

>> THE NEXT CASE ON THE DOCKET  
IS ALLSTATE INSURANCE COMPANY  
VERSUS ORTHOPEDIC SPECIALISTS.  
TAKE YOUR TIME.  
WHENEVER YOU'RE READY.  
BUT DO MAKE IT SOMETIME TODAY.  
>> WHENEVER YOU'RE READY, SIR.  
>> GOOD MORNING.  
MY NAME IS RICK GODFREY.  
WE'RE HERE ON AN APPEAL OF A  
DECISION OF THE FOURTH DISTRICT  
COURT OF APPEALS.  
FROM THE ALLSTATE PERSPECTIVE  
THERE ARE FIVE BUCKETS OF ERRORS  
FOR THE COURT TO CONSIDER.  
>> FIVE BUCKETS?  
>> YES, SIR.  
>> WOW.  
>> I LIKE TO THINK IN TERMS OF  
BUCKETS.  
>> OKAY.  
WE MAY THINK IN TERMS OF BUCKETS  
LATER, TOO.  
>> I LEARNED THAT LAST NIGHT  
WHEN I GOT THE EMAIL  
NOTIFICATION FROM THE COURT.  
I HAD NOT EXPECTED.  
BUCKET ERROR NO. 1 IS THAT THE  
2-1 OPINION IS INCONSISTENT WITH  
AND CONTRARY TO THE HOLDING OF  
THIS COURT IN VIRTUAL IMAGING  
THREE AS WELL AS THE HOLDING IN  
HOLY CROSS.  
THE COURT HAS READ THE POLICY  
NOTICE THAT IS CONTAINED IN THE  
ALLSTATE POLICY IN A MANNER THAT  
RENDERS THE FIVE LINES  
COMPLETELY MEANINGLESS; THAT IS,  
DEVOID OF MEANING.  
ERROR THREE IS THAT THE COURT  
HAS CREATED A SYSTEM OF  
ANALYZING WORDS IN A MANNER IN  
WHICH EVERYTHING BECOMES  
AMBIGUOUS AND THAT THE STATUTES  
OF THIS STATE AND THE PRIOR  
RULES OF CONSTRUCTION OF THIS  
STATE BECOME ABSOLUTELY  
MEANINGLESS.  
BUCKET NO. 4 IS THAT THE LOWER  
COURT TWO-JUDGE OPINION ADOPTED  
RULES OF STATUTORY CONSTRUCTION  
AS WELL AS RULES OF APPELLATE  
REVIEW THAT MAKE IT VIRTUALLY  
IMPOSSIBLE OTHER THAN TO HAVE A

QUAGMIRE OF LITIGATION GOING FORWARD.

THEY ARE NOVEL, TO SAY THE LEAST.

FOR EXAMPLE, THE REQUIREMENT THAT THE COVERAGE MANDATE BE DISCLAIMED AS PART OF THE NOTICE.

NO INSURANCE COMPANY CAN DISCLAIM THAT.

AND BUCKET NO. 5 IS THE ADVERSE COLLATERAL CONSEQUENCES THAT RESULT.

IF YOU WANT TO WRITE DOWN ANYTHING FROM MY ARGUMENT AT ALL, WRITE DOWN THE FOLLOWING NUMBER.

\$438.57.

MISS SURGE HAS NO IDEA THAT SHE'S UP HERE IN THE SUPREME COURT OF FLORIDA TODAY.

YET IF YOU RULE BY ADOPTING THE ARGUMENTS OF THE PROVIDER, SHE WILL HAVE TO CO-PAY AN ADDITIONAL \$438.57 BECAUSE THAT IS THE EFFECT HERE.

THERE'S SOMETHING VERY CLEVER, BUT I SUBMIT TO YOU ERRONEOUS HAPPENED IN THE FOURTH DCA'S OPINION.

AT THE BEGINNING OF THE OPINION THE RULE IS QUOTED.

IT'S STANDARD IN EVERY STATE THAT IF THERE'S AMBIGUITY CONCERNING COVERAGE CONSTRUED IN FAVOR OF THE INSURED.

IT IS NEVER CONSTRUED IN FAVOR OF THE PROVIDER TO THE INJURY OF AND ADVERSE TO THE INTERESTS OF THE INSURED.

AND THAT IS PRECISELY WHAT HAS TAKEN PLACE HERE.

>> THIS STANDARD, IN OTHER WORDS, THERE'S NO QUESTION THAT AN INSURANCE COMPANY CAN LIMIT PAYMENTS TO WHAT THE MEDICARE LIMITS ARE, CORRECT?

>> CORRECT.

>> SO IS -- AND WHEN WE SAY WHAT'S THE DISASTER, GOING FORWARD IS THERE A WAY THAT ALLSTATE CAN PHRASE IT SO IT LEAVES NO DOUBT, WHICH IS JUST TO SAY THAT THE PAYMENTS WILL BE

SUBJECT TO THE MEDICARE -- AND NOT REFER TO ANOTHER STATUTE? AND DOES ANY OTHER INSURANCE COMPANY IN THEIR POLICIES IN FLORIDA HAVE A LESS -- MORE DIRECT STATEMENT OF THAT LIMITATION?

>> FIRST, WE THINK THE POLICY IS CLEAR.

>> I UNDERSTAND.

>> SECONDLY, UNDERSTAND THAT THE ARGUMENT BEING MADE BY THE AMICUS AND BY THE PROVIDER HERE MEANS THAT NO INSURANCE COMPANY CAN LEGITIMATELY ACCEPT THE LIMITATIONS BECAUSE THEY SAY THINGS LIKE YOU CAN'T HAVE ANY OTHER LIMITATIONS, WHICH THEY BROADLY DEFINE. THEY DEFINE LIMITATIONS BROADLY. THAT'S WHY THE OPINION IS SO VEXING. THEY SAY YOU MISCLAIM THE MANDATE AS A PRECONDITION TO MAKING THE ELECTION. THE FUNDAMENTAL ARGUMENT WHEN YOU STRIP AWAY THE RHETORIC, THE FUNDAMENTAL ARGUMENT OF THE AMICUS IS THAT THIS IS DESIGNED TO CONTROL COSTS THAT'S UNFAIR, SHOULDN'T TAKE PLACE. WHEN YOU LOOK AT EACH OF THE HOOPS, NO INSURANCE COMPANY COULD EVER ELECT 5A2. JUDGE MAY HAD IT RIGHT IN HER DISSENT. THERE'S THAT FAMOUS MOVIE. WHEN IS IT GOING TO END? IF YOU READ THE PROVIDER ARGUMENTS AND AMICUS ARGUMENTS, EVEN IF YOU RULE AGAINST ALLSTATE TODAY, YOU WILL BE IN THE SAME POSITION AGAINST EVERY OTHER INSURANCE COMPANY GOING FORWARD BECAUSE THERE'S NO WAY TO COMPLY WITH THE STATUTES. THEY NEED YOU TO DISCLAIM THE BASIC MANDATE, WHICH CONFLICTS WITH VIRTUAL IMAGING THREE. THEY NEED YOU TO DEFINE LIMITATIONS BROADLY, BECAUSE THAT CREATES A STATUTORY CONFLICT. THEY HAVE THE PREMISE, AGAIN,

VERY TO VIRTUAL IMAGING, THE  
CONCEPT IS THAT BY ELECTING A  
DIFFERENT METHOD OF CALCULATION,  
THAT IS THE FEE SCHEDULE METHOD  
OF CALCULATION, AS COMPARED TO  
THE FACT-SPECIFIC METHOD OF  
CALCULATION, THAT THAT EQUALS  
LESSER COVERAGE.

IT MEANS SO SUCH THING.

PAGE 38 OF OUR BRIEF, IT IS  
UNDISPUTED ON THIS RECORD THAT  
IF YOU ADOPT THE POSITIONS  
ADVOCATED HERE BY THE PROVIDER  
AND BY THE AMICUS, YOU ARE  
ADOPTING A RULE OF CONSTRUCTION  
THAT INSUREDS SHOULD PAY MORE TO  
GET LESS.

