

>> THE NEXT CASE ON THE DOCKET
WILL BE de la FUENTE V. FIGA.
[INAUDIBLE CONVERSATIONS]
>> YOUR HONOR,
MR. CHIEF JUSTICE, JUSTICES, MAY
IT PLEASE THE COURT.
MY NAME IS ROBERT BIASOTTI, AND
I REPRESENT LEANDRO de la
FUENTE IN THE LAWSUIT AGAINST
FLORIDA INSURANCE GUARANTY
ASSOCIATION FOR THEIR
RESPONSIBILITY TO CARRY OUT--
[INAUDIBLE]
2009 INSURANCE POLICY.
THERE ARE TWO CERTIFIED
QUESTIONS THAT WERE
ISSUED BY THE SECOND
DISTRICT AND ALSO A CERTIFIED
QUESTION ISSUED BY THE FIFTH
DISTRICT THAT ARE IN TAG CASES
TO THIS CASE.
BUT MY CERTIFIED QUESTIONS
ADDRESS REALLY TWO ISSUES.
ONE IS, WHICH STATUTE APPLIES--
WHICH FIGA STATUTE APPLIES,
631543, THE 2009 STATUTE WHEN
THE EVENT HAPPENED, OR THE 2011
STATUTE WHICH CAME INTO EFFECT
AFTER--
[INAUDIBLE]
BECAME INSOLVENT.
AND THE SECOND ISSUE IS WHETHER
YOU CAN USE APPRAISAL--
ASSUMING YOU ANSWER THE FIRST
ONE CONTRARY TO MY CLIENT'S
INTERESTS, SO THE 2011 STATUTE
APPLIES, THEN YOU GO TO THE
SECOND STATUTE WAS, DOES THE
2011 STATUTE DO AWAY WITH
APPRAISAL?
THERE ARE REALLY SORT OF THREE
ISSUES THAT ARISE UNDER THESE
TWO QUESTIONS X THEY'RE KIND OF
INTERRELATED FOR ALL THE
QUESTION.
THE FIRST QUESTION IS, DOES THE
PLAIN LANGUAGE OF THE FIGA
STATUTES-- WHICH HAVE BEEN IN
EFFECT SINCE 1970 AND DID NOT
CHANGE FROM 1970 UNTIL 2011, THE

KEY STATUTES, WHAT APPLIES?
2009, 2011?
LET ME JUST READ WHAT IT SAYS.
>> WHICH STATUTE ARE YOU
READING?
>> I'LL TELL YOU.
THERE ARE THREE.
>> OKAY.
>> THERE ARE THREE THAT APPLY.
63151 SAYS THAT--
>> I MEAN, WHICH YEAR ARE YOU
READING?
>> 63151 IS FROM 1970 TIL 2011,
NEVER CHANGED.
THEY WERE IN EFFECT FOR,
WHATEVER THE MATH IS, 36 YEARS,
WHATEVER.
30 YEARS, I GUESS.
40 YEARS.
THE PURPOSE OF FIGA IS TO AVOID
FINANCIAL LOSS TO CLAIMANTS OR
POLICYHOLDERS BECAUSE OF THE
INSOLVENCY OF AN INSURED.
THAT'S THE PURPOSE TO HAVE THEM
THERE ARE SEVERAL OTHER PURPOSES
THAT INVOLVE PREVENTING
INSOLVENCIES WHICH THEY
OBVIOUSLY DIDN'T DO IN THIS
CASE, BUT PUT THAT ASIDE.
SEVEN-- EXCUSE ME, 631543
BEFORE THE CHANGE IN 2011--
AND, ACTUALLY, THIS IS IN THE
2011 STATUTE-- IT'S THE
DEFINITION.
AND IN SECTION FOUR IT SAYS
"COVERED CLAIM MEANS AN UNPAID
CLAIM."
AND I'M KIND OF SUMMARIZING
HERE, WHICH IS ARISING OUT OF AN
INSURANCE POLICY ISSUED BY AN
INSURER IF SOME INSURER
BECOMES-- FUTURE TENSE-- AN
INSOLVENT INSURER.
AND THEN THE THIRD THING--
>> BUT DOESN'T THAT MEAN THAT A
CLAIM ONLY BECOMES A COVERED
CLAIM IF THE INSURER BECOMES AN
INSOLVENT INSURER?
AND THAT'S WHEN THE CLAIM
ACTUALLY ARISES?

>> YEAH, LET--
>> INSOFAR AS FIGA IS CONCERNED.
>> LET ME EXPLAIN WHY THAT'S NOT
TRUE, AND LET ME READ THE THIRD
THING THAT'S VERY CRUCIAL TO
THAT, AND THAT'S THE THIRD
STATUTE, 63157.
AND IT SAYS, "POWERS AND DUTIES
OF THE ASSOCIATION."
"THE ASSOCIATION SHALL BE
OBLIGATED TO THE EXTENT OF
COVERED CLAIMS EXISTING PRIOR TO
THE ADJUDICATION OF INSOLVENCY."
SO I THINK THAT ANSWERS YOUR
QUESTION.
CLAIMS DO NOT ARISE WHEN
SOMEBODY BECOMES INSOLVENT.
CLAIMS ARISE UNDER AN INSURANCE
POLICY THAT WAS, THAT MY CLIENTS
IN 2009 SIGNED TO COVER
SINKHOLES.
NO CLAIM COULD POSSIBLY EXIST
AFTER SOMEBODY BECOMES
INSOLVENT, BECAUSE IF THEY'RE
INSOLVENT, THEY'RE NOT ALLOWED
TO WRITE INSURANCE POLICIES
ANYMORE.
THEY MUST ARISE UNDER A
CONTRACT.
NOW, WHAT-- IN EVERY CASE
THAT'S BEFORE THIS COURT HERE,
EVERY TRIAL JUDGE-- AND IN THIS
CASE THE TRIAL JUDGE DID RULE ON
THE ORDER THAT WAS ON APPEAL
THAT WENT TO THE SECOND
DISTRICT-- THE JUDGE MADE A
SPECIFIC FINDING ON THIS.
THE COURT FINDS THAT THE LAW IN
EFFECT AT THE TIME THAT THE
POLICY WAS ISSUED CONTROLS,
CITING THIS COURT'S CASE IN
MENENDEZ AND CITING THIS COURT'S
CASE IN HASAN V. STATE FARM.
THE COURT WENT ON TO SAY, "THE
COURT SPECIFICALLY FINDS THAT
THE CHANGE MADE TO 63154C BY THE
ADDITION OF-- EXCUSE ME--
631543 BY THE ADDITION OF
SUBPARAGRAPH C ON MAY 17, 2011,
DOES NOT APPLY TO THIS POLICY

THAT WAS ISSUED IN TWINE AND EXPIRE-- 2009 AND EXPIRED IN 2010."

NOW, THAT'S KIND OF BASIC LAW IN FRONT OF--

>> WELL, WELL, WELL, YOU KNOW, FIGA IS A STATUTORY CREATION.

>> CORRECT.

>> IF WE DON'T HAVE FIGA, THEN THERE'S NOTHING TO STEP IN FOR AN INSURANCE COMPANY.

