

>> ALL RISE.

[BACKGROUND SOUNDS]

>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

PLEASE, BE SEATED.

>> WE NOW COME TO THE THIRD AND  
FINAL CASE ON OUR DOCKET FOR  
TODAY.

ATWATER V --

[INAUDIBLE]

>> THANK YOU, YOUR HONOR.

I AM MICHAEL DAVIDSON, MAY IT  
PLEASE THE COURT, FOR THE  
DIVISION OF THE DEPARTMENT  
SERVICES.

I BELIEVE I'VE RESERVED FIVE  
MINUTES FOR REBUTTAL.

I HAVE TWO PRIMARY ARGUMENTS I'D  
LIKE TO ADDRESS WITH THE COURT.  
THE SECOND IS THE MISCONSTRUAL  
OF CONTROLLING CASE LAW DEALING  
WITH ACCEPTED CONSTITUTIONAL  
RESTRICTIONS ON COMMERCIAL  
SPEECH.

>> NOW, IF THE STATUTE IS  
CONSTRUED TO BE A COMPLETE BAN  
FOR 48 HOURS ON ALL  
COMMUNICATION WHETHER WRITTEN OR  
VERBAL, YOU HAD AGREED IN FRONT  
OF THE FIRST DISTRICT THAT IT  
WOULD BE UNCONSTITUTIONAL.  
DO YOU AGREE WITH THAT, THAT IF  
IT'S, STILL AGREE THAT IF IT'S  
WRITTEN, INTERPRETED OR ACTUALLY  
SAYS IT'S A COMPLETE BAN, THAT  
THAT IS UNCONSTITUTIONAL?

>> I WOULD AGREE THAT IT WOULD  
BE A COMPLETE BAN, AND BEFORE  
THE DISTRICT COURT I WOULD THINK  
IT WOULD BE UNDER EXISTING CASE  
LAW, HOWEVER, I WOULD ARGUE TO  
EXPAND EXISTING CASE LAW THAT  
MIGHT COME TO THAT OUTCOME.  
MAY I PROCEED?

OKAY.

LET ME GET TO THE CONSTRUCTION

OF THE STATUTE.

THE STATUTE AS WRITTEN EXPRESSLY  
CONTROLS ONLY TWO THINGS,  
FACE-TO-FACE SOLICITATIONS AND  
TELEPHONIC SOLICITATIONS.

>> WELL, BUT NOW, WAIT A SECOND.

IN ALL FAIRNESS, IT STARTS OFF  
EXPRESSLY TALKING ABOUT, UM,  
INITIATING CONTACT.

AND THAT'S, THOSE ARE EXPRESS  
WORDS IN THE STATUTE.

IT SAYS, "PUBLIC ADJUSTOR MAY  
NOT DIRECTLY OR INDIRECTLY  
THROUGH ANY OTHER PERSONAL  
ENTITY INITIATE CONTACT," AND  
THEN IT GOES ON TO TALK ABOUT  
THOSE OTHER THINGS.

BUT ISN'T THE PROBLEM THAT YOU  
HAVE HERE IS THAT "INITIATE  
CONTACT" SEEMS TO BE RATHER  
BROAD?

AND YOUR, I JUST DON'T  
UNDERSTAND YOUR ARGUMENT THAT IT  
DOESN'T ENCOMPASS THESE WRITTEN  
COMMUNICATIONS.

THE FACT THAT WE HAVE THE  
SPECIFICATION OF FACE-TO-FACE  
AND TELEPHONIC SOLICITATION FOR  
SOMETHING A CONTRACT SEEMS TO  
POINT TOWARD, WELL, WE'VE GOT TO  
INITIATE CONTACT, MUST BE  
TALKING ABOUT SOMETHING OTHER  
THAN THOSE.

>> I THINK THE WAY THAT YOU  
INTERPRET THE STATUTE, AND I GO  
BACK TO -- LET'S LOOK AT THE  
CASE IN THE SUPREME COURT.  
IN TALKING ABOUT THAT SITUATION  
THE COURT SAID, AND IT WAS  
JUSTICE POWELL DELIVERING THE  
OPINION OF THE MAJORITY OF THE  
COURT BACK THEN, AND THEY SAID  
THEY WERE TALKING ABOUT A  
PREVIOUS CASE OF BATES V. STATE  
BAR OF ARIZONA WHERE THEY WERE  
TALKING ABOUT WE RESERVED A

QUESTION FROM THAT CASE TO BE RESOLVED HERE.

AND IT SAID THE COURT EXPRESSLY RESERVED THE QUESTION OF THE PERMISSIBLE SCOPE OF REGULATION OF IN-PERSON SOLICITATION OF CLIENTS AT THE HOSPITAL ROOM OR AT THE ACCIDENT SITE OR IN ANY OTHER SITUATION THAT BREEDS UNDUE INFLUENCE BY ATTORNEYS OR THEIR AGENTS OR RUNNERS.

AND THEN THEY WENT ON TO SAY THEY ANSWERED THAT QUESTION BY SAYING THE STATE CAN RESTRICT SUCH SOLICITATIONS.

>> YEAH, BUT WE'RE TALKING ABOUT -- AND, I'M SORRY, I'M MISSING YOUR POINT ABOUT HOW THAT'S RESPONSIVE TO THE QUESTION I ASKED.

THE FIRST QUESTION, IT SEEMS TO ME, IS WE'VE GOT TO FIGURE OUT WHAT THIS STATUTE MEANS BECAUSE I THINK THAT YOU HAVE CONCEDED THAT IF IT MEANS WHAT THE SECOND -- WHAT THE FIRST DISTRICT DECIDED IT MEANS, THERE'S A PROBLEM HERE.

>> IF IT WERE TO CONSTITUTE A TOTAL BAN ON ALL COMMUNICATION UNDER CURRENT CASE LAW, I WOULD AGREE AND DO AGREE.

>> OKAY.

AND I'M NOT SURE YOU'VE, I'M NOT SURE YOU'VE REALLY PRESENTED IT -- YOU CAN'T REALLY CHANGE YOUR ARGUMENT HERE TODAY, OKAY?

>> WELL --

>> I MEAN, IN TERMS OF THE ARGUMENT YOU'VE MADE TO THIS COURT, YOU'RE REALLY BOUND BY WHAT YOU PUT IN THAT INITIAL BRIEF YOU FILED.

YOU'RE THE APPELLANT HERE, AND THAT'S WHAT FRAMES THIS CASE FOR US.

>> IT'S BOTH IN THE INITIAL BRIEF AND IN THE REPLY BRIEF. IT'S NOT NEW.

>> WELL, THAT'S THE POINT. YOU CAN'T, YOU CAN'T MAKE AN ARGUMENT IN A REPLY BRIEF THAT PRESENTS A DIFFERENT ATTACK ON WHAT THE DISTRICT COURT DID, I DON'T THINK.

BUT, YOU KNOW, OBVIOUSLY THAT'S SOMETHING WE'VE GOT TO --

[LAUGHTER]

>> WELL, LET ME TRY, LET ME TRY AND GET TO YOUR FIRST PART OF YOUR INQUIRY HERE, OKAY?

THE POINT IS IN THE ROWLETT CASE THE COURT RECOGNIZED THAT ATTORNEYS OFTEN USE PEOPLE THAT ARE DESIGNATED AS AGENTS OR RUNNERS TO SOLICIT FOR THEM. OKAY?

IT'S COMMON PRACTICE IN THE PUBLIC ADJUSTMENT PROFESSION TO HAVE RUNNERS SOLICIT FOR THEM AS WELL, OKAY?

