

>> NEXT CASE IS STATE FARM
VERSUS SHANDS.
>> GOOD MORNING, YOUR HONORS.
ALAN NISBERG REPRESENTING NATE
STORM.
PARAGRAPH 6 C OF SECTION
627.736, THE PIP STATUTE.
THE FIRST DISTRICT GAVE VERY
RESTRICTIVE INTERPRETATION TO
THAT PARAGRAPH.
>> JUST, THIS IS PRESUIT
DISCOVERY?
>> THIS IS PRESUIT DISCOVERY.
IT IS STATUTORY DISCOVERY.
SPECIAL STATUTORY PROCEEDING
THAT IS SET FORTH BY THE
LEGISLATURE.
>> THIS IS NOT EVEN A SUIT
PRESUIT.
THIS IS DISCOVERY OF INFORMATION
ABOUT BILLING PRACTICES OF
MEDICAL PROVIDERS FOR PURPOSES
OF PIP.
>> YES, TO ASSIST THE INSURER--
>> RIGHT?
>> IN DETERMINING WHAT AMOUNT
SHOULD BE PAID.
>> I MEAN THAT'S WHAT THIS IS.
IT'S A PIP DISPUTE?
>> WELL--
>> MAYBE.
>> IT NOT A PIP LAWSUIT FOR
DAMAGES.
>> NO, I UNDERSTAND BUT IT
CONCERNS ONLY PIP CLAIMS?
>> YES.
THE FIRST DISTRICT CERTIFIED
CONFLICT WITH KAMINESTER WHICH
HELD IN OWN WORDS 6-C IS ALL BUT
IDENTICAL TO--
>> IF I UNDERSTOOD, THEY PAID
THE PIP CLAIM?
>> YES, YOUR HONOR.
>> AND BUT THEY DIDN'T MAKE ANY
CLAIM THAT ANY OF THE, OF WHAT
WAS PAID WAS FRAUDULENT OR
ANYTHING?
>> THIS, THE ISSUE HERE IS THE
REASONABLENESS OF THE CHARGES
AND IT'S NOT-- THE PROCEEDING,

PRESUIT PROCEEDING IS NOT TO DETERMINE WHETHER THE CHARGES WERE OR WERE NOT REASONABLE BUT RATHER THE INSURER IS ENTITLED TO TAKE DISCOVERY ON THAT ISSUE. THE 29 CLAIMS AT ISSUE IN THIS CASE WERE INDEED PAID AND AS THIS COURT WELL KNOWS, THERE IS REQUIREMENT OF SWIFT AND VIRTUALLY AUTOMATIC PAYMENT. THE INSURER HAS TO MAKE A DECISION IF--

>> I REALLY, JUST REALLY TRYING TO UNDERSTAND HOW THIS WHOLE PIP THING WORKS.

SO YOU PAY, CLAIMS ARE MADE UNDER PIP.

THE INSURER PAYS THEM AND THEN THE INSURER HAS AN OPPORTUNITY, WITHOUT THERE BEING ANY ALLEGATION OF ANY KIND OF FRAUD OR ANYTHING, TO DELVE INTO HOW THE, THE MEDICAL PROVIDERS GOT TO THAT?

>> UNDER 4-B-6, THE INSURER IS ENTITLED TO MAKE A DETERMINATION, EITHER PAY THE AMOUNT THAT'S BILLED OR--

>> COULD YOU ANSWER JUST HER QUESTION, THEN EXPLAIN? BECAUSE THE ANSWER IS YES, CORRECT TO HER QUESTION?

>> THE ANSWER IS YES.

>> GO AHEAD AND EXPLAIN.

>> THANK YOU.

THE INSURER CAN EITHER PAY THE CLAIM OR REDUCE THE CLAIM. IF THE INSURER REDUCES THE CLAIM IT SUBJECTS ITSELF IS TO LITIGATION.

IF IT PAYS THE CLAIM TO MAKE SURE VIRTUALLY SWIFT AND AUTOMATIC PAYMENT, THERE IS POINT IN THE STATUTE, 4-B-6, TO ALLOW THERE HAS BEEN VIOLATION OF SUBSECTION 5.

FIVE SAYS INSURERS MAY NOT BILL MORE THAN REASONABLE AMOUNT.

>> SO THAT ASSERTION WAS MADE?

>> THAT ASSERTION WAS NOT MADE

WHEN THE CLAIM WAS PAID BUT THE ASSERTION IS BEING MADE AFTER WHICH IS EXPRESSLY PERMITTED. STATUTE SAYS THAT ASSERTION CAN BE MADE ANYTIME AFTER THE 30 DAYS.

>> THIS MUST HAVE BEEN PUT INTO EFFECT MORE RECENTLY BUT IF THEY PURSUE IT, THE CONFLICT IS, SEEMS LIKE THE FOURTH DISTRICT AND JUDGE LEVINE'S CASE AGREES WITH THE FIRST DISTRICT IT IS LIMITED TO THE FACTS ABOUT THIS, THESE CHARGES, NOT EVERYTHING THAT THE HEALTH CARE PROVIDER, THEIR CONTRACTS WITH OTHERS IN DEPOSITIONS.

IF THE LEGISLATURE INTENDED FOR THAT TO OCCUR IN THIS SORT OF AMORPHOUS UNIVERSE WHERE DISCOVERY JUST OCCURS, AND, WHAT, WHO PAYS THE ATTORNEYS FEES FOR THE HEALTH CARE PROVIDER WHO HAS TAKEN THIS ASSIGNMENT AND NOW HAS TO-- IT IS SHANDS HERE.

NOW HAS TO HAVE THEIR BILLING PEOPLE AND EVERYBODY INVOLVED IN DEPOSITIONS?

DOES STATE FORM THEN, IS THERE PROVISION FOR PAYING FEES, ATTORNEYS FEES FOR THAT DISCOVERY?

>> THERE IS EFFECT DIRECTLY IN PARAGRAPH 6-C IF JUSTICE REQUIRES IT.

>> WHO DETERMINES, DOES IT GO BACK TO THE COURT TO HAVE TO ADJUDICATE AND THEY HAVE TO GET ATTORNEYS TO COME INTO COURT TO DECIDE WHETHER THEY GET ATTORNEYS FEES FOR DEFENDING WHAT YOU PAID?

I MEAN, THERE DOES SEEM TO BE SOMETHING THAT PUTS THE-- WITH ALL DUE RESPECT, THE INSURER AT AN UNFAIR ADVANTAGE IN REQUIRING THE, INSURER, YEAH, UNFAIR ADVANTAGE REQUIRING THAT A HEALTH CARE PROVIDER PROVIDE ALL

THIS INFORMATION AND, YOU NO HE,
AND SUBJECT THEIR OWN PERSONNEL
TO DEPOSITIONS.

>> WEALTH INSURER IS RESPONSIBLE
TO PAY REASONABLE COSTS FOR
OBTAINING THE DISCOVERY.

THE INSURER IS ALSO RESPONSIBLE
AS JUSTICE REQUIRES FOR PAYING
ATTORNEYS FEES IF IT TURNS OUT
THAT--

>> BUT CAN'T, SOMEONE LIKE STATE
FARM WHO IS PAYING THIS ALL THE
TIME DON'T THEY HAVE THEIR OWN,
THEY BASICALLY GAVE YOU WHAT
THEIR CHARGES ARE, ISN'T THERE A
WAY THEY JUST KNOW?

MEDICARE CHARGES THIS IS BUT WE
NEGOTIATED WITH BLUE CROSS-BLUE
SHIELD WITH THIS.

THIS IS A PIP CASE, THIS IS HOW
WE DETERMINED FOR THIS CASE IT'S
REASONABLE AND THAT'S THE
DISCOVERY IT SEEMS THAT YOU'RE
LIMITED TO?

>> WELL THE DISCOVERY THAT'S
REQUESTED, THE PAYMENT'S
ACCEPTED BY THE PROVIDER IS
EXCLUSIVELY WITHIN THE
POSSESSION, CUSTODY AND CONTROL
OF THE PROVIDER T CAN BE
WITHHELD BY THE PROVIDER
STONEWALLING DISCOVERY AND
PRECLUDING THAT VERY IMPORTANT
INDICIA WHETHER THERE ARE
REASONABLE CHARGES OR NOT.
IN THE CONTRACTS BY WHICH THE
HOSPITAL AGREES TO PAY LESSER
AMOUNTS THAN BILL CHARGES, SAME
THING AND COSTS OF CARE.
THOSE ARE THE THREE THINGS WE'VE
ASKED FOR.