>> CORRECT.

>> AND AS LONG AS FIGA HAS BEEN IN EXISTENCE, THERE'S ALWAYS BEEN THIS CONCEPT OF A COVERED CLAIM.

>> ABSOLUTELY CORRECT.

>> BECAUSE FIGA HAS NEVER BEEN REQUIRED TO COME IN AND JUST PAY EVERYTHING, IS MY UNDERSTANDING, UNDER THE POLICY FROM THE COMPANY THAT'S GONE UNDER. THERE'S ONLY, IT'S JUST WHAT THE STATUTE SAYS THEY COVER.

>> YEAH.

>> AND HERE WE RUN INTO-- WELL, I UNDERSTAND, BUT HERE WE COME INTO A SITUATION, AND WE'RE GOING TO HAVE TO DECIDE WITH REGARD TO A LOSS, A POLICY AND A LOSS THAT OCCURS BEFORE INSOLVENCY OF AN INSURANCE COMPANY--

>> CORRECT.

>> AND THE INSOLVENCY DOES NOT OCCUR UNTIL AFTER THE STATUTE HAS BEEN AMENDED.

>> CORRECT.

>> CORRECT?

>> BUT THE POLICY--

>> SO THE QUESTION IS, DOES THE POLICY AND THE EVENT OF THE LOSS, DOES THAT FIX SO THAT THE LEGISLATURE CANNOT AMEND WHAT A COVERED CLAIM IS UNDER A STATUTE?

NOW, I CAN SEE-- I MEAN, GREAT ARGUMENT.

WE COULD HAVE A HURRICANE THIS SUMMER, AND THE LEGISLATURE

COULD LOOK AT IT AND SAY, OH, MY GOODNESS, WE'RE GOING TO LOSE ALL THESE COMPANIES THAT HAVE COME IN--

>> AND WE DID.

>>-- TO REPLACE CITIZENS. THEY'VE ALL COME IN, THESE PEOPLE, THAT WE HAVE NO IDEA-- THEY JUST CAME UP OVERNIGHT. SO WE'RE GOING TO REMOVE WIND COVERAGE FROM WHAT IS A COVERED CLAIM UNDER FIGA.

SO THAT IS AN AFTER-THE-FACT OF THE POLICY AND LOSS, BUT IT IS NOT WITH REGARD TO WHETHER THIS COMPANY'S BECOME INSOLVENT. THAT'S THE DILEMMA THAT WE'RE IN HERE.

>> YEAH.

AND LET ME JUST SAY YOU CANNOT HAVE A COVERED CLAIM BY AN INSOLVENT INSURED WHO'S A MEMBER OF FIGA.

LET'S BE CLEAR WHAT FIGA IS. FIGA IS A CONSORTIUM OF INSURANCE COMPANIES THAT GET TOGETHER, AND IF ONE OF THEIR MEMBERS BECOMES INSOLVENT, THE OTHER INSURANCE COMPANY RAISES MONEY.

WHERE DO THEY RAISE THE MONEY? THEY CHARGE IT BACK ON THE INSUREDS.

>> WELL, I MEAN, THEY PAY A PREMIUM BOO THIS ALL ALONG-- INTO THIS ALL ALONG.

>> OH, NO.

THEY CHARGE A PREMIUM--

>> THERE'S A PART OF INSURANCE COMPANIES THAT BELONG TO FIGA CONTRIBUTE--

>> INSURANCE COMPANIES DON'T PAY THIS MONEY.

INSUREDS PAY THE MONEY.

>> WELL--

>> AS A MATTER OF FACT, IF YOU LOOK--

>> IT DOESN'T COME FROM THE PREMIUMS THAT THEY PAY?

>> ABSOLUTELY.

>> AND THEY DON'T PAY IT DIRECT TO THE STATE.

THEY SEND IT TO, IT'S PART OF WHAT YOU SEE ON YOUR INSURANCE BILL.

>> WHAT I'M SAYING TO THIS COURT IF YOU LOOK IN THIS RECORD ON THE POLICY THAT WAS PAID BY MR. de la FUENTE ON PAGE 36 OF THE RECORD, HE PAID MONEY DIRECTLY TO FIGA.

FIGA CHARGE, \$4.

>> WELL, BUT THAT WENT TO HIS AGENT.

AND THE AGENT THEN REMITS THAT--

>> BUT THE POINT IS--

>>-- TO THE STATE, I MEAN, LET'S BE LEVEL HERE.

>> I WILL.

>> ISN'T THAT HOW THAT OPERATES? I'VE NEVER IN MY LIFE PAID A PREMIUM OR A CHARGE DIRECTLY TO FIGA.

>> WELL, MAYBE YOU HAD A DIFFERENT INSURANCE COMPANY. BUT IF YOU HAD CITIZENS, THAT'S TRUE.

BUT IF YOU HAD ANY PRIVATE INSURANCE COMPANY, YOU DID PAY IT.

>> WELL, I--

>> AND PRIVATE INSURANCE COMPANIES--

>> THAT, I THINK, CREATES A FALSE BASIS FOR THE COURT TO TRY TO DECIDE A LEGAL ISSUE.

>> WELL, LET ME-- ALL RIGHT. LET ME GO TO THREE ISSUES HERE. ONE IS THE 2007-- 2009 STATUTE APPLY, AND I THINK IT SHOULD. BUT IF YOU DISAGREE WITH THAT, THEN LET'S LOOK AT THE 2011 STATUTE WHICH HAS CLEAR CONFLICTS IN IT.

BECAUSE ON ONE CASE THEY SAY A COVERED CLAIM ARISES BEFORE THE SOLVENCY, AND IN ANOTHER PLACE IT SAYS IT ARISES AFTER THE INSOLVENCY, IS WHAT YOU'RE

SAYING. --

>> WELL, NO, I THINK WHEN YOU INTERPRET THOSE, IT'S SAYING BEFORE YOU CAN HAVE A CLAIM, YOU HAVE TO TO BE COVERED UNDER THE POLICY OF THE COMPANY WHO WENT INSOLVENT, AND THEN YOU DON'T HAVE FIGA UNTIL AFTER THEY BECOME INSOLVENT.

>> WE CAN, I GUESS, AGREE TO DISAGREE.

YOU DO HAVE FIGA.

MY CLIENT IS LOOKING AT THIS IN--

>> BUT THAT'S THE READING, I MEAN, I THINK THE READING THAT JUSTICE LEWIS IS EXPLAINING IS THE READING THAT ALL THE DISTRICT COURTS HAVE ADOPTED, ISN'T THAT CORRECT?

>> THAT'S TRUE.

>> OKAY.

IT'S NOT SOMETHING THAT'S JUST FANCIFUL.

I UNDERSTAND YOUR ARGUMENT, BUT IT'S NOT-- THE OTHER VIEW IS NOT FANCIFUL, YOU WOULD CONCEDE.

[LAUGHTER]

MAYBE NOT.

>> MAYBE NOT.

