>> NEXT CASE ON THE DOCKET IS NOAH VERSUS FLORIDA INSURANCE GUARANTY ASSOCIATION.
WHENEVER YOU ARE READY, YOU MAY PROCEED, TAKE YOUR TIME.
SOMETIME TODAY WOULD BE GOOD.
>> MAY IT PLEASE THE COURT, PAUL FELDMAN ON BEHALF OF NOAH.
MR. NOAH, MY BUSINESS PARTNER, AND MR. BENJAMIN ALVAREZ IS HERE.
WE ARE HERE ON THE ISSUE OF WHETHER OR NOT MY CLIENT HAS A RIGHT TO HAVE AN APPRAISAL OF HIS ORDINANCE IN LAW, AND THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL WHICH CONFLICTS WITH NOT ONLY THE FOURTH DISTRICT BUT THIS COURT'S DECISION, SAID THAT THE ORDINANCE IN LAW IS BAKED INTO THE INITIAL APPRAISAL WHICH RUNS COUNTER TO THE LAW OF THE STATE OF FLORIDA WHICH SAYS ORDINANCE IN LAW CANNOT BE APPRAISED BECAUSE IT NEEDS TO BE INCURRED FIRST.
WE HAD A TOTAL LOSS OF A HOME.
IN THAT CASE EVEN A TOTAL LOSS YOU CANNOT GET ORDINANCE OF LAW BECAUSE IT WAS NECESSARY FOR THEM TO INCUR IT, TO BE VIABLE FOR IT.
IN THIS CASE THERE WAS AN INITIAL APPRAISAL OF THE PROPERTY AND ON THE FACE OF THE APPRAISAL, ORDINANCE AND LAW NOT APPRAISED, THE SAME WAY.
>> THAT AS I UNDERSTAND IT, THIS CASE TROUBLES ME BECAUSE THERE ARE A LOT OF HOLES IN BOTH SIDES.
THERE IS ONLY 3% OF THE ROOF DAMAGED.
AM I CORRECT?
>> YOU ARE NOT.
>> THAT IS THE WAY I READ THIS.
>> IF I CAN CLEAR THAT UP THAT IS SOMETHING THAT BECAME DETERMINATIVE IN THIS MATTER AND

IT SHOULDN'T HAVE BEEN.
THIS 3% CAME FROM A LETTER FROM
THE INSOLVENT FIRST HOME
INSURANCE COMPANIES AND IN-HOUSE
EXAMINER WHO REVIEWED THE FILE
IN MAITLAND, FLORIDA.
>> THIS WAS NOT PART OF THE
APPRAISAL.
>> IT DOES NOT SAY $0 FOR
ORDINANCE IN LAW AND IT DOES NOT
SAY 3%.
>> IS THE MATH WRONG?
>> IT IS AND I WILL TELL YOU
WHY.
>> IT IS 120 TILES.
WHAT WAS THERE?
I UNDERSTAND WHAT YOUR
EXPLANATION IS GOING TO BE BUT
THAT MATH IS CORRECT.
TAKE 120 TILES, THE AMOUNT --
>> IT IS CORRECT BUT INCORRECT
AS RELATES TO CONSTRUCTION AND
HOW YOU REPAIR A ROOF.
>> I'M LOOKING AT THE AFFIDAVIT.
WE HAVE AFFIDAVITS BELOW FROM
THE INSURANCE COMPANY APPRAISER
AND YOUR CLIENT'S APPRAISER.
>> AND THE ROOFER.
>> ATTACHED TO THE AFFIDAVIT
FROM THE INSURANCE COMPANY'S
APPRAISER, WHAT HE SAYS IN THE
AFFIDAVIT, THE AWARD OF $17,602
IS AN AWARD BASED ON THE
UMPIRE'S ASSESSMENT OF REPAIRS
THAT ARE NEEDED, CORRECT?
>> THAT IS WHAT HE SAYS.
>> IT ATTACHES TO THE AFFIDAVIT,
THE UMPIRE'S ASSESSMENT PREDATED
THE APPRAISAL DATE.
>> HIS OWN CLAIMS SERVICE.
>> GAIL WAS THE UMPIRE.
>> NO.
IS THE UMPIRE.
>> THE ATTACHMENT TO THE
AFFIDAVIT, $17,602.10, THE EXACT
AMOUNT THAT WAS AWARDED.
AND IT WAS IN THERE THAT HE WAS
DESCRIBING BUILDING DAMAGE, BUT
HE SAYS REPAIR AND REPLACE 220
TILES, THAT IS WHAT THE UMPIRE'S

ASSESSMENT OF WHAT HAD TO BE
DONE, THAT IS WHAT HE PRICED
OUT, CORRECT?
>> WHAT WAS LEFT OPEN WAS
ORDINANCE IN LAW.
>> A FACTUAL MATTER, THAT IS
WHAT HE PRICED OUT.
YOU DIDN'T DISPUTE IT IN A
COUNTER AFFIDAVIT WHICH HE
PRICED OUT.
>> WE DID.
OUR ROOFER PUT FORTH THE
METHODOLOGY REPLACING 120 TILES
SPREAD OVER THE ROOF WAS TO
REPLACE ONE TILE IN EIGHT AROUND
IT.
>> THAT IS HOW WE NORMALLY DO IT
BUT WAS THE INSURANCE CONTRACT,
DID THE INSURANCE CONTRACT
REQUIRE THE INSURANCE COMPANY TO
PAY FOR HOW YOU NORMALLY DO IT?
FOR THE LEAST COST WAY TO
EFFECTUATE REPAIR TO THE DAMAGED
AREA.
>> A LICENSED CONTRACTOR HAS TO
DO WHAT IS REQUIRED UNDER THE
LAW OR FACE THE DV PR OR BE
SUED.
I WANT YOU TO LOOK AT MR.
GAIL'S, IF YOU LOOK AT THE
PLYWOOD THAT YOU PUT UNDER,
THERE'S 1200 FEET.
WHY WOULD YOU COME IN 120 FEET,
WHY WOULD YOU HAVE 1200 FEET OF
UNDERLAYMENT OF PLYWOOD?
THAT IS WHY -- AN UNDERSTANDING
OF CONSTRUCTION AND WHAT NEEDS
TO BE DONE IN THE ONLY EVIDENCE
WAS FROM THE ROOFER WHO DID THE
WORK AND HAD TO GET THE APPROVAL
OF MIAMI-DADE COUNTY.
HE PUT IN FOR A REPAIR AND THE
LESSER AMOUNT IN ORDER TO TRY --
>> WAS THE AMOUNT OF THE
UNDERROOFING PART OF THE INITIAL
APPRAISAL?
>> WAS THE A OF WHAT?
>> WAS THE AMOUNT OF
UNDERPLYWOOD COATING PART OF THE
INITIAL APPRAISAL?