AND ON THE CO-PAY WE KNOW  
PRECISELY WHAT IT IS.

IT'S \$438.57.

AND THAT'S TRUE FOR THE  
THOUSANDS OF CASES THAT ARE  
AWAITING THIS COURT'S DECISION.  
SO GOING BACK TO MY FIRST BUCKET  
OF ERRORS, IN TERMS OF THE  
DEPARTURE FROM VIRTUAL IMAGING  
THREE, YOUR HONOR'S OPINION, 5-2  
DECISION.

ONE, ACCORDING TO THE MAJORITY  
OPINION, YOU MUST DISCLAIM THE  
BASIC COVERAGE MANDATE.

I DON'T KNOW HOW ALLSTATE'S  
GOING TO BE ABLE TO DO THAT.

IT'S PART OF THE LAW.

WE'RE GOING TO COMPLY WITH THE  
LAW.

TRUE, THIS COURT USES THE WORD  
"SHALL" IN THE MANDATORY SENSE,  
BUT WE LEARN THAT "SHALL" IS  
AMBIGUOUS.

I WENT OUT AND BOUGHT A LAW  
BOOK.

THIS WOULD HAVE BEEN HELPFUL  
WHEN I WAS A YOUNGER LAWYER.

I DIDN'T KNOW THIS EXISTED.

WHEN DRAFTERS USE SHALL --

>> WELL, IT DIDN'T EXIST WHEN  
YOU WERE YOUNG OR WHEN I WAS  
YOUNG.

>> FAIR COMMENT.

[LAUGHTER]

>> MY SON TELLS ME THAT ALL THE  
TIME.

BUT IT MAKES THAT THE

TRADITIONAL RULE HOLDS  
BEAUTIFULLY.  
THERE'S A NOTION THAT SHALL AND  
SUBJECT TO ARE INTRINSICALLY  
AMBIGUOUS.  
DO YOU KNOW HOW MANY TIMES THE  
WORD SHALL IS USED IN THE  
STATUTE?  
I ADDED THEM UP.  
I COUNTED 56 TIMES.  
THE PHRASE SUBJECT TO IS USED  
NINE TIMES.  
SO WE'VE GOT FAR BIGGER PROBLEMS  
GOING FORWARD IF YOU ACCEPT THE  
FOURTH DCA'S OPINION.  
YOU WILL BE ADOPTING A RULE  
BASED ON THE FOURTH DCA'S  
OPINION THAT SHALL AND SUBJECT  
TO ARE INTRINSICALLY AMBIGUOUS.  
SO DOES A BASIC COVERAGE MANDATE  
MEAN IT'S OPTIONAL ON WHETHER  
ALLSTATE PROVIDES \$10,000 IN  
COVERAGE?  
I DON'T THINK SO.  
BUT THAT IS ONE OF THE QUAGMIRES  
OF LITIGATION, THE NEGATIVE  
COLLATERAL CONSEQUENCE THAT'S  
WILL RESULT.  
THIS COURT IN VIRTUAL IMAGING  
THREE REQUIRED NOTICE.  
>> LET ME ASK YOU A QUESTION  
ABOUT THE "SHALL" SUBJECT.  
>> YES, MA'AM.  
>> [INAUDIBLE] IN SOME INSTANCES  
APPLY THE MEDICARE SCHEDULE AND  
IN OTHERS THEY DON'T?  
>> NO.  
NO.  
THIS RECORD HERE DOESN'T HAVE  
THAT IN IT.  
BUT ALLSTATE APPLIES 5A2 UNDER  
THIS POLICY.  
THAT'S WHAT IT APPLIES.  
NO.  
THERE ARE NON-MEDICARE SCHEDULES  
UNDER 5A2.  
>> THERE'S MORE SCHEDULES IN  
THAT STATUTE, CORRECT?  
>> YES.  
BUT 5A2, THAT CONDITION IS WHAT  
ALLSTATE APPLIES.  
THAT'S NOT IN THE RECORD.  
I MUST BE FAIR TO THE COURT.  
THAT IS NOT IN THE RECORD.

SO WITH ANY OF THE LEGISLATIVE HISTORY -- AND JUSTICE PARIENTE DETAILED IT. GENERALLY SPEAKING, ONE TRIES TO ADHERE WHEN ONE INTERPRETS A POLICY OR CONTRACT TO THE LEGISLATIVE HISTORY. THE LEGISLATIVE HISTORY WAS TO TRY TO MINIMIZE LITIGATION AND INSTEAD WE HAVE -- I THINK WE HAVE THUS FAR FAILED. THIS COURT HAS AN OPPORTUNITY TO PUT AN END TO THAT. SO WHEN YOU LOOK AT THE FOURTH DCA OPINION, YOU CANNOT SQUARE THAT OPINION WITH THIS COURT'S DECISION IN VIRTUAL IMAGING THREE. NOR CAN YOU SQUARE IT IN THIS COURT'S OPINION IN HOLY CROSS. IN HOLY CROSS, AGAIN, JUSTICE PARIENTE BY PURE CHANCE WROTE AT THE START, AND IT'S NOTED IN SOME OF THESE DECISIONS, LEGISLATIVE INTENT GUIDES A COURT'S INQUIRY UNDER THE NO-FAULT LAW. BUT THE LEGISLATIVE INTENT HERE IS CLEAR. THE LEGISLATIVE INTENT IS NOT TO LET PROVIDERS CHARGE WHATEVER THEY WANT. IT'S TO GIVE THE INSURANCE COMPANY AN OPTION TO CONTROL COSTS FOR THE BENEFIT OF THE INSURED. I HAD THE PRIVILEGE OF APPEARING IN THIS COURT TWO TIMES. THE FIRST TIME WAS HOLY CROSS. AND I THANK THE TIME FOR THE PRIVILEGE ACCORDED ME. I MEAN IT. BUT EACH CASE WAS UNIQUE IN THIS SENSE. AND I WENT BACK AND LOOKED AT THE TAPE BECAUSE YOUR HONOR ASKED ME A QUESTION ABOUT THE INSURED. IN EACH CASE THE INTEREST OF THE INSURED AND THE INSURANCE COMPANY WERE ALIGNED AGAINST THE PROVIDER. IN EACH CASE. THE PROVIDER IS ARGUING

SUPPOSEDLY IN THE SHOES OF THE  
INSURED, BUT THE INSURED KNOWS  
IF THE PROVIDER WINS THEY GET  
LESS COVERAGE FOR THE PRIVILEGE  
OF PAYING MORE.  
THAT IS NOT THE RULES OF  
CONSTRUCTION IN THIS STATE.  
SO THEN WE GET TO THE SECOND  
BUCKET OF ERRORS.  
WHAT DOES IT MEAN?  
SO WE HAVE A SECTION OF THE  
CONTRACT.  
IT'S CALLED THE LIMITS OF  
LIABILITY.  
BOLD.  
LIMITS OF LIABILITY.  
SAYS EXPENSES AND LOSSES WILL BE  
REDUCED BY.  
IT SAYS ANY ACCOUNTS PAYABLE  
UNDER THIS COVERAGE SHALL BE  
SUBJECT TO ANY AND ALL  
LIMITATIONS.  
AND THEN IT GOES ON.  
WHAT COULD BE MORE CLEAR?  
THE THIRD DCA SAID THERE'S NO  
LEGAL REALM.  
ACCORDING TO THE PROVIDERS, THEY  
HAVE NO IDEA.  
HOW IS IT WHEN YOU HAVE IN BOLD  
PRINTS, LIMITS IN LIABILITY, HOW  
IS IT CREDIBLE TO SAY YOU HAVE  
NO IDEA?  
OR, AS JUDGE MAY SAID, IT TOOK  
14 PAGES TO COME UP WITH REASONS  
WHY IT COULD BE AMBIGUOUS.  
LOOK, ALL LAWYERS ARE PRETTY  
GOOD.  
ANYONE CAN TAKE THE LANGUAGE AND  
PARSE IT BY ATOMIZING IT TO MAKE  
AN AMBIGUITY ARGUMENT.  
BUT THEY'VE TAKEN THE FOUR LINES  
AND RENDERED IT COMPLETELY  
MEANINGLESS.  
THEN YOU GET TO THE AMBIGUITY  
ERRORS.  
SHALL?  
YOU CAN'T FIND CASES SHALL IS  
AMBIGUOUS IN THIS CONTEXT.  
THEY JUST DON'T EXIST.  
WE CAN LOOK TO THE CASE IN 1961  
ON THE REFERENDUM, THE FALLACE  
CASE.  
WE CAN LOOK TO THE PUBLIC  
POLICY, CASES WHICH SAY ABOUT

