

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION.
YOU SHALL HEARD.
GOD SAVE THESE IDEAS, THE GREAT
STATE OF FLORIDA, THIS HONORABLE
COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.

THE FIRST CASE ON THE DOCKET IS
WELLS FARGO BANK V. PRUCO LIFE
INSURANCE COMPANY.

WHENEVER YOU'RE READY.

>> THANK YOU, YOUR HONOR.
MAY IT PLEASE THE COURT, RAOUL
CANTERO ALONG WITH MY COLLEAGUE
FOR THE TWO BANKS.

WE'RE HERE, ACTUALLY, ON TWO
CASES THAT ARE CERTIFIED FROM
THE 1 19TH CIRCUIT COURT OF
APPEALS CERTIFYING TWO QUESTIONS
TO THIS COURT.

THE FIRST IS WHETHER AN INSURER
CAN ASSERT THAT THE INSURANCE
POLICY IS VOID AFTER THE
TWO-YEAR INCONTESTABILITY PERIOD
AND THE SECOND IS WHETHER
ASSUMING A PARTY CAN DO SO,
WHETHER FLORIDA STATUTES REQUIRE
THAT AN INDIVIDUAL WITH AN
INSURABLE INTEREST ALSO PROCURE
THE INSURANCE POLICY IN GOOD
FAITH.

I INTEND TO TALK ABOUT THE ISSUE
INS IN THAT ORDER UNLESS THE
COURT WANTS ME TO FOCUS ON ONE
OR THE OTHER.

THE FIRST IS WHETHER THE INSURER
CAN CONTEST THE POLICY AFTER THE
TWO-YEAR PERIOD.

WE BELIEVE THAT THE POLICIES
UNDERLYING THE INCONTESTABILITY
CLAUSE APPLY BOTH TO ASSERTIONS

THAT A POLICY IS VOIDABLE AND TO
SERIOUS THAT A POLICY IS VOID.

>> SO THE ISSUE, FOR THIS
QUESTION WE ASSUME THAT THERE
WAS NO INSURABLE INTEREST AT THE
OUTSET OR THAT THE SCHEME WAS
ONE TO DEFRAUD THE SNUCK?

I MEAN-- INSURANCE COMPANY?
I MEAN, CAN WE MAKE THOSE
ASSUMPTIONS?

IN OTHER WORDS, THE WORST OF THE
WORST, DECIDE AFTER TWO YEARS
THIS INSURANCE COMPANY CAN'T
DO--

>> WELL, I THINK THE LAW IS
CLEAR, AND I THINK THAT PRUCO
CONCEDES IF THE ONLY ALLEGATIONS
WERE ONES OF FRAUD, THAT THEY
CAN'T MAKE THOSE OUTSIDE THE
CONTESTABILITY PERIOD.

AND THEY DON'T MAKE ANY
ALLEGATIONS OF FRAUD PER SE
AGAINST THE BANKS.

THE ONLY COUNT AGAINST THE BANKS
WAS THE INSURABLE INTEREST
COUNT.

>> BUT THE BANK WASN'T, HAD
NOTHING TO DO WITH THIS AT THE
OUTSET.

>> ABSOLUTELY.
THAT'S CORRECT.

>> DID NOT.

>> NEITHER OF THE BANKS, YOU'RE
RIGHT.

YES.

NEITHER OF THE BANKS HAD
ANYTHING TO DO WITH THESE
POLICIES--

>> AND, APPARENTLY, IF THESE
ARE, YOU KNOW, IF THEY'RE
OBTAINED IN GOOD FAITH, THEY CAN
BE TRANSFERRED AT ANY TIME.

AFTER, I MEAN, UNDER EXISTING
LAW WITHOUT AN ISSUE.

>> YES.

FLORIDA STATUTES PERMIT THE
ASSIGNMENT OF THE POLICIES.
THE GOOD FAITH REQUIREMENT IS
ONE OF THE ISSUES WE TALK ABOUT,
BUT THE STATUTES PERMIT

ASSIGNMENT AS LONG AS THE INSURER PERMITS ASSIGNMENT. AND IN THESE POLICIES, ASSIGNMENTS WERE PERMITTED. CERTAINLY, THE INSURANCE COMPANY COULD IMPOSE RESTRICTIONS ON ASSIGNMENTS IF THEY WANTED TO. IF THEY WANTED TO SAY NO ASSIGNMENT WITHIN THE TWO-YEAR INCONTESTABILITY PERIOD, THEY COULD SAY THAT.

>> DID YOU SAY THAT THESE POLICIES WERE, IN FACT, FINE AT THE TIME OF INCEPTION, THAT THERE WAS AN INSURABLE INTEREST AT THE TIME THAT THE POLICIES CAME INTO EFFECT?

>> THAT IS THE ASSUMPTION THAT BOTH THE DISTRICT COURTS MADE AND THAT THE 11TH CIRCUIT MADE. THE DISTRICT COURT IN WELLS FARGO IN THE SUMMARY JUDGMENT ORDER SPECIFICALLY FOUND THAT THERE WAS AN INSURABLE INTEREST AT INCEPTION BECAUSE MRS. BERGER WAS INSURING ON HER OWN LIFE, AND THE BENEFICIARY WAS MR. BERGER.

AND THE COURT FOUND THAT WITHIN THE TWO-YEAR, WHAT THE COURT CALLED THE FREE INSURANCE PERIOD WHICH WAS THAT 26-MONTH PERIOD DURING WHICH SHE ACTUALLY POSSESSED THE POLICY, THAT IF SHE HAD DIED, THEN MR. BERGER WOULD HAVE COLLECTED THE PROCEEDS DURING THAT PERIOD. IT WAS ONLY AFTER THAT PERIOD THAT ANOTHER BENEFICIARY WAS ADDED.

NOW--

>> WHAT ABOUT, AND THE ISSUE OF THE FACT THAT THERE WERE FRAUDULENT FINANCIAL STATEMENTS? BECAUSE THIS WAS A-- FOR HER, IT WAS A \$10 MILLION POLICY.

>> YES.

>> WEREN'T THERE ISSUES ABOUT THE VERY FACT OF THE AMOUNT OF INSURANCE AND HOW MUCH SHE WAS

WORTH WERE NOT, WERE FALSE?

>> THOSE ARE FACTS THAT THEY'VE ASSERTED IN THEIR BRIEF THAT WE ASSERT ARE IRRELEVANT TO THIS ISSUE BECAUSE--

>> THAT'S WHAT I WANT TO ASK.

>> YES.

>> I GUESS DO WE HAVE TO ASSUME THE WAY THE FLORIDA STATUTES GO THE WORST OF THE WORST, THAT THIS WAS SET UP AS A FRAUDULENT SCHEME THAT, YOU KNOW, THERE WAS NEVER AN INTENT, THAT, YOU KNOW, SHE GOT SOME AMOUNT OF MONEY, AND THEN IT'S THE INTERPLAY OF THE TWO STATUTES, WHETHER THE INCONTESTABILITY CLAUSE OF TWO YEARS TRUMPS THE INSURABLE INTEREST STATUTE.

>> AS TO THE FRAUD BE, I DON'T THINK YOU HAVE TO ASSUME ANYTHING, BECAUSE THE CERTIFIED QUESTIONS DON'T ASSUME FRAUD. THEY ASSUME THAT THERE WAS AN INSURABLE INTEREST AT INCEPTION, BUT THERE MAY HAVE BEEN AN INTENT TO LATER TRANSFER THE POLICIES X THAT'S WHERE THE GOOD FAITH COMES IN.

BUT YOU DON'T HAVE TO ASSUME FRAUD BECAUSE FRAUD HAS NOTHING TO DO WITH ANY-- WITH EITHER OF THE CERTIFIED QUESTIONS.

THE FIRST CERTIFIED QUESTION, THE INCONTESTABILITY IS ABOUT WHETHER YOU CAN ASSERT VOIDNESS WHICH IS NOT A FRAUD ISSUE, IT'S THE INSURABLE INTEREST ISSUE.

>> I THINK THERE MAY BE AN EASIER WAY TO APPROACH THIS BECAUSE THE INCONTESTABILITY CONCEPT IS SO BROAD.