[LAUGHTER]

AND THE PROBLEM IS THAT WE ARGUED THIS CASE IN FRONT OF THE SECOND DISTRICT AFTER THE CASE CAME OUT OF THE FIRST DISTRICT. WE ALREADY BRIEFED IT, IT CAME OUT.

WE ARGUED THIS A WEEK AFTER THE FIRST DISTRICT CASE CAME OUT. SO WE DIDN'T REALLY BRIEF THIS. THE FIRST TIME WE EVER BRIEFED THIS WAS ON MOTION FOR A HEARING, WHICH YOU HAVE OUR MOTION FOR HEARING.

AND THEN WE DID TWO THINGS.

ONE IS, WE THINK THE 2009 STATUTE APPLIES, BUT IF YOU'RE RIGHT AND THE 2011 STATUTE APPLIES, HOW DO YOU RESOLVE THESE CONFLICTS?

THERE'S AN ACTUAL STATUTE IN FIGA SAYS YOU'RE ENTITLED TO ATTORNEYS' FEES IS FIGA DENIES SOMETHING WRONGLY, BUT YOU'RE NOT GOING TO PAY ATTORNEYS' FEES FOR SINKHOLES.

WHAT'S SPECIAL ABOUT SINKHOLES?

>> THE LEGISLATURE DECIDED THAT WAS DIFFERENT.

AND UNDER THIS PROGRAM THAT THEY HAVE ESTABLISHED, THEY DECIDED THAT THEY WOULD TREAT THAT DIFFERENTLY.

I'M-- I UNDERSTAND THE POLICY ARGUMENT THAT MAYBE THAT'S, THAT'S A BAD POLICY AND THE LEGISLATURE SHOULDN'T HAVE DONE IT.

I UNDERSTAND THAT.

BUT THE LEGISLATURE OBVIOUSLY MADE THAT CHOICE THAT IS REFLECTED IN THE STATUTE.

I MEAN, THAT'S-- THE QUESTION OF WHY IS THAT DIFFERENT, THAT'S A QUESTION FOR THE LEGISLATURE. THAT'S NOT A QUESTION THAT WE RESOLVE.

>> WELL--

>> THE LEGISLATURE DECIDED IT'S DIFFERENT.

DIDN'T THEY?

>> THEY DID.

AND, OF COURSE, THERE'S NO LEGISLATIVE HISTORY TO SUPPORT THAT AT ALL.

NONE.

>> BUT THE THING IS, DON'T WE HAVE TO ROOK AT THE-- TO LOOK AT THE SPECIFIC BEFORE THE GENERAL?

AND THE SPECIFIC PART SAYS THAT YOU'RE NOT GOING TO PAY IT FOR SINKHOLE.

I MEAN, IT MAY GENERALLY SAY YOU'RE GOING TO PAY ATTORNEYS' FEES, BUT IF THERE IS A MORE SPECIFIC ONE THAT IS APPLICABLE TO YOUR SITUATION, DON'T WE HAVE TO APPLY THE SPECIFIC STATUTORY PROVISION?

>> THE PROBLEM THAT MY CLIENTS HAD AND THE PROBLEM THAT 750 PEOPLE THAT WERE INSURED BY HOME WISE TO \$145 MILLION OF CLAIMS HAVE IS THAT THEY ENTERED THESE CONTRACTS WITH THE ASSUMPTION THAT THESE CONTRACTS WERE EITHER GOING TO BE PAID BY THEIR INSURER, OR THEY WERE GOING TO BE PAID BY FIGA. THOSE STATUTES WERE IN PLACE. MY CLIENT RELIED ON THOSE CHUTES--

>> BUT HOW IS ANYBODY ENTITLED TO RELY ON THE HOPE OF A FUTURE BAILOUT BEFORE THERE'S ANY ACCRUED RIGHT TO THE BAILOUT? I MEAN, AND A "BAILOUT," MAYBE THAT'S NOT THE BEST TERM.

>> YEAH.

>> THAT'S WHAT THIS IS. IT'S A GOVERNMENT PROGRAM THAT THESE PEOPLE ARE REQUIRED TO PARTICIPATE.

>> CORRECT.

>> SO THIS IS SOMETHING THAT THE GOVERNMENT HAS SET UP TO DEAL WITH INSOLVENCIES AND TO BAIL OUT PEOPLE WHO ARE, AND TO GIVE SOME PROTECTION TO PEOPLE WHO SUFFER BECAUSE OF AN INSOLVENCY. BUT THAT'S SOMETHING THE GOVERNMENT DOES.

THAT IS A MATTER OF GRACE. THE GOVERNMENT NEVER HAD TO DO THAT TO BEGIN WITH.

>> WELL, THE FACT IS-- IN FACT, THEY DID DO IT.

>> WELL, I UNDERSTAND THEY DID IT.

>> AND EVERY STATE IN THIS COUNTRY HAS A SIMILAR STATUTE. AND NO STATE IN THE ENTIRE UNITED STATES EXCLUDES A COVERED CLAIM IN THE POLICY. THEY'LL EXCLUDE THINGS THAT ARE OUTSIDE THE COVERED CLAIM THAT THE POLICY SAYS WE'RE GUARANTEEING, AND THE QUESTION IS WHEN DID THAT GUARANTEE

APPLY.

BUT WHAT THEY DO INCLUDE IS THINGS--

>> WELL, BUT HERE THIS IS NOT EVEN ACTUALLY EXCLUDING A CLAIM. IT IS PUTTING CONSTRAINTS ON THE WAY THAT CLAIM IS GOING TO BE PAID FOR.

>> WELL, LET'S READ THE PLAIN LANGUAGE OF THE STATUTE.

>> BUT THIS IS NOT EXCLUDING SINKHOLE COVERAGE.

>> YEAH, THAT'S EXACTLY WHAT IT SAYS.

IT SAYS, UNDER C, IT SAYS SINKHOLES, DEFINITION. COVERED CLAIM MEANS BLAH, BLAH, BLAH, AND THEN IT SAYS "THE TERM DOES NOT INCLUDE A, B, C." ANY AMOUNT PAYABLE FOR A SINKHOLE LOSS.

OTHER THAN THAT-- NOW, THAT'S THE FIRST NEGATIVE-- OTHER THAN THIS.

>> THE OTHER THAN--

>> BUT THE SECOND, BUT THIS. OR EXCEPT THAT.

THERE ARE FOUR NEGATIVE THINGS IN HERE THAT ARE IMPOSSIBLE TO DETERMINE.

AND WHEN YOU ACTUALLY LOOK AT THE STATUTE AND THE PURPOSE OF THIS, HOW ARE, HOW ARE INSUREDS BEING PROTECTED BY THIS?

>> BUT LET ME ASK YOU, AND MAYBE I'M MISSING MANAGER HERE.

ISN'T IT THE CASE THAT FIGA HAS SAID, OKAY, WE'RE GOING TO PAY FOR THE REMEDIATION OF THIS SINKHOLE PROBLEM, BUT WE'RE GOING TO PAY IT TO THE CONTRACTORS, WE'RE GOING TO MAKE THE PAYMENTS TO THE CONTRACTORS WHO ARE GOING TO DO THE WORK.