AND I BELIEVE THERE ARE EVEN COMPANIES THAT EMPLOY RUNNERS, THAT PUT THEM UNDER CONTRACT TO THE PUBLIC ADJUSTOR --

>> AND IT --

>> THE POINT IS, DIRECTLY OR INDIRECTLY IT WAS MEANT TO APPLY TO THE RUNNERS, THE UNLICENSED RUNNERS AS WELL AS THE LICENSED PUBLIC ADJUSTORS.

OTHERWISE IF YOU DON'T EXPAND IT TO THAT SCOPE, THEN THE RUNNERS WILL TAKE OVER ALL THE SOLICITATION EFFORTS, AND THE STATUTE WILL BE --

>> BUT YOU'RE EXPLAINING THAT DIRECTLY OR INDIRECTLY THROUGH ANY OTHER PERSON, BUT WHAT JUSTICE CANADY ASKED YOU ABOUT IS THE "INITIATE CONTACT." BECAUSE, YOU KNOW, ONE OF THE

THINGS THAT I DID IN GOING BACK  
IS LOOKED AT SUBSECTION FIVE,  
AND I'M GOING TO ASK YOUR  
OPPONENT TO ADDRESS THAT BECAUSE  
THAT IS A COMPLETE BAN ON THE  
TIME OF DAY AND THE, THE WEEK,  
NOT DO IT ON SUNDAY.  
AND SO THE QUESTION I'D HAVE,  
THOUGH, IS DOESN'T "INITIATE  
CONTACT" WITHOUT ANY QUALIFIER,  
IT DOESN'T SAY "INITIATED  
CONTACT IN FACE-TO-FACE OR IN  
TELEPHONE," DOESN'T THAT  
"INITIATE CONTACT" ENCOMPASS  
EVERYTHING?

>> IT SAYS, IT SAYS TO "INITIATE  
CONTACT DIRECTLY OR INDIRECTLY  
THROUGH ANY OTHER PERSON OR  
ENTITY."

>> NO, NO, NO --

[LAUGHTER]

WHAT IT SAYS IS "A PUBLIC  
ADJUSTOR MAY NOT DIRECTLY OR  
INDIRECTLY THROUGH ANY OTHER  
PERSON OR ENTITY INITIATE  
CONTACT."

NOW, THE WAY I WOULD UNDERSTAND  
THAT AND I THINK REALLY THE ONLY  
REASONABLE WAY TO UNDERSTAND  
THAT PART OF IT, AND I WILL  
CONCEDE THIS IS NOT THE MOST  
ELEGANT LANGUAGE --

>> I --

>> BUT, YOU KNOW, THE REALITY OF  
OUR STATUTORY INTERPRETATION IS  
THAT WE ARE NOT TYPICALLY  
DEALING WITH ELEGANT LANGUAGE.  
BECAUSE IF IT WAS ELEGANT AND  
PERFECTLY SIMPLE, THERE'D BE NO  
QUESTION IT WOULD REACH THE  
SUPREME COURT.

BUT THE WAY I WOULD -- I THINK  
THE ONLY REASONABLE WAY YOU CAN  
UNDERSTAND THAT PORTION OF IT IS  
THAT WHEN IT SAYS "A PUBLIC  
ADJUSTOR MAY NOT DIRECTLY," THAT

MEANS THE PUBLIC ADJUSTOR CANNOT DO IT HIMSELF OR HERSELF DIRECTLY, THE "DIRECTLY" IS REFERRING TO ACTION TAKEN DIRECTLY BY THE PUBLIC ADJUSTOR OR INDIRECTLY THROUGH ANOTHER PERSON OR ENTITY.

SO NEITHER CAN THE PUBLIC ADJUSTOR DO IT, OR ACTING THROUGH ANOTHER PERSON OR ENTITY INDIRECTLY DO IT, INITIATE CONTACT.

NOW, WHY DOESN'T IT JUST SIMPLY MEAN THAT?

>> I THINK THE DISTINCTION YOU'RE MAKING IS AN IMPORTANT ONE.

WHY CAN'T THEY ACT?

IT'S ALWAYS BEEN OUR CONTENTION THAT THE STATUTE IN THESE REGARDS REGULATES CONDUCT AND NOT SPEECH.

THE STATUTE DOES NOT SAY UNLIKE ALL THESE OTHER CASES WHERE THE GOVERNMENT HAS BEEN CRITICIZED FOR OVERREACHING, IT DOES NOT SAY YOU CAN'T USE THESE WORDS --

>> BUT YOU'RE NOT ANSWERING --

>> YOU CAN'T USE ANY WORDS.

>> I'M SYMPATHETIC TO YOUR ARGUMENT.

THE STATE HERE IS SAYING, LISTEN, WE DIDN'T MEAN TO HAVE THIS TOTAL BAN, AND WE THOUGHT WHAT WE WERE WRITING HERE WAS A, JUST A BAN ON TELEPHONE AND --

>> FACE TO FACE.

>> FACE TO FACE.

SO, AND THAT'S WHAT YOU'RE SAYING.

NO, WE DON'T, DIDN'T MEAN IT.

AND WHAT WE'RE SAYING IS, WELL, GOOD, THAT'S GREAT YOU DIDN'T MEAN IT, BUT WE'VE GOT TO DEAL WITH WHAT'S SAID.

AND MY BIGGEST ISSUE IS THAT

"INITIATE CONTACT" WHICH I DON'T  
THINK WAS IN THE TASK FORCE  
PROPOSAL.

YOU KNOW?

IF IT HAD SIMPLY SAID INDIRECTLY  
THROUGH ANY OTHER PERSON OR  
ENTITY ENGAGED IN -- IN OTHER  
WORDS, WHAT'S THE PURPOSE?  
MAYBE I'LL ASK YOU THAT.

WHAT WOULD BE THE PURPOSE OF  
"INITIATE CONTACT" THAT WOULDN'T  
OTHERWISE BE FULFILLED BY  
ENGAGING FACE-TO-FACE,  
TELEPHONIC SOLICITATION OR  
TELEPHONIC -- WHY DO THEY NEED  
"INITIATE CONTACT"?

>> I THINK THE INTENT OF THE  
WORDS "INITIATE CONTACT" WAS  
RESTRICTED TO THOSE TWO MODES OF  
CONDUCT.

IT WILL NOT INITIATE CONTACT  
THROUGH FACE-TO-FACE  
SOLICITATION OR TELEPHONIC --

>> BUT IT DOESN'T SAY THAT.

IT SAYS "OR," IT SAYS THREE ORS.  
NO INITIATION OF CONTACT, NO  
FACE-TO-FACE OR TELEPHONIC, AND  
NO ENTERING INTO A CONTRACT.  
YOU COULD WRITE THIS, WE COULD  
ALL WRITE THIS TO SAY WHAT IT  
MEANS, YOU KNOW, WHAT IT WAS  
INTENDING TO MEAN.

BECAUSE IF YOU LOOK AT THE ONE  
BEFORE IT, IT IS A COMPLETE BAN  
ON THE CONDUCT DURING SPECIFIC  
PERIODS OF TIME.

>> YES, MA'AM.

>> BUT THIS ONE IS, I THINK IT'S  
THE "INITIATE CONTACT" THAT'S,  
TO ME, THE PROBLEM.

YOU'RE NOT --

>> KEEP IN MIND, KEEP IN MIND  
THE STATUTE ALLOWS THE HOMEOWNER  
TO INITIATE CONTACT --

>> I UNDERSTAND THAT.