IN WORKING THIS UP, WHAT KINDS OF CASES, OF AREAS ARE NOT PRECLUDED BY AN INCONTESTABILITY CLAUSE, AND HOW IS YOUR CASE THE SAME AS THOSE OR DIFFERENT FROM THOSE?

>> YOUR HONOR--

>> BECAUSE IT'S A HUGE AREA.

SOME REALLY BAD STUFF CAN GET COVERED UP IN THAT CLAUSE.

>> YES, YOUR HONOR.

AND I THINK I HAVE AN ANSWER TO YOUR QUESTION.

FIRST OF ALL, THERE'S NOTHING WORSE THAN FRAUD, AND THE INCONTESTABILITY ALREADY COFFERS FRAUD.

SO YOU CANNOT CONTEST FRAUD AFTER THE TWO-YEAR PERIOD. THE WAY THAT THE COURTS-- THE FLORIDA COURTS HAVE ADDRESSED IT, I BELIEVE, AND YOU'LL SEE THIS IN THE PAUL REVERE CASE AND THE HOME LIFE GEAR CASE, THEY MAKE A DISTINCTION. THEY SAY IF IT'S ABOUT THE VALIDITY OF THE POLICY, YOUR WITHIN THE TWO-YEAR INCONTESTABILITY PERIOD.

IF IT'S ABOUT COVERAGE UNDER THE POLICY, THEN YOU DON'T HAVE TO-- YOU'RE NOT WITHIN-- YOU DON'T HAVE TO COMPLY WITH THE TWO-YEAR CONTESTABILITY PERIOD. AND WE THINK THAT'S A GOOD LINE TO DRAW, IT'S A GOOD PUBLIC POLICY.

IT'S WORKED, AND IT SHOULD APPLY TO ANY KIND OF VALIDITY--

>> YOU MEAN UNDER THE COVERAGE AS WRITTEN IN THE POLICY ITSELF.

>> CORRECT.

>> THAT'S THE WAY YOU LOOK AT IT.

>> YES.

AND SOME--

>> DO OTHER STATES FOLLOW THAT SORT OF PARADIGM IN LOOKING AT THESE KINDS OF THINGS?

>> I MUST ADMIT THAT THE MINORITY OF STATES APPLY THE RULE AS WE APPLY IT.

>> OKAY.

>> BUT THERE ARE STATES THAT DO. JUST LAST YEAR THE 8TH CIRCUIT COURT OF APPEAL, 2015, DECIDED AN ISSUE AND SAID THAT INCONTESTABILITY CLAUSE APPLIES

TO ARGUMENTS THAT A POLICY IS VOID AS WELL AS VOIDABLE.

>> IF WE'RE TALKING ABOUT THE EXISTENCE OF A CONTRACT, THAT WOULD FALL OUTSIDE THE INCONTESTABILITY CLAUSE, WOULD IT NOT?

>> EXISTENCE OF A CONTRACT--

>> YEAH.

YEAH, LIKE IF THERE WERE--

>> THERE WAS NEVER A CONTRACT IN THE FIRST PLACE.

>> EXACTLY.

>> NOT THAT THE CONTRACT IS VOID.

>> EXACTLY.

>> YES, PERHAPS.

>> BUT IN TERMS OF THE MINORITY/MAJORITY VIEW, AS I'M SEEING THIS, IT'S NOT OUR JOB-- AND WE'VE HEARD THIS ARGUMENT-- TO DECIDE WHAT THE GOOD POLICY IS FOR THE STATE.

I MEAN, THE STOLI SCHEMES SEEM PRETTY, YOU KNOW, WOULDN'T BE MY POLICY TO ALLOW THEM.

BUT AREN'T WE ONLY, IN THIS CASE, LOOKING AT HOW FLORIDA STATUTES REGARDING INCONTESTABILITY ARE REALIZE IN CONJUNCTION WITH A CONTENTION THAT THE POLICY IS VOID?

>> YES, YOUR HONOR.

>> OKAY.

SO, AND THERE DOESN'T SEEM TO BE.

SO WHATEVER THE OTHER STATES HAVE, ARE THERE OTHER STATES THAT HAVE THE SAME POLICY-- SAME STATUTES THAT HAVE REACHED DIFFERENT RESULTS BASED ON THE SAME STATUTES?

>> YES.

YES, THERE IS A CONFLICT IN THE COUNTRY ON THAT.

BUT IN ANSWER TO YOUR QUESTION AND ALSO FURTHER ANSWER TO JUSTICE LEWIS, BOTH THE POLICY HERE AND THE STATUTE TALK ABOUT A TWO-YEAR INCONTESTABILITY FROM

WHEN THE POLICY IS IN FORCE.
AND THE 8TH CIRCUIT SAID LAST
YEAR HOW CAN YOU ACCEPT PREMIUMS
FOR A PERIOD OF YEARS AND IN
THIS CASE, PRUCO RECEIVED
PREMIUMS IN EXCESS OF \$2 MILLION
DURING THIS PERIOD.

AND THEN SAY THAT THE POLICY WAS
NEVER IN FORCE.

AND THAT'S WHAT THE
CONTESTABILITY CLAUSE SAYS.
IT'S TWO YEARS AFTER THE POLICY
BECOMES IN FORCE.

SO WHETHER YOU'RE LATER CLAIMING
THAT THE POLICY WAS VOID, IT WAS
CERTAINLY IN FORCE AT SOME
PERIOD, OTHERWISE YOU WOULDN'T
BE ACCEPTING PREMIUMS FOR THAT.

>> BUT THE INCONTESTABILITY,
BOTH STATUTE AND CLAUSE, IS
STANDARD IN VIRTUALLY EVERY
CONTRACT THAT YOU PICK UP FROM
WHEREVER IT'S ISSUED.

>> YES.

BECAUSE IT'S REQUIRED UNDER THE
STATUTE.

>> WELL, I MEAN, AND MOST STATES
HAVE THAT STATUTE.

>> YES, CORRECT.

YES.

>> SO GIVE US-- YOU'VE BEEN
FORTHRIGHT ON THIS BEING THE
MINORITY VIEW.

WHAT IS THE WAY THAT THEY LOOK
AT THEIR OWN STATUTE OF
INCONTESTABILITY IN THE POLICY
AND SORT OF GET AROUND WHAT
SEEMS TO BE PLAIN MEANING OF
WHAT THE STATUTE AND THE POLICY
STATES?

>> THE ARGUMENT THERE IS THAT IF
YOU'RE SAYING THAT A POLICY WAS
NEVER IN FORCE-- WAS VOID AND
SO NEVER EXISTED IN THE FIRST
PLACE, THEN YOU CAN'T APPLY A
CLAUSE WITHIN THAT POLICY.
THAT'S THE ARGUMENT.

>> BUT THAT, I MEAN, BASICALLY
ERASES THAT ENTIRE STATUTE FOR
WHAT IT'S DESIGNED TO PROTECT.

AND THAT IS MISREPRESENTATIONS,
AGE, INCOME, HEALTH, WHATEVER
THE PROBLEM IS THAT THE
INSURANCE COMPANY CAN
INVESTIGATE.

NOW, THIS ONE IS NOT QUITE IN
THAT CATEGORY THOUGH, IS IT,
WHERE YOU COULD INVESTIGATE AND
FIND OUT, AND SO IT START OF
STOPS THE COMPANY, IS IT?

>> I DO THINK IT--

>> DO YOU?

HOW SO?

>> BECAUSE THE
MISREPRESENTATIONS THEY CLAIM
WERE MADE WERE ALL THAT COULD
HAVE BEEN INVESTIGATED FROM THE
OUTSET.

SUCH AS \$10 MILLION POLICY, I
HAVE THIS AMOUNT OF ASSETS, I
HAVE THIS REAL ESTATE, I MAKE
THIS AMOUNT OF SALARY EVERY
YEAR.

THEY COULD HAVE INVESTIGATED ALL
THAT, AND THEY DIDN'T.

>> WELL, THEY COULD TALK TO HER
AND HER HUSBAND WHO, APPARENTLY,
HAD NO IDEA THIS WAS GOING TO BE
PART OF A SCHEME TO SAY, NO,
WE'RE NOT REALLY INTERESTED IN
LIFE-- I MEAN, IT WOULDN'T SEEM
THAT HARD TO DISCOVER IT WITH A
\$10 MILLION POLICY.