>> YES IT WAS.
THE ISSUE THEN IS, WHAT, IF YOU LEAVE THE ORDINANCE & LAW OPEN, WHAT THEY'RE LOOKING AT, OKAY, WE HAVE TO DO THE REPAIR, THE REPAIR WILL REQUIRE, WELL WE HAVE 1200 FEET OF UNDERLAYMENT.
IT WILL NOT BE JUST 120 TILES.
NOT JUNE SET OF TILES THAT SPREAD OVER THE ROOF NEED TO BE REPAIRED.
IT WAS LEFT OVER.
IT WAS ORDINANCE & LAW REPAIR WHAT WENT ON IN THE CASE OF JOSSFOLK.
THE ISSUE OF ORDINANCE & LAW IS BAKED INTO THE APPRAISAL.
THE UMPIRE MUST KNOW WHAT THE BUILDING CODES ARE.
THE UMPIRES ARE NOT LICENSED.
THEY COULD BE JUDGES.
THEY COULD BE RETIRED ATTORNEYS, ANYONE WHO IS DESIGNATED TO BE AN UMPIRE AND THAT ISSUE OF SAYING THAT THE ORDINANCE & LAW IS BAKED INTO THE APPRAISAL THE INITIAL ONE WOULD MEAN THAT YOU DON'T GET YOUR ADDITIONAL COVERAGES.
THE COVERAGES DO NOT COME INTO EFFECT UNTIL THEY ARE UNCURED.
>> I NOTICED IN THE PERMIT APPLICATION, SAID THAT THE BUILDER PUT IN REPLACEMENT OF 30% OF THE ROOF.
THAT IS WHAT HE PUT IN.
>> CORRECT.
>> REPLACEMENT OF THE 30% OF THE ROOF.
IT ALSO PUT IN REPLACEMENT OF ROTTEN WOOD AND, WAS THAT PART OF THE COVERED DAMAGE?
>> I WOULD PRESUME IT HAS TO BE BECAUSE THEY HAVE TO REPLACE THE WOOD THAT'S DAMAGED WHEN THEY DO THE ROOF.
THAT IS THE UNDERLAYMENT.
THAT IS THE UNDERLAYMENT.
TO GET TO THE ROTTEN WOOD YOU HAVE TO REMOVE THE TILES.

>> INSURANCE COMPANY IS
RESPONSIBLE FOR DAMAGED CAUSED
BY A COVERED PERIL.
AND I'M HAVING A HARD TIME
UNDERSTANDING HOW ROTTEN WOOD
WOULD BE CAUSED BY A COVERED
PERIL?
>> ONCE THE, ONCE THE DAMAGE
OCCURS, IN ORDER TO DO THE
REPAIR, UNDER THE BUILDING CODE
THEY HAVE TO REPAIR ANY ROTTEN
WOOD THAT THEY FIND.
IF YOU HAVE YOUR ROOF REPLACED
THAT'S WHAT HAPPENS.
THEY HAVE TO TAKE THAT OUT.
THAT IS WHY THIS 1200 SQUARE
FEET OF THE UNDERLAYMENT REVEALS
THAT THERE WAS A LARGE AREA AS
ATTESTED TO BY THE ROOFER, MUCH
MORE THAN JUST SAYING OH, 120
OVER APPROXIMATELY 4,000 FEET
THAT IS ALL WE'LL HAVE.
THAT IS NOT THE WAY IT FOES.
THEY HAVE TO GET TO THE ROTTEN
WOOD, TAKE IT ALL OUT, IT
OTHERWISE WILL NOT PASS
INSPECTION WITH THE BUILDING
DEPARTMENT.
THAT IS THE FACT OF THE MATTER.
THEY GO OUT AND INSPECT IT.
WHEN THEY INSPECT IT THEY ASK
THEM WHY IT ISN'T TAKEN OUT.
THAT HAS TO BE PART OF REPAIR.
>> WHOSE RESPONSIBILITY I GUESS
IS THE QUESTION?
>> THE CARRIER.
MY CLIENT DOESN'T GET TO
ORDINANCE & LAW UNTIL ADDITIONAL
TILES ARE TAKEN OUT UNTIL IT HAS
OCCURRED.
>> SO IF WHEN THEY GO TO DO THE
WORK THEY DISCOVER THERE IS
TERMITE DAMAGE, BUILDING CODE
WOULD REQUIRE THAT TO BE
REPLACED, RIGHT?
IS THE INSURANCE COMPANY
RESPONSIBLE TO REPAIR TERMITE
DAMAGE NOW IT HAS TO BE REPAIRED
BECAUSE IT WAS DISCOVERED
BECAUSE THERE WAS A COVERED

PERIL AFFECTING A ROOF TILE?
>> UNDER, WHAT IS THE THIRD DCA CALLED, UNLESS THERE IS ANTI-CONCURRENT CAUSATION LANGUAGE, THEN, YOU KNOW, THAT WAS NOT COVERED IT WOULD BE SOMETHING FLOWED FROM A COVERED PERIL FOR ALL RISK POLICY WE'RE GOING BEYOND-- I'M NOT GOING TO READ WHETHER THERE IS ANTI-CONCURRENT LANGUAGE THERE IS NOT ANTI-CONCURRENT LANGUAGE YES THEY WOULD BE RESPONSIBLE FOR IT, THE COVERED PERIL IS SOMETHING THAT IS COVERED.
COMES FROM THAT, WOULD ALLOW FOR THE, NON-COVERED.
PLUS, PLUS, PLUS ISSUE OF ROTTEN WOOD.
THIS WAS STORM DAMAGE.
SO YOU HAVE TILES THAT HAVE BEEN LIFTED.
NOW YOU HAVE GOT WOOD UNDERNEATH INFILTRATED BY WATER AND WE HAVE 1200 FEET OF IT THAT NEED TO BE REPAIRED.
>> CAN I GO BACK TO THE BASIC ISSUE WHICH IS THAT, YOU TAKE, THE QUESTION OF HOW MUCH OF THE ROOF WAS DAMAGED SEEMS LIKE A BIG DIFFERENCE BETWEEN 3% AND 30%, DO YOU AGREE WITH THAT?
>> YES I DO.
>> AT THE TIME THE APPRAISAL WAS, YOU HAD THE OPPORTUNITY TO PRESENT YOUR EVIDENCE OF WHAT THE DAMAGE WAS TO GET AS MANY ESTIMATES AS YOU WANTED.
SO I'M HAVING TROUBLE TO UNDERSTAND, AND I THINK, THIS WAS IN THE LANGUAGE OF THE OPINION, THAT, YOU CAN FIND A CONTRACTOR TO SAY WE'RE GOING TO REPAIR MORE OF THE ROOF, AND THEN, WE'RE GOING TO GET A WHOLE NEW ROOF WHICH IS PRETTY BIG, GO FROM 3%, TO I'M GETTING A WHOLE FREE ROOF SEEMS EXTREME.
SO ISN'T, WHY SHOULDN'T YOU BE BOUND BY THE INITIAL APPRAISAL?

WE'RE NOT TALKING ABOUT, WELL
THEY THOUGHT IT WAS 28% AND THEN
IT WENT TO 32%.
THERE IS A REAL QUESTION OF THE
CREDIBILITY OF THE SECOND
ESTIMATE.
>> THE CREDIBILITY, YOUR HONOR,
IS IN RELYING UPON A LETTER,
UNDATED, FROM A NOW BANKRUPT
INSURER WHO, WHEN ORDINANCE &
LAW BEFORE THE WORK WAS DONE,
THIS IS WHAT IT WILL TAKE TO FIX
MY ROOF NOW.
I WENT TO GO GET A PERMIT.
>> WHAT IS THE APPRAISAL PROCESS
YOU WENT THROUGH INITIALLY?
YOU'RE TELLING IT WAS ALL BASED
JUST ON SOME LETTER AND THERE
WASN'T AN UMPIRE?
>> NO, THERE WAS AN UMPIRE.
>> THERE WAS?
DID YOUR CLIENT HAVE THE
OPPORTUNITY TO PRESENT WHATEVER
EVIDENCE NEEDED TO BE PRESENTED
ABOUT THEIR ESTIMATE?
>> YES.
JUST AS IN JOSSFOLK THE UMPIRE
WAS PRESENTED, THEY WILL NEED A
ROOF.
AN INSURER'S APPRAISER SAYING
NO, THEY DON'T.
HE ATTRIBUTED SOME DAMAGE TO THE
ROOF AND LEFT THE ISSUE OF
ORDINANCE & LAW OPEN.
>> THAT IS THE BIG QUESTION.
>> EXACTLY WHAT HAPPENED HERE.
>> YOU'RE SAYING, SO THE
QUESTION THOUGH IS, IF IT HAD
BEEN APPRAISED AT 30%, AND THEY
DIDN'T ALLOW FOR THE ORDINANCE
YOU WOULD HAVE A SECOND ISSUE
BUT WHEN IT COMES IN SO MUCH
BELOW WHAT WOULD TRIGGER THE
ENTIRE ROOF BEING REPAIRED, I'M
JUST HAVING A HARD TIME
UNDERSTANDING WHAT WOULD ENTITLE
YOU TO A SECOND APPRAISAL?
>> THE ISSUE IS, THAT THE 3% IS
FUZZY MATH THAT WAS DONE TO
REJECT THE ORDINANCE & LAW CLAIM