EXCLUSIVE JURISDICTION.  
THE PHRASE SUBJECT TO IS  
UBIQUITOUS.  
IT MEANS GOVERNED BY.  
OR WE CAN ADOPT THE RULE OF THE  
FOURTH DCA AND HAVE A QUAGMIRE  
OF LITIGATION.  
IT WILL NEVER END.  
>> ARE ALL INSURANCE COMPANIES  
ELECTING THE REIMBURSEMENT AT  
MEDICARE RATE?  
>> I DON'T KNOW THE ANSWER TO  
THAT QUESTION.  
IT'S NOT IN THE RECORD.  
BUT I DO NOT KNOW THE ANSWER TO  
THAT QUESTION.  
>> YOU'RE SAYING WHAT'S GOOD FOR  
THE INSUREDS.  
GOOD FOR THE INSUREDS IF THEY  
CAN GET MORE MEDICAL SERVICES  
FOR THEIR PIP.  
>> CORRECT.  
>> IT WOULD BE BAD FOR THE  
INSUREDS IF THE PROVIDERS DO NOT  
WANT TO ACCEPT THE MEDICARE  
SCHEDULE AND THEY ACQUIRE THAT  
THEY -- AND THEY NOT ACCEPT PIP.  
SO IT'S NOT NECESSARILY GOOD FOR  
THE INSUREDS ACROSS THE BOARD.  
>> THREE POINTS, BECAUSE I  
DISAGREE WITH YOUR HONOR  
RESPECTFULLY.  
POINT NUMBER ONE, THAT ASSERTION  
IS DIVORCED FROM THE RECORD.  
THERE'S NOT A SINGLE PIECE OF  
RECORD EVIDENCE THAT PROVIDERS  
ARE NOT PROVIDING PIP SERVICES  
OR THAT THEY WILL FLEE.  
NUMBER TWO, STATUTE ACTUALLY  
DOESN'T SAY THE MEDICARE FEE  
SCHEDULES.  
IT SAYS 80% OF 200%.  
SO IT'S 160% OF MEDICAL FEES.  
SO WHEN YOU DO THE MATH, IT'S  
160%.  
SO IT'S NOT AS IF IT'S THE  
MEDICARE FEE SCHEDULES.  
NUMBER THREE, AGAIN, THIS IS NOT  
PART OF THE RECORD, BUT I DID  
SOME HOMEWORK DOWN HERE --  
>> YOU MUST HAVE ANTICIPATED  
THIS QUESTION?  
>> I THOUGHT ABOUT IT, YES.  
I LEARNED ABOUT SOMETHING, THE



HIALEAH SECTION OF MIAMI,  
THERE'S ONE ZIP CODE AREA THERE  
ARE OVER 400 PIP PROVIDERS.  
NOT SURE WHERE THERE IS,  
PRECISELY.

I DON'T KNOW THAT AREA OF THE  
STATE.

BUT THE NOTION THAT THE MEDICAL  
PROFESSION IS SUDDENLY GOING TO  
STOP PROVIDING SERVICES FOR  
PEOPLE IN NEED?

MY DAUGHTER'S A FOURTH YEAR  
MEDICAL STUDENT.

I DON'T SEE THAT HAPPENING.  
AND THERE'S ALSO NOTHING IN THE  
RECORD TO SUGGEST THAT.

>> WELL, YOU DID SAY THIS  
MORNING AS PART OF YOUR ARGUMENT  
THAT THE DISPUTE IS THAT THERE'S  
A \$400 AND SOME ODD DOLLAR  
SHORTFALL FROM THE CHARGES FROM  
WHAT'S COVERED.

DID I UNDERSTAND THAT CORRECTLY?

>> NO.

NO.

>> I DID NOT.

>> MY POINT WAS IF YOU RULE FOR  
THE PROVIDER, THEN THE CO-PAY  
PORTION THAT MISS KELLY, THE  
PLAINTIFF WILL HAVE TO PAY IN  
ADDITION, IS \$438.57.

>> AND I KNOW THIS HASN'T BEEN  
BRIEFED AND IT'S NOT -- I MEAN,  
IT'S INHERENT IN THE CASE, IS  
THE VERY FIRST CASE THAT CAME  
OUT ON NO-FAULT WAS WHETHER IT  
WAS CONSTITUTIONAL IN SITUATIONS  
FOR PROPERTY DAMAGE WHERE THE  
INSURED DID NOT HAVE COVERAGE,  
FIRST-PARTY COVERAGE, TO PAY FOR  
THE DAMAGE TO THEIR VEHICLE AND  
THE PIP COVERAGE DIDN'T COVER  
IT.

AND THIS COURT HELD BACK IN THE  
'70s THAT THAT'S  
UNCONSTITUTIONAL.

HOW IS IT THAT THIS HAS GONE SO  
MANY YEARS THAT WE HAVE PIP  
COVERAGE THAT'S SUPPOSED TO BE  
AN ALTERNATIVE REMEDY, YET THE  
INSUREDS' BILLS ARE NOT BEING  
PAID, PARTICULARLY -- THERE ARE  
FOLKS -- I MEAN, I UNDERSTAND  
YOUR ARGUMENT.

YOU'RE FROM THE BIG CITY.  
BUT THERE ARE PHYSICIANS THAT  
DON'T NECESSARILY ACCEPT  
MEDICARE OR MEDICARE PATIENTS.  
SO -- AND IN THIS TOWN THAT GOES  
ON.

SO HOW DOES ALL THIS COME  
TOGETHER WHEN YOU'RE TALKING  
ABOUT THE VALIDITY OF ALL OF  
THESE SCHEDULES AND EVERYTHING?

>> I THINK I UNDERSTAND YOUR  
HONOR'S QUESTION.

I'LL DO MY BEST.

THE CONCEPT IS, AS I UNDERSTAND  
IT, FROM THE LEGISLATIVE INTENT,  
WAS TO PROVIDE MORE BENEFITS,  
BECAUSE THE STATUTORY COVERAGE  
MANDATE IS \$10,000 IN BENEFITS.  
AND BECAUSE OF CONCERNS ABOUT  
RUN-AWAY MEDICAL COSTS, ET  
CETERA, THE CONCEPT WAS TO ALSO  
MAKE IT EASIER FOR THE PROVIDERS  
AND THE INSURANCE COMPANIES TO  
HAVE THE PAYMENTS MADE TO AVOID  
LITIGATION.

THERE WAS A LOT OF LITIGATION.  
THE CONCEPT WAS ALMOST A SAFE  
HAVEN.

WE'LL USE THE FEE SCHEDULES THAT  
EVERYONE KNOWS ABOUT, WE'LL  
INCREASE THE AMOUNT OF THE FEE  
SCHEDULE AND THAT SAFE HAVEN  
AVOIDS LITIGATION, REDUCES THE  
COST FOR THE INSURED, PROVIDES  
THEM MORE COVERAGE AND MAKES IT  
EASIER FOR THE  
PROVIDER/INSURANCE COMPANY  
THOSE ARE ALL NOBLE LEGISLATIVE  
GOALS.