WHAT DOES SHE REPRESENT HER NET
WORTH TO BE?

>> I BELIEVE IT WAS OVER, I
THINK, \$15 MILLION.

I THINK IT WAS 15 MILLION.

SO, YES.

THE INSURANCE COMPANIES ARE
CERTAINLY ABLE TO INVESTIGATE
THESE THINGS NOT JUST WITHIN THE
TWO-YEAR PERIOD AFTER THE POLICY
IS ISSUED, BUT BEFORE THE POLICY
IS ISSUED.

AND LIKE JUSTICE PARIENTE SAYS,
THIS IS A \$10 MILLION POLICY.
IT'S CERTAINLY WORTH
INVESTIGATING BEFORE YOU ISSUE A
POLICY AND, CERTAINLY, WITHIN

THOSE TWO YEARS.

SO THERE'S NOTHING THAT PREVENTS THE SAME PUBLIC POLICY THAT IS IN FAVOR OF INCONTESTABILITY CLAUSES FROM APPLYING ACROSS THE BOARD TO ANY INVALIDITY ASSERTED ABOUT THE POLICY.

I'D LIKE TO TALK ALSO ABOUT THE, IF THIS COURT-- WELL, FIRST, IF THIS COURT DECIDES THAT THE INCONTESTABILITY CLAUSE APPLIES BOTH TO ARGUMENTS ABOUT VOID AND VOID ABOUT, YOU REALLY DON'T HAVE TO ANSWER THE SECOND QUESTION BECAUSE THAT DISPOSES OF BOTH CASES.

BUT IF YOU SAY THAT, NO, WE'RE GOING TO DISTINGUISH BETWEEN VOID AND VOIDABLE, THEN YOU NEED TO ADDRESS THE SECOND ISSUE WHICH IS DO YOU NEED AN INTENT, A GOOD FAITH INTENT AT THE TIME THAT YOU BUY A POLICY, GETTING BACK TO JUSTICE QUINCE'S QUESTION, DO YOU NEED AN INTENT AT THAT TIME EVEN IF THERE'S AN INSURABLE INTEREST AT INCEPTION? IF YOU INTEND TO SELL THE POLICY OR ASSIGN THE POLICY, IS THERE SOME GOOD FAITH REQUIREMENT? WHICH IS WHAT THE DISTRICT COURT IN WELLS FARGO IMPOSED AND SPECIFICALLY SAID, FOLLOWED SOME OTHER SOUTHERN DISTRICT JUDGES.

>> BUT IS THERE ANYTHING THAT PREVENTS SOMEONE FROM SELLING, LATER SELLING A POLICY?

>> THERE IS NOTHING-- THE STATUTE PERMITS IT AND THE POLICY PERMITS IT.

AND SO WHAT THEY WANT TO DO.

>>

>> SO WHAT-- WHERE DOES, I MEAN, IF YOU WITH, IN FACT, BUY A POLICY WITH THE INTENT THAT SOMEWHERE ALONG THE LINE YOU'RE GOING TO SELL IT, WHERE DOES THE GOOD FAITH COME IN?

>> THE GOOD FAITH IS, ACCORDING TO THE DISTRICT COURT, IF YOU

BUY A POLICY WITH THAT INTENT,
THEN THE POLICY, THERE'S NO
INSURABLE INTEREST AT INCEPTION.

>> BUT DOESN'T THAT FLY IN THE
FACE OF THE WHOLE CONCEPT THAT
YOU CAN DO THIS?

>> YES, YOUR HONOR, WHICH IS WHY
IN THE GUILD CASE, THE SECOND
CASE WHICH WAS DECIDED ON MOTION
TO DISMISS, DISTRICT JUDGE
MORENO DECIDED, NO-- I'M SORRY,
I'M WRONG.

THAT WAS ON INCONTESTABILITY.
BUT THERE ARE CASES THAT HAVE
HELD THAT, NO, THE STATUTE IS
CLEAR.

>> I MEAN, IT SEEMS TO ME WHAT'S
REALLY GOING ON IS THAT THERE
IS, I DON'T KNOW IF YOU'D CALL
IT SHOCK THE CONSCIENCE.
I KNOW THERE'S A LOT THAT GOES
ON IN THE LIFE INSURANCE
BUSINESS.

BUT THESE STOLI SCHEMES SEEM TO
BE SO COUNTER TO WHAT THE
PURPOSE OF LIFE INSURANCE IS.
BUT YOU JUST-- BUT THIS IS
SOMETHING EITHER THE INSURANCE
INDUSTRY HAS BROUGHT ON ITSELF
AND SOMEONE OTHER THAN THE
COURTS NEED TO MAKE THAT POLICY
DECISION.

BUT SO GOING BACK TO THE GOOD
FAITH, CAN YOU GIVE US THE BEST
ARGUMENT?

IS IT A FACTUAL DETERMINATION
THAT THERE WAS OR WAS NOT GOOD
FAITH, OR IT'S IRRELEVANT
BECAUSE THERE'S STILL
INCONTESTABILITY, SO IT DOES NOT
MATTER WHETHER THEY IN GOOD
FAITH PROCURED THE POLICY.

>> IF YOU FIND IT'S
INCONTESTABLE, YOU DON'T EVEN
NEED TO--

>> RIGHT.

SO THEN YOU GO TO IF YOU COULD
CONTEST IT--

>> YES.

>>-- WHAT IS THIS--

>> THEN YOU HAVE TO FRAME WHAT THE DOCTRINE IS, WHAT KIND OF GOOD FAITH IS REQUIRED. BECAUSE THE STATUTE ITSELF-- AND THE STATUTE IS CLEAR. THE STATUTE SAYS IN THE LAST SENTENCE OF 404.1 THE INSURABLE INTEREST NEED NOT EXIST AFTER THE INCEPTION DATE OF COVERAGE UNDER THE CONTRACT. THE LEGISLATURE CERTAINLY COULD HAVE PUT IN AN INTENT REQUIREMENT AND, IN FACT, WHEN THIS ISSUE CAME UP IN CALIFORNIA, THE CALIFORNIA LEGISLATURE AMENDED THE STATUTE TO ADD AN INTENT REQUIREMENT. BUT UNTIL THAT'S IN THERE, THERE'S NOTHING THAT PREVENTS SOMEBODY FROM BUYING A POLICY LIKE THIS WITH THE INTENT OF ASSIGNING IT AT A LATER DATE. THE STATUTE ITSELF ALLOWS AN ASSIGNMENT AND, IN FACT--

>> I GUESS THIS ONE'S A LITTLE WORSE BECAUSE OF THE TESTIMONY AT LEAST IN THE RECORD THAT, AS TO THE FIRST-- I GUESS WE'RE DISCUSSING THE MAIN ONE WITH THE \$10 MILLION POLICY. SHE REALLY, HEY, I'M GETTING FREE LIFE INSURANCE, PLUS I'M GETTING-- WHAT DID SHE GET, 150--

>> 70,000, I THINK.

>> I MEAN, SOMEONE SHOULD BE SMELLING THAT THAT SOUNDS LIKE A SCHEME.

>> YES.

>> IF IT'S TOO GOOD TO BE TRUE--

>> RIGHT.

>> BUT IT WAS TRUE.

>> AND THE DISTRICT COURT FOUND, YES, WITHIN THAT INSURANCE PERIOD IF SHE DIED, HER HUSBAND WOULD GET THE PROCEEDS.

>> WELL, IF SHE DIED, THEY COULD HAVE CONTESTED IT WITHIN THE TWO YEARS.

>> YES.

OTHER THAN THAT, THE HUSBAND WOULD GET THE PROCEEDS OTHER THAN HAVING TO PAY OFF THE LOAN, THE NONRECOURSE LOAN.

AND BY THE WAY, NONRECOURSE LOANS ARE PERMITTED AND REGULATED IN FLORIDA.

SO THERE'S NOTHING ILLEGAL AT ALL ABOUT GETTING A NONRECOURSE LOAN FOR A LIFE INSURANCE POLICY.

AND THE SETTLEMENT ACT PERMITS THE ASSIGNMENT OF LIFE INSURANCE POLICIES ON THE OPEN MARKET AND, IN FACT, THERE IS A THRIVING SECONDARY MARKET FOR THESE POLICIES.