>> THE HOMEOWNER SEES A WRITTEN

SOLICITATION WHICH COULD BE ANYTHING FROM A DOOR HANGER SAYING HERE'S YOUR TOP TEN TIPS TO GET --

>> BUT THEY'RE SAYING THAT'S INITIATING CONTACT, AND IT'S PROHIBITED BECAUSE IT DOESN'T SAY "INITIATING CONTACT BY PHONE OR IN PERSON."

>> WELL, I UNDERSTAND YOUR ARGUMENT.

>> IT'S NOT MY ARGUMENT --

[LAUGHTER]

I'M, THAT'S THE INTERPRETATION THAT WAS GIVEN BY THE FIRST DISTRICT, AND IT'S THE ONE THAT SEEMS POTENTIALLY TO BE THE MOST REASONABLE ONE.

THE QUESTION IS WHETHER YOUR ARGUMENT, YOU HAVEN'T REALLY ANSWERED WHAT DOES "INITIATE CONTACT" WITHOUT QUALIFIERS MEAN IN THIS STATUTE?

>> LET'S GO BACK TO THE TASK FORCE THE LEGISLATURE COMMISSIONED TO --

>> NO, I'M ASKING YOU THAT QUESTION.

WHAT WOULD YOU -- YOU'RE READING THIS, YOU DON'T KNOW ABOUT THE TASK FORCE, YOU READ IT AS A PUBLIC ADJUSTOR.

WHAT WOULD YOU THINK "INITIATE CONTACT WITH ADDED QUALIFIER" MEANS?

>> I THINK IT MEANS NEITHER I, NOR MY RUNNERS CAN INITIATE CONTACT THROUGH PHONE OR FACE-TO-FACE SOLICITATION.

>> BUT THE PROBLEM YOU'VE GOT WITH THAT, WITH ALL DUE RESPECT, IS THAT'S JUST NOT WHAT IT SAYS. IT'S GOT THESE "ORS," AND AGAIN, IT'S --

[INAUDIBLE]

TO THINK THAT'S WHAT IT SAYS.



[LAUGHTER]

IT JUST DOESN'T SAY THAT.

I UNDERSTAND THAT MIGHT HAVE BEEN WHAT THEY MEANT, BUT, YOU KNOW, WE CAN'T, WE CAN'T DEAL -- AND, I MEAN, I DON'T THINK WE SHOULD DEAL IN WHAT WE THINK THEY MEANT.

WE'VE GOT TO DEAL WITH WHAT THEY SAID.

AND WHAT THEY SAID HERE JUST CAN'T, I DON'T SEE HOW IT CAN BE SQUARED WITH YOUR INTERPRETATION.

I UNDERSTAND YOU'RE MAKING, YOU'RE DEALING WITH THIS AND TRYING TO DO THE BEST YOU CAN WITH IT, BUT IT'S JUST THOSE WORDS ARE VERY PROBLEMATIC BECAUSE WHEN I THINK ABOUT THE DOOR HANGER ON THE DOOR THAT YOU SEND SOMEBODY UP THERE TO PUT ON THEIR DOOR, THAT JUST, THAT'S INITIATING CONTACT BECAUSE YOU'RE HOPING THAT'S GOING TO GENERATE SOME BUSINESS.

AND I'M NOT -- THAT'S THE REALITY OF IT.

AND I THINK, I THINK THE WAY THIS WHOLE THING IS TEED UP IF IT MEANS THAT, THEN THE WAY IT'S BEEN ARGUED -- AND MAYBE IT WOULDN'T MAKE ANY DIFFERENCE THE WAY IT WAS ARGUED CANDIDLY, I'M NOT SURE, BUT I THINK UNDER, I THINK YOU'RE OVER IN CENTRAL HUDSON LAND.

I DON'T, I HAVE TROUBLE SEEING WHY YOU DON'T END UP IN CENTRAL HUDSON LAND BECAUSE THIS IS ABOUT THE COMMUNICATION.

IT'S NOT ABOUT BURNING A DRAFT CARD, OKAY?

THAT'S NOT WHAT WE'RE DEALING WITH HERE.

WE'RE TALKING ABOUT THE

COMMUNICATION OF INFORMATION  
THAT'S COMMERCIAL INFORMATION.  
BUT I DON'T -- IF YOU END UP  
OVER IN CENTRAL HUDSON LAND,  
IT'S PROBLEMATIC, ISN'T IT?

>> WELL, AS YOU HAVE OBVIOUSLY  
MADE UP YOUR MINDS IN THIS  
REGARD, AND I'M NOT -- I DON'T  
SAY THAT PEJORATIVELY.

>> I HAVEN'T MADE UP MY MIND.

>> THE WAY THE FLOW OF THE  
ARGUMENT'S GOING HERE --

>> WELL, SHOW US, GIVE US AN  
ARGUMENT THAT SHOWS US WHY THOSE  
QUESTIONS HAVE A FAULTY PREMISE.

>> WELL, THE BEST I CAN DO, AND  
I'VE ALREADY SAID THIS, THE BEST  
I CAN DO IS SAY TO YOU I THINK  
THE STATUTE WAS DESIGNED TO  
EXPRESSLY PROHIBIT TWO, TWO  
CONDUCTS; FACE-TO-FACE  
SOLICITATION AND TELEPHONIC  
SOLICITATION.

THAT'S THE ONLY THINGS THAT ARE  
EXPRESSLY ADDRESSED.

>> AND I JUST WANT TO MAKE SURE  
ABOUT THIS.

YOU'RE SAYING, AND I THINK IN  
FACE-TO-FACE OR TELEPHONIC  
SOLICITATION MODIFIES BOTH  
ENGAGE IN AND CONTACT, IS THAT  
YOUR ARGUMENT?

>> I'M SAYING, I'M SAYING THAT  
THE INITIATION CONTACT IS  
MODIFIED FOR ANY OTHER PERSON OR  
ENTITY, OKAY?

ANOTHER PERSON OR ENTITY, IT  
WOULD BE A RUNNER OR A COMPANY  
THAT HIRES RUNNERS AND ASSIGNS  
IT TO A PUBLIC ADJUSTOR.

THE IDEA IS THAT YOU DON'T HAVE  
A PERSON EITHER ON THE PHONE OR  
IN THE FACE OF THE HOMEOWNER  
DURING THE FIRST 48 HOURS.

THAT'S THE IDEA OF THE STATUTE.

>> WHAT DOES THE "DIRECTLY"

MEAN?

>> WELL, THAT MEANS THE LICENSED PUBLIC ADJUSTOR, HIM OR HERSELF CANNOT INITIATE TELEPHONIC OR FACE TO FACE.

>> OKAY.

SO THE "DIRECTLY," THE "DIRECTLY" REFERS BACK TO THE PUBLIC ADJUSTOR, AND THEN IT REFERS FORWARD TO ENGAGE IN FACE-TO-FACE OR TELEPHONIC SOLICITATION, SKIPPING OVER THE "INITIATE CONTACT."

>> WELL, IT'S "DIRECTLY OR INDIRECTLY," AND THE "INDIRECTLY" COVERS THE RUNNER SITUATION.

OKAY?

AND SO IT'S OUR CONSTRUCTION OF THE STATUTE THAT, BASICALLY, IF THE STATUTE DOES NOT FORBID SOMETHING EXPRESSLY, IT ALLOWS FOR IT.

AND IT DOES NOT EXPRESSLY FORBID WRITTEN COMMUNICATION.

WE THINK, THEREFORE, IT ALLOWS FOR IT.