ISN'T THAT WHAT FIGA HAS SAID?

>> ABSOLUTELY NOT.

>> OKAY.

>> ABSOLUTELY NOT.

AND YOU CAN GET UP AND REPEAT-- YOU CAN GET UP AND SAY WHAT YOU

WANT.

[LAUGHTER]

WHAT THEY SAY IN THEIR LETTER IS
THERE ARE TWO PEOPLE THAT
VERIFIED THIS THING.

THEIR EXPERT, HSA, WHICH UNDER
HOME WISE DENIED THE CLAIM,
DENIED THE CLAIM AND THEN FIGA
HIRED THE SAME HSA.

OKAY, WELL, WE'LL DO IT.

AND TO FIX YOUR CLAIM, IT'S
GOING TO-- UNDER, BELOW THE
GROUND, \$50,000.

WE HAVE AN EXPERT, C. E. ODELL
WHICH SAYS, NO, NO, IT'S GOING
TO COST \$93,000 TO FIX IT
UNDERGROUND.

FIGA SAYS, WELL, YOU CAN HIRE
ANY CONTRACTOR YOU WANT IT AS
LONG AS YOU DO IT HSA'S WAY.

THAT'S IN THE RECORD.

THAT'S THEIR LETTER.

THAT'S WHAT THEY SAY.

NOW, THERE'S A DISPUTE OVER HOW
DO YOU RESOLVE THIS CLAIM?

NOW, WHAT ARE YOU POSED TO DO?
-- SUPPOSED TO DO?

ARE YOU GOING TO GO TO TRIAL?

ARE YOU GOING TO DO A NORMAL
APPRAISAL?

WHICH, BY THE WAY, FIGA-- IN
FRONT OF THIS VERY COURT THREE
YEARS AGO-- WON A CASE ON THAT
IN THE DEVINE CASE.

THEY WANTED TO APPRAISE A CLAIM
WHICH HAPPENED IN 2005.

THE STATUTE, THE APPRAISAL
STATUTE CHANGED IN 2006.

THEY WENT INSOLVENT IN 2007, AND
FIGA SAID, OH, NO, WE'RE
ENTITLED TO THE APPRAISAL WHEN THE
CLAIM HAPPENED IN 2009-- 2005,
AND THIS COURT, 7-0, SIDED
WITH--

>> THAT'S A DIFFERENT SITUATION
THERE BECAUSE THEY ARE CLEARLY
ENTITLED TO ASSERT THE RIGHTS
THAT WOULD HAVE BEEN ABLE TO BE
ASSERTED BY THE INSURER.

THAT'S WHAT WAS AT ISSUE THERE.

>> WELL, WE'RE ENTITLED TO--
WHY ISN'T-- THERE'S NOTHING IN
THIS POLICY THAT SAYS YOU CAN'T
RESOLVE THESE BY APPRAISAL.
THERE'S A DIFFERENCE IN HOW
TO--

>> BUT THE QUESTION IS FIGA GETS
ALL THE RIGHTS OF THE UNDERLYING
INSURER, BUT THEY DON'T
NECESSARILY GET ALL THE
OBLIGATIONS.

I MEAN, THAT'S JUST IN THE
NATURE OF WHAT IT IS.
AND SO THAT'S A COMPARISON TO
SOMETHING THAT DOESN'T QUITE
FIT.

>> I MEAN, LOOK, THE BOILER--
THE STATEMENTS THAT ARE MADE IN
THE BRIEF, THEY ALL SAY THAT.
THE PROBLEM IS, THAT'S NEVER
HAPPENED.
EVER.

THE WHOLE IDEA OF THIS IS, IT'S
SUPPOSED TO HELP INSUREDS MAKE
SINKHOLES TO GET FIXED.
IF THEY SAY IT'S 40 AND I SAY
IT'S 90, PAY THE \$90,000.
FIX MY SINKHOLE.
THERE'S A SINKHOLE UNDER MY
HOUSE.

MR. de la FUENTE, MODEST,
MIDDLE CLASS PERSON.
HE GOT AN APPRAISAL AWARD OF
\$130,000.
THEY SAID IT WAS 90, WE SAID IT
WAS \$170.

WE WENT TO AN APPRAISAL RIGHT
UNDER THE CONTRACT.
THE RIGHT THAT THEY WON IN THE
DEVINE CASE, WE HAD IT
APPRAISED.

WE GOT A NUMBER.
THEY SAID, WELL, THAT'S FINE.
WE'RE NOT GOING TO PAY YOU THAT.
WE'LL PAY YOU AS LONG AS YOU DO
IT BASED ON OUR EXPERT'S NUMBER.
THAT'S THE LAST COMMUNICATION WE
GOT.

WHAT THEY DID NOT SAY-- AND IT
HAS TO BE PAID TO A-- I'M

RUNNING OUT OF MY TIME, I SEE.
I'LL BE QUICK ABOUT THIS.
YOU HAVE TO DO IT IN THEIR
THING, AND YOU HAVE TO PAY A
CONTRACTOR FOR ABOVE AND BELOW
THE GROUND.

SO IF MY GENTLEMAN WANTED TO PAY
THE WHOLE 90 BELOW THE GROUND
AND HE'LL SPACKLE HIS BATHROOM,
HE CAN'T DO THAT.

BECAUSE HE HAS TO PAY A
CONTRACT.

I'LL RESERVE THE LITTLE TIME I
HAVE LEFT FOR REBUTTAL.

>> IF IT PLEASES THE COURT, GOOD
MORNING.

WILL BISSETT, IT'S MY PLEASURE
TO REPRESENT FLORIDA INSURANCE
GUARANTY ASSOCIATION BEFORE YOU.

>> WOULD YOU, I MEAN, CAN I
JUST-- SOMETHING, I'M STILL
TRYING TO UNDERSTAND SOMETHING.
IN THE NORMAL COURSE OF THE WAY
INSURANCE LAW WORKS IS THAT THE
POLICY THAT'S IN EFFECT AT THE
TIME OF LOSS WILL BE APPLICABLE
POLICY, AND A STATUTE THAT
PURPORTS TO DO SOMETHING
DIFFERENT THAT COMES IN
AFTERWARDS THAT DECREASES RIGHTS
CANNOT BE APPLIED RETROACTIVELY.
SO IF THIS WAS, IF THE HOME--
IF THE INSURANCE COMPANY HAD NOT
BECOME INSOLVENT, WOULD YOU BE
ALLEGING THAT THE CHANGE, THE
STATUTORY CHANGE THAT DIDN'T
REQUIRE APPRAISALS APPLY TO THIS
POLICY IN.

>> MENENDEZ AND HASSAN FOR THAT
EXACT PRINCIPLE--

>> OKAY, SO WHAT IS-- THE LAW,
THOUGH, WHEN THEY CHANGED THE
DEFINITION, WAS IT TO
SPECIFICALLY ASSIST, THERE'S A
LOT OF, I GUESS WE'RE SEEING A
LOT OF SINKHOLE CLAIMS, TO
ASSIST FIGA IN-- BECAUSE, YOU
KNOW, AGAIN, IT'S A STATE-RUN
FUND, TO ASSIST THEM SO THAT
THEIR SINKHOLE LOSSES OR

INSOLVENT INSURERS WOULD BE LIMITED?