NOW, IT HASN'T PLAYED OUT IN  
LIGHT OF THE FOURTH DCA, BUT  
THAT WAS THE GOAL.

THE RECORD DOESN'T ADDRESS  
WHETHER AND, IF SO, THE EXTENT  
TO WHICH ANY PROVIDERS DON'T  
DEAL WITH PURE MEDICARE.

I KNOW MANY DOCTORS WHO DO, I  
DON'T KNOW ANYONE WHO DOESN'T--  
>> WHO?

>> I JUST DON'T KNOW ONE WAY OR  
THE OTHER.

>> TRY GETTING THE OLD FOLKS IN  
TO SEE A DOCTOR HERE IN  
TALLAHASSEE.

>> I CAN'T ADDRESS THAT BECAUSE I DON'T HAVE EXPERIENCE WITH THAT, AND IT'S NOT IN THE RECORD.

ALL I CAN SAY IS THAT IN THIS RECORD IF YOU RULE FOR THE PROVIDERS, THE INSUREDS ARE COVERED.

I'D LIKE TO LEAVE A LITTLE TIME FOR REBUTTAL, SO UNLESS THE COURT HAS ANY FURTHER QUESTIONS, I APPRECIATE THE OPPORTUNITY TO SPEAK WITH YOU THIS MORNING.

>> GOOD MORNING, EVERYONE.

MAY IT PLEASE THE COURT, I'M GARY FARMER FOR THE APPELLEE, AND WITH ME IS CO-COUNSEL, MY SON.

I'M--

[INAUDIBLE]

CAN YOU HEAR ME?

CAN YOU HEAR ME NOW?

[LAUGHTER]

SORRY FOR THAT.

JUST TO BRIEFLY RESPOND TO A COUPLE THINGS OPPOSING COUNSEL SAID-- MUCH OF WHICH IS NOT IN THE RECORD AND WAS NOT IN THE OPINIONS AND IS NOT DIRECTLY RELATED TO THE ARGUMENTS WE MAKE-- I JUST WANT TO POINT OUT SOMETHING THAT I BELIEVE JUSTICE PARIENTE HAS WRITTEN SEVERAL TIMES IN OPINIONS, AND I KNOW A NUMBER OF YOU HAVE ALLUDED TO IT IN DIFFERENT WAYS.

THERE IS NO SUCH THING AS LEGISLATIVE HISTORY IN FLORIDA IN THE SENSE THAT IT'S USED IN THIS CONGRESS.

THERE ARE NO COMMITTEE HEARINGS AND ALL OF THAT STUFF.

LEGISLATIVE INTENT, AS I UNDERSTAND IT FROM YOUR DECISIONS, IS DERIVED ONLY FROM THE LANGUAGE OF THE STATUTE, NOT FROM GUESSING ABOUT--

>> WELL, THAT'S-- I DON'T KNOW WHERE YOU GET THAT IDEA, BECAUSE WE-- NOW, WE CAN ARGUE ABOUT THE MERITS--

>> YEAH.

>>-- LOOKING AT LEGISLATIVE HISTORY.

BUT WE LOOK AT STAFF ANALYSIS--  
>> I KNOW YOU DO.  
BUT YOU'VE SAID IN YOUR OPINIONS  
MANY TIMES THOUGH YOU DON'T USE  
STAFF ANALYSIS TO CHANGE  
SOMETHING THAT IS SAID IN THE  
STATUTE TO UNDERSTAND--  
>> I AGREE WITH YOU.  
>> YEAH.  
AND THAT'S WHAT I'M GETTING AT.  
IT DOESN'T-- THERE'S NO BASIS  
FOR--  
>> I AGREE WITH YOU THAT WE  
SHOULDN'T DO THAT.  
>> YEAH.  
WE-- OKAY.  
[LAUGHTER]  
WE HAVEN'T AGREED ON MUCH IN A  
LONG TIME, THAT'S GREAT.  
[LAUGHTER]  
I'M REALLY HAPPY ABOUT THAT.  
[LAUGHTER]  
>> EVERY DISTRICT COURT OF  
APPEAL AND THIS COURT MAJORITY  
OPINIONS HAVE SAID THE  
LEGISLATIVE HISTORY CAN BE  
CONSIDERED.  
AGAIN, THE QUESTION OF WHAT IT  
IS--  
>> YEAH, WHAT IT MEANS.  
>> BUT--  
>> YOU SAY IN YOUR OPINIONS,  
THOUGH, THAT THE MEANING OF THE  
STATUTE IS DETERMINED FROM THE  
STATUTORY LANGUAGE.  
>> NOT UNLESS IT'S AMBIGUOUS.  
>> YEAH.  
IF IT'S AMBIGUOUS, THEN YOU GO  
AND LOOK FOR SOMETHING ELSE.  
>> I'M TRYING-- I THOUGHT WE  
WERE TALKING ABOUT WHETHER THE  
INSURANCE POLICY IS AMBIGUOUS.  
>> YEAH, WE ARE.  
AND I WANT TO SAY-- I WANT TO  
GET TO THAT.  
I WANT TO TALK ABOUT THAT.  
YOU HAVE-- LET ME BACK UP FOR A  
MOMENT.  
WASHINGTON NATIONAL INSURANCE V.  
RUDEMAN AND VIRTUAL IMAGING WERE  
DECIDED ON THE SAME DAY, JULY 3,  
2013.  
BOTH INSURANCE CASES, BOTH  
INVOLVING CONSTRUCTION OF

POLICIES, BOTH TURNING ON THAT.  
BOTH OF THOSE OPINIONS INVOLVE  
SOMETHING THAT YOU'VE DONE FOR  
DECADES.

IN ALL OF YOUR CASES ON THE  
MEANING OF AN INSURANCE POLICY,  
YOU BEGIN YOUR ANALYSIS BY  
SAYING SOMETHING LIKE THIS:  
THERE ARE CANONS OF STATUTORY--  
OF INSURANCE POLICY  
CONSTRUCTIONS.

AND YOU SAY THESE THREE THINGS:  
WE ALWAYS START WITH THE IDEA  
THAT THE MEANING OF THE POLICY  
IS GOING TO BE DETERMINED FROM  
THE PLAIN MEANING OF THE WORDS  
USED IN THE POLICY.

BY THAT YOU MEAN-- YOU'VE SAID  
THIS INDIRECTLY, BUT THIS IS  
WHAT AS I UNDERSTAND IT-- WHEN  
YOU SAY "THE PLAIN MEANING" OF  
THE WORDS USED, YOU MEAN THE  
MEANING COMMONLY ACCEPTED AND  
UNDERSTOOD BY THOSE WORDS AS  
USED IN THE STANDARD RESOURCES  
OF REFERENCE RESOURCES SUCH AS  
DICTIONARIES.

THE SECOND THING YOU SAY IS IN  
DETERMINING THE MEANING OF AN  
INSURANCE POLICY, YOU MUST LOOK  
AT THE ENTIRE POLICY.

YOU MUST GIVE EVERY WORD, EVERY  
PROVISION IN THAT POLICY ITS  
FULL EFFECT.

OKAY?

THEN YOU SAY AS THE THIRD THING  
IF, HAVING DONE ALL OF THAT, YOU  
THEN ARRIVE IT'S POSSIBLE IT  
COULD BE READ FOR COVERAGE AND  
IT'S POSSIBLE IT COULD BE READ  
AGAINST COVERAGE, IT'S THEN  
AMBIGUOUS, DEEMED AMBIGUOUS AS A  
MATTER OF LAW, AND CONSTRUED  
AGAINST THE INSURER.

THAT'S WHAT YOU SAID.

I THINK-- I WAS THE ATTORNEY IN  
RUDEMAN.