THE BEST I CAN REJOINER WITH IS IF THE STATUTE DOESN'T EXPRESSLY FORBID, IT ALLOWS, AND WE THINK GIVEN THE TASK FORCE HISTORY AND THE LEGISLATURE ACCEPTED THAT TO SAY, OH, NO, WAIT A MINUTE, WE DON'T WANT ANY COMMUNICATION AT ALL.

>> BECAUSE THEY WERE TOLD IT WOULD BE UNCONSTITUTIONAL IF THEY HAD EVERY --

>> YES, THEY WOULD.

AND THE PHRASE "AN ENTITY" WAS INSERTED TO PREVENT THAT FROM CROPPING UP.

>> SO "INITIATE CONTACT," IN YOUR ARGUMENT, REALLY IS REDUNDANT?

>> WELL, IT'S A REDUNDANCY

EXCEPT TO THE EXTENT ALL IT REALLY MEANS IS YOU DON'T INITIATE CONTACT THROUGH ANOTHER PERSON OR ENTITY OVER A TELEPHONE OR IN PERSON.

>> SO THE LEGISLATURE REALLY SHOULD HAVE PUT THE WORD "BY" WHERE THEY HAVE THE WORD "OR"?

>> THE LEGISLATURE SHOULD HAVE SAID YOU CAN DO THIS, AND YOU CAN'T DO THAT.

[LAUGHTER]

BUT THEY DIDN'T DO THAT.

>> IF THEY HAD PUT THE WORD "BY" INSTEAD OF "OR," "BY" INSTEAD OF "OR," THEN WE WOULD HAVE A CLEARER STATUTE.

>> IT WOULD BE A SUPERIOR AUTHORSHIP OF THE STATUTE.

>> I THINK THAT'S THE BEAUTY OF OUR SEPARATION OF POWERS, THAT THE LEGISLATURE HAS ITS OPPORTUNITY -- WHATEVER WE DO AT THE NEXT SESSION TO EITHER CHANGE THE WORDING OR --

>> WE'VE ALREADY SO ADVISED.

[LAUGHTER]

>> THANK YOU FOR YOUR CANDOR.

>> YOU ARE A LITTLE BIT INTO YOUR REBUTTAL TIME HERE, BUT YOU CAN CONTINUE.

>> LET ME FINISH MY SECOND POINT HERE, AND THAT IS I WANT TO POINT OUT TO YOU THAT UNDER THE ORALIK DECISION THE U.S. SUPREME COURT SHOWED MUCH MORE STRINGENT RESTRICTIONS ON LAWYER SOLICITATIONS FOR A NUMBER OF REASONS, ONE OF WHICH WAS LAWYERS ARE TRAINED IN THE ART OF PERSUASION AND, THEREFORE, THEY CAN POSSIBLY TALK PEOPLE INTO ENTERING CONTRACTS THEY MIGHT LATER REGRET BY USING THOSE PERSUASION POWERS.

WELL, I WANT TO SUBMIT TO YOU I

THINK PUBLIC ADJUSTORS EXPAND  
THAT SAME RELATIONSHIP TO THEIR  
HOMEOWNER CLIENTS.

>> NOW, ARE YOU SAYING THERE  
WAS -- YOU'RE NOW SAYING ASSUME  
THERE'S A COMPLETE BAN, IT'S  
OKAY, IS THAT YOUR ALTERNATIVE  
ARGUMENT?

>> FOR 48 HOURS.

>> OKAY.

SO YOU'RE SAYING WE SHOULD -- IF  
WE INTERPRET IT AS A COMPLETE  
BAN, IT'S STILL --

>> IT'S STILL GOT TO PASS  
CONSTITUTIONAL MUSTER.

THE ORALIK CASE SAID A COMPLETE  
BAN, AND IN FLORIDA BAR V.  
WENTWORTH, 30 DAYS WAS A  
COMPLETE BAR AND SOLICITATION  
FOR 30 DAYS.

HERE WE'RE ASKING FOR 48 HOURS.  
LET'S COMPARE BECOME A LAWYER IN  
THIS STATE WHICH WILL ALLOW YOU  
TO ADJUST INSURANCE CLAIMS,  
YOU'VE GOT TO GO THREE YEARS OF  
LAW SCHOOL WHICH GIVES YOU A  
WHOLE VARIETY OF TOPICS YOU  
STUDY IN THREE YEARS.

YOU COME OUT OF LAW SCHOOL, YOU  
PASS THE BAR EXAM, OKAY?

YOU PASS THE BAR EXAM, THE  
EXEMPTION YOU'RE GIVEN AS A  
LAWYER, YOU CAN GO AND ADJUST  
INSURANCE CLAIMS EVEN THOUGH  
THERE'S NEVER AN INSURANCE  
ADJUSTING 101 IN LAW SCHOOL.

YOU'LL BE USING THAT SAME  
PERSUASION TO TALK YOUR CLIENTS  
INTO ENTERING A CONTRACT WITH  
YOU AND THE SAME PERSUASION IN  
TALKING TO THE INSURANCE COMPANY  
TO PART WITH ITS MONEY BECAUSE  
YOU'RE IN THAT MONEY STREAM  
BETWEEN YOU AND THE INSURANCE  
COMPANY.

>> YOU KNOW, I DON'T REALLY

UNDERSTAND THAT ANALOGY BECAUSE,  
YOU KNOW, LAWYERS ARE REALLY  
PRETTY MUCH WELL KNOWN IN THE  
PUBLIC AND WHAT LAWYERS DO AND  
THEIR PERSUASIVE POWERS.

QUITE FRANKLY, UNTIL THIS CASE I  
WASN'T EVEN AWARE THERE WERE  
PUBLIC ADJUSTORS.

YOU KNOW, I'VE ALWAYS CALLED MY  
INSURANCE COMPANY, AND THEY SENT  
AN ADJUSTOR OUT.

AND SO, YOU KNOW, I DON'T THINK  
THAT PUBLIC ADJUSTORS ARE PEOPLE  
THE PUBLIC EVEN KNOWS ABOUT.

>> WELL, AT TRIAL LEVEL I  
SUGGEST THEY PROBABLY OUGHT TO  
ADVERTISE MORE, BUT THAT'S  
BESIDE THE POINT.

THE THING IS --

>> NOT IN THE FIRST 48 HOURS.

>> PUBLIC ADJUSTORS POLLED  
THEMSELVES OUT TO THE EXPERTS IN  
CLAIMS ADJUSTING.

I MEAN, THERE'S EXHIBITS IN THE  
RECORD THAT SAYS WE HAVE GREAT  
EXPERTISE IN THESE THINGS --

>> AND I KNOW WHAT YOU'RE  
GETTING INTO.

THEY SHOULD BE LOOKED AT AS  
LAWYERS.

MY CYNICISM ABOUT THE MOTIVATION  
ON THIS IS THAT THE TASK FORCE  
REPORT SHOWS THAT PEOPLE WHO HAD  
HURRICANE CLAIMS THAT USE PUBLIC  
ADJUSTORS GOT 750% MORE ON THEIR  
CLAIMS EVEN WHEN YOU TOOK OUT A  
PERCENTAGE, AND IT SEEMS TO ME  
IT'S THE INSURANCE INDUSTRY THAT  
IS SORT OF SAYING, YOU KNOW, WE  
DON'T WANT THESE GUYS HERE, OR  
GIRLS, FOR THE FIRST 48 HOURS  
BECAUSE WE WANT TO DO OUR THING.  
YOU KNOW, IT'S THOSE OF US THAT  
HAVE DEALT WITH INSURANCE  
COMPANIES FOR MOST OF OUR  
CAREER, WE SORT OF WONDER WHAT

THAT MOTIVATION IS.  
SO I WOULDN'T EXACTLY BE SAYING  
THESE PUBLIC, YOU KNOW, THAT THE  
MOTIVATION OF THE STATUTE WAS  
ENTIRELY TO PROTECT THE  
CONSUMER.