AND MANY LIFE INSURED'S HAVE BEEN ABLE TO RECOVER MORE THAN THEY WOULD HAVE RECOVERED IF THEY JUST SOLD BACK THE POLICY TO THE INSURANCE COMPANY.

AND SO IT'S A, AN INDUSTRY THAT'S BEEN REGULATED BY THE LEGISLATURE AND HAS BEEN APPROVED BY THE LEGISLATURE.

>> YOU'RE INTO YOUR RE--

>> I'M SORRY.

AND THANK YOU FOR REMINDING ME.

>> UP TO YOU.

>> THANK YOU FOR REMINDING ME.

UNLESS THE COURT HAS ANY OTHER QUESTIONS, I'LL RESERVE THE REST OF MY TIME.

THANK YOU.

>> PLEASE THE COURT, BRUCE ROGOW, STEVE SURFACE FOR PRUCO. I NEED TO TURN THE QUESTIONS INTO WHAT I THINK ARE THE REAL ISSUE IN THIS CASE, BECAUSE I DON'T THINK THAT MR. CANTERO'S ARGUMENT REALLY ADDRESSES WHAT IS AT STAKE HERE.

WHAT IS AT STAKE HERE ARE TWO LONG-ESTABLISHED PRINCIPLES OF FLORIDA LAW.

AND, ACTUALLY, OF THE LAW GENERALLY THROUGHOUT THE COUNTRY.

ONE IS YOU CANNOT WAGER ON
SOMEONE'S LIFE.
THAT IS CLEARLY AN ESTABLISHED
PRINCIPLE.

IT GOES BACK TO 1774 WITH THE
PARLIAMENT PASSING THE LIFE
INSURANCE ACT--

>> ISN'T THAT, IN ESSENCE, WHAT
INSURANCE IS?

IT'S A BET BY THE INSURANCE
COMPANY YOU'RE GOING TO LIVE AND
THE POLICYHOLDER YOU'RE GOING TO
DIE?

>> THE BET HERE IS THE BET BY
COVENTRY IN BRASSNER THAT SHE
WOULD NOT LIVE AS LONG AS IT
WOULD TAKE TO PAY PREMIUMS.

AND THE QUESTIONS-- SO THE TWO
ISSUES ARE, ONE, CAN YOU WAGER
ON SOMEONE'S LIFE?

THE ANSWER TO THAT IS, NO, AS A
MATTER OF FLORIDA PUBLIC POLICY,
PUBLIC LAW--

>> THAT'S A PRETTY GOOD ARGUMENT
AS TO WHY THE LEGISLATURE OUGHT
NOT TO ALLOW A SECONDARY MARKET
TO START WITH.

BUT, IN FACT, THEY DO.

>> THEY DO AND THAT'S FINE
BECAUSE THIS IS NOT A SECONDARY
MARKET CASE.

THE SECOND PRINCIPLE OF FLORIDA
LAW IS IN THE FLORIDA STATUTE
THAT ONE HAS TO HAVE AN
INSURABLE INTEREST IN THE
PERSON'S LIFE.

AND IN THIS CASE THE RECORD IS
CLEAR THAT COVENTRY WAS THE
PROCURER.

WHO PROCURED THE POLICY.

THAT QUESTION IN ONE OF THE
BRIEFS FILED BY MR. CANTERO'S
SAYS THAT BERGERES PROCURED THE
POLICY.

THEY DID NOT PROCURE THE POLICY.
THAT'S THE ESSENCE OF HOW THIS
WORKS.

THE POLICY WAS PROCURED BY
BRASSNER AND COVENTRY.

THEY PAID THE \$81,000 INITIAL

PREMIUM.

THE BERGERES HAD NO ABILITY TO PAY THAT, NO INTEREST IN PAYING THAT--

>> WELL, COULD THE, COULD THE ULTIMATE INSUREDS HAVE BORROWED THAT MONEY FROM SOMEONE?

>> THEY COULD HAVE BORROWED THE MONEY--

>> WELL, DOESN'T THAT DEFEAT YOUR ARGUMENT THAT THEY DIDN'T HAVE THE MONEY TO PAY IT?

AS LONG AS-- ISN'T REALLY THE PERSON WHO PROCURES THE INSURANCE THE ONE WHO SIGNS ON THE APPLICATION?

>> NO.

THE APPLICATION IS NOT PROCURING THE INSURANCE.

>> WHAT IS, WHAT'S PROCURING IT?

>> WHEN THE PREMIUM IS PAID AND THE POLICY--

>> WELL, AGAIN, THAT GETS BACK TO IF THEY COULD HAVE BORROWED THE PREMIUM, IT WOULD HAVE BEEN VALID.

>> IF THEY HAD NOT, IF THEY HAD BORROWED THE PREMIUM, YES.

IF THEY WERE PROCURING IT FOR THEMSELVES.

BUT THEY DIDN'T PROCURE IT FOR THEMSELVES.

THEY DIDN'T BORROW IT FROM BRASSNER.

BRASSNER AND COVENTRY PAID THAT \$81,000 INITIAL PREMIUM, AND THAT IS WHEN THE POLICY WAS ISSUED.

>> SO THE APPLICATION IS NOT THE POINT HERE.

WHO PROCURED THE POLICY.

AND IT'S CLEAR THAT THE PERSON WHO PROCURED THE POLICY HAD NO INSURABLE INTEREST.

AND IT'S THE STATUTE THAT SAYS AT THE VERY BEGINNING, 627.404, YOU MUST HAVE AN--

>> BUT IT SOUNDS LIKE YOU'RE JUMPING TO THE SECOND QUESTION. BECAUSE INSURABLE INTEREST, YOU

KNOW, I USED TO CALL IT UNDERWRITING AFTER THE FACT. THE INSURANCE COMPANY HAD THE APPLICATION, \$10 MILLION IS A LOT OF LIFE INSURANCE. THEY GET A FINANCIAL STATEMENT. THESE-- WHAT I UNDERSTOOD ABOUT INCONTESTABILITY, THAT IT TRUMPS THE ISSUE OF INSURABLE INTEREST. OF COURSE THEY HAVE TO HAVE AN INSURABLE INTEREST. BUT IT'S TWO YEARS, IT'S EITHER YOU FIND IT OUT BEFORE YOU ISSUE THE POLICY AND BEFORE YOU TAKE WHAT MR. CANTERO'S SAYS, \$2 MILLION WORTH OF PREMIUMS, OR YOU'RE STUCK WITH IT. I MEAN, TELL ME WHAT'S WRONG ABOUT-- IT'S WRONG BECAUSE I WOULD AGREE THAT IN A WORLD THAT I LEGISLATE I WOULDN'T ALLOW THIS. BUT WHAT'S WRONG WITH THAT THAT'S WHAT THE STATUTES SAY? >> BECAUSE THE CHOREOGRAPHY OF THIS, JUST LIKE A BALLET, THE CHOREOGRAPHY STARTS WITH 404. ONE MUST HAVE AN INSURABLE INTEREST. AND IF ONE DOESN'T HAVE AN INSURABLE INTEREST, THE POLICY IS VOID. AND FLORIDA LAW-- >> SO YOU ARE SAYING THAT UNDER FLORIDA LAW AT ANY TIME INCLUDING 20 YEARS AFTER WHEN ALL THE PREMIUMS HAVE BEEN COLLECTED, THAT AT THE POINT OF DEATH THE INSURANCE COMPANY CAN NOW CONTEST INSURABLE INTEREST. >> AND SAY THAT THE POLICY WAS VOID, THERE WAS NO INSURABLE INTEREST. >> AND KEEP ALL THE MONEY. >> PARDON ME? >> AND KEEP ALL THE PREMIUMS THAT WERE PAID. >> THEY CAN KEEP ALL THE PREMIUMS-- THAT'S NOT THE ISSUE BEFORE THE COURT, BY THE WAY,

FOR TODAY.
BUT THE POINT IS THAT THE PEOPLE
WHO STARTED THIS SCHEME, I MEAN,
EVERYBODY WHO TOOK IT AFTERWARDS
IS TAKING A RISK ALONG THE WAY.
I MEAN, THERE'S NO QUESTION,
THIS IS THE WORST OF THE WORST.
BUT THAT'S NOT THE ISSUE IN THIS
CASE.