WHEN FIRST HOME GOT THE CLAIM
BACK.
IT IS NOT 3%.
THE ONLY TESTIMONY BELOW WAS
FROM THE ROOFER AS TO HOW THE
WORK NEEDED TO BE DONE AND HE
TRIED TO GO AND DO IT AS A
REPAIR.
>> IS THE PROBLEM THERE IS A
FACTUAL DISPUTE ABOUT THE EXTENT
OF THE REPAIR THAT WAS
DETERMINED AS NECESSARY BY THE
UMPIRE WHO SPLIT THE DIFFERENCE
BETWEEN, WHO DIDN'T?
HE SIDED WITH THE INSURANCE?
>> I DON'T KNOW IF HE DID BUT I
KNOW WHERE THEY'RE GETTING THE
3% FROM BUT THAT IS NOT EVEN AN
AFFIRMATIVE DEFENSE.
THE ISSUE IS THE METHODOLOGY I
THINK WOULD BE THE ISSUE.
IF THERE IS FACTUAL ISSUE HOW
YOU'RE SUPPOSED TO REPAIR THIS
ROOF.
IF YOU HAVE 120 TILES OVER THE
WHOLE ROOF, THEY'RE SAYING YOU
HAVE TO PUT IN 1200 FEET OF
UNDERLIMIT, YOU HAVE TO TAKE UP
MORE THAN 120 TILES.
>> BUT NOT 30% IF MY--
>> IT WOULD BE, IF YOU LOOK AT
THE MATH, WHICH IS IN THE BRIEF,
IN THE METHODOLOGY IS, IT'S, IT
IS LEFT HAVE YOU BEEN SQUARE
FEET.
IF YOU TAKE PROPER METHODOLOGY
IS.
>> PART OF THE PROBLEM, THIS IS
BIZARRE PROCEDURALLY WE'RE HERE
ON APPEAL FROM INTERLOCUTORY
ORDER BECAUSE BOTH SIDES MOVED
FOR SUMMARY JUDGMENT.
>> NO, WE DIDN'T.
WE MOVED FOR APPRAISAL.
THE OTHER SIDE MOVED FOR SUMMARY
JUDGMENT.
THE THIRD DISTRIBUTE GRANTED
SUMMARY JUDGMENT ON APPEAL.
>> YOU WERE SORT OF ASKING FOR
SUMMARY JUDGMENT BY--

>> THEY MOVED TO REOPEN THE
APPRAISAL.
THEY WANTED AN APPRAISAL TOO.
THEY WANTED TO REOPEN THE
ORIGINAL ONE.
>> WHEN THEY ASKED FOR, GO BACK
TO THE ORIGINAL APPRAISERS.
IF THERE IS A QUESTION WHAT THE
APPRAISAL PROCESS DETERMINED,
THEN LET THOSE APPRAISERS TELL
THE COURT, TRIAL COURT.
>> BUT THE CASE LAW WE CITED
DOESN'T ALLOW THAT TO HAPPEN.
WHY YOU NEED A SECOND APPRAISAL.
>> SINCE THERE IS A FACTUAL
DISPUTE, IF THERE IS A FACTUAL
DISPUTE WHY WOULDN'T YOU LET
THIS LAWSUIT PLAY OUT?
WHY WOULDN'T YOU JUST LET THERE
BE A DETERMINATION OF WHETHER
THE APPRAISAL, WHAT THE
APPRAISAL DID DETERMINE?
>> I WOULD AGREE WITH YOU IT
DOES NEED TO PLAY OUT, HOWEVER,
WHAT--
>> I MEAN YOU WOULD ALSO AGREE
IF THE APPRAISER'S DETERMINED
THAT 3% OF THE ROOF NEEDED TO BE
REPLACED, IF THAT WAS WHAT THEY
DETERMINED, THAT YOU'RE BOUND BY
THAT AND YOU DON'T GET ORDINANCE
& LAW COVERAGE?
>> IT DOESN'T SAY 3% ON
APPRAISAL.
>> IF IT DID?
>> IF THERE WAS ONLY 3% IT WOULD
BE BINDING.
IT DOESN'T SAY 3%.
>> OKAY.
THEY SAY IT SAYS 3%.
YOU SAY IT DOESN'T SAY 3%.
IF IT DOES SAY 3%, IF IT DID SAY
3% YOU REALIZE, YOU AGREE YOU
WOULDN'T BE ENTITLED TO
ORDINANCE & LAW COVERAGE.
>> IF IT SAID 3%, ORDINANCE &
LAW, IF IT SAID 3% I WOULDN'T BE
HERE.
>> THE PERCENTAGE BECOMES AN
ISSUE ONLY BECAUSE OF THE

ORDINANCE & LAW COVERAGE,
CORRECT?
>> EXCUSE ME, WHAT?
>> THE PERCENTAGE BECOME AS AN
ISSUE ONLY BECAUSE OF THE
ORDINANCE & LAW COVERAGE?
>> CORRECT.
>> OKAY.
SO WITHOUT THAT YOU HAVE GOT
JUST AN APPRAISAL OF WHAT THE
DAMAGE IS.
NOW HERE'S WHAT MY CONCERN IS.
I SAY STRAIGHT UP TO BOTH OF
YOU.
IS THAT I'M CONCERNED THAT THIS
KIND OF CASE WOULD LEAD TO
CIRCUMSTANCES WHERE UNDISCOVERED
DAMAGE, LEGITIMATE, UNDISCOVERED
DAMAGE, COULD SOMEHOW BE NOT
COMPENSATED ONCE YOU GET IN AND
START DOING YOUR REPAIRS?
>> I AGREE WITH YOU, YOUR HONOR.
>> THAT'S A PROBLEM.
>> IT'S A PROBLEM.
>> HOWEVER, BUT THEN IT COMES
DOWN TO, WHY WAS THAT, I MEAN,
THIS IS NOT PART OF, IT SEEMS IT
HAS BEEN TREATED THIS IS A FIXED
AMOUNT OF DAMAGE.
AND THE REST OF IT IS NOT
RELATED TO THE STORM.
>> NO.
IT IS, IT IS--
>> SO IT IS NOT THAT?
>> IT SAYS ORDNANCE AND RAW HAS
NOT BEEN APPRAISED AND IT HAS
BEEN LEFT OPEN.
YOU HAVE A VERY CLEAR SITUATION
WHERE YOU HAVE 1200 FEET OF MY
WOOD WHICH THEY RECOGNIZE WILL
HAVE TO GO IN THERE.
THAT'S A METHODOLOGY ISSUE AND
THE ONLY EVIDENCE THAT WAS
BROUGHT IN BELOW WAS THROUGH OUR
ROOFER, BUT THERE IS A CONCERN
THERE MAY BE ADDITIONAL DAMAGES
THAT WILL BE SEEN ONCE THAT
REPAIR STARTS TO HAPPEN.
IT SAYS, OKAY, GUESS WHAT?
NOW ORDINANCE & LAW IS GOING TO

APPLY.
I GET TO BACK AND APPRAISE MY ORDINANCE & LAW.
THAT IS A FACT.
>> IT MAKES SENSE THAT A TREE FALLS ON A ROOF AND YOU BREAK SOME TILE, AN SUPERFICIALLY LOOKS THOUGH WE HAVE GOT A COUPLE OF, 100 FEET OF TEAL BUT ONCE THEY START REMOVING THE TILE AND THE TAR PAPER, THEY SEE, OH, MY GOD, THERE IS A CRACK RIGHT DOWN MIDDLE OF THE ROOF BOARDS.
THAT IS A DIFFERENT STORY THAN ROTTEN ROOFS AND STUFF BUT CLEARLY RELATED TO THE TREE THAT HAS FALLEN ON IT.
THAT TO ME MAKES NO SENSE, THAT INSURED COULD NOT PRESENT THAT TO THE INSURANCE COMPANY.
>> I AGREE.
>> BUT HERE IT SEEMS THIS HAS BEEN PRESENTED IN A DIFFERENT CONTEXT.
THIS IS PRESENTED IN THE CONTEXT OF, THIS IS NOT SOMETHING THAT IS CHANGED FROM WHEN THE ORIGINAL APPRAISAL WAS DONE, BUT THE 3% HAS CREPT INTO IT BECAUSE, AND I THINK IT HAS THROUGH SOME OF THE AFFIDAVITS.
SO IT MAY BE THERE IS A FACTUAL DISPUTE THAT NEEDS TO GO BACK.
>> INITIAL 3% CAME FROM THE NOW-DEFUNCT INSURER.
>> THEN THEY INITIALLY COME FROM THERE BUT SOMEBODY ELSE PLACED IT IN EXHIBITS TO ADDS.
>> AM I CORRECT THAT WHAT YOU'RE, YOUR CLIENT'S APPRAISER SUBMITTED TO THE UMPIRE WAS A CLAIM THAT WE NEED TO REPLACE THE ENTIRE ROOF, NOT BECAUSE WE HAVE TO REPLACE 30% BUT BECAUSE THOSE 120 TILES THAT ARE BROKEN CAN'T BE MATCHED AND YOU HAVE TO COLOR MATCH?
>> IT IS CORRECT THAT THEY, MATCHING TILE STATUTE REQUIRES

THAT THE TILES MATCH.
IN THIS CASE THE TILES ARE NO
LONGER MANUFACTURED, WHICH WAS A
IS SAME THING AS IN JOSSFOLK,
WHICH WOULD BE A SEPARATE AND
INDEPENDENT REASON.
THE THIRD DISTRICT SAID THEY
WILL GET NEW TILES.
THEY WILL NOT GET NEW TILES.
THEY DON'T HAVE THE TILES.
THEY DON'T MAKE THEM ANYMORE.
SO, I DON'T KNOW WHAT THEY WERE
GOING, IN THEIR MIND WHAT THEY
THOUGHT THEY WERE GOING TO PUT
ON THERE BUT THOSE TILES DON'T
EVEN EXIST ANYMORE.
WHICH IS INDEPENDENT--
>> NOT IN THE SAME COLOR, RIGHT?
>> DOWN TO 15 SECONDS.
INTO REBUTTAL TIME.
GIVE YOU TWO MINUTES FOR
REBUTTAL, OKAY?
LET'S JUST--
>> HE RESERVE FIVE, DID I NOT?
THANK YOU.
>> OKAY.
20 MINUTES.
>> GOOD MORNING, HILDA KLINE ON
BEHALF OF FIGA.
I AGREE THAT ONE OF THE PROBLEMS
IN THIS CASE, AND I DON'T
BELIEVE IT IS OUR PROBLEM, IS
THAT THERE ARE CERTAIN THINGS
THAT COULD HAVE BEEN IN THIS
RECORD BUT WHICH ARE NOT.
>> WELL, LET'S START WITH WHERE
THE 3% CAME FROM BECAUSE, YOU
KNOW, SITTING HERE LISTENING TO
THIS ARGUMENT HAS CONFUSED ME
ABOUT WHERE WE ARE AND WHAT IS
IT THAT IS REALLY AT ISSUE HERE?
IF IT WAS A 3%, IT DIDN'T KICK
IN THE LAW AND LAW AND
ORDINANCE, CORRECT?
>> CORRECT.
>> IF IT WAS 30% IT WOULD?
>> CORRECT.
>> WHERE DID THE 3% COME AND
WHAT WAS IT BASED ON?
>> IT WAS PURELY MATHEMATICAL

BASED ON NUMBERS OF TILES HAVE
TO BE REPLACED ACCORDING TO
APPRAISAL AWARD.
120.
>> 3,000 SOME ODD SQUARE FEET,
120 TILES IS 3% OF THAT, IS THAT
WHAT IT IS?
>> I THINK 120 WAS 3%, CORRECT.
THAT IS WHERE THAT NUMBER CAME
FROM.
AND THERE WAS 1100 SQUARE FEET
OF UNDERLIMIT IN THE
APPRAISAL AWARD.
>> HOW MUCH DID YOU SAY?
>> LEFT HAVE YOU BEEN HUNDRED
SQUARE FEET.
>> I'M LOOKING AT GAIL CLAIMS
SERVICE, INC., ROOFING
UNDERLAYMENT, 1200.
>> I APOLOGIZE.
I'M LOOKING, I MISREAD IT.
YES.
>> THAT IS WHAT, WITH YOU'RE
RELYING ON WHICH WAS REFERRED TO
THIS EARLIER GAIL CLAIMS
SERVICES ATTACHMENT TO THE
AFFIDAVIT?
>> RIGHT.
I WAS THINKING OF THE UNICLAUSE
AS OPPOSED TO QUANTITY.
>> WHAT IS THAT 1200 ABOUT?
>> IT SAYS UNIT COST.
>> YES.
AND THAT UNIT COST, SO IT'S, I
GUESS, IT SAYS ONE EACH.
1.00 EACH AT A UNIT COST OF
1200.
I DON'T CLAIM TO BE A ROOFING
EXPERT BUT, I DID JUST WANT TO
POINT OUT THAT THE THERE WAS AN
AWARD FOR UNDERLAYMENT OF $1200.
IN FACT THE TOTAL AWARD FOR THE
ROOFING DAMAGE ALL TOGETHER WAS
$9800.
IT WASN'T INSIGNIFICANT.
IT WASN'T JUST A TINY PERCENT OF
WHAT A NEW ROOF WOULD CAUSE.
IT WAS A SIGNIFICANT AMOUNT.
>> THAT IS, IS THAT 1200 FEET OR
SOMETHING DIFFERENT?

IS THERE ANY WAY WE CAN TELL?
>> I HAVE NO IDEA.
IT, THAT'S ALL THAT IT SAYS.
THE PROBLEM IS WHEN YOU HAVE AN APPRAISAL YOU DON'T HAVE A RECORD OF WITH OCCURRED DURING THE APPRAISAL.
SO WE CAN ONLY DETERMINE--
>> WE HAVE NO RECORD OF WHAT EVIDENCE WAS PRESENTED TO THE APPRAISERS?
>> CORRECT.
THAT IS HOW THE APPRAISAL PROCESS WORKED, BUT THEY DID HAVE AN OPPORTUNITY DURING THIS LITIGATION TO HAVE, MAYBE FILLED IN SOME OF THE MISSING INFORMATION AND I WOULD SUBMIT THAT THEIR FAILURE TO DO SO IS TELLING AS TO THE ACTUAL SCOPE OF THIS APPRAISAL.
MR. PYLE, WHO WAS, AND IS, THEIR APPRAISER AS WELL AS THEIR PA, ALL HE SAYS IN HIS AFFIDAVIT IS THAT, THAT I DISAGREE WITH THE APPRAISAL.
HE DOESN'T SAY, I SUBMITTED THIS INFORMATION, MY ESTIMATE TO THE APPRAISER, HERE IS MY ESTIMATE, THEY SAID WE'RE NOT GOING THERE BECAUSE ORDINANCE & LAW IS PREMATURE AT THIS POINT.
HE DOESN'T SAY ANYTHING AT THAT POINT.
>> WE DON'T HAVE ANY IDEA AT THE APPRAISAL STAGE WHAT IF ANYTHING THEY SAID ABOUT REPLACING ADJACENT-- WE KNOW THERE WAS 120 DAMAGED TILES BUT DO WE HAVE EVIDENCE WITH NEEDED TO BE DONE ABOUT ADJACENT TILES AND THE UNDER, I'M SURE THERE IS SOMETHING THAT THE TILES ARE SITTING ON.
I HAVE NO IDEA ABOUT ROOFS EXCEPT WHEN I NEED ONE I CALL SOMEBODY BUT, SO, DO WE HAVE THAT KIND OF RECORD BEFORE US?
>> NO, WE DON'T AND I SUBMIT THAT IF IN FACT THIS NEVER CAME

UP DURING THE APPRAISAL, THERE
WOULD HAVE BEEN ONE.
THERE WOULD HAVE BEEN SOME KIND
OF AFFIDAVIT FROM MR. PYLE WHO
DID SUBMIT AN AFFIDAVIT SAYING
THAT I BROUGHT THIS UP.
I OBJECTED.
HERE'S MY ESTIMATE.
YOU CAN SEE FROM MY ESTIMATE.
I DIDN'T PUT ANYTHING IN THERE.
>> I MEAN THE APPRAISER WHO WAS
ACTUALLY THERE ON OF BEHALF YOUR
CLIENT SUBMITTED AN AFFIDAVIT IN
SUPPORT OF SUMMARY JUDGMENT THAT
SAYS THE TOTAL AMOUNT OF ROOF
TILE AND UNDERLAYMENT REPAIR
AWARDED IN APPRAISAL AWARD
REPRESENTED 3% OF THE TOTAL ROOF
AREA.
WE DO HAVE, THAT'S WITH, HE WAS
THE APPRAISER.
>> HE WAS OUR APPRAISER.
>> RIGHT.
HE ATTACHES THE UMPIRE, AND
MR. PYLE DIDN'T DISPUTE THAT IN
THE ATTACHED AFFIDAVIT, DID HE?
HE CAME BACK AND SAID, WE HAVE
NEW INFORMATION.
BASED ON THIS NEW INFORMATION,
ARE THE BUILDERS CONCLUDED THAT
WE HAVE TO REPLACE 30% NOW?
>> THE WAY I READ MR. PYLE'S
AFFIDAVIT, NOT THAT IT IS NEW
INFORMATION PER SE, BUT THAT HE
IS RELYING ON THE FACT THAT ONLY
AFTER THE APPRAISAL DID THE
ROOFER GO OUT AND SEEK A PERMIT
FOR 30% REPAIR OF THE, OF THE
ROOF.
THERE IS NOTHING IN THIS RECORD
THAT TALKS ABOUT NEW
INFORMATION.
THAT TALKS ABOUT, THAT THERE WAS
AN AGREEMENT NOT TO ADDRESS
ORDINANCE & LAW BECAUSE IT WAS
PREMATURE.
>> WHAT ABOUT THE DAMAGE THAT
HE, YOUR OPPONENT ALLEGES WAS
ROTTEN AND ALL THAT, WAS THERE
ANY EVIDENCE THAT THIS WAS ALSO

RELATED TO THE COVERED EVENT, OR
IS THIS SOMETHING THAT WAS GOING
ON ALREADY AND HAD NOTHING TO DO
WITH THE ACTUAL HURRICANE?
>> AGAIN, WE HAVE NO EVIDENCE
BECAUSE THAT WOULD HAVE BEEN
SOMETHING, I ASSUME, THAT CAME
UP DURING THE APPRAISAL.
>> SEEMS TO ME, SEEMS TO ME
THAT, SOMETHING FOR ME IS
SIGNIFICANT, BECAUSE YOU LOOK AT
SOMEBODY GETTING RAVAGED BY A
HURRICANE.
THERE WAS HURRICANE WILMA IN
OCTOBER OF 2005, RIGHT?
MR. NOA FIRST SUBMITTED A CLAIM
IN, IN DECEMBER OF 2005.
OVER THREE YEARS LATER IS WHEN
HE SUBMITS THE CLAIM FOR THE,
UNDER THE POLICY, WITH THE SWORN
STATEMENT OF $71,000.
FACTUALLY, AND WE DON'T HAVE THE
RECORD, BUT IT IS NOT AS IF
THERE WAS SOMETHING RUSHED
IMMEDIATELY AFTER THE HURRICANE,
I BETTER FIND A ROOFING
CONTRACTOR BECAUSE YOU COULDN'T
FIND ONE BACK THEN.
AND SO, THERE IS THREE YEARS OR
FOUR YEARS PLUS OF WHATEVER
HAPPENED IN BETWEEN THAT TIME,
TO HAVE TO LOOK AND SAY, WELL,
IS THIS NOW, WAS IT A DELAY IN
THE REPAIR THAT CAUSED THIS
ADDITIONAL DAMAGE?
GOING BACK TO THIS, THE QUESTION
I GUESS WE GO TO AT WHAT POINT
IS ORDINANCE & LAW COVERAGE COME
INTO EFFECT IN A SECOND
APPRAISAL?
IS THERE EVER A SITUATION WHERE
THAT SHOULD OCCUR WHERE IT WAS
NOT CONTEMPLATED IN THE ORIGINAL
APPRAISAL?
BECAUSE AGAIN IT GOES BACK TO
WHAT JUSTICE LEWIS IS SAYING
FAIRNESS ABOUT WHEN SOMETHING IS
DISCOVERED BUT WHERE DOES THE
DELAY PART COME IN, WHICH TO ME
IS ANOTHER SIGNIFICANT FACTOR

AGAINST MR. NOA, HE HAD A LOT OF TIME TO LOOK AT THIS AND SUBMIT HIS CLAIM BEFORE THE FIRST APPRAISAL?
SO IT IS SOMEWHAT FRIENDLY QUESTION BUT WITH A CONCERN THAT THE INSURANCE COMPANY COULD, THERE ARE THINGS THAT HAPPEN WHEN A ROOF STARTS TO BE, TILES GET TAKEN OFF, THAT, MIGHT NOT HAVE FIRST APPEARED AS DAMAGE?
>> THERE IS NO QUESTION ABOUT THAT.
AND, YOU KNOW, THERE, IS A PROCESS BY WHICH YOU CAN, GO BACK TO THE INSURANCE COMPANY ON A SUPPLEMENT CLAIM.
SUPPLEMENTAL CLAIMS HAPPEN EVERY DAY.
THE COURT MADE A VERY IMPORTANT POINT.
THERE WAS A THREE-YEAR DELAY BETWEEN THE FIRST CLAIM, WHICH WAS ACTUALLY LESS THAN THE DEDUCTIBLE, AND THAT WAS BACK IN 2005, AND THIS SUPPLEMENTAL CLAIM, IF YOU WILL.
>> ALMOST FOUR YEARS ACTUALLY.
I MEAN REALLY A LONG TIME.
>> RIGHT.
ALL WE KNOW FROM THE RECORD, REALLY THERE WAS A LEAK.
AND THERE WAS SOME ROTTING.
AND IT COULD HAVE BEEN COMPLETELY UNRELATED, AND--
>> ISN'T THAT, I MEAN THIS CASE SEEMS TO HAVE BECOME OVERLY COMPLEX.
>> I AGREE.
I AGREE.
>> SEEMS TO ME THAT, IF THE HOMEOWNER, AND THESE LAWYERS FELT THERE WAS A CLAIM TO BE MADE, THEY WOULD HAVE FILED THAT, WHICH THEY DID IN THIS CASE.
THEY MUST HAVE SAID SOMETHING ABOUT THE ROOF AND ABOUT THE APPRAISAL, CORRECT?
>> CORRECT.