>> WELL, LET'S NOT FORGET THIS  
CAME TO THE COURT FROM A BENCH  
TRIAL.

IN THE BENCH TRIAL, THERE WAS  
TESTIMONY UNREFUTED IN THE  
RECORD THAT DEFENSE CLAIMS  
AREN'T INITIATED, LET ALONE  
SETTLED IN 48 HOURS.

>> BUT YOU'VE GOT TO KNOW WHAT  
TO KEEP, YOU KNOW, WHETHER  
THE --

>> AND THAT'S WHERE WRITTEN  
COMMUNICATION WOULD ALLOW YOU TO  
PUT THE DOOR HANGER ON, WHATEVER  
YOU WANT TO DO, AND SAY HERE'S  
YOUR TOP TEN TIPS, DON'T DO THE  
FOLLOWING THINGS BEFORE WE GET  
TO YOU, OKAY?

AND THAT WOULD ALLOW THE  
HOMEOWNER TO KNOW THESE THINGS.  
BUT WHAT I WANT TO GET TO BEFORE  
I RUN COMPLETELY OUT OF TIME  
HERE --

>> YOU'RE ACTUALLY OUT OF --

>> MAY I HAVE ONE MINUTE,  
PERHAPS?

>> IF YOU WANT TO SAVE IT FOR  
REBUTTAL, OR DO YOU WANT TO JUST  
GO AHEAD AND DO IT?

>> I'LL JUST -- LET ME SAY THIS.

I THINK FINAL ANALYSIS, AND IT'S  
IN THE BRIEF, IF YOU READ THE  
BRIEF, YOU'LL SEE WE THINK  
LAWYERS AND PUBLIC ADJUSTORS  
SHOULD BE LOOKED UPON AS  
LIMITED-DUTY LAWYERS AND HELD TO  
THE SAME STANDARDS LAWYERS ARE,  
AND IF LAWYERS' SPEECH CAN BE  
RESTRICTED, SO CAN THE PUBLIC  
ADJUSTORS' CONSTITUTIONALLY.

>> I'LL ALLOW YOU AN ADDITIONAL MINUTE FOR REBUTTAL, IF YOU'D LIKE.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, MY NAME IS WILBUR BREWTON, I'M REPRESENTING MR. COURTON.

>> CAN I ASK YOU ABOUT THE SUBTEXT?

IF WE READ -- LET'S TAKE SUBSECTION FIVE OF THE STATUTE. WAS SUBSECTION FIVE ADDED AT THE SAME TIME AS SUBSECTION SIX?

>> IS THAT THE SUNDAY --

>> YES.

>> YOU KNOW, I REALLY DON'T KNOW BECAUSE WE ELECTED NOT TO, WE ELECTED NOT TO PURSUE THE SUNDAY ISSUE.

>> YEAH.

I HAVE -- I MEAN, I HAVE A FEELING.

IN THAT ONE THEY USED THE WORD "A PUBLIC ADJUSTOR MAY NOT DIRECTLY OR INDIRECTLY THROUGH ANY OTHER PERSON SOLICIT AN INSURED OR CLAIMANT BY ANY MEANS."

SO, TO ME, WHEN THE LEGISLATURE THE SECTION BEFORE KNOWS HOW TO SAY YOU CAN'T DO ANYTHING AT ALL, AND YOU CAN'T DO IT BETWEEN 8 A.M. AND 8 P.M., YOU CAN DO IT 8 A.M. TO 8 P.M. MONDAY THROUGH SATURDAY BUT NOT BEFORE 8 A.M. AND NOT AFTER 8 P.M. AND NOT ON SUNDAY, RIGHT?

THAT'S CLEARLY A BAN ON DOING ANYTHING BY ANY MEANS.

SO MY QUESTION IS, THE LEGISLATURE INTENDED NUMBER SIX TO BE A COMPLETE BAN FOR 48 HOURS.

WHY DIDN'T IT JUST SAY, USE THE SAME LANGUAGE THAT THEY "MAY NOT DIRECTLY OR INDIRECTLY THROUGH



ANY PERSON OR ENTITY SOLICIT A CLAIMANT FOR THE FIRST TWO DAYS"?

I MEAN, AND IF THEY'RE WRITING IT AT THE SAME TIME, WE DO LOOK AT THE ISSUE OF -- BECAUSE I DON'T THINK THIS IS, BY THE WAY, CLEAR AND UNAMBIGUOUS, NUMBER SIX.

WE LOOK AT OTHER PROVISIONS WITHIN THE STATUTE. AND WHEN YOU LOOK AT THAT ONE, THAT ONE IS PLAIN AND CLEAR AS TO WHAT IT INTENDED.

THIS ONE APPEARS TO BE AN ATTEMPT, ALBEIT SOMEWHAT AWKWARD AND MAYBE EVEN, YOU KNOW, CONFUSING TO TRY TO DO WHAT MR. ANDERSON -- IS IT -- SORRY, HAS SAID WHICH IS TO LIMIT TELEPHONIC OR, UM, TELEPHONIC OR PERSON-TO-PERSON COMMUNICATION?

>> YOU MAY WELL BE RIGHT ON THAT, BUT I STILL THINK THAT'S UNCONSTITUTIONAL BECAUSE IN THE EDENFIELD CASE WHICH WAS A FLORIDA CASE THAT WENT UP TO THE SUPREME COURT IT SPECIFICALLY SPOKE TO BANNING TELEPHONIC SOLICITATION --

>> OKAY.

SO YOU'RE -- THAT'S WHAT I WAS GOING TO ASK YOU.

>> YEAH.

>> BECAUSE I DIDN'T THINK YOU WERE MAKING THAT ALTERNATIVE ARGUMENT.

>> OH, YEAH.

>> YOU'RE SAYING EVEN IF WE INTERPRET IT THE WAY THE LEGISLATURE INTENDED, THAT IS TO ONLY BAN TELEPHONIC OR PERSON TO PERSON, IT'S UNCONSTITUTIONAL?

>> YES.

THE "INITIATE CONTACT" MEANS YOU CAN'T SEE ANYBODY, AND I HAVE

OFTEN WONDERED HOW YOU WOULD WALK ON SOMEBODY'S PROPERTY WITH A DOOR HANGER AND NOT BE INITIATING CONTACT, BUT THAT'S NOT OUR POINT HERE.

OUR POINT HERE IS THERE'S A WHOLE LINE OF CASES, AND BEFORE I GET INTO MY ARGUMENT, I WANT TO POINT OUT ONE THING.

THERE IS A HUGE AMOUNT OF STIPULATION IN OUR APPENDIX NUMBER THREE, AND I WILL TELL YOU THAT THE DEPARTMENT HAS STIPULATED THAT THE BOTTOM LINES ARE OTHER PEOPLE THAT CAN CAUSE YOU FINANCIAL HARM; YOUR CLEANING SERVICES, ETC., THAT ARE NOT RESTRICTED THAT CAN COME IN, CONTRACTOR, SMOKE MITIGATION.

