I'm talking about whether they create something that they referred to as a tort.

Of course in the bad-faith statute they don't refer to it as a tort.

>> Right because it doesn't say one way or the other.

>> Does it do it elsewhere?

>> Your Honor actually in our brief we refer to a series of cases in which this court itself has referred to statutory torts in different contexts.

If you will give me just a moment.

>> In this context there are references in your complaint that are replete with issues having to do with the contract. It all arises from a contract, right?

The example before the defamation, they're there is no

contract issue.

Here we are talking about contractual issues.

Isn't that a lot different?

>> No, Your Honor, not in terms of bad faith.

Bad faith is really kind of an odd duck in courts in a way.

It is almost contoured but the question is, where does the duty arise from?

The duty does not arise from the contract in this case.

Or in any bad faith case.

The duty arises from the duty of good faith that is imposed by the statute therefore it is not a contract.

>> Really, in common-law bad-faith, the duty arises as a fiduciary duty because of the relationship between the insured, the insurer to the insured, so it is arising in the contract.

My question, you made some statement that a breach of contract somebody could be very imaginative than say it is a breach of contract but they can be sued for breach of contract.

Now you have not alleged that the statutory bad faith arises.

You are trying to put it in subsection A.

>> It is a willful tort.

>> But why are you saying it is coming out of -- that they breached their contract and that entitles you to statutory bad-faith remedy?

>> Your Honor, that argument actually can be made.

>> But you didn't make it.

>> No I didn't – but actually yes I did.

At the trial court level, yes it was argued that the trial court chose to pass on the willful tort aspect and thought that was more in line with 64.155.

>> You must have thought it was a very good argument because you did not make it up her.

>> Because as the case has progressed in the courts, when it went to the first DCA because the trial court fastened on a willful court aspect of it that is what the first DCA looked at.

>> But the first DCA did not look at it.

The first DCA said we are not going to look at it and here is I guess my question for you.

It still goes back to that the argument here is, if the case is in front of us now, and there are no facts that need to be determined, statutory construction, does not solve this particular issue once and for all?

Shouldn't the court decided?

That was what was done and meant the co.

They first decided this substantive issue and then they would on and said okay we are going to add this on.

For us, unless you are going to tell me there are facts -- and this is what I need to know.

Are there factual issues in dispute that would inform our decision in this case that should allow it to go to a full trial and then evaluate it?

And that is what -- there are factual issues and disputes, then it wouldn't be either a proper for interlocutory review or for our decision.

>> Alright, two reasons Your Honor.

First off, it would not be proper for interlocutory review because at the time this case was decided there was simply a general rule and not an exception in 9.110.

It did not allow --

>> Understand that.

We have the ability to take any other issue that has been raised and decide that issue so what I'm asking is why isn't it the appropriate thing for this court to settle the statewide issue once and for all?

So it is a pure question of law.

Are there factual issues they you tell me know, you need to wait and see what the whole trial is so you can see all the terrible things that have happened to your homeowner homeowners?

>> Well, the factual issues do need to be developed.

>> Why?

>> This is on a motion to dismiss and you know, we never developed any tracks whatsoever in this case.

It just never got past the initial motion.

And we think that developmental tracks would allow this court a better view to decide whether it falls into the willful tort exception, the behavior falls

into to the willful tort exception in this case.

The other issue is that.

>> Don't you have to allege that?

Shouldn't that be your burden in your complaint?

If you are going to be going beyond statutory bad-faith, to provide additional allegation that would take this outside of just a garden-variety statutory bad-faith into something that is punitive damage territory?

>> Actually our allegations did Your Honor and remember also that we have to get past a motion to dismiss to get into punitive damages to -- we have got to go through separate proceeding that we never even got to reach.

>> I would also point out -- is it your -- that they are liable for punitive damages?

>> Yes, absolutely.

And Your Honor, I would also point out that the certified question before this court now does not contemplate anything to do with the underlying merits of the case as Your Honor pointed out.

We did argue the underlying merits but then the first DCA go back and read brief, reargue and then said we are not considering the underlying merits, so on the basis of the underlying merits whether there is a willful tort here or not, right there now there is no conflict.

>> We can have the case before us.

We might not have to that we can.

>> Certainly Your Honor.

You are the Supreme Court.

My time is about up here.

I would say based upon this court's prior precedence, forcing Citizens to go to trial does not under any circumstances constitute the kind of irreparable harm which allows for certiorari review.

Therefore the interlocutory appeal was not proper.

I would urge this court to follow its president and Roe and remanded to the first DCA and back down to the trial court for full litigation and.

>> Wouldn't they have to follow the fifth District?

>> And that will be appealed and we will be -- one way or the other -- we will be back up on appeal whether we reach this level are not.

>> That is why it seems sufficient for us to decide if there are no factual issues in the --

>> Yes, but in the name of efficiency, are you going to look to circumvent the courts prior precedence?

>> It is conceivable that there could be another District that disagrees with that.

>> That is true too.

Yes, Your Honor.

My time is done and unless there other questions or anything I can answer for anyone -- thank you.

>> I will give you another extra

minute, give counsel and asked her minute here.

You have two and half minutes.

>> Citizens, can they be sued for punitive damages?

>> I would suggest not Your Honor.

They have absolute immunity except for the exception.

There is no exception for punitive damages.

>> But if it is a willful tort, which does not involve in many cases punitive damages?

They don't say they can be for punitive damages?

>> All I I'm doing is expressing my opinion.

It is not before us today so I can answer that.

>> And does anyone make the argument that this is a bad-faith case that falls within the section that deals with breaches of contract and it arises out of their breach of contract and that is why it envisions that it would be permissible course of action?

>> That is not the argument that is being made and I think that raises a very important point, which is that you don't get bad-faith and any other breach of contract action other than the insurance company and it makes the question, why the legislature would have intended one here when they are seeking very clearly and stated as clearly as they could, to preserve a fund for a singular purpose which is to pay claims for losses and to do it at the

lowest possible premium without burdening all of the policyholders in the state because it is not just the policy with higher premiums.

Why would they have applied something that you can't get in any other breach of contract?

>> But you say you are liable to statutory attorney fees?

>> Yes you are.

>> What statute does that specifically authorize?

>> It comes under the general statute that permits attorneys fees against an insurance company in any course of action.

>> You are saying the statute only limits -- why wouldn't you say no statutory attorney's fees?

>> I might suggest to Citizens that they try that but up until now to my knowledge they never have.

>> That is the same thing.

Insurance companies are not exempted, so why wouldn't they be otherwise the same thing?

They are operating like any other insurance company.

>> Well you know my premise Your Honor is that they are not really an insurance company and we don't have to go into all the reasons that they are just the funding mechanism.

The last point I wanted to make is that this court I believe operates, performs his most important function when it deals with big principle that affect the people of the state and is a big principle at work in this

case.

That principle is that a citizen cannot be permitted to lose the right with no opportunity, no meaningful opportunity for appeal.

A trial judge cannot be placed in a position in which the trial court can absolutely stop the legislative wheel from being effective with no opportunity for meaningful appeal for that.

Here we know what the legislative wheel this.

It is that there is an agent -- immunity from suit.

How this court does that doesn't make any difference.

At the core chooses as it didn't Tucker to do it by a change in the rules to say where you have an for sued you haven't interlocutory field or whether it does it by Certiorari which I think is appropriate doesn't make any difference.

I'm just suggesting to this court that it has to be done because if not we have an irrational situation that is unprecedented in the state.

>> We thank both of you for your arguments and this is the final case on the docket today.

The court will now be adjourned for the day.

>> All rise.