WAS IT DIRECTED TO ASSISTING FIGA?

OR HOW DO WE GET TO THE FIGA GETS THE BENEFIT OF THE NEW STATUTE WHEN THE INSURANCE COMPANY WOULDN'T GET THE BENEFIT?

>> WELL, IN HASSAN AND MENENDEZ, THOSE WERE BOTH DIRECT DISPUTES BETWEEN--

>> I UNDERSTAND.

I'M JUST TRYING TO UNDERSTAND THAT BECAUSE IT SEEMS LIKE THE INSURER GETS, YOU KNOW, THAT FIGA GETS THE BENEFIT OF A POLICY THAT DECREASES WHAT THEY'D HAVE TO PAY FOR A STATUTE THAT CHANGED BUT DIDN'T CHANGE BASED ON THE CONSIDERATION OF FIGA.

>> THEY'RE GOING TO GET THE FULL BENEFIT.

THEY'RE GOING TO GET THEIR HOME REPAIRED.

AND SINCE MAY 20, 2012, WE'VE BEEN TELLING THEM IT IS A COVERED CLAIM.

THERE'S A PAYMENT RESTRICTION. THEN THE STATUTE THAT WENT INTO EFFECT SIX MONTHS PRIOR TO YOU EVER--

>> BUT I'M ASKING YOU, IF THIS WAS THE SAME INSURANCE COMPANY, COULD YOU HAVE DONE THE PROCEDURES UNDER THIS NEW STATUTE?

COULD YOU HAVE SAID, NO, WE'RE NOT PAYING IT TO YOU, WE'RE ONLY GOING TO PAY IT TO A CONTRACTOR THAT WE DECIDE ON?

>> IF WE WERE THE INSURANCE COMPANY AND THE LEGISLATURE PASSED THAT SORT OF A LAW, IT WOULD HAVE TO BE INCLUDED IN THE POLICY ITSELF.

>> OKAY.

SO THAT'S WHAT-- I'M TRYING TO UNDERSTAND WHY DOES FIGA GET THE

BENEFIT OF THAT IF THIS WASN'T DONE FOR A OVERRIDING REASON THAT THEY NEEDED TO MAKE SURE THAT FIGA WAS INSOLVENT IN THE AREA OF SINKHOLE CLAIMS, AND THEY INTENDED TO APPLY IT RETROACTIVELY?

>> WELL, IT'S NOT BEING APPLIED RETROACTIVELY, IT'S BEING CLEARLY APPLIED PROSPECTIVELY, BECAUSE THE CHUTE--

>> WELL, THE CLAIM AROSE, THIS CLAIM AROSE IN 2009-- NO, 2010. IF THEY HAD, I MEAN, IF HOME WISE HAD GONE AHEAD AND THEY COULD HAVE PAID THE CLAIM THEN, BUT THEY, I DON'T KNOW, AGAIN, WE DON'T KNOW WHAT HAPPENED. BUT A YEAR OR A FEW MONTHS LATER THE LAWSUIT WAS FILED, AND THEN IT WAS ANOTHER YEAR UNTIL INSOLVENCY.

SO I DON'T KNOW WHAT HAPPENED IN BETWEEN.

BUT IT'S ONLY BECAUSE OF THE DELAY OF THE INSURANCE COMPANY, IT LOOKS LIKE, THAT THIS CLAIM DIDN'T GET PAID.

SO NOW MAYBE THEY KNOW-- SO THAT'S WHAT, I DON'T UNDERSTAND-- EXPLAIN AGAIN WHY THIS WOULD APPLY TO FIGA BUT NOT IF IT WAS THE SAME INSURANCE COMPANY.

>> BECAUSE IF FIGA ACTS AS A PURE--

[INAUDIBLE]

OF STATUTE WHICH THE LEGISLATURE CAN CHANGE OR AMEND JUST LIKE THE BENEFIT PLAN CASE THIS COURT DEALT WITH IN THE LAST--

>> OKAY.

SO THE STATUTE THAT WAS AMENDED WAS A FIGA STATUTE.

>> FIGA STATUTE.

>> OKAY.

>> WELL, AND IT WAS AMENDED IN CONJUNCTION WITH A WHOLE SLEW OF LEGISLATIVE FINDINGS DEALING WITH THE SINKHOLE PROBLEM THAT

DIMINISHED THE PROPERTY BASE.
THEY WANTED TO ADDRESS THE
PROBLEM OF PEOPLE TAKING THE
MONEY AND RUNNING.

AND, THEREFORE, THEY WANTED THE
LIMITED AMOUNT OF FUNDS WHICH
YOU HAVE TO CONSERVE TO THE
EXTENT POSSIBLE TO COVER THE
MOST NUMBER OF CLAIMS WITHOUT
PASSING ALONG ASSESSMENTS.
AND ASSESSMENTS FOR HOME WISE
CAME AFTER INSOLVENCY OCCURRED.
THOSE ASSESSMENTS AND THAT
MONEY.

ANY ASSESSMENT THAT WOULD HAVE
BEEN PAID BY THE de la FUENTES
WOULD HAVE BEEN FOR PRIOR
INSOLVENCIES OF DIFFERENT
CARRIER.

HOWEVER, IF YOU LOOK--

>> LET ME ASK YOU THIS.

IS THE QUESTION REALLY HERE
WHETHER OR NOT FIGA IS GOING TO
PAY FOR EVERYTHING BUT TO A
CONTRACTOR VERSUS FIGA IS NOT
GOING TO PAY CERTAIN ELEMENTS OF
DAMAGES?

>> NO.

WE'RE GOING TO PAY TO REMEDIATE
THE SUBSURFACE.

ONCE THAT'S COMPLETED--

>> WHAT ABOUT THE APPRAISAL?

>> WELL, I MEAN, THE APPRAISAL,
THE COURTS THAT HAVE HELD,
NUMBER ONE, IMPORTANT POINT AT
LEAST SECOND DCA AND THE FIFTH
IN BRONCO, THEY HELD THAT
APPRAISAL IS UTILIZED TO
DETERMINE AN AMOUNT OF LOSS
QUESTION.

AND THEY'VE HELD THAT THE METHOD
OF REMEDIATION EVEN THOUGH IT'S
A GEOTECHNICAL QUESTION, THAT IT
CAN BE DONE BY APPRAISE A.

>> SO--

>> THE SECOND QUESTION--

>> BUT IN THIS CASE IS THAT
GOING TO BE PAID BY FIGA?

>> THE-- WELL, FIGA WILL
ACTUALLY ONCE THEY-- WHAT THEY

DID WAS KIND OF GOT LESS MONEY THAN THEY WERE DEMANDING. THEY KIND-- THE APPRAISAL PANEL SPLIT THE AMOUNT, SO ON ONE HAND, THE COURT COULD VIEW THAT AS CAPPING THE AMOUNT OF MONEY THAT CAN BE SPENT TO REMEDIATE THE PROPERTY. BUT IF IT GOES OVER THAT APPRAISAL AMOUNT, FIGA WILL PAY THAT AND HAS BEEN DOING IT UP TO THERE'S A \$500,000 STATUTORY CAP.