>> BUT NOW IN THE CONFLICT CASE
IN THE FOURTH, THE PURPORTED
CONFLICT CASE, IN THE FOURTH,
THAT INSURED'S CLAIM WAS STILL
OPEN AND IN DISPUTE.

>> THAT HAD ALREADY BEEN PAID.

>> IT WAS NOT IN DISPUTE?

>> THE KAMINESTER DECISION
ADDRESSES THAT DIRECTLY.

EVEN THOUGH CLAIMS HAD BEEN PAID, 4-B-6 ALLOWS.

>> PAID THAT INSURED, DIDN'T THEY.

>> I'M SORRY I MISSED QUESTION.

>> DIDN'T THE INFORMATION SOUGHT ONLY PERTAINED THAT TO THAT INSURED?

>> PERTAINED NOT JUST TO THE INSURED'S INJURIES BUT IT PERTAINED TO LEASE AGREEMENT.

>> THE LEASE WAS IN CONNECTION WITH THE MRIs ADMINISTERED TO THIS INSURED.

>> YES BUT--

>> KEEP GOING.

I'M MAKING SURE I TRY TO UNDERSTAND WHERE THE CONFLICT IS HERE.

WHAT ELSE WAS INVOLVED IN THAT FOURTH DISTRICT CASE?

>> WELL IN THE KAMINESTER CASE THE COURT FOUND A DEPOSITION CAN BE TAKEN.

THERE IS NOTHING MENTIONED IN 6-B ABOUT TAKING TESTIMONY.

>> UNDERLYING FACTS, UNDERLYING FACTS OF CASE?

>> UNDERLYING FACTS OF CASE WERE SQUARE WITHIN 6-BS THAT THE COST OF CASE COULD BE REQUESTED.

>> BUT WHAT WAS BEING SOUGHT WHAT WAS RELATED TO CHARGES TO THE PARTICULAR INSURED.

>> YES.

BUT THE KAMINESTER--

>> AND THAT IS NOT THE CASE HERE.

>> WELL, I DISAGREE.

THE AMOUNT, WHAT WE'RE ASKING FOR IS WHAT WAS THE REASONABLENESS OF THE CHARGES TO THE PARTICULAR INSUREDS.

SO, SUBSECTION 5 DEALS WITH THE REASONABLENESS OF CHARGES.

SUBSECTION 6 TALKS ABOUT WHAT COULD BE DISCOVERED.

SUBJECT MATTER OF REASONABLENESS IS ADDRESSED IN 6-B BUT ONLY THING AN INSURED CAN GET UNDER

6-B IS ONE-SIDED UNSWORN
STATEMENT BY THE MEDICAL
PROVIDER AS TO WHETHER THE
CHARGES WERE REASONABLE OR NOT.
FROM THEIR OWN PERSPECTIVE.
COULD BE AS SIMPLE WE THINK THE
CHARGES ARE REASONABLE BECAUSE
IT IS ECONOMICALLY FEASIBLE
MODEL THAT BRINGS US A PROFIT.
VIRTUALLY MEANINGLESS TO
INSURED TRYING TO DETERMINE
VARIOUS FACTORS, MULTIFACTOR
ANALYSIS WHAT DO YOU USUALLY
ACCEPT IN REIMBURSEMENT?
WHAT IS YOUR ACTUAL COST OF
CARE?

PRESENTATION TO THE TRIAL JUDGE
HERE WAS THERE ARE INDICIA--
>> FOURTH DISTRICT CASE DEAL
WITH ALL OF THAT?

>> IT DID NOT.

THIS IS--

>> IT DID NOT.

>> CORRECT.

>> OKAY.

SO THERE IS NO CONFLICT WITH THE
FOURTH DISTRICT CASE ON THESE
POINT?

>> THERE IS CONFLICT WITH THE
FOURTH DISTRICT ON THE POINT
DEPOSITIONS WERE ALLOWED BY THE
KAMINESTER CASE.

>> AGAIN ABOUT WHAT?

IN THAT FOURTH DISTRICT CASE AS
I UNDERSTOOD IT AND READING IT,
I WILL GO BACK AGAIN, AS I
UNDERSTOOD THE CASE IT WAS
REGARD TO THE LEASE, WHERE THEY
SHENANIGANS WITH REGARD TO
MRIs AND THE INDIVIDUAL WHO
WAS THE NAMED INSURED.

THIS WAS NOT A FAR-REACHING
FISHING EXPEDITION IN THE FOURTH
DISTRICT CASE.

>> NO, BUT I WOULD ARGUE, YOUR
HONOR, THIS IS NOT A
FAR-REACHING FISHING EXPEDITION

--

>> THE FOURTH DISTRICT CASE WAS
VERY LIMITED, WASN'T IT?

>> IT WAS LIMITED TO THE TERM,
DISCOVERY OF FACTS.
IT DIDN'T ADDRESS THE ISSUE OF
FACTS UNDER THE SECTION.
SO THAT'S DIFFERENT HERE BUT THE
CONFLICT--
>> YOU'RE AVOIDING MY QUESTION.
>> I'M TRYING NOT TO.
YOU'RE ASKING ABOUT THE
CONFLICT, CORRECT?
>> I'M ASKING ABOUT THE FACTS IN
THAT CASE TO DETERMINE IF
THERE'S A CONFLICT.
>> FACTS IN THAT CASE--
>> WE HAD, WE HAD SOME KIND OF A
CONCERN OR PROBLEM WITH AN MRI
BILL, WASN'T IT?
WASN'T THAT THE BASIS IS OF
THAT?
>> WHICH IS DIFFERENT FROM OUR
CASE.
>> NOT ONLY THAT BUT MRI FOR
THIS PARTICULAR INSURED BECAUSE
THERE WAS SOME CONNECTION
BETWEEN THE INSURED AND THE MRI
AND THE LEASE OF THE MRI.
>> YES, YOUR HONOR.
>> WE DON'T HAVE ANYTHING LIKE
THAT HERE.
>> WELL WHAT WE DO HAVE, WE HAVE
CHARGES TO THESE 29 INSUREDS.
>> NO, I UNDERSTAND THAT.
>> WHO TREATED THOSE INSUREDS
WHICH, MAY BE UNREASONABLE AND
UNREASONABLE CHARGES WOULD
PREMATURELY DEplete THE BENEFITS
AVAILABLE TO THE INSURED.
>> SO IT IS REALLY, IN A WAY
YOU'RE SORT OF SAYING, YOU'RE
HELPING THE INSURED IN THESE
SITUATIONS.
>> IF THEY'RE BEING CHARGED MORE
THAN WHAT THE CONTRACT IS WITH
BLUE CROSS/BLUE SHIELD AND THAT
GETS PAID, THEY GET LESS IN THE
WAY OF BENEFITS.
>> YES.
>> WE DO CERTAINLY LIKE A
HOSPITAL EMERGENCY ROOM BILL
COULD BE \$10,000.

>> YES.

AND ANY PAYMENT THAT'S MORE THAN MORE A REASONABLE AMOUNT, THIS COULD BE A FRAUDULENT CLAIM WHERE THERE'S A MISREPRESENTATION.

>> THERE'S WHERE THAT FRAUDULENT -- AND THAT SEEMED TO BE IN THE FOURTH DISTRICT CASE.

THAT SEEMED TO BE THE CONCERN, AS JUSTICE LEWIS WAS SAYING, REALLY DEALING WITH THIS HEALTH CARE PROVIDER, WHOEVER THEY WERE, DO ANYTHING OTHER THAN REFER THE PATIENT TO THE MRI FACILITY.

AND IT DOES SEEM LIKE THE CONFLICT ISSUE IS WHETHER YOU CAN TAKE A DEPOSITION IN FURTHERANCE OF DISCOVERING INFORMATION ABOUT THE PARTICULAR COST.

AND WHAT YOU'RE SAYING IS, NO, IT'S REALLY -- YOU GET TO DO, IN THIS VERY INFORMAL PROCEDURE, EVERYTHING THAT YOU COULD DO IF YOU HADN'T PAID THE CLAIM AND THEY SUED YOU.

>> WELL, --

>> THERE WOULD BE NO DIFFERENCE. YOU COULD DO ALL OF THAT IN A LAWSUIT, BUT SOMEHOW THE LEGISLATURE'S SAYING YOU CAN DO ALL OF THAT IN INFORMAL, NO LAWSUIT, DISCOVERY LAND.