>> I THINK--

[INAUDIBLE]

TO KILL, YOU KNOW, THEY DON'T
HAVE AN INSURABLE INTEREST, AND
THEY END UP KILLING THE PERSON.

>> AND THAT CAN BE CHALLENGED.

I MEAN, SO THE PEOPLE WHO DO
HAVE THE INSURABLE INTEREST
COULD COME IN AND SAY, HEY, YOU
KNOW, WE CAN CHALLENGE THIS
LATER ON, AND WE CAN GET THE
MONEY.

>> WHAT CASE IN FLORIDA SAYS
THAT INSURABLE INTEREST CAN BE
CHALLENGED AFTER TWO YEARS?

>> IT, I THINK, IS A CASE THAT
MAKES IT CLEAR THAT YOU MUST
HAVE AN INSURABLE INTEREST AT
THE OUTSET.

THERE IS NO CASE THAT
SPECIFICALLY SAYS WHAT WE'RE
TALKING ABOUT--

>> SO WHAT IS IT THAT'S BARRED
BY INCONTESTABILITY IF IT
DOESN'T INCLUDE INSURABLE
INTEREST?

>> FRAUD, IMPOSTERS.

ALL OF THOSE THINGS ARE BARRED
BY THE INCONTESTABILITY CLAUSE.
I MEAN, WHAT'S THE WORST?

WE HAVE AN IMPOSTER COME IN.

>> ARE WELL, SO SOMETHING WORSE
IS BARRED, BUT NOT INSURABLE
INTEREST.

>> IT'S NOT WORSE BECAUSE THERE
IS NO--

>> WELL, IT IS.

AS WE SAID, WHAT COULD BE WORSE
THAN FRAUD?

I MEAN, YOU MIGHT THINK YOU HAD
AN INSURABLE INTEREST AND MAYBE

YOU DIDN'T.

>> WHAT CAN BE WORSE THAN FRAUD IS SOMEONE BETTING ON SOMEONE'S LIFE.

THAT'S WORSE THAN FRAUD, AND THAT'S WHAT THE PUBLIC POLICY--

>> BUT IT'S NOT-- DO WE NOT ALLOW IF IT WAS A VALID INSURABLE INTEREST, IF THESE INSUREDS HAD REALLY WANTED THIS INSURANCE BUT THEY COULDN'T AFFORD IT AND THEY THEN RECEIVED IT, \$10 MILLION, IS THERE ANYTHING-- AS WE ASKED MR. CANTERO'S-- THAT BARS THE TRANSFER OF THE INSURANCE TO THIRD PARTY?

>> INTEREST EXISTED AT THE TIME OF THE ISSUANCE OF THE POLICY, IT CAN BE TRANSFERRED.

THAT'S NOT AN ISSUE.

>> SO IT'S ONLY THE INTENT THAT INSTEAD OF YOU DECIDING ON YOUR OWN LATER ON THAT YOU'RE GOING TO TRANSFER IT, IF YOUR-- IS IT BECAUSE THE INSUREDS HERE WERE DUPED INTO THINKING THAT THEY WERE GETTING FREE LIFE INSURANCE AND THEN THEY GOT MONEY?

I'M TRYING TO UNDERSTAND WHAT MAKES THIS WORSE THAN SOMEBODY THAT IS TRANSFERRING IT, I MEAN, BUYING THE INSURANCE WITH THE INTENT TO SELL IT AND MAKE MONEY ON IT.

>> WELL, IF THE PERSON WHO BUYS IT WITH THE INTENT TO SELL IT LATER ON HAS AN INSURABLE INTEREST AT THE OUTSET, THEN THAT'S FINE.

BUT IF THE PERSON WHO BUYS IT AT THE OUTSET DOES NOT HAVE AN INSURABLE INTEREST-- AND THAT'S THIS CASE, COVENTRY-- THEN THEY HAVE WAGERED ON THE LIFE OF--

>> IS IT A CRIMINAL ACT? DID THEY COMMIT-- IS THIS A CRIME?

>> I DON'T THINK IT'S A CRIME. I DIDN'T FIND ANY STATUTE THAT

SAYS IT'S A CRIME.
BUT IS IT A VIOLATION OF 404,
THE INSURABLE INTEREST STATUTE?
YES, IT'S A VIOLATION OF THAT
BECAUSE--

>> SO TELL ME WHAT WOULD HAVE
HAPPENED IN THIS CASE IF THE
INSURED HAD DIED 15 MONTHS AFTER
THIS POLICY ISSUED.

WHO WOULD HAVE GOTTEN THE
PROCEEDS OF THE POLICY?

>> IF WE ASSUME, AND THIS IS NOT
A GOOD ASSUMPTION, BUT I'LL
ASSUME IT FOR THE MOMENT.

IF WE ASSUME THAT A BERGER,
MR. BERGER WOULD HAVE GOTTEN THE
MONEY, WHAT THAT PROVES IS, IS
THAT IT WAS A BAD BET FOR
COVENTRY.

IT WAS A WAGER.

NO MATTER HOW, NO MATTER HOW--
IT DOESN'T MEAN--

>> BUT UNDER THIS POLICY, THAT'S
WHAT WOULD HAVE HAPPENED IF, IN
FACT, THE INSURED HAD DIED
BEFORE THE TWO-YEAR PERIOD WAS
OVER, THE INSURED HAD DIED.
THE BENEFICIARY, WHO WAS THE
SPOUSE, WOULD HAVE GOTTEN THE
PROCEEDS, RIGHT?

>> AND ALL IT WOULD HAVE PROVED,
BECAUSE WE HAVE TO GO BACK TO
THE INCEPTION.

I MEAN, THIS IS THE KEY TO MY
ARGUMENT.

AND I UNDERSTAND ALL OF THESE
CONCERNS.

BUT IF HE HAD-- IF SHE HAD DIE
ASKED HE HAD GOTTEN THE MONEY,
AND LET'S ASSUME HE'D GOTTEN THE
MONEY, ALL IT PROVES THEN IS
THAT COVENTRY MADE A BAD BET.

>> WHAT IT PROVES IS THAT THERE
WAS AN INSURABLE INTEREST AT THE
OUTSET, WAS THERE NOT?

BECAUSE IF THERE WASN'T, THERE
SHOULD BE NO LIFE INSURANCE
BENEFITS PAID.

>> IT DOES NOT PROVE THAT AT THE
OUTSET, JUSTICE POLL JUSTICE

POLSTON.
BECAUSE IF WHEN THAT APPLICATION
WAS MADE BY MRS. BERGER, THAT
DIDN'T MAKE HER THE PROCURER.
THE PROCURER OF THE POLICY WAS
COVENTRY.
AND I'M NOT TRYING TO CUT THIS
TOO FINE.
I'M GOING BACK TO--
>> WELL, WHAT COULD THE
INSURANCE COMPANY HAVE DONE IF
SHE, IN FACT, HAD DIED BEFORE
THAT TWO-YEAR PERIOD WAS OVER?
THEY WOULD HAVE HAD NO RECOURSE
BUT TO PAY THAT POLICY AMOUNT,
CORRECT?
>> NO.
THEY COULD HAVE CONTESTED IT--
>> OKAY.
UNDER YOUR THEORY THEY WOULD--
OF COURSE THEY WOULD HAVE
CONTESTED IT.
AND MAYBE, AND YOU WOULD HAVE,
UNDER WHAT YOU'RE SAYING, YOU
SHOULD HAVE BEEN SUCCESSFUL.
BECAUSE IF IT'S VOID, IT DOESN'T
BECOME LESS-- MORE VOID AFTER
TWO YEARS.
>> IF IT'S VOID FROM THE
BEGINNING, IT'S VOID AT THE END.
>> WELL--
>> IF IT'S VOID AT THE END--
>> SO UNDER THE QUESTION THOUGH
THE ANSWER SHOULD BE, TO BE
CONSISTENT, IS THAT YOU WOULDN'T
HAVE PAID IT.
YOU WOULD HAVE CONTESTED IT AS A
FRAUDULENT SCHEME.
>> NOT AS A FRAUDULENT SCHEME,
VOID FOR LACK OF AN INSURABLE
INTEREST AT THE OUTSET.
SO IF IT WAS VOID WITHIN 15
MONTHS, IT WAS VOID WITHIN 15
YEARS.
VOID IS VOID.
>> SO YOU DON'T THINK THE TWO
YEARS, AGAIN, JUST
STRUGGLING WITH THIS.
>> I UNDERSTAND.
>> THE TWO-YEAR INCONTESTABILITY

CLAUSE MEANS ANYTHING WITH REGARD TO INSURABLE INTEREST BECAUSE OF EVERYTHING, FRAUD, SCHEMES, WHATEVER ELSE AWFUL COULD HAPPEN, THAT THE WORST WOULD BE THAT YOU DON'T HAVE AN INSURABLE INTEREST.