I THINK I WENT-- IN THE BRIEF  
THERE, I WENT BACK AND I LOOKED  
AT EVERY INSURANCE POLICY  
CONSTRUCTION CASE OF THIS COURT  
SINCE 1906 WHEN THEY ADOPTED THE  
AMBIGUITY PRINCIPLE.

I NEVER SAW AN OPINION DECIDING

WHAT THE MEANING OF AN INSURANCE POLICY WAS THAT DID NOT BEGIN BY RECITING THESE ARE THE RULES OF CONSTRUCTION.

YOU WILL LOOK AT THE DECISION, THE OPINIONS IN THE FIRST, SECOND AND THIRD CONFLICT CASES, AND NONE OF THOSE COURTS DID THAT.

THEY MADE NO ATTEMPT TO UNDERSTAND AND APPLY THE APPLICABLE RULES OF THE MEANING OF INSURANCE POLICIES.

BUT THE MAJORITY IN THE ORTHO SPECIALIST CASE, THAT'S EXACTLY WHAT THEY BEGAN WITH.

AND THEY TALK ABOUT RUDEMAN. SO THEY TOOK THAT, AND THEY APPLIED IT JUST AS YOU DID IN VIRTUAL IMAGING.

>> HOW WOULD YOU WRITE THIS CLAUSE SO IT WOULD BE, IN YOUR VIEW, UNAMBIGUOUS?

THEY'RE SAYING UNDER YOUR INTERPRETATION AN INSURANCE COMPANY COULD NEVER DO THAT.

>> I WILL TELL YOU EXACTLY HOW THEY COULD DO IT.

>> ALL RIGHT.

>> START OFF BY SAYING WHAT THEY DID IN THEIR POLICY RIGHT OFF THE BAT.

INCIDENTALLY, LET ME SHOW YOU SOMETHING.

I WANT TO MAKE SURE YOU GET THIS BEFORE-- I DON'T WANT TO GET LOST.

THIS IS THE FRONT PAGE OF THE POLICY, OKAY?

ALLSTATE'S POLICY.

VERY NEXT PAGE, TABLE OF CONTENTS, OKAY?

THERE ARE SEVERAL DIFFERENT KINDS OF INSURANCE IN HERE, YOU KNOW, UM, BODILY INJURY AND ALL THAT STUFF.

SO THERE'S A TABLE OF CONTENTS FOR EACH.

PART THREE, PERSONAL INJURY PROTECTION.

FIRST LINE UNDER IT, INSURING AGREEMENT.

INSURING AGREEMENT.

YOU TURN TO THAT PAGE, AND WHAT

DOES IT SAY?  
ALLSTATE WILL PAY 80% OF  
REASONABLE CHARGES.  
ALLSTATE WILL PAY.  
NOW, YOU GO DOWN AND LOOK AT--  
THAT'S-- THE POLICY ITSELF IS  
24 PAGES AT THAT POINT.  
YOU GO DOWN AND LOOK 12 PAGES OR  
SO, THAT'S WHERE YOU FIND THAT.  
A FEW PAGES LATER THERE'S  
SOMETHING CALLED THE LIMITS OF  
LIABILITY, AND THERE'S NOTHING  
IN THERE ABOUT FEE SCHEDULES,  
NOTHING.  
NOTHING LIMITING ANYTHING.  
THEN THERE'S AN AMENDATORY  
ENDORSEMENT, ANOTHER NINE PAGES,  
AT THE END.  
AND IN THAT SEVEN PAGES IN,  
THERE'S A PROVISION ON LIMITS OF  
LIABILITY.  
AND THAT'S WHERE YOU FIND THIS  
PARAGRAPH THAT WE-- HE'S  
RELYING ON.  
THAT PARAGRAPH IS LISTED IN A  
SERIES OF NINE SEPARATE  
SUBPARAGRAPHS, AND IT'S THE ONLY  
ONE THAT DOESN'T HAVE ANY  
ACCENTED TEXT IN IT.  
AND IT SAYS WHAT YOU READ IN THE  
PAPERS, IT SAYS THAT COVERAGE  
WILL BE SUBJECT TO ALL BUT NOT  
LIMITED TO ALL FEE SCHEDULES.  
DOESN'T SAY MEDICARE PART B  
SCHEDULES, BY THE WAY, WHICH YOU  
SAID IN VIRTUAL IMAGING.  
IN VIRTUAL IMAGING, YOU WERE  
VERY CLEAR ABOUT THAT.  
IF YOU'RE GOING TO ADOPT THE  
MEDICARE FEE SCHEDULE, YOU'VE  
GOT TO SAY THE MEDICARE FEE  
SCHEDULES.  
YOU SAID YOUR POLICY, BECAUSE  
IT'S A LIMITATION, MUST MAKE IT  
CLEAR AND UNAMBIGUOUS.  
LET ME TALK ABOUT THAT A SECOND.  
CLEAR AND UNAMBIGUOUS IS NOT ONE  
OF THOSE INSTANCES WHERE LAWYERS  
USE ITERATION, AS IN GIVE,  
DEVISE, BARGAIN, BEQUEATH AND SO  
FORTH.  
CLEAR AND AMBIGUOUS MEANS TWO  
THINGS; THE WORDS THEMSELVES  
MUST BE CLEAR, BUT THEY MUST NOT

BE MADE AMBIGUOUS BY THE CONTEXT  
OR BY SOMETHING THAT APPEARS  
LATER ON IN THE POLICY, IN THE  
WRITING THAT SEEMS TO CONTRADICT  
IT.

THEY MUST HAVE BOTH QUALITIES.  
THEY JUST CAN'T LEAVE YOU WITH  
ANY DOUBT ABOUT IT.

SO YOU'RE THE UNEDUCATED,  
NON-LAWYER POLICY BUYER, OKAY?  
AND YOU'VE PAID YOUR MONEY.

BY THE WAY, THEY SAY WE'RE  
SELLING YOU A POLICY THAT SAYS  
WE'RE GOING TO PAY 80%.

THE PREMIUM FOR A POLICY THAT  
PAYS 80% IS UP HERE, WE CAN  
AGREE.

IF, ON THE OTHER HAND, THEY'RE  
ONLY GOING TO PAY THE FEE  
SCHEDULES, THE MEDICARE FEE  
SCHEDULES-- WHICH, IF YOU DO  
THE MATH, DON'T AMOUNT TO AS  
MUCH AS 40% OF WHAT THE  
REASONABLE CHARGE WOULD BE-- IF  
YOU LOOK AT THAT, THAT'S WHAT'S  
GOING TO BE PAID, THE PREMIUM'S  
ALREADY GOING TO BE DOWN HERE.  
WELL, THEY PUT IT THAT WAY IN  
THEIR POLICY SO THAT THEY CAN  
CHARGE THAT PREMIUM.

SO WHO IS RIPPING OFF WHO HERE,  
AND WHO IS OVERCHARGING WHO?  
NEVERTHELESS, IN THAT--

[LAUGHTER]

IN--

>> SO I'M STILL-- JUSTICE  
PARIENTE ASKED YOU WHAT COULD  
YOU SAY IN THE POLICY--

>> OH, OKAY.

>> [INAUDIBLE]

>> I WANT TO TELL YOU WHAT THEY  
SAID TO SHOW YOU HOW I WOULD  
HAVE SAID IT, ALL RIGHT?  
FIRST OF ALL, I DON'T THINK YOU  
CAN BURY IT IN LIMITS OF  
LIABILITY, WHAT YOU WANT TO DO  
THERE.

I THINK IT HAS TO BE PART OF  
YOUR INSURING AGREEMENT BECAUSE  
THEY'RE SAYING IT'S THE  
COVERAGE.

IT'S GOING TO BE TWO SENTENCES  
IN THAT COVERAGE, IT'S NOT GOING  
TO BE ONE.



ALLSTATE WILL PAY 80% OF--  
>> BUT, YOU KNOW, I'VE SEEN ANY  
NUMBER OF INSURANCE POLICIES,  
AND IT SEEMS TO ME THAT THE  
LIMITATIONS ARE ALWAYS IN A  
SEPARATE SECTION --  
>> LIMITS ON LIABILITY, SURE.  
THE POLICY LIMITS, YEAH.  
BUT WE'RE NOT TALKING ABOUT  
LIMITS OF LIABILITY HERE.  
YOU'RE TALKING ABOUT COVERAGE.  
THEY WANT TO MAKE IN THE ONLY  
COVERAGE IN THIS POLICY JUST  
THAT.  
WE'RE GOING TO PAY MEDICARE PART  
FEE SCHEDULES ONLY.  
>> SO YOU, YOUR ARGUMENT REALLY  
IS AT THE TIME WHERE THEY SAY  
HOW MUCH THEY'RE GOING TO PAY,  
THAT 80%, THAT YOU NEED TO  
FOLLOW IT BY SAYING--  
>> RIGHT.  
>>-- THIS 80% IS LIMITED BY--  
>> YEAH.  
>>-- THE FEE SCHEDULES IN 627.  
WOULD THAT BE SUFFICIENT?  
>> THE FIRST SENTENCE WOULD BE  
ALLSTATE WILL PAY 80% BECAUSE  
THEY'RE REQUIRED, AS THEY POINT  
OUT.  
THE STATUTE SAYS IF YOU DON'T  
PUT IT IN THERE, IT'S GOING TO  
BE READ IN THERE ANYWAY.  
THAT'S WHAT IT SAYS, SO THEY  
HAVE TO PUT IT IN THERE.  
>> I'M STILL TRYING TO GET TO  
WHAT YOU THEN HAVE TO PUT IN  
THERE--  
>> HERE'S WHAT THE SECOND  
SENTENCE WOULD SAY: ANYTHING TO  
THE CONTRARY IN THE FORGOING  
SENTENCE NOTWITHSTANDING,  
ALLSTATE WILL ONLY PAY, WILL  
NOT-- WILL PAY AMOUNTS THAT DO  
NOT EXCEED THE MEDICARE FEE  
SCHEDULE LIMITS UNDER THAT  
SECTION--  
>> AND THEY HAVE, AND THEY WOULD  
HAVE TO DELINEATE EACH FEE  
SCHEDULE?  
OR--  
>> NO.  
NO, BECAUSE--  
>> IS THE LANGUAGE-- LET ME

JUST ASK THIS.

>> YEAH.

>> IS THE LANGUAGE HERE THAT SAYS "AND ALL LIMITATIONS AUTHORIZED BY SECTION 627.736"--

>> RIGHT.

>>-- AND I THINK IT GOES ON TO SAY SOMETHING, "AND ALL FEE SCHEDULES," IS THAT SUFFICIENT LANGUAGE, OR DO THEY NEED TO SPECIFICALLY SAY MEDICARE--

>> THAT'S WHAT VIRTUAL IMAGING REQUIRED, SO IT WOULD SEEM TO ME IT WOULD HAVE TO SAY MEDICARE FEE SCHEDULES PART B.

I MEAN, IF THAT'S WHAT THEY'RE GOING TO PAY.

LOOK, YOU'RE A NON-LAWYER BUYING INSURANCE.

YOU'RE A SIMPLE PERSON, YOU WANT TO KNOW WHAT THEY'RE GOING TO PAY.

IF I GET INJURED, I WANT TO KNOW WHAT I CAN DO WITH A DOCTOR AND WHATEVER.

AND SO THEY'RE GOING TO NEED TO KNOW THAT IF IT'S ONLY GOING TO BE THE MEDICARE FEE SCHEDULES THAT'S GOING TO DETERMINE HOW MUCH A PROVIDER CAN PAY, THAT'S GOT TO BE SAID.

THAT'S GOT TO BE STATED.

BECAUSE THAT'S THE ONLY COVERAGE, THAT'S THE ONLY INSURING AGREEMENT IN THE POLICY.

>> MR. FARMER, I'VE GOT A PROBLEM WITH YOUR UNDERLYING PREMISE.

AND THAT IS, EVERY LIMITATION UPON WHAT IS PAID MUST BE SET FORTH IN CONNECTION WITH THE INSURING AGREEMENT SENTENCE.

>> I WASN'T TRYING TO SAY THAT.

>> WELL, IT SEEMS TO ME THAT'S WHAT YOU'RE SAYING, AND I'VE NOT SEEN OVER 50 YEARS--

>> YEAH.

>>-- INSURANCE CONTRACTS--

>> YOU'RE RIGHT.

>>-- THAT HAVE ALL THE LIMITATIONS IN THE INSURING AGREEMENT.

>> WHAT I WAS TRYING TO SAY,  
WE'RE MIXING UP IDEAS HERE IN A  
SENSE.  
POLICY LIMITS ON LIABILITY ARE  
ONE THING.  
WHAT YOU SAID IN VIRTUAL IMAGING  
THOUGH WAS IF YOU'RE NOT GOING  
TO PAY THE FULL 80%, THAT'S--  
YOU'RE LIMITING THE AMOUNT  
YOU'RE GOING TO PAY AND,  
THEREFORE, IT MUST BE CLEAR AND  
UNAMBIGUOUS.  
>> OKAY.  
BUT NOT NECESSARILY IN THE  
INSURING--  
>> NO.  
>> JUST TO MAKE THIS IN MY BRAIN  
SIMPLE, IF THE ISSUE IS THAT  
ALLSTATE WANTS TO-- WILL ONLY  
PAY MEDICARE 200%--  
>> RIGHT.  
>> THE FMA SAYING THIS IS ONE  
MORE WAY THAT, WHERE  
PROFITABILITY IS BEING LOST,  
THAT WHEN IT SAYS 80% OF  
REASONABLE MEDICAL EXPENSES, WHY  
WOULDN'T IT SAY-- AND THIS IS  
SORT OF A FRIENDLY QUESTION,  
BECAUSE YOU'VE BEEN SORT OF  
DANCING AROUND IT-- THAT 80% OF  
REASONABLE MEDICAL EXPENSES IS  
200% ABOVE THE MEDICARE RATE AS  
SET FORTH IN SUCH AND SUCH?  
I MEAN, THEN IT'S-- THERE'S  
NO--  
>> I AGREE WITH THAT.  
>> BUT WHAT-- YOU AGREE WITH  
IT, BUT THAT'S-- IF IT'S MORE  
THAN THAT, THEN IT WOULD BE  
ONEROUS.  
>> YES, RIGHT.  
>> I'M NOT SURE, YOU KNOW, I  
READ THIS, AND I GO WHY WOULD AN  
ORDINARY PERSON KNOW WHAT IS IN  
ANOTHER STATUTE?  
AND WHY IF EVERY INSURANCE  
COMPANY, I DON'T KNOW IF THEY  
ARE, ARE TAKING ADVANTAGE OF THE  
MEDICARE RATE, IT OUGHT TO BE  
THERE.  
AND IF THEN AN INSURED WANTS  
MORE COVERAGE OR LESS DEPENDING  
ON--  
>> RIGHT.

>>-- WHAT WE'RE LOOKING AT,  
THEY WANT TO BE ABLE TO GO TO  
DOCTORS WHO WILL ACCEPT THEIR  
PIP THAT THEY-- IT'S A FURTHER  
PREMIUM.  
>> I AGREE WITH THE PREMISE OF  
YOUR QUESTION.  
I THINK--  
>> WHAT AM I MISSING?  
WHY IS THAT NOT, WHY IS THAT NOT  
THE SIMPLE--  
>> I'M-- IT IS.  
IT IS A SIMPLE WAY OF DOING IT.  
>> BUT YOU MADE IT SOUND SO  
COMPLICATED.  
>> WELL, I WAS TAKING THEIR  
FORMAT, BASICALLY, IS WHAT I WAS  
DOING.  
THEY INSISTED ON USING THAT  
FORMAT, AND I WAS THINKING HOW  
COULD YOU CLEAN IT UP TO MAKE IT  
CLEAR IN THE INSURING AGREEMENT  
THAT ALTHOUGH IT SAYS WE'RE  
PAYING 80%, WE'RE NOT GOING TO  
PAY 80%, WE'RE ONLY GOING TO PAY  
80% OF 200% OF THE MEDICARE PART  
B FEE SCHEDULES.  
>> AGAIN, I'M TROUBLED BY YOUR  
ARGUMENT ON THAT, BECAUSE WHAT  
YOU'RE SUGGESTING IS THAT  
INSURANCE COMPANIES CANNOT HAVE  
THEIR BASIC FORM POLICY AND  
AMEND IT BY ENDORSEMENTS.  
AND I MEAN--  
>> OH, NO, NO, NO.  
I WASN'T SAYING THAT.  
>> WELL, WHEN YOU GET INTO THIS  
WHERE IT IS KIND OF ARGUMENT,  
THAT'S WHERE YOU'RE GOING.  
>> WELL--  
>> JUSTICE PARIENTE'S-- AND  
YOU'RE TALKING ABOUT MAKING SURE  
PEOPLE ARE ON NOTICE, WHICH  
MAKES SENSE.  
>> RIGHT.  
>> BUT WHEN YOU GET INTO IT MUST  
BE IN THE INSURING AGREEMENT,  
YOU KEEP SAYING THAT OVER AND  
OVER.  
>> WELL, ISN'T IT THE INSURING  
AGREEMENT WHEN IT COMES RIGHT  
DOWN TO IT?  
>> NO.  
I DON'T AGREE WITH IT, THAT THAT

INSURING SENTENCE MUST CONTAIN  
EVERY LIMITATION ON THE  
COVERAGE.

>> OH, I DON'T AGREE IT SHOULD  
HAVE EVERY LIMITATION, THAT'S  
NOT WHAT I'M SAYING.  
IT TURNS OUT ALLSTATE, IN  
SELLING THIS POLICY, NEVER  
INTENDED TO PAY 80% OF, WHAT DO  
YOU CALL IT, THE REGULAR CHARGE.  
WHAT THEY ALWAYS INTENDED TO PAY  
WAS ONLY 200%-- 80% OF 200%.  
THEY SHOULD SAY THAT.

>> THEY CANNOT DO IT BY AN  
ENDORSEMENT TO A FORM?

>> I MEAN, JUST THINK OF  
YOURSELF AS THE NON--

>> I'M THINKING OF MYSELF--  
WHAT IS THE ANSWER TO THAT  
QUESTION?

CAN THEY NOT USE AN  
ENDORSEMENT--

>> THEY COULD, BUT I SUPPOSE, I  
SUPPOSE THEY COULD MAKE IT CLEAR  
IN THE MAIN PART, GO LOOK AT THE  
ENDORSEMENT, WHATEVER.

BUT, YEAH, I DON'T THINK-- I  
THINK YOU'RE DROPPING THE BALL  
FOR THE PUBLIC THERE BY  
SAYING--

>> IT JUST SEEMS TO ME THAT WE  
WOULD BE, I MEAN,  
REVOLUTIONIZING THE AREA OF THE  
LAW IF WE SAY THAT YOU CANNOT,  
BY ENDORSEMENT, IMPACT THE FORM  
OF THE POLICY.

I DON'T KNOW AN INSURANCE  
COMPANY ALIVE THAT DOESN'T USE A  
FORM CONTRACT--

>> I AGREE WITH THAT.

I AGREE WITH THAT.

AND WE ALL KNOW THAT THEY HAVE  
TO GET THESE FORMS APPROVED  
EVERY YEAR BECAUSE THEY CHANGE  
IT, I AGREE WITH ALL OF THAT.  
NO, MY POINT WAS THAT IT SEEMED  
TO ME THAT BECAUSE YOU'RE BUYING  
INSURANCE, YOU'RE A SIMPLE  
PERSON BE, ALL I WANT TO KNOW IS  
WHAT I'M GETTING FOR IT.  
AND WHAT ARE THEY GETTING FOR  
IT?

BE YOU HAVE TO GO FISHING  
THROUGH AND LOOKING THROUGH

ENDORSEMENTS TO FIND IT ALL?  
WHILE IT'S PERMISSIBLE AND IT'S  
UNDERSTANDABLE IT'S BEEN DONE  
FOR ALL THESE YEARS, I'M SAYING  
IN THE TERMS OF CONTEXT OF PIP  
WHERE YOU HAVE A STATUTE THAT IS  
ITSELF AMBIGUOUS TO, IS AT WAR  
WITH ONE ANOTHER.

EVERY INSURER MUST PROVIDE 80% OF  
REASONABLE CHARGES AND 20 OR 30  
YEARS LATER AFTER IT'S BEEN  
ADOPTED ONE DAY IN A SPECIAL  
SESSION CALLED JUST TO REENACT  
THE WHOLE PIP STATUTE, THE  
LEGISLATURE VOTES NOT TO REFUSE  
TO REENACT IT.

NO, WE'RE NOT GOING TO DO THAT,  
WE'RE NOT GOING TO KILL IT  
ALTOGETHER.

THEY INSTEAD JUST DROP IN A  
SENTENCE INTO THE STATUTE SAYING  
BUT THEY MAY PAY ALL OF THE FEE  
SCHEDULES, THE MEDICARE FEE  
SCHEDULES.

>> MR. FARMER, I UNDERSTOOD YOU  
TO SAY THAT THE PREMIUMS WERE  
BASED ON THE 80%, NOT THE  
MEDICARE FEE SCHEDULE RATE.  
IS THAT IN THE RECORD?

>> I'M NOT SURE I UNDERSTAND THE  
QUESTION--

>> WHAT I THOUGHT YOU SAID WAS  
THAT THE PREMIUMS CHARGED BY THE  
INSURANCE COMPANY ACTUARIALLY  
WERE BASED UPON THE 80%, NOT  
THE--

>> I DON'T BELIEVE THERE'S ANY  
TESTIMONY, BUT YOU HEARD HIM  
TALKING ABOUT WHAT WAS, THEY'RE  
COSTING THEM MONEY ON THE  
CO-PAYS, AND THAT'S NOT TRUE,  
IT'S NOT GOING TO COST THEM  
MONEY.

I CAN JUST SAY AS A MATTER OF  
COMMON SENSE, I DO NOT BELIEVE  
THEY GAVE THEM THE BREAK ON THAT  
PREMIUM.

BUT THERE'S NOTHING IN THE  
RECORD, NO.

>> OKAY.

>> I AGREE WITH THAT.

AND I ALSO WANT TO MAKE IT CLEAR  
THAT I CAN HAVE MY CO-COUNSEL  
EXPLAIN TO YOU WHY THE CO-PAY

THING IS NOT IN THE POLICY.  
BUT LET ME JUST MAKE, GO BACK  
AND JUST FINISH UP THIS  
AMBIGUITY ANALYSIS.  
YOU ASKED ME WHAT WOULD BE THE  
CLEAREST WAY TO DO IT, AND I  
SAID WHAT I THOUGHT WOULD BE THE  
CLEAREST WAY TO DO IT EVEN  
THOUGH INSURANCE COMPANIES ARE  
FREE TO PUT THINGS IN IN AN  
ENDORSEMENT, AS YOU SAY.  
I JUST THOUGHT IT WOULD BE  
EASIER TO READ IT RIGHT THEN AND  
THERE, THERE IT IS.  
IT'S ONLY TO GOING TO PAY--  
>> ASSUMING THAT IT'S--  
>> BY THE WAY, THE LAST TIME YOU  
SAID THAT'S IMPORTANT IS BECAUSE  
PROVIDERS RELY ON THAT.  
>> SO LET'S ASSUME THAT IT'S  
OKAY TO PUT IT WHERE IT IS.  
WHAT IS THE LANGUAGE THAT'S  
IMPROPER IN THIS ONE, AND WHAT  
WOULD BE THE PROPER LANGUAGE.  
>> WELL, AS I SAID, YOU COULD  
START OUT-- REMEMBER--  
>> WE'RE JUST IN THE LIMITED  
LIABILITY SECTION.  
WHAT IN THERE SHOULD BE CHANGED?  
>> OH, YOU WANT ME TO DROP DOWN  
TO THAT SECTION DOWN THERE?  
NOTWITHSTANDING WHAT'S SAID IN  
THE INSURING AGREEMENT, THIS  
POLICY WILL PAY NO MORE THAN, NO  
AMOUNTS GREATER THAN THE MAXIMUM  
AMOUNTS ALLOWABLE UNDER THE  
MEDICARE PART B FEE SCHEDULES AS  
SET FORTH IN SECTION, YOU KNOW,  
ETC., ETC., ETC.  
I CAN'T REMEMBER THE NUMBERS  
ANYMORE.  
>> SO, I MEAN, REALLY THIS  
DISPUTE IS WHETHER THAT LINE  
THAT THEY HAVE SUBJECT TO ALL  
FEE SCHEDULES--  
>> RIGHT.  
>>-- IS SUFFICIENT NOTICE.  
>> AND I'M SAYING, TOO, EVEN IF  
YOU BOUGHT HIS ARGUMENT ABOUT  
SHALL NOT BEING AMBIGUOUS, BY  
THE WAY, WHAT I SHOWED YOU IN MY  
BRIEF, BY THE WAY, IT'S THE  
COMMON, ORDINARY FUTURE TENSE OF  
THE WORD AS WELL AS BEING USED

AS EMPHASIS.  
SO WHICH ONE DID HE MEAN HERE?  
I DON'T KNOW.  
BUT, NO.  
IN THIS PARTICULAR CASE, SUBJECT  
TO AND SHALL ARE CLEARLY NOT  
ENOUGH IN THIS CASE.  
SUBJECT TO HAS A WORLD OF  
MEANINGS APART FROM THE ONE THAT  
THEY'RE RELYING ON.  
THEY'RE ACTING LIKE THERE'S ONLY  
ONE MEANING FOR SUBJECT TO IN  
THE WHOLE WIDE WORLD, AND IT'S  
JUST THAT MANDATORY OUTCOME.  
AND WE ALL-- I SENT YOU I DON'T  
KNOW HOW MANY EXAMPLES OF  
SUBJECT TO MEANING POSSIBLE,  
MAYBE.  
AS JUDGE SICKLIN DID AT ORAL  
ARGUMENT IN THE CASE, WHAT ABOUT  
THE SIGN IN THE AIRPORT WHEN YOU  
WALK IN?  
ALL LUGGAGE SHALL BE SUBJECT TO  
A SEARCH.  
IS ALL LUGGAGE SEARCHED?  
NO.  
NO, IT'S NOT.  
THIS WORD HAS LONG HAD SEVERAL  
MEANINGS.  
MY POINT IS YOU SAID IN YOUR  
RULES OF CONSTRUCTION THAT  
THEY'VE GOT TO, YOU'VE GOT TO  
GIVE THE WORD EVERY MEANING IT  
HAS.  
>> MR. FARMER, YOU'RE--  
[INAUDIBLE]  
>> I'M OUT OF TIME.  
CAN HE JUST GIVE YOU ONE MINUTE  
ON--  
>> YOU'VE USED YOUR TIME, SIR.  
SORRY.  
THANK YOU.  
>> NUMBER ONE, I ONLY QUOTE FROM  
THE RECORD, AND WHEN I DON'T, I  
TELL THE COURT.  
PAGE 20 AND 21 OF THE RECORD,  
PAGE 38 OF OUR BRIEF IS THE  
CO-PAY.  
IT IS UNDISPUTED  
ON THIS RECORD.  
NUMBER TWO, LEGISLATIVE HISTORY.  
LEGISLATIVE INTENT.  
NOT MY LANGUAGE, IT'S VIRTUAL  
IMAGING.



IT'S ON PAGE 156 OF THE OPINION.  
YOUR HONOR TALKED ABOUT THE  
COST-CUTTING INTENT.  
THAT WAS THE PHRASE THAT WAS  
USED.

THAT'S WHAT I WAS CITING.  
THAT'S ANOTHER DEPARTURE FROM  
VIRTUAL IMAGING.

NUMBER THREE, THE RUDEMAN CASE  
HAS NOTHING TO DO WITH PIP.  
IT USES THE STANDARD LANGUAGE OF  
CONSTRUING IN CASE OF AN  
AMBIGUITY FOR THE BENEFIT OF THE  
INSURED.

IT DOES NOT SAY, AS DOES THE  
FOURTH DCA AT THE END OF THE  
OPINION, WE FIND THE LANGUAGE IS  
AMBIGUOUS AND THAT IT MUST,  
THEREFORE, BE CONSTRUED IN FAVOR  
OF PROVIDERS.

THAT IS A NEW RULE OF  
CONSTRUCTION FOR THIS COURT, AND  
WHAT IT REALLY MEANS CONSTRUED  
FOR THE BENEFIT OF THE PROVIDERS  
TO THE DETRIMENT AND INJURY OF  
THE INSURED BECAUSE IT IS  
UNDISPUTED ON THIS RECORD THAT  
IF YOU ADOPT THE FOURTH DCA'S  
OPINION, YOU'RE ADOPTING THE  
RULE OF PAY MORE AND GET LESS  
FOR ALL THE INSURED OF ALLSTATE.

>> BUT ISN'T IT A PRETTY  
DANGEROUS PATH TO FOLLOW,  
PARTICULARLY IN OUR STATE  
BECAUSE WE ALLOW AN ASSIGNMENT  
OF BENEFITS, TO NOT INCLUDE THE  
ASSIGNEE OF THOSE BENEFITS IN  
THAT EQUATION OF INTERPRETING A  
POLICY?

>> IN FACT, I WANT YOU TO  
INCLUDE THE ASSIGNEE.  
I THINK YOU HAVE TO LOOK AT THE  
S AND O HERE, EXCUSE ME, THE  
PROVIDER, THE--

>> [INAUDIBLE]

>> ARE THEY ACTING FOR THE  
BENEFIT OF THE INSURED?  
IN WHICH CASE THAT WOULD BE AN  
IMPORTANT RULE IF YOU WERE TO  
FIND AN AMBIGUITY.  
BUT IN THIS CASE, THEY'RE ACTING  
TO THE CONTRARY OF THE INTEREST.  
AND THIS IS NOT A COVERAGE CASE.  
WE BELIEVE THERE'S NO AMBIGUITY,

BUT THIS IS NOT A COVERAGE CASE.  
I THINK I'VE GOT 30-- I CAN'T  
TELL IF I'M OVER OR UNDER.

>> YOU'RE OVER.

[LAUGHTER]

>> OKAY.

UNLESS THE COURT HAS ANY FURTHER  
QUESTIONS, I THINK WE HAVE MADE  
THE POINTS WE NEED TO MAKE.

WE WOULD ASK THAT THE COURT  
QUASH THE DECISION OF THE FOURTH  
DCA, ADOPT THE DECISIONS OF THE  
FIRST, SECOND AND THIRD DCAs.

I, AGAIN, VERY MUCH APPRECIATE  
THIS COURT'S ACCORDING ME OF  
APPEARING HERE BEFORE.

I DIDN'T THINK I'D BE BACK, BUT  
IT'S BACK AFTER NINE YEARS.

SO THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS.

WE'RE IN RECESS FOR TEN MINUTES.

>> ALL RISE.