>> WHAT DID THEY SAY?
>> WELL THEY DID A PROOF OF LOSS.
>> I'M SORRY?
>> THEY FILED A PROOF OF LOSS.
>> BEFORE THE LAWSUIT?
>> BEFORE THE LAWSUIT.
>> KEEP GOING.
>> THEY ASKED FOR $71,000. AND THAT INCLUDED A NEW ROOF.
>> WELL, KEEP GOING.
>> AND--
>> THEY SAID NOTHING ABOUT AN APPRAISAL HAD BEEN DONE?
THEY DIDN'T SEEK AN APPRAISAL?
HOW, WHAT WERE THEY ASKING FOR?
JUST THE 71,000?
>> WELL I CAN NOT RECALL OFF THE TOP OF MY HEAD WHETHER IT WAS FIRST HOME OR WHETHER IT WAS THE CLAIMANT WHO DID THE ORIGINAL APPRAISAL.
ASKED FOR THE ORIGINAL APPRAISAL.
>> THE OPINION SAYS THEY SUBMITTED THEIR CLAIM, THEIR SECOND CLAIM.
IT WAS A DETAILED SWORN STATEMENT, AND A PROOF OF LOSS FORM.
PRESUMABLY THAT IS IN OUR RECORD, FOR $71,000, EXCEEDING THE DEDUCTIBLE.
THEY REJECTED IT AND THEY INVOKED THE APPRAISAL CLAUSE.
THEN AT THAT TIME HE SUBMITTED A LETTER SAYING IT WAS THE, ROOF TILE WAS NO LONGER IN STOCK.
SO AGAIN THE QUESTION IS WHAT HAPPENED BETWEEN-- TO ME--
>> THAT WOULD BE DETERMINED IN APPRAISAL, WOULDN'T IT?
>> IT WOULD ABSOLUTELY BEEN DETERMINED IN APPRAISAL.
>> THEY DIDN'T GET AN ACCESS TO AN APPRAISAL HERE.
>> I'M NOT SURE I'M FOLLOWING.
>> NO, AT THE TIME JUSTICE PARIENTE IS SAYING IF THEY HAD DISCOVERED THERE IS SOMETHING,

WE STILL HAVE A DISPUTE.
THEY ASKED THAT IT BE SUBMITTED
TO APPRAISAL.
IF, IF IT IS AN UNRELATED
DAMAGE, THAT WOULD BE DETERMINED
DURING THE APPRAISAL PROCESS.
>> YES.
>> WHETHER IT IS OR IS NOT.
>> YES.
>> BUT THEY NEVER GOT TO THAT
POINT IN THIS CASE.
>> NO, THEY GOT-- THERE WAS AN
APPRAISAL.
>> YES.
>> THERE WAS AN APPRAISER BY
MR. NOA, THE INSURER'S APPRAISER
AND NEUTRAL APPRAISER.
>> I DON'T KNOW WHETHER THE
ISSUE OF CAUSATION CAME UP.
>> THAT IS WHERE IT WOULD COME
UP THOUGH, ISN'T IT?
>> YES, ABSOLUTELY, BUT WE CAN'T
TELL FROM THIS RECORD.
AS YOU KNOW FIGA DIDN'T COME
INTO THIS CASE FULL AFTER THERE
WAS A LAWSUIT.
SO THERE IS A LOT THAT WE DON'T
EVEN KNOW.
>> I THINK IT GOES BACK TO THIS.
THE APPRAISAL STATED IT DIDN'T
APPRAISE ANY ALLOWANCE FOR
EFFECTS OF LAW AND ORDINANCE.
YOU SAID THAT THE PETITIONER
INTERPRETS THAT, LAW-- THEY
DIDN'T CONSIDER THAT AT ALL.
I GO BACK TO MY QUESTION TO THE
PETITIONER.
THEY DIDN'T NEED TO CONSIDER IT,
THEY APPRAISED IT ONLY REQUIRING
3% OF THE TOTAL 3200 SQUARE FOOT
ROOF, CORRECT?
>> CORRECT.
>> SO NOTHING ABOUT, IF IT WAS,
IF THAT WAS ACCURATE, THAT
AMOUNT, NOTHING WOULD BRING UP
AN ORDINANCE THAT WOULD REQUIRE
THEM TO REPLACE THE WHOLE ROOF?
>> CORRECT.
AND YOU KNOW, THAT'S REALLY THE
BIG DISTINCTION BETWEEN THIS

CASE AND JOSSFOLK.
IN JOSSFOLK THE INSURANCE
APPRAISER SAID, HEY, WAIT A
SECOND, WE'RE LOOKING FOR A
WHOLE NEW ROOF AND WE CAN'T, YOU
KNOW, WE HAVE THIS ORDINANCE &
LAW ISSUE, ETCETERA, ETCETERA.
AFTER HE RAISED THAT OBJECTION,
THE APPRAISAL AWARD WAS CHANGED
A LITTLE BIT BUT, BUT FOR A
SECOND TIME THEY SAID, WE'RE NOT
APPRAISING ORDINANCE & LAW.
THERE YOU HAVE--
>> THE QUESTION, WHICH IS A
FRIENDLY QUESTION, WHICH I DON'T
USUALLY ASK, THEY DISTINGUISH
JOSS.
DO YOU ARGUE A CASE WE SHOULDN'T
HAVE TAKEN BECAUSE IT IS
DISTINGUISHABLE?
>> WELL, YES I DID MAKE THAT
ARGUMENT IN BRIEFS ON
JURISDICTION AND AGAIN--
>> YOU STILL BELIEVE THAT IS THE
CORRECT LEGAL POSITION, THAT WE
DON'T HAVE JURISDICTION?
>> I, I DON'T BELIEVE THAT THE
COURT HAS JURISDICTION BECAUSE I
DON'T BELIEVE THAT THIS CASE IS
IN EXPRESS DIRECT CONFLICT WITH
EITHER JOSSFOLK OR CEBALLO,
WHICH HAS ABSOLUTELY NOTHING TO
DO WITH PARTICULAR ISSUES.
I AGREE WITH JOSSFOLK IS
FACTUALLY SIMILAR BUT THERE ARE
SOME MAJOR DISTINCTIONS THERE.
>> WHAT'S THE DISTINCTION?
>> FIRST ONE BEING IN JOSSFOLK
THE INSURANCE COMPANY DIDN'T
ACTUALLY RAISE THIS WHOLE, AYE,
25% WOULD REQUIRE A ROOF AND
APPRAISAL AWARD FELL WELL BELOW
THAT THEY DIDN'T EVER MAKE THAT
ARGUMENT.
>> THEY DID ON APPEAL?
>> WELL--
>> BECAUSE THE OPINION SAYS WE
REJECT THIS ARGUMENT BECAUSE IT
WASN'T MADE TO THE TRIAL COURT.
BUT ISN'T IT THE CASE THAT EVEN

THOUGH THEY MADE THAT ARGUMENT
ON APPEAL THE DIRECT COURT, FOR
SOME REASON, SAID THEY WOULDN'T
CONSIDER IT BECAUSE IT HAD NOT
BEEN MADE BELOW?
>> THAT'S CORRECT.
IT HADN'T BEEN MADE BELOW.
>> ISN'T THAT THE BASIS FOR THE
DISTINCTION?
THE DISTRICT COURT DID NOT
CONSIDER THAT ARGUMENT WHICH IS
CENTRAL TO THIS CASE?
>> RIGHT.
THAT IS THE BE ALL AND END ALL
OF THIS COURT'S ALLEGED
JURISDICTION HERE IS THAT THESE
TWO CASES ARE INDISTINGUISHABLE,
AND THEY CLEARLY ARE NOT.
BOTTOM LINE IS, THERE'S, AND
THIS IS WHAT THE THIRD DISTRICT
REALLY RAISED IT ORAL ARGUMENT
WHICH IS IMPLICIT IN THE, IN THE
OPINION.
WHERE, THERE IS, THERE IS NO
EVIDENCE IN THIS CASE THAT, THAT
THE ISSUE, THAT THE DISPUTE
INVOLVING THE EXTENT OF ROOF
DAMAGE WAS NOT APPRAISED.
THE ASSUMPTION IS ALWAYS THAT
IT'S NOT JUST THE NUMBER BUT THE
EXTENT OF A LOSS THAT IS
APPRAISED.
AND IF THE APPRAISAL IS TO HAVE
ANY TEETH IT HAS TO BE
SACROSANCT AND WHILE IN JOSSFOLK
THERE ARE AT LEAST WAS SOME KIND
OF EVIDENCE THAT THE INSURED'S
APPRAISER TRIED TO CLARIFY AND
SAY, WELL, YOU'RE NOT OF COURSE,
DEALING WITH ORDINANCE & LAW
BECAUSE YOU DON'T HAVE THAT
ABILITY RIGHT NOW.
HERE WE HAVE NOTHING.
WE HAVE NOTHING EXCEPT THAT A
MONTH AFTER THE APPRAISAL AWARD
WAS PAID AT THE MIRACULOUSLY
FIND A ROOFER WHO CAN'T DO THIS
WORK UNLESS HE DOES THE ENTIRE
ROOF.
AND--

>> BUT YOU WOULD AGREE IF IT WAS 30%--
>> CORRECT.
>> THERE WOULDN'T UNDER THE ORDINANCE THEY WOULDN'T HAVE A CHOICE?
>> ABSOLUTELY AND THE ROOFER, NEVER ASKED FOR A PERMIT OF LESS THAN 30% KNOWING, PRESUMABLY YOU HAVE TO HAVE THE ENTIRE ROOF.
AND I JUST DON'T THINK, FIRST OF ALL, I DON'T THINK THAT THIS COURT HAS JURISDICTION BUT IF IT DOES I CERTAINLY THINK THE THIRD DISTRICT'S OPINION IN THIS CASE SHOULD BE THE ONE THAT THIS COURT APPROVES OVER JOSSFOLK.
>> IF THE INSURED BELIEVED THAT 30% OF THE ROOF HAD TO BE REPLACED TO EFFECTUATE THE DAMAGE CAUSED BY THE COVERED PERIL, WHEN SHOULD THEY HAVE PRESENTED THAT INFORMATION?
WOULD IT HAVE BEEN TO THE UMPIRE?
>> YES, ABSOLUTELY, ABSOLUTELY AND I-- IT ALMOST SOUND BY VIRTUE OF MR. PYLE'S AFFIDAVIT WHICH WAS FILED, THAT HE DID.
THAT HE NEVER AGREED.
HE DIDN'T SIGN OFF ON THE APPRAISAL AWARD.
AND--
>> WHAT IT SOUNDS LIKE HE PURCHASED IT DIFFERENTLY AND SAID BECAUSE WE CAN'T MATCH THE TILES YOU HAVE TO REPLACE THE WHOLE ROOF.
INSTEAD THE UMPIRE DETERMINED THAT YOU COULD MATCH THE TILES BY SOME COATING THAT GOES ON THE ENTIRE ROOF UNDERNEATH, YOU DON'T HAVE TO REPLACE THE ENTIRE ROOF TO MATCH THE TILES.
>> THERE WAS 4,000 SOMETHING AWARD FOR HYDRO SHEEN TO MATCH THE TILES.
THE ROOFER'S AFFIDAVIT DIDN'T SAY NEVER.
SAID IT WILL BE DIFFICULT FOR US

TO FIND MATCHING TILES.
THE COLOR WILL BE A PROBLEM.
THAT AGAIN MUST HAVE COME UP
DURING THE APPRAISAL OTHERWISE
THERE WOULDN'T BE AWARD FOR
COLOR MATCH, HYDROSHEEN AND IT
WAS THERE.
SO, I THINK UNDER THE SPECIFIC
FACTS OF THIS CASE, THAT THIS
SHOWS THE WISDOM OF THEIR BEING
AN APPRAISAL SYSTEM, AND THE
IMPORTANCE OF IT BEING
SACROSANCT.
THERE IS NOTHING IN HERE, AND I
KNOW JUSTICE LEWIS, YOU WERE
CONCERNED ABOUT THINGS YOU FIND
OUT AFTERWARDS.
CERTAINLY IF THIS WAS SOMETHING
THAT COULD NOT HAVE, AND WAS NOT
DETERMINED BEFORE THE FACT,
COULDN'T HAVE BEEN DISCOVERED
BEFORE THE FACT, THERE WOULD BE
SOME EVIDENCE OF THAT HERE.
WE DON'T HAVE ANY EVIDENCE OF
THAT HERE, AND I MADE THAT POINT
IN OUR BRIEF.
THIS IS NOT ONE OF THOSE
SITUATIONS WHERE YOU COULDN'T
HAVE DISCOVER AD PROBLEM AND
ONLY WHEN YOU DO COULD YOU HAVE
BROUGHT IT TO THE INSURANCE
COMPANY'S ATTENTION.
AS FAR AS WE KNOW THERE HAS BEEN
NO CHANGE IN THE CIRCUMSTANCES
AND NOTHING TO WARRANT HAVING A
SECOND APPRAISAL OR REOPENING AN
APPRAISAL.
>> WAIT A MINUTE.
I WAS UNDER THE IMPRESSION
BEFORE IN YOUR RESPONSE TO
JUSTICE PARIENTE YOU SAID THEY
DID HAVE A SECOND APPRAISAL.
THEY DID NOT.
IT WAS ONE APPRAISAL THAT WAS
DONE BEFORE ALL THIS BROKE LOOSE
AND THEN THEY FILED A LAWSUIT
ASKING FOR AN APPRAISAL.
THAT IS THE WAY I UNDERSTAND THE
PROCEDURAL POSTURE OF THIS CASE.
>> ACTUALLY THERE WAS ONE BACK

IN 2005.
>> RIGHT.
>> THAT APPRAISAL AMOUNTED--
>> NOT SINCE THEY FILED THE CURRENT LEGAL ACTION?
>> NO, NO.
THERE WAS A SECOND APPRAISAL IN 2010 I BELIEVE.
>> OH.
>> AND THAT IS THE APPRAISAL THAT WE'VE BEEN TALKING ABOUT IN THIS LAWSUIT.
>> OKAY.
ALL RIGHT.
>> IF THERE ARE NO FURTHER QUESTIONS I THANK THE COURT FOR ITS ATTENTION.
>> WITH ALL DUE RESPECT THERE WAS ONLY ONE APPRAISAL IN THIS MATTER.
THERE WAS A CLAIM THAT WAS MADE IN 2005.
THAT WAS NOT APPRAISED.
THEY CAME WITH AN UNDERPAYMENT AND IT WAS THEIR REASON THAT THERE WAS A DELAY FOR THE SECOND CLAIM TO COME IN.
THERE WAS NO TWO APPRAISALS HERE.
THERE WAS ONE APPRAISAL, AND THAT WAS DONE IN ACCORDANCE WHAT WE SEE HERE IN THE RECORD.
IS I'M NOT SURE-- I'M CONCERNED ABOUT THAT.
>> I HAVE A QUESTION ABOUT WHAT WE DISCUSSED REGARDING THE GAME-- GAIL CLAIM SERVICES ATTACHED TO THE AFFIDAVIT.
THE 1200 NUMBER.
>> YES.
>> IF I UNDERSTOOD YOU CORRECTLY THAT INDICATED OF 1200 FEET OF UNDERLAYMENT, IS THAT WHAT YOU SAID?
>> YES.
>> I'M HAVING TROUBLE FOLLOWING THAT.
I HEARD WHAT YOU SAID BUT I'M LOOKING AT THIS AND IT SAYS ROOFING REPAIR UNDERLAYMENT.

QUANTITY, 1.0 EACH, EA, I ASSUME
THAT MEANS EACH.
UNIT COST, 1200.
IT LOOKS TO ME LIKE THAT IS AN
AGGREGATE AMOUNT THEY FIGURED
FOR THE YOU KNOW LAYMENT
WITHOUT-- IT IS NOT REALLY
SQUARE FEET.
I WOULD INFER THAT, RIGHT BELOW
THAT IS SAYS, HYDRO-- I CAN'T
PRONOUNCE IT.
>> THAT IS OKAY.
HYDROSHEEN.
>> TO OBTAIN COLOR MATCH.
THERE IT SAYS 3488 SF.
THAT WOULD BE SQUARE FEET.
SO TALKING ABOUT SQUARE FEET
OVER THERE BUT IT WOULDN'T MAKE
SENSE TO BE TALKING ABOUT SQUARE
FEET UNDER THE UNIT COST ANYWAY.
NOW I'M FOLLOWING, I'M HAVING
TROUBLE FOLLOWING YOUR
SUGGESTION THAT IS 1200 SQUARE
FEET.
>> I'M GLAD YOU BROUGHT THAT UP
BECAUSE I HAVE NEVER SEEN WHERE
THEY HAVEN'T PUT SQUARE FEET IN
ON THESE FIRST TWO ITEMS.
SO I WAS CONCERNED ABOUT THAT
BECAUSE NATURALLY IT WOULD FLOW
THAT HAS TO BE 1200 SQUARE FEET,
THAT IS HOW THESE ARE DONE.
BUT SEPARATELY--
>> THAT IS NOT WHAT IT SAYS
THOUGH.
>> BUT THE FACT OF THE MATTER IS
YES, IT DOESN'T SAY THAT, AND
I'M CONCERNED THEY DIDN'T PUT
THAT IN INITIALLY.
>> IT IS AN AGGREGATE COST,
SOMEHOW HE FIGURED, AND IN THE
SAME WAY HE FIGURED AN AGGREGATE
COST FOR TAXES INSURANCE,
PERMITS AND FEES, OKAY?
THAT IS ONE, 1.00 EACH.
HAULING DEBRIS.
THEY DOING AN AGGREGATE
COST.
I DON'T SEE IN ANY WAY LOOKING
AT THIS CONTEXT YOU CAN INFER

FROM THAT IT IS 1200 SQUARE FEET
AS YOU SUGGEST.
>> THE HYDROSHEEN IS OVER THE
WHOLE ROOF.
IT SHOWS THE TILES WERE SPREAD
OVER THE WHOLE ROOF.
NOT JUST IN ONE AREA.
>> I DON'T THINK THAT HAS BEEN
IS DID MUTED.
>> BUT I WANT-- DISPUTED.
1200 FEET OF IS UNDERLAYMENT?
>> WHERE DOES IT SAY THAT?
>> THAT IS IN THE ROOFER'S
AFFIDAVIT.
THAT WAS UNDER THE ESTIMATE OF
MR. GAIL.
THAT BUTTRESSES THE ARGUMENT
THAT, ADDRESSES EXACTLY WHAT
YOU'RE ASKING, YOUR HONOR, ABOUT
THAT.
>> IT IS UNIT COST.
I MEAN, I JUST, I'M, PUZZLED.
>> THE AFFIDAVIT OF THE
ROOFER--
>> WE'RE OVER TIME.
>> I DO WANT TO MAKE--
>> I WANT TO ASK ONE QUESTION.
>> I WANT TO MAKE A COUPLE
POINTS.
>> THAT IS UP TO THE CHIEF.
>> I AM THE BOSS.
ASK ONE QUESTION.
>> CAN YOU VERY BRIEFLY EXPLAIN
HOW WE HAVE JURISDICTION WHEN
ISSUE YOU'RE ASKING TO DECIDE IS
EXPRESSLY NOT ADDRESSED IN THE
4th DCA OPINION?
>> THE ISSUE OF THE JURISDICTION
IS THAT UNDER THE FACTS OF THIS
CASE AND IN THE, OUR APPRAISER'S
AFFIDAVIT HE STATES, IT IS ON
RECORD 44, INDEED APPRAISAL OF
ORDINANCE & LAW COVERAGE WAS
LEFT OPEN FOR CONSIDERATION AT A
LATER DATE IT BECAME NECESSARY.
IT BECAME NECESSARY AND
THEREFORE JUST AS IN JOSSFOLK
THEY REQUESTED IT.
HE REQUESTED IT BEFORE THE ROOF
WAS DONE.

THEY SAID NO, OKAY, I'M GOING
AHEAD AND DO THE WHOLE ROOF.
HE WOULD FILE THE LAWSUIT
AFTERWARDS.
THE FACT OF THE MATTER IS THE--
>> HOW DOES IT EXPRESS A DIRECT
CONFLICT WHEN THE FOURTH DCA
SAYS WE'RE NOT CONSIDERING THAT
ISSUE?
>> THEY ALLOWED APPRAISAL IN
JOSSFOLK AND THEY DID NOT ALLOW
APPRAISAL ORDINANCE & LAW IN
THIS MATTER WHEN IT SHOULD HAVE
BEEN ALLOWED BECAUSE OF THE
NATURE AND FACTS OF CIRCUMSTANCE
OF THIS CASE.
>> JUSTICE QUINCE, DID YOU HAVE
A QUESTION?
>> NO.
>> ONE MORE POINT, THERE IS
ISSUE ABOUT DELAY, MY CLIENT
TIMELY NOTICED BEFORE THE STORM,
AND FACT THAT THEY DIDN'T ADJUST
PROPERLY SHOULD NOT BE BORNE BY
MY CLIENT.
SHOULD NOT BE HIS FAULT.
WE RESPECTFULLY REQUEST DECISION
OF THIRD DISTRICT BE REVERSED AT
A MINIMUM, ISSUES OF FACT THAT
THE COURT POINTED OUT IT WOULD
BE SENT BACK DOWN FOR FURTHER
PROCEEDINGS.
>> THANK YOU FOR YOUR ARGUMENTS.
>> THANK YOU.
>> WE'RE IN RECESS FOR TEN
MINUTES.