>> YOU KNOW, IF YOU GO IN AND YOU HAVE SOMEBODY ELSE USE THEIR BLOOD PRESSURE FOR YOUR BLOOD PRESSURE AND THEN THE APPLICATION LOOKS BETTER THAN IT SHOULD, SURE, THAT'S FRAUD. BUT IF YOU'RE APPLYING FOR THAT INSURANCE OR--

>> IS THAT A CRIME?

>> IT PROBABLY IS A CRIME.

>> OKAY.

SO IF YOU MAKE A FRAUDULENT REPRESENTATION TO PROCURE A POLICY, THAT'S A CRIME.

BUT YOU'VE SAID THAT WHAT WENT ON HERE WAS NOT A CRIME.

BUT THIS IS WORSE THAN WHAT IS A CRIME.

EXPLAIN THAT TO ME.

>> WELL, I'M GOING TO THE TWO PRINCIPLES, BEGINNING PRINCIPLES.

YOU HAVE TO HAVE AN INSURABLE INTEREST AT THE OUTCOME.

AND A PERSON WHO PROCURES THE INSURANCE MUST HAVE AN INSURABLE INTEREST.

THAT'S THE BEGINNING POINT.

AND THAT IS TIED TO THE NOTION, THE ESTABLISHED PRINCIPLE YOU CAN'T BET ON SOMEBODY'S LIFE.

>> BUT WHAT CAN'T THE INSURANCE COMPANY-- WHAT I DON'T UNDERSTAND IS THERE'S, THIS IS A \$10 MILLION POLICY.

THE INSURANCE COMPANY COLLECTED, IS WHAT MR. CANTERO'S SAID TRUE, \$2 MILLION BEFORE--

>> I DIDN'T THINK IT WAS THAT MUCH.

>> THAT'S A LOT OF MONEY.

>> YES.

YES.

>> WHAT IS-- WHERE'S THE INCENTIVE FOR AN INSURANCE COMPANY, A LIFE INSURANCE COMPANY TO DO DUE DILIGENCE IN UNDERWRITING BEFORE THEY ISSUE A POLICY IF THEY CAN COME BACK YEARS LATER AND SAY, YOU KNOW, IT WAS THE-- SHE WAS A FRAUDULENT FINANCIAL STATEMENT. SOMEBODY ELSE PROVIDED THE BLOOD PRESSURE?

I MEAN, IF-- WHERE'S THE INCENTIVE FOR THEM TO DO IT? BECAUSE THEN THEY'RE BETTING THEY MAY NOT DIE, AND WE KEEP ALL THESE PREMIUMS, OR IF THEY DIE, WE'LL USE EVERYTHING THAT WE CAN NOW FIND OUT TO CONTEST THE POLICY.

>> I UNDERSTAND THE CONCERN ABOUT LOOKING AT THIS EARLY FROM THE INSURANCE COMPANY'S POINT OF VIEW.

BUT AGAIN, IF SOMETHING IS VOID TO BEGIN WITH, IF IT NEVER HAD LIFE TO BEGIN WITH BECAUSE IT WAS VOID AND VIOLATED THE LAWS OF FLORIDA, THEN IT CAN BE CHALLENGED LATER ON.

AND THERE'S NO QUESTION THAT THE ISSUE THAT YOU'RE RAISING IS AN ISSUE THAT HAS BEEN RAISED BEFORE.

BUT LET ME JUST READ TO YOU WHAT JUDGE BLUME SAID IN JANUARY OF THIS YEAR IN DEALING-- IT'S A CASE THAT ULTIMATELY WENT OFF ON THE DELAWARE LAW.

BUT SHE ADDRESSED THE FLORIDA LAW RECOGNIZING WE WERE GOING TO HAVE THIS ARGUMENT THIS MORNING. AND HERE'S WHAT SHE SAID.

I'VE SUBMITTED THE CASE AS A SUPPLEMENTAL AUTHORITY A MONTH OR SO AGO.

THE QUESTION MUST ALWAYS BE WHO PROCURED THE POLICY AT ISSUE AND NOT WHAT THE FORMAL CONSEQUENCES ARE OF OBTAINING A LIFE INSURANCE POLICY.

THAT'S THE APPLICATION PROCESS,
ETC.

INDEED, THIS IS PART AND PARCEL
OF THE GAMBLE.

IF THE INSURED SUCCUMBS TO THE
INEVITABLE AT THE TIME PRIOR TO
THE EXPIRATION OF THE
CONTESTABILITY PERIOD, THE
FUNDING ENTITY LOSES THE WAGER.
THIS IS A WAGER.

THAT'S GOT TO BE THE STARTING
POINT HERE.

THE PUBLIC POLICY THIS COURT HAS
TO ADDRESS IS, IS DOES THE
INSURABLE INTEREST STATUTE--
WHICH IS CLEAR AND UNAMBIGUOUS,
INSURABLE INTEREST MEANING YOU
HAVE SOME INTEREST IN THE LIFE
AND WELL BEING OF THAT, OF THE
PARTY WHO'S BEING INSURED, IS
THAT PERSON WHO PROCURES IT MUST
HAVE, MUST HAVE TO HAVE THAT
INTEREST.

IF THEY DON'T HAVE THAT
INTEREST, THEY ARE BETTING ON
THE LIFE OF THE INSURED.

>> MR. ROGOW, YOUR CLIENT HERE,
IT SEEMS TO ME, HAS A PRETTY
SIMPLE FIX.

CAN'T YOU JUST PUT IN YOUR
POLICY THAT IT'S NOT ASSIGNABLE?
AND THEN YOU DON'T HAVE THIS
ISSUE.

>> STATE LAW PERMITS IT TO--
IT'S TRUE, YOU COULD HAVE A
NONASSIGNABILITY, BUT THERE IS
AN INDUSTRY HERE THAT OPERATES,
AND THERE ARE ASSIGNMENTS, AND
THERE ARE LEGITIMATE REASONS TO
ASSIGN POLICIES.

SO WE HAVE NO PROBLEM WITH THAT.
AS LONG AS THERE'S AN INSURABLE
INTEREST AT THE OUTSET.

I MEAN, YOU CANNOT BET ON
SOMEBODY'S LIFE.

>> YOU KEEP--

>> THAT'S EXACTLY WHAT THEY DID.

>> YOU KEEP SAYING THAT, BUT
THEN WE RECOGNIZE WE'VE GOT THIS
SECONDARY MARKET HERE WHERE

THESE POLICIES AFTER INCEPTION
ARE FREELY ASSIGNABLE, AND THAT
CAN BE DONE IN CIRCUMSTANCES
WHERE SOMEBODY'S BETTING ON
SOMEBODY'S LIFE, ISN'T THAT
CORRECT?

>> BUT NOT AT THE OUTSET.

>> WELL, I UNDERSTAND THAT.
BUT YOU, BUT YOUR RESORT HERE IS
TO A PUBLIC POLICY WHICH SEEMS
TO BE INCONSISTENT WITH WHAT THE
LEGISLATURE HAS DECIDED ABOUT
THE ASSIGNABILITY OF INSURANCE
POLICIES AFTER INCEPTION.
DOESN'T IT?

>> IT-- YES.

THEY CAN INSURE-- THEY CAN
ASSIGN AFTER INCEPTION.
BUT THE INCEPTION IS THE KEY.
THE BIRTH OF THE POLICY IS THE
KEY.

AND THE LEGISLATURE HAS BEEN
VERY CLEAR, AN INSURABLE
INTEREST.

AND THIS COURT HAS BEEN VERY
CLEAR AS HAVE EVERY COURT THAT
HAVE LOOKED AT IT THAT YOU
CANNOT WAGER ON A PERSON'S LIFE.
YOU'RE TALKING ABOUT A
SUBSEQUENT WAGER, THAT'S WHAT
YOU'RE TALKING ABOUT, JUSTICE
CANADY.