>> BUT ISN'T -- SINCE I ALSO HADN'T HEARD OF A PUBLIC ADJUSTOR, I CONFESS, UNTIL MORE RECENTLY, AND IT LOOKS LIKE THIS STATE, LIKE IT LEADS IN SO MANY WAYS, LEADS THE COUNTRY IN PUBLIC ADJUSTORS.

FIRST OF ALL, "PUBLIC ADJUSTOR," TO ME, SOUNDS LIKE SOMETHING THAT THE GOVERNMENT WOULD HAVE AUTHORIZED, SO THAT WORD ITSELF GETS ME A LITTLE NERVOUS.

BUT IT'S, THEY'RE LICENSED BY THE STATE, AND THEY, THEY HOLD A FIDUCIARY DUTY, AND THEY CAN ENTER INTO -- CAN THEY ENTER INTO CONTINGENCY CONTRACTS?

>> THEY CAN, THEY CAN ENTER INTO CONTRACTS THAT --

>> SURE SOUNDS LIKE A, I MEAN, THAT SOUNDS TO ME LIKE WHAT A LAWYER CAN'T DO IN THE FIRST 48 HOURS.

>> WELL, YOUR HONOR --

>> CAN THEY DO THAT?

CAN A LAWYER DO THAT?

>> LAWYERS ARE NOT INCLUDED IN THIS --

>> NO, BUT I'M ASKING YOU, CAN A LAWYER DO THAT, GO TO SOMEBODY WHO'S JUST HAD THEIR HOUSE DESTROYED IN THE FIRST -- AND SAY THEY'LL REPRESENT THEM?

>> YEAH.

>> WE DON'T HAVE A BAN ON THAT?

>> NO.

AND SPECIFIC -- LET ME BACK UP JUST A LITTLE BIT.

PUBLIC ADJUSTORS WERE APPROVED 50 YEARS AGO BY THIS SUPREME COURT BECAUSE THERE WAS A STATUTE AROUND FOR THEM.

PUBLIC ADJUSTORS CAME IN, AND WHEN THIS ORGANIZATION GOT ORGANIZED AND MR. CORDHAM IS A MEMBER OF THE ORGANIZATION, THE FIRST THING HE DID WAS PASS AN ETHICS PROVISION INTO THE FLORIDA LAW.

THAT ETHICS PROVISION IS ENFORCED BY DFS.

THE STIPULATIONS INDICATE THAT THERE ARE VIOLATIONS OTHER THAN TECHNICAL VIOLATIONS THAT THEY'VE INVESTIGATED EVER SINCE THEY'VE BEEN DOING THIS.

I THINK YOU'RE RIGHT, IT'S THE INSURANCE COMPANIES THAT ARE THE ISSUE, AND FOR THOSE WHO HAVEN'T HAD A HOUSE FIRE AND ONE THAT BURNED DOWN, YOU REALLY WANT A PUBLIC ADJUSTOR WHEN YOU HAVE A PROBLEM BECAUSE IT'S HARD TO UNDERSTAND THE RULES.

BUT LET ME JUST GET TO MY ARGUMENT, IF I CAN.

THE FIRST 48 HOURS AFTER YOU HAVE A LOSS IS WHEN YOU'VE GOT MITIGATION ISSUES.

WE'VE STIPULATED, AND ALL THE STIPULATIONS THOSE ARE THE MOST IMPORTANT TIMES FOR A

POLICYHOLDER TO BE ABLE TO HAVE  
THE SERVICES OF A PUBLIC  
ADJUSTOR.

SO WE'RE NOT BAD GUYS.

THE ISSUE HERE IS SOME PEOPLE  
LIKE TO TRY TO MAKE THIS OUT  
LIKE THE AMICUS THAT POPPED IN.  
BUT THE ISSUE HERE IS  
COMMUNICATION FROM A PERSON TO  
PERSON IS COMMERCIAL FREE  
SPEECH, AND THAT'S PROTECTED BY  
THE FIRST AMENDMENT.

SO YOU CAN'T BAN TELEPHONIC  
SOLICITATION AND FACE-TO-FACE  
COMMUNICATION.

ALL THE CASE LAW THAT WE HAVE,  
THE PROGENY OF CENTRAL HUDSON,  
ARE THERE.

THE BRADFORD CASE BY THIS COURT,  
SAME RESULT.

THIS IS BARRING PIP CLAIM  
SOLICITATION.

EDENFIELD, THAT I JUST  
MENTIONED.

FLORIDA DOESN'T HAVE ANY  
EVIDENCE RELATED, THEY WANT THE  
HUDSON TEST.

INSURANCE OVER IN PENNSYLVANIA,  
THEY STRUCK DOWN A 24-HOUR BAN  
ALMOST IDENTICAL TO FLORIDA'S.

PRUITT V. HARRIS COUNTY BAIL  
BONDSMAN AFTER YOUR CRIMINAL  
CASES CITE THAT NO BAN ON  
COMMUNICATIONS BECAUSE IT MAY BE  
VALUABLE FOR THE SPEAKER AND THE  
POTENTIAL CUSTOMER.

VIRGINIA BOARD OF PHARMACY.

>> SO DO YOU CONTEST THAT ANY OF  
THE CENTRAL HUDSON OR OTHER  
REQUIREMENTS COULD BE MET IN  
THIS CASE?

>> NO.

I THINK THE FIRST TWO  
DEFINITELY, THE FIRST DISTRICT  
SAID THEY MET THE THIRD.  
BUT I DIDN'T AGREE, BUT THE

POINT IS THIS THING --

>> THEY DON'T MEET THE FOURTH ONE, GAME'S UP ANYWAY.

>> GAME'S OVER.

AND SO THE BOTTOM LINE IS AS FAR AS THE THIRD, THE HARM'S GOT TO BE REAL, IT CAN'T BE IMAGINED, IT CAN'T BE SPECULATION THAT SOME ROGUE PUBLIC ADJUSTOR IS GOING TO VIOLATE THE ETHICS STATUTE AND TRAUMATIZE SOMEBODY AT A CERTAIN POINT IN TIME.

>> WELL, IT DOES, I MEAN, THE REASON IT'S IMPORTANT ON THE THIRD IS BECAUSE IF WE INTERPRET THIS AS A TOTAL BAN AND SAY IT'S UNCONSTITUTIONAL, YOU'RE ACTUALLY ARGUING EVEN IF IT'S NOT A TOTAL BAN, IT'S UNCONSTITUTIONAL.

BUT IF IT DOESN'T MEET THE THIRD PRONG, THEN ANY TYPE OF RESTRICTION WOULD BE UNCONSTITUTIONAL.

>> AND I THINK IT IS BECAUSE THE TOUCHSTONE OF ALL THE CASES IS THAT SPEECH THAT PROPOSES A COMMERCIAL TRANSACTION IF NOT UNLAWFUL AND NOT MISLEADING, IS PROTECTED BY THE FIRST AMENDMENT.

>> EXCEPT FOR LAWYERS.

>> EXCEPT UNDER ORALLY.

>> EXCEPT FOR LAWYERS.

>> AND THAT APPLIES STRICTLY TO LAWYERS.

>> WELL, WHEN YOU SAY STRICTLY, I MEAN --

[INAUDIBLE CONVERSATIONS]

>> AND, I MEAN, TO ME THE RATIONALE OF THAT IS ABSURD. I MEAN, THERE ARE CARNIVAL WORKERS THAT TALK PEOPLE OUT OF THEIR HARD-EARNED MONEY TO PLAY STUPID GAMES AT A CARNIVAL. THROW YOUR MONEY AWAY.

THERE ARE ALL KINDS OF FINANCIAL ADVISERS THAT GO IN AND TAKE ADVANTAGE OF PEOPLE.

TO SAY THAT LAWYERS ARE THE ONLY GROUP THAT HAS SUCH TRAINING, THAT THEY CAN TALK THE MONEY OUT OF THE POCKETS OF THE HOMEOWNER IS PURE SOPHISTRY.

>> WELL, THE OIL RIG CASE WAS NOT A PUBLIC ADJUSTOR CASE.

>> OH, NO, I UNDERSTAND.

I UNDERSTAND.

BUT THE POINT BEING, I THINK THE POINT'S BEEN MADE HERE, IN FACT, THE HOUSE BURNED BESIDE ME IN MIAMI.

DO YOU KNOW WHO HAPPENED TO SHOW UP?

A LAWYER AND A PUBLIC ADJUSTOR. WHAT ARE YOU DOING HERE?

I LIVE HERE, WHAT ARE YOU DOING HERE?

AND THE PUBLIC ADJUSTORS WERE CHASING JUST LIKE WE SAY, CHASING LAWYERS.

SO I DON'T REALLY SEE A DIFFERENCE BETWEEN THE TWO. WE'VE CREATED SOME OF THESE EXCEPTIONS, WHAT'S A FAIR EXCEPTION HERE?

>> WELL, AND I THINK THE SUPREME COURT -- I FILED TWO CASES OF TOTALLY DIFFERENT ISSUES OF SUPPLEMENTAL AUTHORITY.

I MEAN, THE SUPREME COURT OF THE UNITED STATES IS EXPANDING THE COMMERCIAL SPEECH AS WE GO, AND FOR ALL PRACTICAL PURPOSES I THINK THE RULE OF LAW TODAY IS VERY SIMPLE, AND THAT IS THAT IF IT'S A COMMERCIAL TRANSACTION AND IT'S A LAWFUL ACTIVITY AND IT'S NOT MISLEADING, IT'S COMMERCIAL FREE SPEECH, AND THE STATE CAN BAN IT IF THEY COME UP WITH A REAL REASON TO DO IT.

THEY CAN PROVE THE HARM, AND  
THEY CAN SHOW THAT WHAT THEY DID  
IS VERY NARROWLY TAILORED TO  
ACCOMPLISH THAT GOOD, THEN I  
THINK THEY CAN DO THAT.

>> WELL, HERE WE HAVE, THOUGH,  
WE DO HAVE A PRINCIPLE OF  
DEFERENCE TO THE LEGISLATURE OF  
CONSTRUING A LAW IN A WAY THAT  
WILL UPHOLD ITS  
CONSTITUTIONALITY.

>> NOT IN FREE SPEECH CASES.  
THE BURDEN IS ON THE STATE.  
THE BURDEN IS RIGHT ON THE  
STATE.

THAT'S THE, THAT'S THE CENTRAL  
HUDSON LAND.

THE BURDEN IS ON THE STATE TO  
PROVE IT UP, AND YOU CAN'T  
DEFER, AND THAT'S THE PATH THAT  
THE CIRCUIT JUDGE,  
UNFORTUNATELY, WENT DOWN WAS  
INTERPRETING LEGAL ARGUMENT AT  
TRIAL AS BEING IN THE  
DEPARTMENT'S POSITION.

AND, UNFORTUNATELY, IT'S THE  
STATUTE.

>> NO, I'M TALKING ABOUT THE  
ISSUE AS TO WHETHER THIS IS A  
TOTAL BAN OR INTERPRETING THE  
STATUTE, THAT THE LEGISLATURE  
INTENDED NOT A TOTAL BAN, BUT A  
BAN ON FACE-TO-FACE AND  
TELEPHONIC COMMUNICATION WHICH  
ARE CLEARLY, YOU KNOW, SOMEBODY  
DROPPING OFF A DOOR HANGER OR  
SENDING AN E-MAIL DOESN'T HAVE  
THE SAME IMPACT ANYWAY AS A  
PERSON SHOWING UP AT YOUR DOOR  
THE MORNING AFTER YOU'VE HAD  
THIS CATASTROPHE AT YOUR HOUSE  
AND SAYING I'M HERE TO HELP YOU.  
AND, YOU KNOW, SO I DON'T --  
IT'S NOT TO ME IN THE SAME  
CATEGORY, BUT YOU'RE SAYING WE  
WOULD HAVE TO -- EVEN IF IT WAS

INTERPRETED THAT WAY, IT WOULD STILL BE UNCONSTITUTIONAL. AND I'M NOT SURE I SEE THAT UNDER, THAT THAT WOULD BE A NARROWLY-TAILORED STATUTE THEN, THAT IS IF IT ONLY BANNED THE FACE TO FACE AND THE TELEPHONIC. >> JUSTICE PARIENTE, THE PROBLEM IS THAT THERE ARE OTHER PEOPLE THAT SWARM TO YOUR DOOR WHICH ARE CONTRACTORS, WHICH ARE MITIGATION EXPERTS AND SO FORTH. THAT'S ALL STIPULATED TO THAT THERE IS NO TIME RESTRICTION ON INSURANCE COMPANY ADJUSTORS, CLEANING SERVICES, CONTRACTORS, ROOFERS, SMOKE MITIGATION OR WATER DAMAGE EXPERTS, ALL WHO MAY FREELY APPROACH THE POLICYHOLDER IN THE AFTERMATH OF --

>> YOU SEE, THIS IS THE DIFFERENCE I SEE, AND WE KNOW THERE ARE UNSCRUPULOUS PEOPLE IN EVERY WALK OF LIFE. BUT IF YOU JUST HAD YOUR ROOF HAS COME OFF, YOU'RE PROBABLY GOING LOOKING FOR THAT ROOFING PERSON.

SO THE ROOFER COMES HERE, TO YOUR HOUSE, OKAY, AND I THINK PEOPLE UNDERSTAND THINGS LIKE WHAT SOMETHING MIGHT COST, WHATEVER.

BUT WHEN YOU GET INTO THIS REALM OF AN ATTORNEY WHO'S GOING TO SAY I WILL HELP YOU, YOU SHOULD NOT SIGN UP WITH --

>> WE'RE NOT HERE ON ATTORNEYS.

>> BUT THE PUBLIC ADJUSTOR IS IN THIS SITUATION DOING EXACTLY WHAT THE ATTORNEY WOULD DO OTHER THAN BEING ABLE TO FILE SUIT.

>> OKAY.

>> AREN'T THEY?

>> NOT REALLY.



LET ME PUT THIS --

>> WELL, HOW NOT?

TELL ME HOW NOT.

>> OKAY.

WELL, FIRST OF ALL, THEY DO OWE FIDUCIARY DUTY LIKE THE LAWYER DOES DIRECTLY TO THEIR CLIENT, THEY DO KNOW HOW TO ADJUST CLAIMS, AND I'M NOT SURE MOST LAWYERS DO BECAUSE I HAD A FIRE, AND I DIDN'T KNOW HOW TO DO IT. AND I DON'T KNOW WHY LAWYERS ALWAYS SHOW UP AT PLACES LIKE THAT ANYHOW.

BUT LET ME TRY TO PUT THIS --

>> DID THEY ALSO ENTER INTO HIS CONTINGENCY CONTRACT WITH --

>> MORE LIKELY THAN NOT.

>> SURE SOUNDS LIKE A LAWYER TO ME.

>> IF I CAN JUST HAVE 30 SECONDS ON THIS ISSUE, THE BOTTOM LINE IS THAT --

>> YOU'VE GOT ABOUT SIX MINUTES.

>> YEAH.

I'M TRYING NOT TO USE THE TIME.

[LAUGHTER]

BUT WHAT I THINK I'M TRYING, WHAT I THINK I'M TRYING TO SAY IS THESE PEOPLE THAT I'M TALKING ABOUT, SCRUPULOUS/UNSCRUPULOUS, ASSUME THEY'RE ALL HONEST.

THE BOTTOM LINE IS THEY CAN COST YOU MONEY OFF YOUR POLICY IN THE FIRST 48 HOURS WHEN YOU DON'T HAVE A PUBLIC ADJUSTOR THAT CAN STAND THERE AND SAY, NO, THIS IS THE WAY TO MITIGATE YOUR LOSS, NOT HIRE THE MITIGATION EXPERT TO DO IT BECAUSE YOU NEED TO PLAN TO DO THIS, OTHERWISE YOU'LL BE SPENDING MONEY UNWISELY.

PUBLIC ADJUSTORS DO A LOT MORE THAN JUST COLLECT A CONTINGENT FEE, AND IN REALITY ALL I'M

SAYING IS WHAT THEY DO WHEN THEY APPROACH PEOPLE IS COMMERCIAL FREE SPEECH, AND IT'S PROTECTED. IF YOU TOOK THE "INITIATE CONTACT" OUT AND EVERYTHING OUT AND SAID YOU CAN'T HAVE TELEPHONIC OR FACE-TO-FACE COMMUNICATION, YOU'RE BANNING COMMERCIAL FREE SPEECH OF A LAWFUL ACTIVITY.

>> BUT THAT VERSION OF THE STATUTE REALLY IS NOT THE WAY THIS WHOLE THING HAS BEEN -- IT'S NOT THE WAY --

>> NO, IT HASN'T --

>> THE FIRST DISTRICT'S DEALT WITH IT --

>> AND IT'S NOT THE WAY I DEALT WITH IT.

>> RIGHT.

>> AND MY POSITION IS IT SAYS YOU CAN'T INITIATE CONTACT DIRECTLY OR INDIRECTLY OR THROUGH ANY PERSON. AND I THINK THAT MEANS ANY WAY. I WAIVE THE REST OF MY TIME.

>> YOU'RE WELCOME TO DO THAT.

[LAUGHTER]

>> THANK YOU.

THANK YOU.

>> VERY BRIEFLY, YOUR HONORS, WHILE IT IS MR. BREWTON SAID THAT THE COURTS ARE EXPANDING ON COMMERCIAL FREE SPEECH SITUATIONS, LET ME BRING TO ATTENTION A QUOTE FROM ONE OF THE CASES HE RECENTLY SUPPLIED US WITH, THE SOIL CASE, SOIL V. IMH.

IT SAYS, "IT IS ALSO TRUE THAT THE FIRST AMENDMENT DOES NOT PREVENT RESTRICTIONS FROM IMPOSING INCIDENTAL BURDENS ON SPEECH."

OKAY?

SO, BUT LET ME GET TO A COUPLE

THINGS.

JUSTICE PARIENTE, THE BIG DIFFERENCE HERE BETWEEN THESE OTHER PEOPLE THAT SWARMED ON THE SITE AND PUBLIC ADJUSTORS, THE P.A.S ISSUE CONTINGENCY CONTRACTS, THESE OTHER PEOPLE DON'T.

SO THAT'S A BIG DISTINCTION HERE.

THAT'S JUST LIKE THE LAWYER. THE ONLY DIFFERENCE BETWEEN A LAWYER AND AN ADJUSTOR COMING ON YOUR PROPERTY, THE LAWYER HAS NO FEE CAP.

THE PUBLIC ADJUSTOR DOES. SO THE LAWYER'S PROBABLY GOING TO CHARGE YOU MORE THAN THE PUBLIC ADJUSTOR DOES, AND THE P.A.'S PROBABLY BETTER QUALIFIED.

>> SO THEN WE OUGHT TO ENCOURAGE THEM.

>> YEAH.

[LAUGHTER]

>> GET IN THERE BEFORE THE LAWYERS.

>> I'M GOING TO GET ONE NEXT TIME, I CAN TELL YOU THAT.

[LAUGHTER]

>> AND LET ME SAY THIS BRIEFLY, WE DON'T --

>> AND I MEAN, AND SERIOUSLY, IT DOES SOUND LIKE THEY'RE DOING A VERY IMPORTANT SERVICE.

>> NO, I WAS JUST ABOUT TO SAY THAT.

WE DO NOT CONTEND PUBLIC ADJUSTORS ARE UNIFORMLY BAD PEOPLE OR UNIFORMLY IN THAT CATEGORY.

THERE'S A NUMBER OF GOOD ONES OUT THERE, THEY DO VERY GOOD WORK.

I'VE SEEN THEM BEFORE.

BUT AS ANY REGULATORY BODY DOES

JUST LIKE WITH THE FLORIDA BAR,  
THE REGULATIONS ARE THERE FOR  
THE PEOPLE WHO ARE NOT ETHICAL,  
NOT SO HONEST, NOT SO SCRUPULOUS  
ABOUT WHAT THEY DO.

THE REST OF THE PEOPLE THOSE  
REGULATIONS DON'T WORRY ABOUT.

>> BUT THIS REGULATORY MEASURE  
THAT WE'RE DEALING WITH HERE IS  
NOT AIMED AT DISHONEST OR  
UNSCRUPULOUS CONDUCT.

IT IS AIMED AT ALL SPEECH DURING  
CERTAIN PERIODS OF TIME.

>> JUDGE, JUST AS YOU DON'T KNOW  
WHICH PERSON IS GOING TO ROB THE  
BANK, YOU JUST SAY ONLY BAD  
PEOPLE CANNOT ROB BANKS.  
YOU NEVER KNOW WHO'S GOING TO BE  
THE UNSCRUPULOUS PERSON.

>> WELL, THIS ISN'T ABOUT A BANK  
BEING ROBBED.

>> WELL --

>> I MEAN --

>> TO THE EXTENT SOMEONE IS  
TALKED INTO SIGNING A CONTRACT  
THEY WOULD NOT OTHERWISE SIGN  
WITHIN TWO DAYS, AND WE HAVE  
DEPOSITIONS IN THE RECORD THAT  
PEOPLE HAVE SAID THAT, IF I'D  
HAD TIME TO CONSIDER THE  
CONTRACT, I NEVER WOULD HAVE  
SIGNED IT.

>> WELL, THEY'VE GOT --

>> IF YOU WOULD, I THINK  
WE'RE --

>> YEAH.

>> YOU'VE GONE OVER ABOUT THREE  
MINUTES.

IF YOU COULD WIND UP IN ABOUT 15  
SECONDS.

>> ALL WE WANT TO SAY THE  
REGULATION OF GOVERNMENTAL  
INTEREST, AND IF YOU DO IT  
CONSTITUTIONALLY, IT SHOULD PASS  
MUSTER, AND WE STAY ON AT LEAST  
AN EQUAL FOOTING WITH LAWYERS

REGARDING COMMERCIAL SPEECH  
REGULATION THAT THEY SHOULD BE  
REGULATED JUST LIKE THE LAWYERS  
ARE, AND THE TEMPORARY BANS  
SHOULD BE ALLOWED.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR  
ARGUMENTS.

THAT'S THE LAST CASE ON OUR  
DOCKET TODAY, COURT IS NOW  
ADJOURNED.

>> ALL RISE.