THE PROBLEM WITH APPRAISAL IS IT DOESN'T DETERMINE WHAT THE ACTUAL AMOUNT IT'S GOING TO COST TO REPAIR.

AND THAT'S WHAT THE SECOND DISTRICT SPECIFICALLY HELD. IT'S NOT DETERMINE THAT, IT'S A DETERMINATION OF AN ESTIMATE WHICH MAY BE ABOVE WHAT WE WOULD WANT TO PAY BELOW THEM. BUT THE HOME'S GOING TO BE REMEDIATED.

IT'S DONE BY PROFESSIONALS X. AS THEY GET INTO IT, THEY MAY HAVE TO ADMINISTER GROUTING--

>> SO BEYOND, SO BEYOND THE FACT THAT THE STATUTE CHANGED BETWEEN 2009 AND 2011, WHAT IS THE HOMEOWNER OUT OF UNDER THIS NEW STATUTE THAT THEY WOULD HAVE BEEN ENTITLED TO IF IT'S UNDER 2009 STATUTE?

>> OKAY.

SEVERAL THINGS.

THEY'RE NOT GOING TO BE OUT OF ANYTHING BECAUSE IF YOU LOOK AT THE LOSS PAYMENT PROVISION, PAGE 102 OF THEIR POLICY, THEY WOULD HAVE HAD TO GO AHEAD AND ENTER INTO A REPAIR CONTRACT, AND THE INSURANCE COMPANY WOULD HAVE BEEN PAYING.

NOT PAYING THEM DIRECTLY, WHICH IS WHY THEY WENT UNDER A SEPARATE APPRAISAL CLAUSE. THEY WANTED THE MONEY TO BE PAID DIRECTLY.

THE LEGISLATURE HAS DECLARED--
AND THAT'S THE SPECIFIC-- IS
FIGA PAYS FOR THE ACTUAL REPAIRS
OF THAT PROPERTY.

IF WE ASSUME THAT PEOPLE BUY
INSURANCE COVERAGE SO THAT ONCE
THEY HAVE A LOSS EVENT THEY'RE
GOING TO HAVE THAT EVENT FIXED
AND REPAIRED, THEN THEY'RE
GETTING 100% OF WHAT THEY
BARGAINED FOR.

THE APPRAISAL AWARD IS BELOW
THEIR POLICY LIMITS, SO THERE'S
NO PROBLEM THERE.

AND EVEN IF IT WAS ABOVE, ONCE
THEY GET INTO IT IF IT'S ABOVE
THEIR POLICY LIMITS, WE
INDICATED THERE'S AN ORDER.

AND THE COURT WILL
ALLOW FIGA TO GO ABOVE THE
POLICY LIMITS WHICH IS A BENEFIT
ALL THE WAY UP TO THE 500,000.

>> BUT YOU'RE STILL LIMITED--
[INAUDIBLE]

>> BY THE 500,000.

PLUS THE OTHER-- AND THERE ARE
QUITE A FEW DIFFERENT
LIMITATIONS.

I DON'T KNOW IF IT'S NECESSARY
TO GO THROUGH THEM.

THEY WERE SET OUT IN THE BRIEF.

>> BUT FEES AND COSTS ARE NOT
INCLUDED IN THAT.

>> THAT'S ONE THING THAT WAS NOT
INCLUDED.

NOW, INTERESTINGLY--

>> BUT THEY WOULD HAVE HAD UNDER
THEIR INSURANCE CONTRACT.

>> AS TO THEIR INSURANCE
CARRIER, YES.

BUT THEY-- IT WAS HELD BY THIS
COURT IN PETTY THEY'RE NOT GOING
TO GET THOSE ONCE THE INSOLVENCY
OCCURRED.

THOSE DON'T CARRY THROUGH TO
FIGA.

THEN IT'S SOLELY A QUESTION OF
WERE THEY, WOULD THEY BE
ENTITLED TO GET ATTORNEYS' FEES
FROM FIGA UNDER THE FACTS OF THE

CASE THAT'S BEFORE YOU, AND THE ANSWER'S, NO.

BECAUSE IT'S ALREADY BEEN HELD BY THESE OTHER APPELLATE COURTS SPECIFICALLY IN SEVERAL CONTEXTS INCLUDING THESE CASES THAT DETERMINING A DISPUTE OVER HOW TO REPAIR IT, WHETHER YOU HAVE GROUTING OR GROUTING AND UNDERPINNING, IS AN AMOUNT OF LOSS QUESTION.

AND UNDER THE SMOTHERS CASE OUT OF THE FOURTH DISTRICT, THAT IS AN AMOUNT OF LOSS QUESTION.

IT'S NOT A DENIAL OF COVERAGE. WE NEVER DENIED THEIR COVERED CLAIM IN THIS CASE.

WE SIMPLY SAID THAT YOUR COVERED CLAIM IS SUBJECT TO THE PAYMENT LIMITATIONS IMPOSED BY THE LEGISLATURE AFTER EXTENSIVE FINDINGS OF THE FINANCIAL LOSSES AND TWO SPECIFIC COUNTIES WHERE THEIR TAX BASE WAS ERODING BECAUSE HOUSES WERE GETTING LEFT VACANT, PEOPLE WERE BEING PAID INSURANCE PREMIUMS AND LEAVING.

>> I'VE GOT AN UNDERLYING CONCERN THAT I WOULD LIKE FOR YOU TO HELP ME WITH, HOW TO WORK THROUGH IT X. THAT WAS THE EXAMPLE THAT I PROVIDED TO YOUR GOOD FRIEND.

AND THAT IS IF WE HAVE A DRAMATIC EVENT, STORM THIS SUMMER, AND WE SEE ON THE HORIZON WE'VE GOT A LOT OF NEW INSURANCE COMPANIES THAT HAVE COME INTO FLORIDA SINCE CITIZENS STARTED SPINNING EVERYTHING OFF. AND THE LEGISLATURE AFTER A LOSS-- TERRIBLE HURRICANE LOSS-- BUT BEFORE THE CARRIERS GO UNDER BECAUSE WE ALL KNOW THAT THE CARRIERS TEND TO JUST DELAY, DELAY, DELAY, DELAY WHEN THEY'RE FACING INSOLVENCY. I MEAN, THAT'S JUST A FACT. AND THIS NEXT SESSION, AFTER A LOSS HAS OCCURRED, THE

LEGISLATURE ELIMINATES ANY
PAYMENT FOR WIND DAMAGE.
ALL ALONG THE INSURED-- AND I
DISAGREE WITH YOUR OPPONENT--
CERTAINLY, A PREMIUM HAS BEEN
PAID FOR FIGA ACCESS ON EVERY,
AS I UNDERSTAND IT, IT'S ON
EVERY BILL, EVERY INSURANCE
AGENT OR COMPANY THAT SENDS OUT
A BILL, FIGA HAS A FEE ON IT.
YOU PAY YOUR AGENT, AND THEY PAY
IT TO THE FIGA.

CAN FIGA THEN COME IN AND MAKE
THAT CHANGE TO WHAT IS A COVERED
CLAIM AND SAY THERE'LL BE NO
WIND COVERAGE OR PAYMENTS FOR
WIND DAMAGE AFTER THE POLICY,
THE LOSS AND THE INSURED HAS
MADE PAYMENTS TO FIGA?

HELP ME UNDERSTAND-- BECAUSE
THAT'S WHAT WE'RE GETTING DOWN
TO, IS THERE A VESTED INTEREST
OF SOME KIND BEFORE THE CARRIER
BECOMES INSOLVENT.

AND I UNDERSTAND YOUR POSITION
THAT FIGA'S NOT EVEN INVOLVED
UNTIL AFTER THE INSOLVENCY.
AND THE STATUTE WAS CHANGED
BEFORE THEY BECAME INSOLVENT.
SO IT'S NOT A POST-INSOLVENCY
CHANGE.

I THINK THAT WOULD CHANGE IT
ALSO.

BUT HELP ME ANALYZE THAT.

>> SEVERAL POINTS.

FIRST, IF YOU LOOK IN THE RECORD
IN THIS CASE, THEY DIDN'T PAY
THE POLICY THAT HE'S RELYING ON,
2009-2010, THERE'S NO FIGA,
ANYTHING LABELED FIGA ON THAT.

>> WELL, I MEAN--

>> BUT LET'S ASSUME--

>> LET'S BE STRAIGHT UP THOUGH,
I MEAN, IS THAT NOT A
REQUIREMENT FOR INSUREDS IN
FLORIDA?

>> NO, NOT EVERY YEAR WHEN YOU
PURCHASE A POLICY WILL YOU SEE A
SPECIFIC \$4 OR WHATEVER--

>> DON'T THEY HAVE TO PAY EVERY

YEAR?
DON'T THE INSURANCE COMPANIES?
>> NO.
THOSE DEPEND ON WHEN ASSESSMENTS
ARE MADE.
>> ALL RIGHT, OKAY.
FAIR ENOUGH.
>> THEY'RE NOT MADE EVERY SINGLE
YEAR.
>> OKAY.
>> ASSESSMENTS OR TAKING CARE OF
THINGS THAT HAVE ALREADY
HAPPENED.
>> OKAY.
LET'S GO AHEAD THEN.
JUST FORGET THAT PART.
>> SECONDARILY, WHAT THE
LEGISLATURE DID IN THIS CASE WAS
NOT EXCLUDE A COVERED PERIL
SINKHOLE.
>> WELL, IF THEY CAN CHANGE
THIS, IN MY VIEW, IT WOULD
CREATE PRECEDENT FOR THEM TO
CHANGE WHATEVER A COVERED CLAIM
IS.
>> RIGHT.
>> SO--
>> I THINK THAT THEY CAN DO
THAT, BECAUSE IT'S, FIGA'S A
LIMITED SAFETY NET.
THEY COULD REPEAL THE WHOLE FIGA
ACT IF THEY WANTED TO.
IT'S A LEGISLATIVE ALTERNATIVE
REMEDY--
>> SO THERE'S NO VESTING OF ANY
KIND OF INTEREST IN THE STATUTE
UNTIL THE CARRIER BECOMES
INSOLVENT.
>> BECOMES INSOLVENT.
AND THAT'S WHAT EVERY CASE
ACROSS THE COUNTRY--
>> AND THEN YOUR RIGHTS ARE
VESTED, AND THE LEGISLATURE
COULD NOT--
>> THEY COULD NOT AFTER THE
FACT, AFTER LIQUIDATION OCCURRED
THEN ATTEMPT TO CHANGE THE
LAW--
>> SO THE CRITICAL THING WAS
THAT THE LIQUIDATION, IN THIS

SITUATION, OCCURRED AFTER THE NEW ACT WAS PASSED?

>> RIGHT.

>> WHEN YOU MENTION IT ONLY CHANGES WHO GETS PAID, NOT ALLOWING ATTORNEYS' FEES, IF THIS HAD BEEN-- I DON'T KNOW WHEN THE ATTORNEY FIRST GOT INVOLVED IN THIS CASE, BUT THE INVOLVEMENT MAY HAVE STARTED WHEN THE COVERAGE WAS DENIED IN 2010. THAT'S A, IS THERE NOT THE RELIANCE ON THAT THAT'S PART, NOW AT THIS POINT THE HOMEOWNER'S GOING TO HAVE TO PAY FOR THE ATTORNEY OUT OF HIS OR HER OWN POCKET?

AND DOES THAT MATTER?

AGAIN, I GUESS GOING BACK TO THIS ISSUE OF HOW DRAMATIC OR DRASTIC.

I WAS JUST REFERRING TO YOUR COMMENT DOES THIS ONLY CHANGE WHO GOT PAID.

SO LIMITING ATTORNEYS' FEES IS A PRETTY BIG CONCERN TO THE HOMEOWNER WHO WAS RELYING ON IT.

>> ON SINKHOLE CLAIMS ALL OF THESE CHANGES HAD OCCURRED TO THE LIQUIDATION AND FIGA BECOMING INVOLVED.

ATTORNEYS RIGHT AS OF THEN LOST THE ABILITY-- BECAUSE THE POLICY'S NOT PROVIDING FOR ATTORNEYS' FEES BEING PAID BY THE INSURANCE COMPANY.

ARE.

>> RIGHT.

>> THE FLORIDA LEGISLATURE PASSED A STATUTE.

UNDER COMMON LAW THEY WOULD NOT HAVE A RIGHT TO ATTORNEYS' FEES--

>> BUT YOU WOULD AGREE UNDER 627.428 THAT THEY WERE LOOKING TO APPEAL, THAT THAT COULD NOT-- I MEAN, I THINK WE'VE ALREADY-- THAT COULD NOT BE, THAT COULD NOT BE REPEALED AND

APPLY TO CLAIMS THAT AROSE
BEFORE THE EFFECTIVE DATE OF THE
CHANGE?

THIS IS RELIANCE.

>> AS CANNOT BE APPLIED-- I
DON'T KNOW NECESSARILY AS TO
CLAIMS.

>> WELL, LET'S JUST SAY 627 --
THE SAME THING HAPPENED AND
627.428 GOT REPEALED AND IT
WASN'T INSOLVENCY.

COULD THEY HAVE REPEALED
ATTORNEYS' FEES AND APPLIED IT
TO THIS CLAIM?

>> YOU MEAN HOME WISE?

>> CORRECT.

I MEAN, THE EASY--

>> WELL, IT DEPENDS ON WHEN THEY
BEGAN THE INCURRED.

THERE'S NO CLAIMS FOR ATTORNEYS'
FEES UNTIL YOU HIRE THE
ATTORNEY, AND HE BEGINS TO
UNDERTAKE SOME WORK.

>> WELL, I'M ASSUMING-- HERE
THE WHOLE THING RISES ON THE
UNIQUE CREATURE OF STATUTE THAT
IS KNOWN AS FIGA.

>> CORRECT.

>> SO IT SEEMS TO ME THAT THEN
FIGA, I MEAN, THE STATUTE COULD
CHANGE FOR ANY KIND OF COVERED
LOSS, AND YOU WOULD NOT HAVE TO
PAY-- FOR EXAMPLE, IF IT WAS A
FLOOD, AND THEN, YOU KNOW, WE
HAD SO MUCH WATER IN THIS STATE,
AND SO THERE'D BE A NUMBER OF
FLOOD CLAIMS, YOU COULD HAVE A
CHANGE THAT SAYS YOU'RE NOT
GOING TO PAY ATTORNEYS' FEES FOR
THOSE KINDS OF THINGS.

>> WELL, AS THEY CREATED THE
RIGHT-- OR, ACTUALLY, THEY
LIMITED THE APPLICABILITY OF
SECTION 627428 SPECIFICALLY IN
THE FIGA ACT TO WHERE FIGA ONLY
PAY IFS THEY AFFIRMATIVELY DENY
A CLAIM, NOT DELAY PAYING THE
CLAIM.

>> I MEAN, THE WHOLE THING THAT
WE'VE GOT TO LOOK AT, AND THIS

IS HELPFUL TO YOU, IS THAT THIS IS A LIMITED FUND SITUATION. SO THE LEGISLATURE HAS TO LOOK AT WHAT THE REAL-LIFE SITUATION IS.

AGAIN, IF WE HAD ANOTHER HURRICANE ANDREW WHERE ALL THESE COMPANIES WENT BELLY UP AND EVERYBODY LOOKS TO FIGA, YOU KNOW, IT MIGHT HAVE TO MAKE ADJUSTMENTS THERE IN ANTICIPATION OF COMPANIES GOING INSOLVENT.

>> CORRECT.

AND IF THE FIGA ACT, YOU KNOW, AS WE GO BACK TO I THINK THE FERNANDEZ CASE OUT OF THE THIRD DCA TALKING ABOUT IF FIGA DIDN'T EXIST, THEIR ONLY REMEDY-- WHICH THEY STILL MAINTAIN-- IS TO FILE A CLAIM WITH THE RECEIVERSHIP AND WHATEVER THE DISTRIBUTION, YOU KNOW, TURNS OUT TO BE ON THAT.

THEY CAN MAKE THE CLAIM FOR THEIR ATTORNEYS' FEES IN RECEIVERSHIP.

HERE THERE IS NOT-- THEY'RE NOT DEPRIVED BECAUSE THEIR CLAIM WAS NOT AFFIRMATIVELY DENYING.

SO UNDER 631.70, THEY WEREN'T ENTITLED TO THEM TO BEGIN WITH.

AND THE DCA HELD THAT, AND ASSUMING THE COURT ANSWERS THE FIRST QUESTION AFFIRMATIVELY, AND ON THE APPRAISAL ISSUE, IF THE COURT DOES FEEL AS WE'VE POINTED OUT IN THE BRIEF THAT APPRAISAL, THEY SHOULD STILL MAINTAIN THE RIGHT TO APPRAISAL BECAUSE IT, HOPEFULLY, WILL RESOLVE CASES MORE SWIFTLY, THEN IT CAN GO THAT ROUTE.

BUT IT'S NOT GOING TO DETERMINE THE ACTUAL AMOUNT TO DO THE REPAIRS, AND FIGA'S COMMITTED TO EXCEEDING WHAT THE APPRAISAL AWARD IS TO GET THE PROPERTY REMEDIED.

THAT SERVES THE ENTIRE PUBLIC IN

THESE AREAS OF SINKHOLES.
AND SO I THINK THE LIMITATION IS
REASONABLE, IT'S NECESSARY, AND
THE LEGISLATURE CERTAINLY HAD
PLENTY OF LEGITIMATE REASON TO
PASS ALL THE GROUP OF STATUTES
THAT THEY DID.

THANK YOU.

>> I HAVE LIMITED TIME, SO I'LL
DO MY BEST.

THE SINKHOLE STATUTE THAT HE'S
TALKING ABOUT WHICH CHANGED IN
2011 WHICH APPLIED MOSTLY TO
PRIVATE INSURANCE COMPANIES WERE
NOT RETROACTIVE TO ANY OF THOSE.
THEY CERTAINLY WERE NOT
RETROACTIVE TO HOME WISE.
THE ONLY THING THAT'S
RETROACTIVE IS THE FIGA STATUTE.
NOW, HOW YOU DON'T CONSIDER THAT
RETROACTIVE WHEN THE WHOLE PLAN
OF FIGA IS TO PROTECT
INSUREDS.

IN THIS CASE THE RECORD SHOWS
BASED ON MY REHEARING THAT WE
DID AT THE SECOND DISTRICT
BECAUSE WE TOTALLY DISAGREE WITH
THE OPINION THAT CAME OUT OF THE
FIRST DISTRICT, THAT THESE ARE
UNCONSTITUTIONAL DENIALS OF
PEOPLE'S RIGHTS.

THEY HAD, THEY FAIRLY AND READ
THE STATUTES WHEN THEY PAID
SINKHOLE INSURANCE WHICH IS AN
EXTRA PAYMENT.

I CAN EITHER PAY FOR IT OR NOT.
IT'S GOING TO BE GUARANTEED BY
FIGA.

FIGA INSURANCE GUARANTY
ASSOCIATION.

WHAT ARE THEY GUARANTEEING?
NOT WHEN SOMEBODY BECOMES
INSOLVENT, THE GUARANTEE DOESN'T
COME OUT OF ANYTHING.

THERE'S A STATUTE IN 2009 THAT
SAYS, WELL, IF MY INSURANCE
COMPANY DOESN'T PAY IT, THEY'RE
GOING TO PAY IT.

NOW, IT USED TO BE-- WHEN I SAY
USED TO BE, IN THE '20s UP TO

THE '50s.

INSURANCE COMPANIES COULD GO
BANKRUPT, AND THERE WOULD BE A
RECEIVER, AND THEY WOULD GET
MONEY PAID OUT OF THEIR DEBTS.
NOW, THE SIMPLE THING IS WHEN
YOU HAVE A SINKHOLE-- WHICH, BY
THE WAY, IT'S NOT A HURRICANE.
SINKHOLE'S VERY LIMITED IN A
CERTAIN PART OF FLORIDA.
BUT IT COMPLETELY DEVASTATES
PEOPLE.

THE de la FUENTE'S HOME IS
WORTHLESS.

THEY WILL NOT PAY THE CLAIMINGS.
I ENCOURAGE YOU TO LOOK AT THE
DOCUMENT HE REFERRED
TO, THE MAY 2012 LETTER
THAT FIGA SENT, THAT WE WILL DO
THE REPAIRS BASED ON OUR EXPERT,
NOT YOUR EXPERT.

SO THE METHOD OF REPAIR OF MY
HOUSE SHOULD BE MY DECISION, NOT
FIGA'S DECISION.

AND THAT'S WHAT THIS WHOLE THING
IS ALL ABOUT.

THANK YOU.

>> [INAUDIBLE]