>> BUT A WAGER IS A WAGER.

>> NO.

A WAGER IS NOT A WAGER WHEN
WE'RE TALKING ABOUT AT THE
INCEPTION OF A POLICY WHETHER OR
NOT SOMEONE HAS THE INSURABLE--

>> NOW WE GET TO THE SECOND
CERTIFIED QUESTION.

IF WE AGREE THAT YOU CAN LOOK AT
IT, IN THIS SITUATION I THINK
YOU WOULD-- SHORT OF THE ISSUE
OF THE PROCUREMENT, IF THE
HUSBAND WAS THE BENEFICIARY
UNTIL THE ASSIGNMENT OCCURRED,
WHY WASN'T THERE-- I MEAN, THEY
SET THIS SCHEME UP TO BE, TO
COMPLY AND MAYBE MOCK THE LAW,
BUT TO COMPLY WITH IT SO THAT

THE HUSBAND AND WIFE, THE WIFE'S LIFE WAS INSURED, AND THE HUSBAND WAS THE BENEFICIARY.

AND YOU ANSWERED JUSTICE QUINCE'S QUESTION THAT IF WITHIN THE TWO YEARS THE WOMAN, MRS. BERGER, HAD DIED, THAT SHORT OF OTHER ISSUES, THAT YOU WOULD HAVE HAD TO PAY.

SO WHERE ARE YOU SEEING THAT THERE WAS NO INSURABLE INTEREST AT THE OUTSET?

>> BECAUSE, BECAUSE WHO PROCURED THE POLICY.

PROCURED IS THE IMPORTANT-- GETTING THE POLICY ON SOMEONE'S LIFE IS A STARTING POINT.

>> WELL, WOULD IT MATTER IF AT THE MOMENT OF PROCUREMENT THEY ASSIGNED IT?

I MEAN, WHAT WAS THE REASON, I GUESS, IN THIS SCHEME THAT FOR TWO YEARS IF SHE DIED HER HUSBAND WOULD GET THE MONEY?

>> WELL, THE TRUTH IS THEY ASSIGNED IT RIGHT AWAY AND, ACTUALLY WITH, FOUR OR FIVE MONTHS BEFORE THEY SIGNED POWERS OF ATTORNEY THAT GAVE EVERYTHING OVER TO--

>> DOES THE INSURANCE COMPANY HAVE TO SEE THAT, DO THEY GET THE ASSIGNMENTS?

COPY OF THE ASSIGNMENT?

>> THEY GOT THE ASSIGNMENT--

>> DO THEY HAVE TO AGREE TO THE ASSIGNMENT?

>> PARDON ME?

>> DOES THE INSURANCE COMPANY HAVE TO AGREE TO THE ASSIGNMENT?

>> YES.

>> SO THEY ARE NOW LOOKING AT A \$10 MILLION POLICY, \$15 MILLION NET WORTH, AND THEN WITHIN TWO YEARS AN ASSIGNMENT SO OCCURRING TO A THIRD PARTY.

YOU DON'T THINK THAT'S SOMETHING AN INSURANCE COMPANY MIGHT GO, RED FLAGS ARE UP, WE BETTER INVESTIGATE THIS?

>> AND THEY DID INVESTIGATE
IT--

>> WHEN?

>> AT THE BEGINNING.

WELL, THERE'S A RECORD.

IF YOU LOOK AT THE JUDGE'S
OPINION, IT TAKES PAGES 23-40 OR
SO OF THE APPENDIX, HE TAKES YOU
THROUGH EVERYTHING THAT
HAPPENED.

AND SO I UNDERSTAND THE CONCERN,
WELL, WHY DIDN'T THE INSURANCE
COMPANY DO SOMETHING ABOUT THIS
AT THE BEGINNING.

BUT IT BEGS THE QUESTION THAT IS
THE LEGAL QUESTION IN THIS CASE.
I MEAN, THE FACTS OF THIS CASE
ARE ONE THING.

AND CERTAINLY, THE FACTS ARE THE
WORST OF THE WORST IN THIS
SITUATION.

HE GAVE UP, MR. BERGER ACTUALLY
IN THE TRUST AGREEMENTS, AND I
THINK IF YOU'LL TAKE A LOOK AT
THE TRUST AGREEMENT WHICH IS AT
265, HE BASICALLY SAYS IF ANY
MONEY COMES IN, IT'S GOING TO BE
TURNED OVER TO COVENTRY.

BUT I ANSWERED JUSTICE QUINCE'S
QUESTION, LOOKING AT IT IN THE
LIGHT MOST FAVORABLE TO THIS
NOTION THAT THEY WOULD COLLECT
SOMETHING IN THAT TWO-YEAR
PERIOD.

AND I COME BACK TO-- AND THIS
IS WHAT I THINK IS IMPORTANT IN
UNDERSTANDING THIS, THAT THIS
WAS A BET.

IT WAS A BET.

BECAUSE WHEN IT WAS PROCURED, IT
WAS A BET.

EITHER THEY WIN THE BET OR THEY
LOSE THE BET.

YOUR QUESTION, JUSTICE QUINCE,
IS THEY WOULD LOSE THE BET IF
THE MONEY WENT TO MR. BERGER.
AND I'M NOT SAYING IT WAS GOING
TO GO BECAUSE, BY THE WAY, THE
WAY THEY HAD THIS THING
STRUCTURED, IT ENDED UP ALL

GOING TO COVENTRY AND NOW
COVENTRY TRANSFERS IT.
SO IT'S A MESS DOWN THE ROAD.
>> MR. ROGOW, IF A FLORIDA
CITIZEN GOES TO A LOCAL BANK AND
WE ARE GOING TO TAKE OUT A LOAN
AND WE WANT IT IN AVERAGE
AMOUNTS, MAYBE MORE THAN THE
BANK WOULD OTHERWISE PROVIDE US
BUT THE CONDITION IS THAT THERE
BE A LIFE INSURANCE POLICY ON
LIFE OF THE BORROWER AND THAT
THAT BE ASSIGNED FOR THE
PROTECTION OF THIS LOAN EITHER
AS AN ASSIGNMENT OR THROUGH SOME
OTHER AGREEMENT THAT WILL GO TO
THE BANK, IS THAT PRECLUDED
UNDER YOUR THEORY?
>> IT WOULD NO PRECLUDED--
>> AND WHY NOT?
>> IF THE BORROWER AND THE
INSURED ARE THE ONES WHO ARE
PROCURING THE INSURANCE AND THE
INSURED.
BUT HERE THE INSURED DID NOT
PROCURE THE INSURANCE.
SO IF I GO TO
THE BANK AND I SAY--
>> BUT IT HAS ALL THE SAME
ELEMENTS, BUT IT IS BECAUSE OF
THE RELATIONSHIP BETWEEN THE
BORROWER AND THE BANK THAT MAKES
THE DIFFERENCE ON THAT ONE?
>> NO.
THE RELATIONSHIP BETWEEN THE
INSURED AND THE SMUSH--
>> WELL, THE BORROWER.
>> WELL, IF THE BORROWER
IS INSURED.
IF I GO TO THE BANK AND SAY I
WANT TO--
>> WELL, THAT'S THE QUESTION.
>>-- AND I WANT TO INSURE MY
LIFE TO THE BENEFIT OF MY
CHILDREN, THAT'S FINE.
>> NO, NO, NO, NOT YOU, BUT THE
BANK INSISTS ON IT.
>> THAT'S FINE.
BUT, AGAIN, I'M GETTING THE
COVERAGE FOR MYSELF.