>> WELL, THIS IS DIFFERENT BECAUSE IT'S SUBJECT TO THE DISCRETION OF THE COURT, AS JUSTICE REQUIRES.

>> IT WOULD BE HARD FOR ME TO UNDERSTAND HOW THE LEGISLATURE WOULD WANT -- AND THIS IS LEGISLATIVE INTENT WE'RE TALKING ABOUT HERE, BECAUSE DISCOVERY IS OTHERWISE CONTROLLED BY THE RULES OF CIVIL PROCEDURE, THAT THIS IS DONE OUTSIDE OF THE RULES OF CIVIL PROCEDURE. YOU'RE NOT A JUDGE, PRESUMABLY A COUNTY COURT JUDGE, THAT IS

TRYING TO LOOK AT A DISPUTE
WHERE THERE IS NO LAWSUIT AND
THERE'S NO INSURED, RIGHT?
THE INSURED'S NOT INVOLVED IN
IT.

>> ACTUALLY, THE PROCESS IS
DIFFERENT THAN YOUR HONOR
DESCRIBED.

>> THEN TELL ME THE PROCESS.

>> THIS WAS IN FRONT OF THE
CIRCUIT COURT.

>> EVEN WORSE.

SO THEN THE CIRCUIT COURT HAS TO
DEAL WITH IT RATHER THAN A
COUNTY COURT.

SO -- BUT THAT'S -- WORSE FOR
THE CIRCUIT COURT.

>> THE JURISDICTION OF THE COURT
IS TO CONSIDER -- AND IT IS
SUBJECT TO THE RULES OF CIVIL
PROCEDURE, BECAUSE ONCE A
PETITION IS FILED, IT'S A CIVIL
ACTION.

ALL CIVIL ACTIONS OTHER THAN
SMALL CLAIMS, PROBATE AND FAMILY
LAW ARE SUBJECT TO THE RULES OF
CIVIL PROCEDURE.

SO THE RULES OF CIVIL PROCEDURE
DO APPLY.

BUT IT'S A MORE LIMITED
PROCEEDING.

IT'S ONLY SO THAT THE INSURANCE
COMPANY CAN MAKE A CLAIM
DETERMINATION AND AVOID PAYING
MORE THAN WHAT SHOULD BE PAID
FOR BENEFITS.

>> WELL, HOW MUCH -- AND WHEN
DOES SHANDS GETS ITS ATTORNEYS'
FEES?

>> IF THE COURT ORDERS IT.
THEY WERE REQUESTED BY BOTH
SIDES IN THE UNDERLYING CASE
BECAUSE OUR POSITION WAS --

>> STATE FARM CAN GET ATTORNEYS'
FEES --

>> IF JUSTICE REQUIRES.
IF THERE'S STONEWALLING OF
INFORMATION THAT'S SOLELY IN THE
POSSESSION OF THE MEDICAL
PROVIDER, THE INSURANCE COMPANY

WILL BE PRECLUDED FROM MAKING A SIGNIFICANT DETERMINATION OF WHETHER IN THIS CASE THE CHARGES WERE REASONABLE OR NOT, BUT ALSO IN OTHER CASES WHERE THERE'S NONCOMPENSABLE CLAIMS UNDER THE STATUTE AS A WHOLE.

TO YOUR POINT, THERE'S ACTUALLY I THINK IT WAS JUSTICE LEWIS'S POINT, THERE'S ACTUALLY TWO POINTS OF CONFLICT.

ONE IS CERTIFIED.

THE ONE THAT'S CERTIFIED IS ON THE DEPOSITION ISSUE.

THE OTHER IS WITH THE GOLF CHANNEL CASES WHERE SECTION MEANS SECTION.

THIS COURT INTERPRETED THE TERM SECTION TO BE THE ENTIRETY OF 627.736.

SO WHAT IT COMES BACK TO IS THE FIRST DISTRICT GAVE A RESTRICTIVE INTERPRETATION BY A MISAPPLICATION OF THE BASIC TENETS OF STATUTORY CONSTRUCTION.

THE PROPER STATUTORY CONSTRUCTION SHOULD HAVE BEEN TO USE THE TERM SECTION AS ITS INTENDED.

THERE'S NOTHING ILLOGICAL ABOUT USING SECTION AS DISCOVERY OF FACTS IN THIS SECTION BEING DISCOVERY OF THAT WHICH IS SET FORTH IN THE ENTIRETY OF THE STATUTE.

AND THERE ARE PROVISIONS IN SUBSECTION 5 AND 4 THAT RELATE TO FRAUD, UNLAWFUL SERVICES, PATIENT BROKERING AND OTHER IMPROPER CHARGES THAT UNDER THE RESTRICTIVE INTERPRETATION, THE IMPROPER INTERPRETATION OF THE WORD SECTION, MEANING JUST SUBSECTION 6, DOESN'T ALLOW AN INSURER TO GO INVESTIGATE THESE OTHER CLAIMS.

AND THE VERY BASIC PURPOSE OF DISCOVERY IN THE PIP STATUTE IS BUILT IN THERE TO PREVENT

MEDICAL PROVIDER FRAUD OR OTHER
IMPROPER BILLINGS.

IT'S NOT JUST THIS FRAUD.

IN THIS CASE WE'RE TALKING ABOUT
UNREASONABLENESS OF THE AMOUNT.

>> LET ME ASK YOU THIS, IF I
COULD.

WHAT IS THE RIGHT OF DISCOVERY
UNDER THIS SECTION?

I MEAN, IS THAT REFERRING TO A
RIGHT OF DISCOVERY THAT IS
CREATED BY THE SECTION?

YOU'RE SAYING NOT.

>> I'M SAYING NOT.

>> WELL, BUT ISN'T IT NATURAL TO
READ THAT RIGHT OF DISCOVERY OF
FACTS UNDER THIS SECTION AS
POINTING TO A RIGHT THAT ARISES
UNDER THAT SECTION?

THAT IS, THAT EXISTS BY VIRTUE
OF THAT SECTION.

NOT THAT SOMEHOW IT'S CONNECTED
WITH IT, BUT, I MEAN, WHY IS
THAT WRONG?

WHICH MAY BEAR MAINLY ON THE
DEPOSITION ISSUE, BECAUSE
THERE'S NOTHING IN THIS STATUTE
ANYWHERE THAT SAYS ANYTHING
ABOUT DEPOSITIONS, IS THERE?

>> THERE ISN'T.

>> OKAY.

THERE IS SOMETHING IN HERE THAT
TALKS ABOUT PRODUCTION AND
INSPECTION AND COPYING OF
RECORDS.

THAT'S A DIFFERENT SUBJECT.
BUT THERE'S NOTHING IN THE
STATUTE ANYWHERE THAT TALKS
ABOUT DEPOSITIONS, CORRECT?

>> THERE'S NOTHING IN SUBSECTION
-- NOTHING IN THE STATUTE THAT
EXPRESSLY AUTHORIZES OR
PROHIBITS DEPOSITIONS.

THERE'S NOTHING IN THE ENTIRE
STATUTE THAT SAYS ANYTHING ABOUT
AUTHORIZING OR PROHIBITING ANY
PARTICULAR REQUEST FOR
INFORMATION.

>> CAN I ASK JUST A GENERAL
QUESTION ABOUT THIS

REASONABLENESS?

IN A LAWSUIT WHERE THE PLAINTIFF IS TRYING TO RECOVER THE COSTS OF THEIR TREATMENT, IS THE DEFENDANT PERMITTED TO TAKE EACH HEALTH CARE PROVIDER THAT PROVIDED IT AND IS THE DEFENDANT ABLE TO THEN GET ALL OF THAT DISCOVERY ABOUT WHAT THEY ARE -- WHAT THEIR CONTRACTS ARE WITH EVERYBODY ELSE?

>> IT'S WITHIN THE DISCRETION OF THE TRIAL COURT THAT --

>> BUT WHAT HAS BEEN THE GENERAL RULE?

BECAUSE THAT REALLY OPENS FOR EVERY HEALTH CARE PROVIDER -- JUST BECOMES -- YOU KNOW, IT'S NOT THE INSURED THAT MADE THE DEAL WITH -- I MEAN, THEY'RE BEING CHARGED WHAT THEY'RE BEING CHARGED.

>> THERE'S NO GENERAL RULE. CIRCUIT COURTS HAVE GONE BOTH DIRECTIONS.

WE'VE ASKED FOR THE INFORMATION THAT WE'VE ASKED FOR HERE IN THE SHANDS CASE AND WE WERE GRANTED IT BY THE TRIAL COURT.

WE'VE ASKED FOR VIRTUALLY THE IDENTICAL PRESENTATION IN THE DELRAY CASE THAT CAME OUT SUBSEQUENT --

>> NO.

THIS PLAINTIFF WAS INJURED, GOES TO TRIAL AND IS TRYING TO PROVE REASONABLENESS OF THE MEDICAL BILLS THAT THEY HAVE INCURRED. IS THE DEFENDANT ENTITLED FOR EACH MEDICAL PROVIDER THAT BILLED TO GET -- ARE THERE CASES TO GET ALL THE THIRD-PARTY CONTRACTS THAT THAT DOCTOR OR HOSPITAL HAS ENTERED WITH EVERY OTHER INSURANCE COMPANY?

>> THERE IS -- YES.

THE ANSWER IS YES.

>> THAT'S WHAT'S HAPPENING NOW?

>> IN THE DAMAGES LAWSUIT, THAT IS IMPORTANT ENOUGH INFORMATION

THAT IN FACT THE GIACALONE CASE SAID IF IT'S PROHIBITED FROM PRODUCTION, IT WOULD BE CONTRARY FROM LAW.

IT'S SUCH IMPORTANT ON THE ISSUE OF REASONABLENESS --

>> SO EVEN THOUGH THE CHARGE IS REASONABLE, THE DOCTOR IS GETTING EVERY WHICH WAY.

I CAN UNDERSTAND IF THE DOCTOR IS PUTTING THREE TIMES THE AMOUNT FOR AN OPERATION.

BUT, I MEAN, THEY'RE GETTING -- I DON'T KNOW.

MAYBE THIS ISN'T WHO'S FAIR OR WHATEVER, BUT IT'S SORT OF LIKE THE PATIENT GETS FORGOTTEN IN ALL OF THIS AS TO WHAT -- THEY'RE NOT -- THEY DON'T HAVE THE BARGAINING AUTHORITY, RIGHT?

>> THE PATIENT -- THE MEDICAL PROVIDER IS PROHIBITED FROM NOT ONLY CHARGING THE INSURED, BUT ALSO THE PATIENT, MORE THAN A REASONABLE AMOUNT.

AND THE MANDATE OF THE STATUTE IS TO PROVIDE PIP INSURANCE ONLY FOR REASONABLE MEDICAL EXPENSES.

>> BUT WHAT IF THE DOCTOR WON'T TAKE THE ASSIGNMENT AND THE BILL IS THE \$1,000?

CAN YOU DO THE SAME THING IF IT'S THE PATIENT?

THAT IS, GO TO THE DOCTOR AND GET EVERYTHING ELSE AND SAY ALL WE'RE GOING TO PAY IS \$500 EVEN THOUGH THE DOCTOR MAINTAINS HE OR SHE IS ABLE TO CHARGE \$1,000?

>> YES.

IN FACT, THE GIACALONE CASE IS THAT EXACT SITUATION.

THE INSURED WAS CONTESTING THE HOSPITAL'S BILLINGS AND HAD THE ABILITY TO DO THAT AND IT PRECLUDED UNDER THE STATUTE FROM BILLING MORE THAN A REASONABLE AMOUNT.

BACK TO THE POINT ABOUT THE RIGHT, WHAT IS THE RIGHT.

IT'S NOT SET FORTH IN THE

STATUTE WHETHER THERE'S A RIGHT OR NOT, BUT THERE'S AN EQUITABLE RIGHT OF THE INSURER, WHO NEEDS THE INFORMATION TO MAKE A MEANINGFUL DETERMINATION OF REASONABLENESS OF CHARGES TO DETERMINE WHAT TO PAY.

THERE'S AN EQUITABLE RIGHT UNDER THE STATUTE.

IN FACT, THE LANGUAGE OF 6C IS WORDED IN SUCH A WAY THAT IT TALKS ABOUT EQUITABLE RIGHTS, ONLY AS JUSTICE REQUIRES, PERMISSION TO OBTAIN DISCOVERY, WHICH IS VERY DIFFERENT FROM A AND B, WHICH IS MANDATORY REQUIREMENTS.

IN FACT, EVEN B DOESN'T SAY THAT AN INSURER HAS THE AUTHORITY TO REQUEST IS STATEMENT REGARDING REASONABLENESS OR ANY OF THE OTHER DOCUMENTS THAT ARE SET FORTH IN THAT PROVISION.

WHAT IT SAYS IS IF THE INSURED MAKES A REQUEST, IF THE INSURED MAKES A REQUEST, THEN CERTAIN THINGS ARE MANDATORY PRODUCTION.

>> BUT WHEN YOU READ THAT IT REALLY ESSENTIALLY ESTABLISHES THAT THEY'VE GOT A RIGHT TO GET THE WRITTEN REPORT, WHICH IS REFERRED TO, AS WELL AS A RIGHT TO THE PRODUCTION AND INSPECTION AND COPYING OF THE RELEVANT RECORDS, WHATEVER THEY MAY BE, WHICH IS KIND OF THE OTHER POINT HERE.

>> YES.

THERE'S A STATUTORY RIGHT TO THE THINGS THAT ARE SET FORTH IN 6B, BUT THERE'S ALSO A RIGHT OF EQUITY, AND THIS IS SIMILAR TO THE HEGWAY CASE WE CITED.

DISCOVERY PROVISIONS NEITHER PROHIBITED OR AUTHORIZED DISCOVERY THAT WAS NECESSARY FOR A MOTHER WHO LOST HER MINOR CHILD IN AN EMERGENCY ROOM. THE CHILD DIED.

AND COULDN'T FIND OUT WHAT

HAPPENED TO HER CHILD BY THE DOCUMENTARY DISCOVERY THAT WAS SET FORTH IN THE STATUTE, THE MEDICAL NEGLIGENCE STATUTE.

THIS IS VERY SIMILAR.

THE INSURANCE COMPANY CAN'T FIGURE OUT WHAT A REASONABLE CHARGE IS UNLESS IT HAS THE INFORMATION THAT'S WITHIN THE HANDS OF THE HOSPITAL.

AND AS A MATTER OF EQUITY --

>> YOU HAVE USED UP ALL YOUR TIME, INCLUDING YOUR REBUTTAL TIME.

>> UNDERSTOOD, YOUR HONOR.

>> OF COURSE, WE HELPED YOU A LOT WITH THAT.

WHAT I'LL DO IS I'LL GIVE YOU TWO MINUTES FOR REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> OKAY?

>> GOOD MORNING.

MY NAME IS JOHN TUCKER.

I REPRESENT SHANDS JACKSONVILLE.

WITH ME IS BEN GROSSMAN.

THE KAMINESTER CASE IS A VERY DIFFERENT CASE.

IN THAT CASE, THE PIP INSURED TOLD THE INSURANCE COMPANY, I DON'T KNOW THIS COMPANY.

I DIDN'T HAVE THE MRI DONE THERE.

THAT'S WHAT GENERATED THE REQUEST FOR INFORMATION.

ALSO VERY DIFFERENT FROM THIS CASE, WHEN THEY SENT THE 6B REQUEST FOR INFORMATION, AS THE COURT SAID IN KAMINESTER AND IN THE DELRAY CASE, WHICH FOLLOWED MORE RECENTLY, THEY WERE COMPLETELY STONEWALLED.

NOTHING WAS GIVEN.

SO WHAT THE JUDGE DID IN THAT

--

>> BUT HOW DOES THAT RELATE TO THIS ISSUE ABOUT DEPOSITIONS? DOESN'T ONE CASE SAY, YES, YOU CAN GET A DEPOSITION AND THE OTHER CASE SAY, NO, YOU CAN'T GET A DEPOSITION?

>> RIGHT.

I THINK YOU CAN RECONCILE THE TWO.

I DON'T THINK THAT YOU HAVE TO SAY THAT WHAT THE JUDGE DID IN THE KAMINESTER CASE IS WRONG, BECAUSE IF YOU LOOK AT THE DEPOSITION THAT WAS ORDERED IN THE KAMINESTER CASE, IT WAS A VERY LIMITED DEPOSITION, SAID SHOW UP AND TELL US WHAT YOU'RE CHARGING AND WHY, WHICH IS WHAT THE STATUTE SAYS THEY HAVE TO DO IN A SWORN STATEMENT.

>> AND IT WAS IN DISPUTE IN THAT CASE.

>> AND IT WAS IN DISPUTE.

AND IT'S VERY DIFFERENT.

IF YOU LOOK AT THE DEPOSITION THAT WAS ORDERED IN OUR CASE, IT WAS A DESIGNATED REPRESENTATIVE TO TALK ABOUT ANYTHING AND EVERYTHING.

>> DIDN'T THE FOURTH DISTRICT CHANGE ITS VIEW RECENTLY?

>> YES.

JUSTICE POLSTON, I DON'T KNOW IF I CUT YOU OFF.

>> YOU DID.

COME BACK TO ME, THOUGH.

>> I WILL.

WE CAME HERE INITIALLY ON CONFLICT WITH KAMINESTER. AFTER KAMINESTER WAS DECIDED, IT WAS A FOURTH DCA OPINION, THE FOURTH DCA CAME OUT WITH THE DELRAY CASE, WHICH IS CITED IN OUR BRIEF, AND THE DELRAY CASE THEY WHOLESALY ADOPTED THE REASONING OF THE FIRST DCA. WHAT THEY SAID IS WHEN YOU LOOK AT THE STATUTE, IT'S VERY SIMPLE.

YOU HAVE THIS SECTION, THIS SUBSECTION 6, SAYS IT'S ENTITLED.

DISCOVERY OF FACTS REGARDING INSURED.

IT SAYS DISPUTES.

THEN IT FOLLOWS, VERY

STRAIGHTFORWARD.

A SAYS IF A PIP INSURER WANTS INFORMATION REGARDING WAGE LOSS, THEY CAN ASK THE EMPLOYER FOR THAT INFORMATION, BECAUSE PIP PAYS, IN PART, WAGES.

SUBSECTION B SAYS BECAUSE PIP INSURERS ALSO PAY HEALTH CARE COSTS, IT SAYS IF A PIP INSURER HAS QUESTIONS ABOUT THAT, THEY CAN ASK FOR CERTAIN BASIC LIMITED INFORMATION.

AND THEN SUBSECTION C SAYS, IF -- AND I'LL QUOTE -- IF IN THE EVENT OF ANY DISPUTE REGARDING AN INSURER'S RIGHT TO DISCOVERY UNDER THIS SECTION, THEN YOU CAN COME INTO COURT FOR ENFORCEMENT. SO WHAT THE DELRAY CASE DID IS THEY ADOPTED THE FIRST DCA PLAIN AND PARIMATERIA INTERPRETATION.

>> LET ME ASK YOU ABOUT 6B AND THE PROVISION THAT REFERS TO THE OBLIGATION OF PROVIDER TO PRODUCE AND ALLOW THE INSPECTION AND COPYING OF ITS RECORDS REGARDING COSTS OF TREATMENT.

>> ALL RIGHT.

>> OKAY?

FOCUS ON THAT.

WHAT DOES COSTS MEAN IN THAT CONTEXT?

>> THE COSTS HAS BEEN -- AND AS PROVIDED -- WHEN THE 29 BILLS WERE PAID OVER A YEAR --

>> NO.

NO.

NO.

WAIT A SECOND.

PLEASE ANSWER MY QUESTION.

>> I WILL.

I WILL.

>> I UNDERSTAND THERE ARE OTHER THINGS YOU MIGHT WANT TO SAY.

LET ME ASK YOU THIS.

MAYBE I'LL REFOCUS MY QUESTION.

DOES THAT MEAN -- DO YOU INTERPRET "COSTS" TO MEAN BILLED, CHARGED?

>> I'M NOT SURE I UNDERSTAND

YOUR QUESTION, BUT LET ME SEE IF I CAN ANSWER IT THIS WAY.

>> WELL, I DON'T UNDERSTAND -- I MEAN, WHAT DOES COSTS MEAN?

DOES IT MEAN BILLED, CHARGED?

>> IT WILL MEAN BILLED CHARGES AND THE UNDERLYING COSTS ASSOCIATED WITH THAT BILLED CHARGE.

SO WHAT SHANDS PROVIDED WAS DETAILED, GIVING THE DIRECT COSTS ASSOCIATED WITH THE PROVIDING OF THE CHARGE.

SO IF SOMEBODY CAME IN AND THEY HAD SOME STITCHES, THERE MAY BE SOME MATERIALS THAT ARE USED AND THROWN AWAY.

THAT'S A DIRECT COST.

AND THEN WE ALSO PROVIDED THEM WHAT THE HOSPITAL NORMALLY DOES IS ALLOCATE OVERHEAD TO THOSE COST.

SO THAT WAS THE COST INFORMATION WE GAVE THEM.

IN ADDITION TO THAT, WE GAVE THEM THE COMPARATIVE COST TO CHARGE RATIO INFORMATION THAT WE GOT FROM THE AGENCY FOR HEALTH CARE ADMINISTRATION FROM THE STATE OF FLORIDA THAT SHOWED THAT SHANDS WAS RIGHT IN THE MIDDLE IN TERMS OF CHARGE-TO-COST RATIO.

SO WE GAVE ALL THAT INFORMATION. WHAT THEY WANTED WAS A LOT MORE.

>> CAN I TALK TO YOU ABOUT THE LOT MORE?

>> SURE.

>> ALL RIGHT.

THEY REQUESTED INFORMATION ON 29 OF ITS INSUREDS, RIGHT?

>> YES.

>> NOW, WHAT IF IT HAD BEEN JUST ONE?

>> IT WOULDN'T MATTER.

IT WOULDN'T MATTER.

IF YOU LOOK, JUSTICE -- I WOULD RECOMMEND YOU LOOK AT THE RECORD AT 1012 THROUGH 1016 AND THAT IS THEIR REQUEST.

>> SO IF THEY ASKED INFORMATION ON JUST ONE CLAIM, THAT DOESN'T MATTER.

>> WHETHER IT'S ONE OR A MILLION, THE QUESTION IS UNDER 6B AND IN 6A, YOU'RE ENTITLED TO CERTAIN BASIC LIMITED INFORMATION.

IT DOESN'T MATTER --

>> LET ME TALK ABOUT THAT INFORMATION.

>> OKAY.

>> SO THEN THE TRIAL JUDGE ORDERED PRODUCTION OF DOCUMENTATION, INCLUDING CONTRACTS BETWEEN SHANDS AND 37 HEALTH INSURANCE ENTITIES, RIGHT?

SO YOU'VE GOT THESE -- WHAT THEY'RE TRYING TO DO, STATE FARM AND OTHER CARRIERS WHO ARE PAYING THESE AMOUNTS, THEY'RE TRYING TO DETERMINE, IT SEEMS TO ME, THE REASONABLENESS OF WHAT IT IS THEY'RE PAYING COMPARED TO OTHER CONTRACTUAL ARRANGEMENTS THAT THE HOSPITAL HAS MADE.

SO WHAT IF THEY HAD ASKED INSTEAD OF 37, WHAT IF THEY HAD SIMPLY ASKED FOR THE TOP THREE? THE TOP THREE CONTRACTS THAT SHANDS HAS THAT IT'S PAYING MONEY TO TO BE ABLE TO COMPARE SIMILAR CHARGES THAT THEY'RE PAYING FOR TO WHAT'S BEING PAID BY THE HOSPITAL TO OTHER PEOPLE, SO THAT THEY'RE NOT PAYING, IT SEEMS TO ME, SOME UNREASONABLE AMOUNT.

WOULD THAT BE APPROPRIATE OR NOT?

>> IT WOULD NOT BE APPROPRIATE BECAUSE IT IS NOT -- THIS ARGUMENT IS NOT ABOUT THE NUMBER OF INSURANCE -- OTHER INSURANCE -- DISCOUNT INSURANCE CONTRACTS THERE ARE.

IT'S ABOUT WHAT YOU CAN GET UNDER 6B -- UNDER SECTION 6. WHEN YOU LOOK AT, WE THINK, AND

AS THE FIRST DCA --
>> SO IT'S A -- YOU'RE OKAY WITH
THEM BEING ABLE TO DETERMINE --
AT SOME POINT, SOMEHOW, THE
REASONABLENESS OF CHARGES PAID
TO AN INDIVIDUAL.

IF THEY PAY A PIP CLAIM THAT
THEY THINK I DON'T THINK THIS IS
A REASONABLE AMOUNT, HOW ARE
THEY THEN, PROCEDURALLY,
APPROPRIATELY ENTITLED TO
DISCOVER HOW THAT AMOUNT IS
REASONABLE?

>> OKAY.

LET ME TALK TO YOU ABOUT THE
PROCESS A LITTLE BIT, AND I
THINK IT WAS ANOTHER QUESTION
ABOUT HOW DOES THIS WORK.

THE BILL GETS SENT FROM THE
HOSPITAL BECAUSE THERE'S AN
ASSIGNMENT BY THE INSURED.

IT GOES TO STATE FARM.

STATE FARM HAS 30 DAYS TO PAY.

IF STATE FARM SAYS WE HAVE A
QUESTION ABOUT THIS BILL, THEY
CAN SEND THIS 6B REQUEST FOR
INFORMATION.

AND UNTIL THEY'RE PROVIDED THAT
INFORMATION, THEY DON'T HAVE TO
PAY, OKAY?

IF THEY REALLY QUESTION THE
REASONABLENESS OF THIS BILL,
WHICH THEY DIDN'T, WE THINK, IN
THIS CASE BY PAYING IT A YEAR
EARLIER, IF THEY DO QUESTION IT,
THEN THEY CANNOT PAY IT OR THEY
CAN PAY THE PORTION THAT THEY
THINK IS APPROPRIATE.

AND THAT'S WHAT SECTION 5A COMES
INTO PLAY.

THIS IS -- THE PIP STATUTE IS
SOME 17 PAGES LONG OR 16 OR 17
PAGES LONG WITH LIKE 17
PROVISIONS.

IT GOES FROM A TO Z.

IT COVERS EVERYTHING.

SECTION 6 -- SUBSECTION 6, AS HE
WOULD HAVE YOU SAY, IS THE ONLY
ONE THAT DEALS WITH DISCOVERY AS
REFERENCED IN 6C.

>> OKAY.
SO I'M WITH YOU.
SO HOW DO THEY ULTIMATELY GET TO
THE INFORMATION THEY'RE TRYING
TO GET THROUGH WHAT YOU SAY IS
AN IMPROPER DISCOVERY DEVICE?
HOW ARE THEY TO DO THAT?
>> HOW ARE THEY TO DO IT?
THEY EITHER PAY WHAT THEY THINK
IS REASONABLE OR THEY DON'T PAY
AND THEN THERE'S A LAWSUIT.
AND THAT'S WHEN 5A COMES INTO
PLAY.
IF YOU LOOK AT 5 --
>> SO ARE THEY THEN ENTITLED TO
THIS INFORMATION WHEN THEY HAVE
A LAWSUIT OVER A DISPUTED
AMOUNT?
>> THE STATUTE-- IN 5A IT TALKS
ABOUT CHARGES AND WHAT WOULD BE
THE REASONABLE CHARGES, AND IT
SAYS IN THE STATUTE, WITH
RESPECT TO DETERMINATION OF
WHETHER A CHARGE FOR A
PARTICULAR SERVICE, TREATMENT OR
OTHERWISE IS REASONABLE,
CONSIDERATION MAY BE GIVEN TO
EVIDENCE OF USUAL AND CUSTOMARY
CHARGES AND PAYMENTS ACCEPTED BY
THE PROVIDER IN THE DISPUTE,
REIMBURSEMENT LEVELS IN THE
COMMUNITY AND VARIOUS STATE --
IT GOES ON.
SO WHEN YOU HAVE A LAWSUIT IN
WHICH THE REASONABLENESS OF THE
RATE IS AT ISSUE, THIS STATUTE
COMES INTO PLAY.
NOW, THERE'S TWO THINGS THAT YOU
NEED TO --
>> SO ARE THEY ENTITLED TO THAT
INFORMATION AT THAT POINT?
>> THEY WOULD BE.
>> BUT TO GET TO THAT POINT,
DON'T THEY HAVE TO PUT
THEMSELVES AT RISK?
>> YES.
>> AND SO THEY'VE GOT TO PUT
THEMSELVES AT RISK IN ORDER TO
FIND OUT THAT INFORMATION RATHER
THAN BEING ABLE TO GET IT -- GO

AHEAD AND PAY THE CLAIM SO THAT THERE'S NO PROBLEM FOR THE -- THAT PUTS THEM AT RISK, BUT -- SO YOU'RE SAYING THEY CAN ONLY GET THIS INFORMATION, BUT YOU WANT THEM TO HAVE TO BE AT RISK IN ORDER TO GET IT, OR THE STATUTE REQUIRES THAT.

>> WHAT I'M SAYING IS THE STATUTE'S SET UP BASICALLY TO SAY, LOOK, YOU CAN'T JUST SEND A BILL AND EXPECT STATE FARM TO HAVE TO PAY IT.

THEY SHOULD BE ABLE TO GET SOME BASIC INFORMATION.

I KIND OF REFER TO IT AS NAME, RANK AND SERIAL NUMBER.

THEY GET BASIC INFORMATION.

IF THEY HAVE SOME CONCERNS ABOUT IT, THEN THEY NEED TO ADDRESS IT.

AND THE FIRST THING THAT OPPOSING COUNSEL STOOD UP --

>> BUT YOUR POSITION IS THEY CAN'T REALLY GET ANY INFORMATION OR PERHAPS THE MOST RELEVANT INFORMATION ABOUT WHETHER THE CHARGES THAT ARE BEING BILLED ARE IN FACT REASONABLE AT THAT STAGE.

THAT'S YOUR POSITION.

>> THEY ARE GOING TO GET CERTAIN INFORMATION THAT THEY CAN USE IN THEIR REASONABLENESS ANALYSIS, BUT IT'S NOT GOING TO BE EVERYTHING.

AND LET ME POINT OUT ONE THING.

>> THEY AREN'T GOING TO GET COMPARATIVE INFORMATION ABOUT WHAT OTHER PEOPLE ARE PAYING FOR THE SAME SERVICES, RIGHT?

>> CORRECT.

>> WHICH I'M HAVING A HARD TIME UNDERSTANDING HOW THAT'S NOT THE KIND OF CORE TO CERTAINLY A DETERMINATION OF THE REASONABLE COST.

I MEAN, OBVIOUSLY IT IS.

>> WELL --

>> AND HOW THAT WOULDN'T BE

RELEVANT TO THE DETERMINATION OF COST THAT IS TALKED ABOUT IN SECTION 6B.

>> WELL, LET ME POINT OUT A FEW THINGS TO YOU AS PART OF THIS ANALYSIS.

I READ TO YOU WHAT 5A SAID IN TERMS OF IF YOU HAVE A CLAIM WITH REGARD TO REASONABLENESS OF THE RATE, THEN IT WOULD BE POTENTIALLY BE USABLE AS EVIDENCE, OKAY?

IF YOU LOOK AT THEIR PETITION IN THIS CASE, IN THE FIRST PARAGRAPH IT SAYS THIS IS NOT -- AND THEY UNDERLINE "NOT" -- AN ACTION THAT WILL REQUIRE A DETERMINATION OF THE ULTIMATE ISSUE OF REASONABLENESS.

THEY PLEAD WE ARE NOT -- THIS IS NOT WHAT THIS IS ABOUT.

WHEN COUNSEL SAYS --

>> WELL, THAT'S OBVIOUS, BECAUSE THIS IS A PROCEEDING TO ENFORCE A DISCOVERY RIGHT.

>> RIGHT.

RIGHT.

AND WHEN COUNSEL STOOD UP, HE SAID THIS IS A LAWSUIT TO DETERMINE THE SCOPE OF DISCOVERY UNDER 6B.

IF YOU LOOK AT THE REQUEST THEY SENT, THE REQUEST SAYS IN ACCORDANCE WITH FLORIDA STATUTE 627.7365A1 AND B, WE HEREBY FORMALLY REQUEST AND THEN THEY GIVE US THREE PAGES THAT ASK FOR EVERYTHING.

AND THEN THEY BACKED OFF A LITTLE BIT OF THAT --

>> BUT YOUR ARGUMENT IS NOT THAT THE REQUEST IS OVERBROAD.

YOUR ARGUMENT IS IT'S LEGALLY IMPERMISSIBLE UNDER THE STATUTE.

>> WHAT WE'RE HERE ON WHAT DOES 6C MEAN ESSENTIALLY WHEN THEY TALK ABOUT THE ARGUMENT ABOUT SECTION VERSUS SUBSECTION.

AND LET ME TALK ABOUT THAT FOR A MINUTE.

I AM FAMILIAR WITH THE CASES THAT SAY SECTION MEANS SECTION. THERE'S OTHER CASES THAT SAY SECTION MAY MEAN SUBSECTION. HOW DO YOU RECONCILE THOSE? THE COURTS ARE LOOKING AT THE PARTICULAR STATUTE AND SAYING WHAT IS REALLY MEANT IN THIS PARTICULAR STATUTE. AND IF YOU DO THAT IN THIS CASE, WHETHER YOU SAY SECTION MEANS THE ENTIRETY OF 727.736 OR WHETHER YOU SAY IT JUST MEANS SUBSECTION 6, YOU GET TO THE SAME POINT, BECAUSE THE ONLY PROVISION IN THIS ENTIRE SECTION IS SUBSECTION 6. AND IT WOULD MAKE NO SENSE-- WHEN YOU LOOK AT IT AND IT SAYS RIGHT TO DISCOVERY UNDER THIS SECTION, IT WOULD MAKE NO SENSE, AS STATE FARM SAYS, THAT WE HAVE -- AND THEY'VE ADMITTED IN THEIR BRIEF. 6B ONLY ALLOWS FOR LIMITED -- AND THEY CALL IT MANDATORY DISCOVERY. LIMITED. BUT THEN THEY SAY WE'RE ONLY ALLOWED THAT. BUT THEN THEY SAY ONCE WE FILE A 6C ACTION, KATIE, BAR THE DOOR. EVERYTHING IS PERMISSIVE. AND THAT'S NOT WHAT THE STATUTE SAYS. IT'S TO PERMIT SUCH DISCOVERY. WE THINK IT WOULD MAKE NO SENSE TO INTERPRET THE STATUTE TO SAY THAT YOU ONLY -- YOU'RE ONLY ALLOWED TO GET CERTAIN INFORMATION, BUT IF YOU GO IN TO ENFORCE IT, NOW YOU GET A LOT MORE. THAT'S NOT THE PLAIN MEANING OF THE STATUTE. IT ALSO -- ONE OF THE THINGS THAT THE FIRST DCA HAD PROBLEMS WITH AND ASKED COUNSEL FOR STATE FARM, ARE YOU SAYING THAT WHAT THIS STATUTE MEANS IS THAT

ANYTIME A PIP INSURER GETS A BILL FROM ANY HOSPITAL ACROSS THIS STATE, IF IT SAYS I GOT A QUESTION ABOUT THIS BILL, I QUESTION THE REASONABLENESS, THEY'RE ENTITLED TO ALL OF THE CONFIDENTIAL DISCOUNTED CONTRACT INFORMATION THAT THE HOSPITAL SIGNS WITH BLUE CROSS, WITH AETNA, UNITED, ALL OF THOSE THINGS, THAT THAT'S WHAT THIS LIMITED DISCOVERY IS SUPPOSED TO BE ABOUT?

>> LET ME ASK YOU A QUESTION ABOUT JUST THIS CASE AGAIN. STATE FARM WENT AHEAD AND PAID ALL 29 BILLS.

>> CORRECT.

>> AND THEN HOW LONG WAS IT BEFORE THEY THEN ASKED YOU FOR THIS ADDITIONAL INFORMATION?

>> IT WAS ABOUT A YEAR.

IT WAS ABOUT A YEAR.

BUT LET ME SAY THIS, IN ALL FAIRNESS.

IN ALL FAIRNESS.

THEY HAD SUBMITTED ON SIX OTHER ONES PREVIOUSLY.

WE'RE WORKING ON AN AMENDED PETITION.

>> THEY WERE ASKING YOU FOR THIS INFORMATION FROM THE TIME THEY PAID IT?

>> NO.

THEY WERE ASKING FOR OTHER BILLS THAT HAD NOT BEEN PAID.

AND IN FACT WHAT HAPPENED FOR VARIOUS REASONS SHANDS JUST SAID WE'RE WRITING THOSE BILLS OFF, PRIMARILY BECAUSE THE CASE WAS SET UP WHERE IT WAS --

>> HONESTLY, INSURERS COULD TAKE -- AGAIN, I'M NOT GENERALLY SYMPATHETIC TO HOSPITALS EITHER BECAUSE I'VE SEEN THE CHARGES AND THEN WHAT THEY PAY -- BLUE CROSS PAYS.

IT'S ABSURD, THE DIFFERENCES.

BUT THIS COULD BE LIKE A SURVIVAL OF THE FITTEST.

I MEAN, BEAT DOWN A SMALLER FACILITY THAN SHANDS. BUT HERE'S THE QUESTION. IF THIS INSURED HAD BLUE CROSS/BUE SHIELD, BUT BLUE CROSS/BUE SHIELD PROVIDED THAT PIP WOULD BE PRIMARY.

>> RIGHT.

>> THEY DON'T HAVE THE CHOICE. WOULD THEY BE ENTITLED IN DETERMINING THE COST, AT LEAST GET -- AND THIS GOES BACK TO MAYBE JUSTICE POLSTON'S QUESTION, THE LIMITED OF WHAT WOULD BLUE CROSS/BUE SHIELD -- WHAT WOULD YOU HAVE RECEIVED FROM BLUE CROSS/BUE SHIELD?

>> UNDER 6B, NO.

>> BUT IT DOESN'T SEEM LIKE THERE IS SOMETHING THERE IN ORDER TO PROTECT THE CLIENT, THE PATIENT, THAT IF YOU HAVE -- AGAIN, YOU GET AN MRI AT A HOSPITAL.

GOODNESS KNOWS WHAT THEY MIGHT COST.

AND THEN -- BUT THE NEGOTIATED RATE WITH BLUE CROSS/BUE SHIELD IS \$200, BUT YOU'RE CHARGING \$1,000 --

>> IN YOUR HYPOTHETICAL, THE INSURED IS FULLY PROTECTED. THE STATUTE SAYS THAT STATE FARM ONLY HAS TO PAY 80% OF WHAT WERE THE REASONABLE CHARGES. THE STATUTE THEN GOES ON TO SAY, FOR EXAMPLE, CERTAIN PROCEDURES, CERTAIN THINGS YOU CAN ONLY CHARGE A CERTAIN PERCENTAGE OF MEDICARE, YOU KNOW, 75%, YOU KNOW.

THEY SET IT UP.

>> SO THAT MAYBE IS ANOTHER STATUTORY CONSTRUCTION CASE, BECAUSE IF THE LEGISLATURE WANTED TO DETERMINE WHAT'S REIMBURSABLE BY THE 13 OR -- CONTRACTS, THEY COULD HAVE SAID THAT.

BUT THEY ACTUALLY USED MEDICARE

AS THE BELLWETHER?

>> WHAT WE THINK THIS IS ABOUT IS THEY SET KIND OF WHAT THE STANDARD WOULD BE FOR A LOT OF THE CHARGES, WHAT THE REASONABLE CHARGE WOULD BE.

>> THEY WHO?

>> THE STATUTE DOES.

IF YOU LOOK AT 5, THERE'S A LOT OF INFORMATION THERE.

THIS IS ABOUT AN ATTEMPT TO SAY WE WANT TO SEE WHAT YOU'RE ACCEPTING FOR BLUE CROSS.

AND PART OF THE REASON -- PART OF THE TESTIMONY -- WE HAD THAT TRIAL ON THIS.

EVIDENTIARY HEARING FOR AN AFTERNOON OR A DAY.

LOOK, BLUE CROSS IS NOT THE SAME THING AS STATE FARM.

BLUE CROSS BRINGS PEOPLE TO OUR HOSPITAL AND THEY DO WHAT IS TYPICALLY DONE.

THEY SAY WE'RE GOING TO NEGOTIATE IT.

WE'VE GOT 200,000 INSUREDS WE MIGHT SEND YOU.

WHAT CAN WE WORK OUT?

STATE FARM, THERE IS NO SUCH DEAL.

>> WELL, THERE ARE WITH SUCH PIP CARRIERS.

WE'VE SEEN THEM DISCUSSED IN THIS COURTROOM.

IT MAY NOT BE FOR THE HOSPITAL BILL, BUT FOR OTHER DIAGNOSTIC PROCEDURES.

>> IF THIS WAS ALL ABOUT LET'S GET THIS INFORMATION AND THEN WE'RE GOING TO TRY TO NEGOTIATE --

>> LET ME ASK YOU THIS QUESTION. WE'VE HEARD BANTERED AROUND THAT STATE FARM CAN'T GET ACCESS TO REASONABLE COSTS.

IT'S BEEN A NUMBER OF YEARS SINCE I'VE BEEN IN THE TRENCHES, BUT BACK IN THOSE DAYS THERE WERE PUBLICATIONS-- YOU COULD EVEN GET THEM FROM THE STATE--

WITH REGARD TO CHARGES FOR
CERTAIN PROCEDURES.
ARE THOSE AVAILABLE?
YOU MENTIONED SOMETHING ABOUT
AHCA HAD RECORDS OR
PUBLICATIONS.

>> RIGHT.

>> WHAT'S THE STATUS OF THAT, TO
GET THE REASONABLENESS OF
CHARGES?

CAN YOU GO GET THAT?

>> I'M WORKING OVERTIME HERE,
BUT I THINK -- FINE TO DO THAT.
YES.

IN FACT, PART OF THAT
INFORMATION TO THE EXTENT WE HAD
IT, WE GAVE IT.

I'LL TELL YOU ONE ANOTHER THING
BRIEFLY ON THAT IS STATE FARM IS
SENDING INSUREDS TO EVERY
HOSPITAL IN THE CITY OF
JACKSONVILLE AS WELL AS ACROSS
THE STATE.

ONE OF THE THINGS THAT WE ARGUED
-- AND THERE ARE REASONS THAT
YOU COULD AFFIRM THIS THAT THE
FIRST DCA NEVER GOT TO, BUT WE
ASKED THEM, WHAT DO YOU THINK IS
REASONABLE?

WHAT ARE YOU PAYING?

WE WERE DENIED ALL THAT
DISCOVERY.

WE WEREN'T ALLOWED TO TEST IT.

IN FACT, THE PERSON --

>> WELL, THAT'S NOT IN THE
STATUTE FOR YOU TO GET THAT
INFORMATION.

>> NO.

IT'S NOT FOR ME TO GET THAT
INFORMATION.

BUT IT'S FOR ME TO BE ABLE TO
TEST WHEN THEIR WITNESS COMES IN
AND SAYS I HAVE A REASONABLE OR
GOOD CAUSE TO ASK THIS BECAUSE I
HAVE A QUESTION REGARDING THIS
BILL.

IF WE HAD BEEN ABLE TO GET
DISCOVERY THAT SAYS THEY HAVE A
POLICY THAT SAYS THIS IS HOW
MUCH WE PAY, WE'VE DONE THESE

STUDIES, WE'VE GOT CONTRACTS ON THIS, WE THINK THAT THAT WOULD HAVE BEEN RELEVANT TO THE ISSUE OF WHETHER THEY HAVE GOOD CAUSE TO SAY THEY QUESTION OUR BILL. WE ASK YOU THAT YOU AFFIRM. THANK YOU.

>> THANK YOU.

>> THANK YOU.

AGAIN, THANK YOU FOR THE ADDITIONAL TWO MINUTES. ON THE COST ISSUE, JUSTICE CANADY HAD ASKED WHAT THAT MEANS.

COSTS HAVE BEEN INTERPRETED TO MEAN WHAT THE HOSPITAL ACTUALLY HAS INCURRED IN ITS OWN COSTS TO PROVIDE THE CARE.

SO IT'S VERY DIFFERENT FROM WHAT THE CHARGES ARE.

>> BUT THEREFORE WHAT THEY MIGHT NEGOTIATE WITH BLUE CROSS/BLUE SHIELD, THEY MIGHT HAVE TO TAKE A LOSS, BUT OVERALL THEY GET THAT -- YOU KNOW, THEY GET THE GUARANTEED BUSINESS, SO IT'S -- THEY MAKE UP FOR IT IN SOME WAY. BUT THE COST, THEY PROVIDED YOU -- WHAT WERE -- GIVE ME SOME EXAMPLES OF WHAT SOME OF THESE CHARGES WERE.

>> SURE.

SO THEY GAVE US COST-TO-CHARGE RATIOS, MEANING IT COSTS US ABOUT 20% OVERALL FOR ALL THE CARE WE GIVE, WHETHER IT'S HEART SURGERY OR CANCER CARE OR WHATEVER.

OUR COST IS ABOUT 20%.

IN THIS CASE, THE ISSUE IS MORE ABOUT -- YOU'RE IN THE EMERGENCY ROOM.

YOU'VE GOT CAT SCANS, X-RAYS. CAT SCANS, THEY'VE ESTABLISHED, COST LESS THAN 8 CENTS ON THE DOLLAR.

>> IT SHOULD BOTHER ALL OF US, SHOULDN'T IT?

>> IT'S INDICIA OF POSSIBLE UNREASONABLENESS.

>> NEXT TIME I HAVE A CAT SCAN I CAN ASK THE HOSPITAL TO CHARGE 25 CENTS?

>> YOU CAN.

>> DOES THAT INCLUDE THE COST OF THE EQUIPMENT?

>> COST OF THE EQUIPMENT, NURSING CARE, THE ELECTRICITY, EVERYTHING.

THE COST THAT GOES INTO IT. THEY HAVE LISTED ON THEIR SCHEDULE AT 7.6 CENTS ON THE DOLLAR FOR A CAT SCAN.

HAVING SAID THAT, THERE'S A FOOTNOTE, WHERE THEY SAY THAT'S OUR DIRECT COST FOR A CAT SCAN, BUT WE'VE GOT SOME OTHER COSTS, BUT THEY WOULDN'T IDENTIFY THEM. SO THE COST INFORMATION THAT WE RECEIVED IS INCOMPLETE.

OKAY.

FOR THE CARE PROVIDED TO THESE 29 PATIENTS, THE CAT SCANS THAT THEY GOT, WHAT'S THE REAL COST? IS IT 7.6 CENTS ON THE DOLLAR OR IS THERE SOME OTHER INDIRECT COST?

>> BUT HOW DO YOU GET THAT BY WHATEVER YOU NEGOTIATE WITH THE OTHER INSURER?

SEEMS TO ME IF I WERE THE BIG INSURERS SHOULD GET TOGETHER, SUE ALL THE HOSPITALS AND MRI PROVIDERS AND HELP ALL THE CONSUMERS IN THE STATE OF FLORIDA PAY REASONABLE AMOUNTS FOR THESE MRIs AND CAT SCANS. THAT WOULD BENEFIT EVERYONE.

BUT IT JUST SEEMS ON AN INDIVIDUAL BASIS WE ARE STILL -- IT SEEMS LIKE YOU'RE GOING FAR BEYOND WHAT THE STATUTE REQUIRES OR ALLOWS.

>> AGAIN, THIS IS PIP.

WE'RE TRYING TO PROTECT THE INSURED.

THE DISCOVERY RIGHTS OF AN INSURER ARE TO PREVENT FROM BENEFITS BEING PREMATURELY EXHAUSTED.

AND IF WE CAN'T EXPLORE THE REASONABLENESS OF THE CHARGES BECAUSE HOSPITAL OR OTHER MEDICAL PROVIDERS ARE WITHHOLDING IT, OR FRAUDULENT CHARGES --

>> BUT YOU KNOW CAT SCANS THEY PAY THAT AND YOU SAY, LISTEN, WE'VE BEEN PAYING THIS AMOUNT TO GOOD SAMARITAN HOSPITAL, TO WHATEVER HOSPITALS ARE IN THE GAINESVILLE REGION, WE'RE GOING TO REIMBURSE YOU AT \$100 RATHER THAN THE \$1200 YOU CHARGE. GIVE IT A SHOT.

>> THERE'S TWO PROBLEMS WITH THAT.

CLAIM EXPENSES ARE GOING TO GO UP IF DEFENSE COSTS ARE INVOLVED, YOU GOT TO HIRE EXPERTS.

THEN PREMIUMS GO UP FOR ALL FLORIDA CONSUMERS.

I SEE THE EYEROLL.

I UNDERSTAND, JUDGE.

>> I'M JUST THINKING THIS IS NOT HELPFUL -- THIS SEEMS LIKE THERE IS HARASSMENT GOING ON AGAINST THE HOSPITALS THAT WOULD COST THEM IN TERMS OF DEPOSITIONS AND ATTORNEYS' FEES.

AND I DON'T KNOW HOW THAT'S GOOD EITHER.

BUT THAT'S REALLY A POLICY -- WE'RE DEALING WITH WHAT THE LEGISLATURE INTENDED, RIGHT, NOT WHAT WE THINK IS BETTER.

>> WE WOULD SUGGEST THE PLAIN MEANING IS OBVIOUS AND THAT A MORE DETAILED, ROBUST REVIEW OF THE LEGISLATIVE HISTORY, THE CHANGES IN THE STATUTES, WHICH ARE IN OUR BRIEFS, DEMONSTRATES THAT IN FACT THE ENTIRE SECTION IS SUPPOSED TO BE EXPLORED.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. COURT'S IN RECESS UNTIL TOMORROW AT 9:00.

>> ALL RISE.