>> NO.
NO, IT'S GOING FOR THE BENEFIT
OF THE BANK.
>> ULTIMATELY--
>> JUST LIKE THIS GOING TO THE
BENEFIT OF SOMEONE ELSE.
>> BUT THE INSURED HAS AN
INTEREST.
THE INSURED.
PERSON WHO IS PROCURING THE
POLICY.
EVEN THOUGH THE MONEY'S COMING
FROM WHATEVER SOURCE IT'S COMING
FROM HAS AN INSURABLE INTEREST.
I MEAN, I KNOW THIS--
[LAUGHTER]
I KNOW THIS SOUNDS KIND OF
AGAINST THE GRAIN AS A TWO-YEAR
INCONTESTABILITY STATUTE, AND
THAT SHOULD BE THE END OF THE
INQUIRY.
FOR THE FRAUD CASES ARE
DIFFERENT BECAUSE IN THE FRAUD
CASES THERE'S AN INSURABLE
INTEREST.
ALTHOUGH THE PERSON MAY HAVE
OBTAINED IT BY FRAUD, THERE'S AN
INSURABLE INTEREST.
BUT WHEN THERE IS NO INSURABLE
INTEREST, AND THAT--
>> BUT BACK TO JUSTICE LEWIS
WITH' QUESTION, THE BANK IS
REALLY THE PROCURER IN THAT
SITUATION.
SO YOU'RE SAYING THE BANK HAS AN
INSURABLE INTEREST?
>> NO.
THE BANK IS NOT THE PROCURE--
>> WELL, THEY'RE THE ONES
WHO ARE SAYING TO THE
INSURED I'M NOT GOING
TO GIVE YOU THIS LOAN
UNLESS YOU TAKE OUT AN INSURANCE
POLICY AND ASSIGN IT TO ME.
>> AND WHEN I TAKE OUT--
>> I MEAN, THIS IS LIKE THESE
PEOPLE WHO PAY \$81,000 FOR THIS
PREMIUM.
WHAT'S THE DIFFERENCE?
>> TWO THINGS.

REMEMBER, IN THIS CASE THE BERGERES DIDN'T WANT INSURANCE, DIDN'T NEED INSURANCE, DIDN'T KNOW HOW MUCH THE INSURANCE WAS GOING TO BE.

THEY-- SO THIS IS NOT LIKE JUSTICE LEWIS' QUESTION.

BUT THE POINT IS THAT IF I GO BECAUSE A BANK SAYS THEY WANT INSURANCE AND I GET INSURANCE, I HAVE AN INSURABLE INTEREST.

YES, IS IT TO THE ULTIMATE PROTECTION OF THE BANK?

YES.

BUT THAT'S NOT THE ISSUE.

I HAVE AN INSURABLE INTEREST. AND WHEN THAT PREMIUM IS PAID, IT'S PAID BY ME BECAUSE I HAVE AN INSURABLE INTEREST.

OTHERWISE IT IS A BET ON SOMEBODY'S LIFE, AND THAT'S WHY WHAT JUDGE KHAN WROTE, JUDGE BLUME WROTE, JUDGE MORENO TOOK THE EASY ROUTE, TWO YEARS, THAT'S IT, TOO BAD, SO SAD--

>> YOUR TIME IS UP.

THANK YOU.

>> THANK YOU.

>> REBUTTAL.

>> FIRST, I WANT TO MAKE ONE THING CLEAR.

IF MR. ROGOW WERE CORRECT THAT THERE WAS NOT AN INSURABLE INTEREST AT INCEPTION, WE WOULDN'T BE HERE.

THE 11TH CIRCUIT WOULD NOT HAVE NEEDED TO CERTIFY A QUESTION, BECAUSE EVERYBODY AGREES THE STATUTE IS CLEAR.

YOU HAVE TO HAVE AN INSURABLE INTEREST AT INCEPTION.

THAT WASN'T THE QUESTION THAT THE 19TH SIR-- 11TH CIRCUIT ASKED.

IT ASSUMED THERE WAS AN INSURABLE INTEREST AT INCEPTION FOR ALL THE REASONS WE'VE BEEN TALKING ABOUT THIS MORNING.

THE ONLY QUESTION WAS WITH THAT ASSUMPTION, IS THERE SOME KIND

OF GOOD FAITH REQUIREMENT IN THE STATUTE.

>> SO DO YOU AGREE THAT IF THERE WAS NO INSURABLE INTEREST AT INCEPTION THAT IT CAN BE CONTESTED AT ANY TIME?

>> NO.
IN OKAY.

>> THAT GOES BACK TO THE INCONTESTABILITY CLAUSE.

>> OKAY.

SO THAT GOES TO QUESTION ONE.

>> I'M TALKING ABOUT QUESTION TWO.

>> WHAT'S WRONG WITH HOW THE DELAWARE SUPREME COURT ANSWERED PRETTY CLOSE TO CERTIFIED QUESTION?

I MEAN, THAT'S-- THEY'RE ESPOUSING THE MAJORITY VIEW.

>> RIGHT.

WELL, AS FAR AS THE INCONTESTABILITY, I THINK FLORIDA AS THE LAW HAS EVOLVED IN FLORIDA, IT HAS MADE A BRIGHT LINE BETWEEN ATTACKING THE VALIDITY OF THE POLICY AND ATTACKING THE COVERAGE UNDER THE POLICY.

AND IT'S A CLEAR LINE FOR EVERYBODY INCLUDING--

>> BUT THEIR STATUTES ARE THE SAME AS FLORIDA'S?

>> FOR THE MOST PART, YES.

AND THEN IN THE INSURABLE INTEREST AS WE'VE BEEN TALKING ABOUT THE FLORIDA STATUTE SPECIFICALLY SAYS THE INSURABLE INTERESTS NEED NOT EXIST AFTER THE INCEPTION OF THE POLICY.

>> LET ME ADDRESS ALSO WHAT MR. ROGOW SAID ABOUT PROCUREMENT.

AND IT WASN'T MS. BERGER WHO PROCURED, IT WAS COVENTRY.

WELL, THE RECORD SHOWS IT WAS BERGER WHO PROCURED, AND MAYBE IT WAS FRAUDULENT.

BUT SHE WAS THE ONE WHO APPLIED FOR THE INSURANCE.

BUT ULTIMATELY, IT DOESN'T
MATTER.

AND THE REASON IT DOESN'T MATTER
IS UNDER THE STATUTE, 404 PAREN
ONE, IT'S NOT WHO PROCURES THAT
MATTERS, IT'S WHO GETS THE
BENEFITS OF THE POLICY UPON THE
DEATH OF THE INSURED.

AND THAT PERSON HAS TO HAVE AN
INSURABLE INTEREST.

SO IT COULD HAVE BEEN-- WELLS
FARGO COULD HAVE TAKEN OUT AN
INSURANCE POLICY ON MRS. BERGER
AS LONG AS THE BENEFICIARY WAS
MR. BERGER.

SO WHETHER IT WAS MRS. BERGER OR
COVENTRY OR BRASSNER OR ANYBODY
ELSE WHO PROCURED THE POLICY, IT
WAS MR. BERGER WHO WAS THE
BENEFICIARY.

AND UNDER THE STATUTE HE HAD AN
INSURABLE INTEREST AT THE
INCEPTION.

JUSTICE LEWIS, TO ANSWER YOUR
HYPOTHETICAL, SUBSECTION B3 OF
THE STATUTE ACTUALLY WOULD
PERMIT THE BANK TO PROCURE AN
INSURANCE POLICY WITH THE BANK
AS THE BENEFICIARY.

BECAUSE IF YOU HAVE A PECUNIARY
INTEREST IN KEEPING THAT PERP
ALIVE, YOU HAVE AN INSURABLE
INTEREST UNDER SUBSECTION B3
AND, THEREFORE, YOU CAN PROCURE
THE INSURANCE POLICY.

MR. ROGOW TALKED ABOUT IT.
THAT WAS NOT A INCONTESTABILITY
CASE.

THAT WAS CLEARLY SOMEBODY WITH
NO INTEREST WHATSOEVER IN THE
INSURED CONTESTING THE POLICY
WITHIN THE TWO-YEAR PERIOD, AND
AND IT WAS CLEAR THERE WAS NO
INSURABLE INTEREST AT INCEPTION
THERE.

AND I WILL NOT WAIT FOR CHIEF
JUSTICE TO TELL ME MY TIME IS
UP.

I WILL SAY, PLEASE, ANSWER THE
CERTIFIED QUESTIONS AT YOU HAVE

TO HAVE-- YOU CAN'T CONTEST A
POLICY AFTER THE TWO YEARS.
AND IF YOU ANSWER THAT YOU CAN,
THEN THAT YOU DON'T HAVE A BAD
FAITH REQUIREMENT IN THE
STATUTE.
THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENTS.