>> THE COURT WILL NOW MOVE TO MRI ASSOCIATES OF TAMPA INC. V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.
YOU MAY PROCEED.
>> GOOD MORNING, YOUR HONORS, DAVID CALDEVILLA.
I'M HERE TODAY IN TAMPA, FLORIDA, WITH MY CO-COUNSEL, KRISTIN NORRIS AND JOHN ORICK WHO REPRESENT MRI ASSOCIATES OF TAMPA.
I'VE RESERVED FIVE MINUTES FOR REBUTTAL THIS MORNING.
MY CLIENT WAS SUED BY STATE FARM FOR DECLARATORY RELIEF.
THE TRIAL COURT GRANTED SUMMARY JUDGMENT FOR MY CLIENT, STATE FARM APPEAL AND THE SECOND DISTRICT REVERSED.
WE'RE NOW BEFORE THIS COURT ON A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE.
AMONG OTHER THINGS, WE CONTEND THE SECOND DISTRICT ERRONEOUSLY CONCLUDED THAT THERE ARE NO LONGER TWO MUTUALLY-EXCLUSIVE METHODS TO CALCULATE PIP REIMBURSEMENTS FOR MEDICAL EXPENSES.
BASED ON THAT ERROR, THEY ALSO CONCLUDED THAT A PIP INSURER IS ALLOWED TO USE THE FACT-DEPENDENT METHOD TO CALCULATE CHARGES WHILE AT THE SAME TIME USING A CEILING.
I THINK WE ALL KNOW THERE'S BEEN A LOT OF SIGNIFICANT PIP LITIGATION ABOUT THE REASONABLE AMOUNT OF MEDICAL EXPENSES.
THIS WAS SUCH A HUGE PROBLEM THAT IN OCTOBER 2007 THE NO-FAULT STATUTES WERE AUTOMATICALLY REPEALED BY A SUNSET PROVISION.
AND SO THERE WAS ACTUALLY NO PIP STATUTE IN FLORIDA DURING THE LAST THREE MONTHS OF 2007.
BUT IN 2008 THE LEGISLATURE RESURRECTED THE NO-FAULT STATUTE

IN A MANNER THAT WAS INTENDED TO
REDUCE PIP LEGISLATION.
THE LEGISLATURE DID THIS BY
PROVIDING CERTAINTY WITH A FIXED
AND PREDETERMINED SCHEDULE OF
MAXIMUM CHARGES THAT WILL ALWAYS
SATISFY THE REASONABLE MEDICAL
EXPENSES MANDATE.
IF A PIP INSURER LAWFULLY USES
THE SCHEDULE OF MAXIMUM CHARGES,
THAT PROVIDES CERTAINTY TO THE
INSURANCE COMPANIES, THE INSURED
PATIENTS, THEIR HEALTH CARE
PROVIDERS AND THE COURTS AND
ELIMINATES THE NEED TO LITIGATE
OVER WHETHER THE AMOUNT PAID BY
THE INSURANCE COMPANY WAS
REASONABLE.
THE SECOND DISTRICT'S DECISION
ELIMINATES THE CERTAINTY
PROVIDED BY THE SCHEDULE OF
MAXIMUM INJURIES, EXPOSES
INSURED TO BALANCED BILLING AND
RETURNS PIP TO THE PRE-2008 ERA
LITIGATING OVER THE REASONABLE
AMOUNT OF MEDICAL EXPENSES.
THAT IS NOT WHAT THE LEGISLATURE
INTENDED WHEN IT RESURRECTED THE
PIP STATUTE AND ADOPTED THE
SCHEDULE OF MAXIMUM CHARGES OF
2008.
THAT'S NOT WHAT THE LEGISLATURE
INTENDED WHEN IT AMENDED THE
STATUTE TO CODIFY THE NOTICE
REQUIREMENT IN 2012.
CASE LAW EXPLAINS THAT THE PIP
STATUTE HAS A REASONABLE MEDICAL
EXPENSE COVERAGE MANDATE WHICH
CANNOT BE DISCLAIMED IN AN
INSURANCE POLICY.
THERE ARE TWO DIFFERENT METHODS
FOR SATISFYING THAT.
THE FIRST METHOD IS THE
LONGSTANDING FACT-DEPENDENT
METHOD DESCRIBED IN SUBSECTION
5A.
THE SECOND METHOD IS OFTEN
CALLED THE FEE SCHEDULE METHOD,
AND IT'S BASED ON A FIXED AND
PREDETERMINED SCHEDULE OF

MAXIMUM CHARGES ALONG WITH AN
EXTENSIVE SET OF TERMS AND
CONDITIONS ATTACHED TO IT.
THIS SECOND METHOD WAS ADOPTED
BY THE LEGISLATURE IN 2008 TO
REDUCE LITIGATION, AND IT'S NOW
FOUND IN SUBSECTIONS 5A 1-5.
IN ALLSTATE VS STAND-UP MRI, THE
FACT DEPENDENT METHOD IS THE--
WE KNOW THE FEE SCHEDULE METHOD
IS A PERMISSIVE ALTERNATIVE.
BECAUSE 5A 1-5 REPEATEDLY
EXPLAINED THE INSURER MAY USE
IT, ALSO WHAT HAPPENS IF THE
INSURER USED IT.
WE KNOW THE FEE SCHEDULE METHOD
IS SEPARATE AND DISTINCT BECAUSE
ALL THE DECISIONS
CROSS-REFERENCE AND REFER BACK
TO THE SCHEDULE OF MAXIMUM
CHARGES IN SUBSECTION 5A.
THEY'RE ALL TIED TOGETHER.
IN FACT, ALL APPELLATE COURTS,
THE FLORIDA SUPREME COURT AND
DCAs, ALL OPINIONS THAT HAVE
ADDRESSED THIS ISSUE ALL
RECOGNIZE THAT THE TWO METHODS
ARE SEPARATE AND DISTINCT--
>> I'M SORRY TO INTERRUPT YOU.
I'M NOT SURE THAT IT MATTERS,
BUT IT'S NOT OBVIOUS THAT
VIRTUAL IMAGING WAS RIGHT ON
THAT.
AND NOW THAT THE STATUTE HAS
CHANGED, ISN'T IT CLEAR THAT
THERE'S THIS ONE REASONABLENESS
REQUIREMENT AND THAT, CERTAINLY,
THIS LIMITATION ON REIMBURSEMENT
BASED ON THE SCHEDULES IS JUST
SORT OF THE STATUTORY DEFAULT
WAY OF COMPLYING WITH THE
REASONABLE ARGUMENT?
>> THAT'S EXACTLY THE ARGUMENT
THAT GEICO MADE IN VIRTUAL
IMAGING.
THAT WAS REJECTED UNIVERSALLY BY
THE DISTRICT COURTS OF APPEAL.
THE LEGISLATURE COULD HAVE
SUBSTANTIALLY AMENDED THE PIP
STATUTE IN 2012 TO ADDRESS THAT

IDEA.
GEICO HAD BEEN REPEATEDLY
REBUFFED ON THAT ARGUMENT, BUT
DCI, MRI DECISION, VIRTUAL
IMAGING I AND II, ALL OF WHICH
HAD BEEN DECIDED BEFORE THE 2012
LITIGATION.
>> BUT, COUNSEL, LET'S JUST
FOCUS ON THE TEXT OF THIS
STATUTE.
AND, YOU KNOW, THERE'S A LONG,
COMPLICATED HISTORY HERE, I
UNDERSTAND.
BUT WHEN I JUST FOCUS ON THE
TEXT OF THIS STATUTE AND I SEE
THE LANGUAGE THAT SAYS THE
INSURER MAY LIMIT REIMBURSEMENT
TO 80 PRESIDENT OF THE FOLLOWING
SCHEDULED MAXIMUM CHARGES, I
HAVE A HARD TIME UNDERSTANDING
WHY THAT DOESN'T MEAN WHAT IT
SAYS, THAT IT IS, IT IS GIVING
THE INSURER THE OPTION OF
LIMITING REIMBURSEMENT IN THAT
MANNER.
MAY LIMIT REIMBURSEMENT.
IT DOES NOT SAY THAT THE INSURER
MAY ELECT TO PROVIDE
REIMBURSEMENT IN ACCORDANCE
WITH, OKAY?
THAT WOULD BE ONE THING.
IT DOESN'T SAY THAT.
>> WELL, YOU'RE RIGHT.
>> AND IT SEEMS, BUT IT SEEM
LIKE YOUR ARGUMENT DEPENDS ON
INTERPRETING THAT LANGUAGE AS
THOUGH IT SAID THAT INSTEAD OF
WHAT IT ACTUALLY SAYS.
NOW, WHAT AM I MISSING ABOUT THE
TEXT OF THE STATUTE?
>> YOU'RE NOT MISSING ANYTHING
BECAUSE THAT'S WHAT THE STATUTE
SAID IN 2008.
IT IS PERMISSIVE, I TOTALLY
AGREE WITH PERMISSIVE.
BUT WHAT YOU POINTED OUT IN YOUR
DISSENT, JUSTICE CANADY, IN THE
VIRTUAL IMAGING III CASE WHICH
WAS IN 2013 BASED ON THE 2008
VERSION OF THE STATUTE-- THE

STATUTE HAD BEEN AMENDED-- YOU
POINTED OUT THAT VERY FACT.
WELL, THE STATUTE SAYS MAY,
THERE'S NOTHING THAT REQUIRES
THIS TO BE IN THE POLICY.
>> I THOUGHT I MIGHT HAVE
THOUGHT OF THAT BEFORE.
>> RIGHT.
BUT IN 2012 THE STATUTE WAS
AMENDED TO CODIFY THE NOTICE
REQUIREMENT THAT THE DCI MRI
CASE WAS TALKING ABOUT AND WITH
THE KING'S WAY-- WHAT THE
KING'S WAY CASE.
IN 2012 THE LEGISLATURE ENACTED
A NOTICE REQUIREMENT, AND IT
SAYS AN INSURER MAY LIMIT
PAYMENT AS AUTHORIZED BY THIS OF
PARAGRAPH ONLY IF THE INSURANCE
POLICY INCLUDES A NOTICE AT THE
TIME OF ISSUANCE OR RENEWAL THAT
THE INSURER MAY LIMIT PAYMENT TO
THE CHARGES SPECIFIED ABOVE.
IT NOW HAS TO THE IN THE
POLICY--
>> THAT'S NOT AT ISSUE HERE.
THE FACT THAT NOTICE HAS TO BE
GIVEN, THAT WAS THE ISSUE
WHETHER SPECIFIC NOTICE HAD TO
BE GIVEN OF THE, THE WAY THE
INSURER WAS GOING TO PROCEED OR
WHETHER THE INSURER WAS GOING TO
AVAIL ITSELF OF THAT PROVISION.
THAT'S NOT AT ISSUE HERE.
THE LEGISLATURE'S CHANGED THAT.
THE QUESTION IS WHETHER THEY ARE
RESTRICTED TO THAT, TO THOSE
SCHEDULES EVEN THOUGH IT STILL
SAYS MAY LIMIT, IT REFERS TO
THE, ALLOWING THEM TO LIMIT
REIMBURSEMENT.
I KNOW THE HISTORY.
>> AND BEFORE YOU ANSWER, I
WOULD JUST ADD TO THAT THERE'S
NOTHING IN THE TEXT OF THIS NEW
STATUTORY EXPLICIT NOTICE
REQUIREMENT THAT BUYS INTO THE
REQUEST THAT THERE ARE TWO
SEPARATE, MUTUALLY-EXCLUSIVE
THINGS.

I MEAN, ALL IT SAYS IS IF YOU WANT TO AVAIL YOURSELF OF THE LIMIT, YOU HAVE TO GIVE NOTICE. BUT IT DOESN'T, IT DOESN'T ENDORSE ANY, YOU KNOW, THE VIRTUAL IMAGING VIEW OF WHETHER THEY'RE TWO SEPARATE THINGS OR NOT.
>> NO.
THERE'S NOTHING THAT SUGGESTS THAT THEY'RE NOT MUTUALLY EXCLUSIVE.
I DISAGREE WITH YOU.
BUT LET ME-- BEFORE I ANSWER YOUR APPENDAGE TO THE QUESTION THAT JUSTICE CANADY ASKED, LET ME ADDRESS JUSTICE CANADY QUICKLY.
WE AGREE THAT IT'S PERMISSIVE, BUT IT'S ONLY PERMISSIVE ONCE YOU'VE GOT A NOTICE--
>> WHERE DOES IT, WHERE DOES--
OKAY.
SO DIDN'T THE INSURANCE COMPANY IN THIS CASE INCLUDE THE NOTICE THAT THEY RESERVE THE RIGHT TO LIMIT REIMBURSEMENT TO 80% OF THE SCHEDULE?
>> THAT'S A DISPUTED ISSUE IN THIS CASE.
THIS WAS A SUMMARY JUDGMENT CASE BASED ON A STIPULATION OF FACTS.
THERE IS NO EVIDENCE IN THIS CASE THAT STATE FARM EVER COMPLIED BY PROVIDING A NOTICE AT THE TIME OF ISSUANCE OR RENEWAL OF HIS POLICY, THERE'S NO EVIDENCE THAT THEY SUBMITTED A REQUEST FOR APPROVAL OF ANY NOTICE UNDER 5A-5 OF THE STATUTE.
THERE'S NO EVIDENCE THAT THE OFFICE OF INSURANCE REGULATION APPROVED ANY NOTICE FOR PURPOSES OF 5A-5.
BUT THERE IS A NOTICE REQUIREMENT, AND I THINK WE CAN ALL AGREE BEFORE YOU CAN USE THE FEE SCHEDULES, YOU HAVE TO HAVE ISSUED A NOTICE AT THE TIME OF

RENEWAL.
>> THE POLICY'S QUOTED IN THE SECOND DISTRICT OPINION, AND THE POLICY ITSELF SAYS THAT THEY ARE GOING TO LIMIT PAYMENT TO 80% OF THE FEE SCHEDULE.
>> IT SAYS TWO THINGS, JUSTICE LAWSON.
FIRST OF ALL, LET ME JUST SAY BECAUSE WHAT THE-- JUST BECAUSE THE POLICY SAYS IT DOESN'T MEAN IT IS A NOTICE THAT WAS ISSUED AT THE TIME OF ISSUANCE OR RENEWAL.
IT DOESN'T MEAN THAT IT WAS OFFERED FOR APPROVAL TO THE OFFICE OF INSURANCE REGULATION.
IT DOESN'T MEAN THAT THE OFFICE OF INSURANCE REGULATION DID APPROVE.
BUT WITH THAT SAID, LET'S READ THE LANGUAGE OF THE POLICY BECAUSE IT SAYS TWO THINGS.
IT SAYS-- THIS IS AT PAGE 16 OF THE POLICY AND PAGE 232 OF THE RECORD.
IT SAYS WE WILL LIMIT PAYMENT OF MEDICAL EXPENSES TO 80% OF A PROPERLY-BILLED AND DOCUMENTED REASONABLE CHARGE, BUT IN NO EVENT WILL WE PAY MORE THAN 80% OF THE FOLLOWING NO-FAULT SCHEDULE OF MAXIMUM CHARGES.
SO IT SAYS TWO THINGS; WE WILL LIMIT PAYMENT TO A REASONABLE CHARGE, AND WE WILL LIMIT PAYMENT TO THE SCHEDULE OF MAXIMUM CHARGES.
THAT PROBABLY WOULD BE OKAY EXCEPT STATE FARM THEN DEFINED THE TERM REASONABLE CHARGE IN ITS POLICY TO INCLUDE THE FEE SCHEDULES AS MERELY ONE OF SEVEN FACTORS THAT IT WAS GOING TO RELY UPON IN DETERMINING WHETHER IT'S GOING TO LIMIT PAYMENT TO THE REASONABLE CHARGE WHICH WAS--
>> AM I--
>> [INAUDIBLE]

>> JUST, AM I CORRECT THAT THAT, THEY ESSENTIALLY TRACKED THE STATUTORY TESTIFY IN ADDITION OF REASONABLE CHARGE?
>> NO.
THEY DID NOT, YOUR HONOR.
THEY ADDED, THEY ADDED TO THE DEFINITION FOUND IN 5A THE SCHEDULE OF MAXIMUM CHARGES WHICH IS A SEPARATE METHOD.
AND TO ANSWER JUSTICE MUNIZ'S QUESTION IF I COULD FINALLY GET TO THAT.
ALL THE LANGUAGE, JUSTICE MUNIZ, IN 5A 1, 2, 3, 4 AND 5, EVERY ONE RELATES BACK TO 5A 1.
AND THAT'S IMPORTANT BECAUSE THERE ARE RAMIFICATIONS, THERE ARE CONSEQUENCES ASSOCIATED WITH SELECTING ONE METHOD FOR THE OTHER.
THAT'S WHAT MAKES THEM DIFFERENT.
WE KNOW THAT THE TWO METHODS ARE SEPARATE AND DISTINCT BECAUSE THEY HAVE VERY SEPARATE CONSEQUENCES.
THE MOST IMPORTANT CONSEQUENCE WAS THE BALANCED BILLING.
UNDER 5A-4 THE PIP INSURER USES, THE PIP INSURER USES THE FEE SCHEDULE METHOD THE HEALTH CARE PROVIDERS PROHIBITED FROM BALANCED BILLING, BUT UNDER THE FACT PAYMENT METHOD BALANCED BILLING IS NOT PROHIBITED.
AND ONE STEP FURTHER, ANOTHER STATUTE-- SECTION 817.234-- ACTUALLY REQUIRES THE HEALTH CARE PROVIDER TO BALANCE BILL THE PATIENT.
AND IF NOT, THE HEALTH CARE PROVIDER'S EXPOSED TO CRIMINAL INSURANCE FRAUD CHARGES WHICH IS A FELONY-LEVEL CRIME.
>> COUNSEL, LET ME ASK A QUESTION ABOUT THAT.
IF I UNDERSTOOD YOUR ARGUMENT ABOUT THE BALANCED BILLING AND THE WAY THE REMEDY SHOULD WORK

HERE, I MEAN, IF I UNDERSTAND
WHAT YOU'RE SAYING, WE SHOULD
REQUIRE THAT THE FACT-DEPENDENT
METHOD BE USED WHICH WILL--
BECAUSE OF THE PROBLEMS YOU HAVE
IDENTIFIED, YOUR INTERPRETATION
OF THE WAY THE STATUTE SHOULD BE
APPLIED.
SO YOU'RE SAYING THE
FACT-DEPENDENT-- THE REMEDY IS
THAT THE FACT-DEPENDENT METHOD
BE USED.
AND SO THAT, THAT ENTAILS THE
BALANCED BILLING.
BUT THEN ELSEWHERE IN YOUR
ARGUMENT THAT'S THE GREAT EVIL
IN THIS WHOLE THING.
SO WHY, IF YOU WERE-- WHY WOULD
THAT BE THE REMEDY AS OPPOSED TO
REQUIRING THAT, IF WE AGREED
WITH YOUR BASIC ARGUMENT, WHY
WOULDN'T THE REMEDY BE TO
REQUIRE THAT THE SCHEDULE, THE
NON-FACT-DEPENDENT METHOD BE
USED?
I WAS CONFUSED BY WHY YOU, HOW
YOU IDENTIFY THE BALANCED
BILLING AS SUCH A TERRIBLE
THING, WHICH I UNDERSTAND THE
CONCERNS ABOUT THAT, BUT THEN
THE REMEDY YOU PROPOSE IS A
REMEDY THAT WOULD REQUIRE THAT.
>> BECAUSE YOU CAN'T--
ABSOLUTELY, JUSTICE CANADY.
IT'S BECAUSE STATE FARM IS
TRYING TO GIVE ITSELF THAT
OPTION.
IT'S PURPORTING TO GIVE ITSELF
THAT OPTION TO USE EITHER OR
BOTH OF THOSE METHODS AT THE
SAME TIME.
IT LEADS TO TOTAL
UNPREDICTABILITY OF HOW MUCH
STATE FARM IS GOING TO PAY FOR A
MEDICAL BILL.
YES, WE WANT YOU TO DIRECT STATE
FARM, LOOK, YOU HAVE TO ELECT
ONE METHOD THE OTHER JUST LIKE
ALL THE CASE LAW HAS SAID--
>> COUNSEL, THAT'S NOT WHAT I'M

TALKING ABOUT.
I'M TALKING ABOUT THE REMEDY IN THIS CASE GIVEN THE CIRCUMSTANCES THAT HAVE DEVELOPED IN YOUR ARGUMENT.
IF WE AGREE WITH YOUR BASIC ARGUMENT, YOU'RE SAYING MAKE THIS AS BAD AS IT COULD BE.
THAT WOULD BE THE REMEDY, RIGHT?
>> THAT DOESN'T MAKE IT AS BAD AS IT COULD BE.
IT PROVIDES THE METHOD THAT'S BEEN IN PLACE SINCE 1971 THAT THE LEGISLATURE HAS CHOSEN NOT TO DELETE FROM THE STATUTE.
IF THE LEGISLATURE WANTED ONLY THE SCHEDULED MAXIMUM CHARGES METHOD TO BE USED, IT COULD HAVE DONE THAT, BUT THEY DIDN'T.
IN FACT, THERE ARE SEVERAL INSURANCE COMPANIES THAT DON'T USE THE SCHEDULE OF MAXIMUM CHARGES METHOD AT ALL.
THEY'RE STILL USING THE FACT-DEPENDENT METHOD WHEN THEY PAY CLAIMS, AND THEY DON'T LITIGATE LIKE STATE FARM DOES.
INSTEAD, STATE FARM HAS ITSELF, HAS GIVEN ITSELF THE UNMITIGATED DISCRETION, UNFETTERED DISCRETION TO PAY ANY AMOUNT THAT IT WANTS ANYTIME IT WANTS.
SO AS A HEALTH CARE PROVIDER, WE DON'T KNOW HOW MUCH WE CAN CHARGE.
>> COUNSEL, YOU ARE NOW, COUNSEL, YOU'RE NOW IN YOUR REBUTTAL TIME.
YOU MAY CONTINUE, BUT YOU ARE CONSUMING YOUR REBUTTAL TIME.
>> WELL, YOUR HONOR, ONE THING I WANT TO POINT OUT INTO MY REBUTTAL TIME IS THE SECOND DISTRICT MADE SEVERAL MISTAKES.
ONE OF PROBABLY THE MOST IMPORTANT ONES IS THEY SAID THAT A INSURER MAY NOT DISCLAIM THE FACT-DEPENDENT INFORMATION.
THAT'S DIRECTLY CONTRARY TO THE LAW.

YOU CANNOT DISCLAIM THE MANDATE.
THE LAW IS THAT YOU CANNOT
DISCLAIM THE FACT-DEPENDENT
METHOD, THEN THAT MEANS A LOT OF
INSURANCE POLICIES RIGHT NOW ARE
INVALID.
GEICO'S POLICIES, THOSE POLICIES
WOULD BE INVALID.
I'LL RETAIN THE REST OF MY TIME,
WHATEVER I HAVE LEFT.
THANK YOU.
>> THANK YOU, COUNSEL.
WE'LL NOW GO TO COUNSEL FOR THE
RESPONDENT.
>> MAY IT PLEASE THE COURT, GOOD
MORNING.
MY NAME IS MARCY ALDRIDGE, AND
I'M HERE ON BEHALF OF THE
RESPONDENT, STATE FARM.
THIS CASE POSES A VERY SIMPLE
QUESTION THAT THIS COURT HAS
ADDRESSED TWICE BEFORE IN
ORTHOPEDIC SPECIALISTS AND IN
VIRTUAL IMAGING WHICH IS WHETHER
AN AUTO INSURER'S POLICY
SATISFIES WHAT THE COURTS HAVE
CALLED A SIMPLE NOTICE
REQUIREMENT ALLOWING STATE FARM
TO LIMIT REIMBURSEMENT FOR
MEDICAL EXPENSE BASED ON THE
SCHEDULE OF MAXIMUM CHARGES IN
SUBSECTION 5A-1.
THE SECOND DISTRICT FOUND THAT
IT DID.
THE POLICY USES UNEQUIVOCAL
LANGUAGE THAT SAYS IF A PROVIDER
SUBMITS BILLS IN EXCESS OF THE
SCHEDULE AMOUNTS BUT IN NO EVENT
WILL THEY BE PAID MORE THAN THE
SCHEDULE WOULD PROVIDE.
IT IMPORTS THE ACTUAL SUBSTANCE
OF THE SCHEDULE ITSELF, UNLIKE
EVEN THE POLICY THIS COURT
CONSIDERED IN ALLSTATE V.
ORTHOPEDIC SPECIALISTS.
IT COMPLIES WITH THE NEW NOTICE
PROVISION THAT CAME INTO THE
STATUTE IN 2012 IN SUBSECTION
5A-5 WHICH SAYS THAT AN INSURER
MAY ELECT TO LIMIT BASED ON THE

SCHEDULE IF THE INSURANCE
POLICY, AS THIS POLICY HERE,
INCLUDES A NOTICE AT TIME OF
ISSUANCE OR RENEWAL THAT THE
INSURER MAY LIMIT PAYMENT BASED
ON THE SCHEDULE.
>> COUNSEL, I'M SORRY TO
INTERRUPT YOU.
CAN I JUST ASK YOU A QUESTION?
AND IT'S KIND OF-- I'M TRYING
TO FIGURE OUT WHAT OUR SORT OF
POTENTIAL VALUE-ADD HERE IS.
AND I UNDERSTAND THAT THE DCA
HERE WAS STUCK WITH VIRTUAL
IMAGING, AND SO THEY HAVE THIS,
THEY-- PART OF THEIR ANALYSIS
IS THAT SOMEHOW THE RENUMBERING
OF THE STATUTE CHANGED THIS
ISSUE AS TO WHETHER THEY'RE
MUTUALLY EXCLUSIVE.
BUT IF YOU KIND OF PUT THAT TO
THE SIDE, FROM YOUR PERSPECTIVE
WHAT'S WRONG WITH-- IS THERE
ANYTHING WRONG WITH THE ANALYSIS
THAT THE DISTRICT COURT ENGAGED
IN HERE?
I MEAN, I'M TRYING TO UNDERSTAND
WHY THIS ISN'T JUST A VERY
STRAIGHTFORWARD ISSUE THAT THEY,
IN MY OPINION, NOTWITHSTANDING,
YOU KNOW, WHETHER I WOULD HAVE
WRITTEN IT THIS EXACT WAY ABOUT
THE, YOU KNOW, THE RENUMBERING
THING.
BUT WHAT IS THERE TO ADD, WHAT
CAN WE DO TO ADD TO THIS?
OR WHAT SHOULD WE DO?
>> YOUR HONOR, I AGREE 100%.
WHAT THE SECOND DISTRICT FOUND
IS WHETHER WE LOOK AT IT UNDER
THE PRISM OF THE NEW STATUTE OR
WE LOOK THIS UNDER THE PRISM OF
THIS COURT'S JURISPRUDENCE UNDER
VIRTUAL AND ORTHOPEDIC
SPECIALISTS, STATE FARM'S POLICY
FORM CLEARLY ELECTS TO LIMIT
REIMBURSEMENT BASED ON A
SCHEDULE.
AND IT DOES IT IN A METHOD THAT
TRACKS THE TEXT OF THE STATUTE.

AS FAR AS WHAT THIS COURT CAN ADD, OBVIOUSLY, OUR POSITION WAS THAT THIS COURT DIDN'T NECESSARILY NEED TO HEAR THIS CASE BECAUSE STATE FARM'S POLICY AS THE SECOND DISTRICT FOUND, THIS POLICY LANGUAGE IS EVEN MORE PRECISE THAN THE LANGUAGE THIS COURT-- AND, THEREFORE, WE THINK IT IS SUBJECT TO AFFIRMANCE JUST BASED ON THE DECISION IN ORTHOPEDIC SPECIALISTS.
BUT I GUESS TO THE EXTENT THIS COURT WANTS TO GIVE VALUE-ADD, WHAT THEY CAN DO IS PROVIDE CLARITY IN THIS AREA.
AS MY OPPONENT IDENTIFIED, WHETHER PARTICULAR INSURERS' POLICIES SATISFY THIS NOTICE.
AND IN PARTICULAR, THE PROVIDERS CONTINUE TO LIT GATE OVER THEIR VIEW WHICH I DON'T BELIEVE IS ACTUALLY THE VIEW IN EITHER VIRTUAL OR ORTHOPEDIC SPECIALISTS THAT THESE ARE TWO ALL-OR-NOTHING, MUTUALLY-EXCLUSIVE APPROACHES.
THE STATUTORY TEXT IS VERY CLEAR, AND IT HAS BEEN CLEAR SINCE 2008 THAT EVERY INSURER IN THE STATE OF FLORIDA MUST, IT'S A MANDATE, MUST IN 1A OF THE STATUTE, MUST ELECT TO LIMIT-- SORRY, TO LIMIT, TO PAY 80% OF REASONABLE AND MEDICALLY-NECESSARY CHARGES.
EVERY INSURER MUST ELECT REASONABLE.
WHAT THE INSURER MAY DO IN SUBSECTION 5.A OF THE CURRENT INSTITUTE IS ELECT A LIMIT ON THAT, A CAP ON THAT BASED ON THE SCHEDULE OF MAXIMUM CHARGES.
SO TO THE EXTENT THAT THERE CONTINUES TO BE SOME UNCERTAINTY IN THIS AREA WHICH HAS LED TO THIS CASE AND TO THE EXTENT THAT THIS COURT MAY WANT TO GET OUT OF THE BUSINESS OF HAVING TO BE

THE LAST WORD ON EVERY POLICY
ELECTION OF THE SCHEDULE IN THE
STATE OF FLORIDA FOR EVERY
INSURER AND ALL OF THEIR
POLICIES, WHAT THIS COURT COULD
BRING TO THE TABLE IS SOME
CLARITY ON THIS QUESTION.
AS FAR AS, AS I SAID, STATE
FARM'S POLICY IS NOT ONLY CLEAR
IN ITS LANGUAGE, IN ITS ADOPTION
OF THE SCHEDULE ITSELF, BUT IT
ALSO TRACKS THE STATUTORY TEXT
BECAUSE, AGAIN, SUBSECTION 1A
PROVIDES THAT EVERY INSURER,
EVERY INSURER WHO ISSUES A
POLICY IN THIS STATE MUST
PROVIDE REIMBURSEMENT FOR
REASONABLE AND
MEDICALLY-NECESSARY MEDICAL
CHARGES.
BUT IT THEN GOES ON TO, IN 1A,
CHOOSE TO FOLLOW THE TEXT AND
INCLUDE A LIMITATION WITHIN THE
LIMITS PROVISIONS OF THE ITS PIP
POLICY TO LIMIT REIMBURSEMENT
BASED ON THE SCHEDULE.
NOW, MY OPPONENT WOULD HAVE YOU
BELIEVE THAT SOMEHOW THE FACT
THAT STATE FARM HAS CONTAINED A
GENERALIZED DEFINITION OF
REASONABLE CHARGES IN ITS
GENERAL DEFINITIONS SECTIONS
WHICH INCLUDES THE 5A FACTORS
AND ALSO REFERS TO THE FEE
SCHEDULE ITSELF SOMEHOW CREATES
AN AMBIGUITY OR RENDERS ITS
ELECTION INVALID, NOTHING COULD
BE FURTHER FROM THE TRUTH.
5A WHICH-- 5A CONTAINS FACTORS
WHICH EVEN AN INSURER ELECTS TO
LIMIT BASED ON THE SCHEDULE
MUST, MUST CONSIDER.
FIRST OF ALL, THE FIRST SENTENCE
OF 5A INCLUDES AN OBLIGATION ON
THE PART OF THE PROVIDER, AND
THAT IS THAT A PROVIDER MAY ONLY
CHARGE A REASONABLE CHARGE.
THAT ISN'T STATE FARM'S
OBLIGATION, THAT IS A PROVIDER'S
OBLIGATION, TO PROVIDE A

REASONABLE CHARGE.
AND THEN IT LAYS FOUR FACTORS THAT IT INSURER MAY, MAY CONSIDER IN ASSESSING THE REASONABLENESS OF THIS CHARGE.
SOME OF THOSE THINGS THAT EVEN AN INSURER WHO ELECTS A SCHEDULE MUST CONSIDER.
SO, FOR EXAMPLE, THE FIRST FACTOR IN STATE FARM'S DEFINITION OF REASONABLE CHARGES AND THE FIRST FACTOR OF THE 5A FACTORS THAT AN INSURER MUST CONSIDER IS USUAL AND CUSTOMARY CHARGES.
AND AN INSURER WHO ELECTS THE SCHEDULE AND GETS A HOSPITAL BILL, THE HOSPITAL BILLS ARE PAYABLE UNDER-- THE LIMIT FOR HOSPITAL BILLS IS PROVIDED UNDER 5A-1A.
AND IT SAYS THE MONTH BILLS ARE PAID AT 75% OF USUAL AND CUSTOMARY PRICING.
SO AN INSURER WHO ELECTS TO LIMIT BASED ON THE SCHEDULE LIKE STATE FARM MUST, AT THE SAME TIME, CONSULT THE USUAL AND CUSTOMARY PRICING BECAUSE THAT'S EXACTLY HOW YOU WOULD PAY FOR THOSE SERVICES.
AND SO IT GOES ON WITH OTHER SECTIONS OF THE SCHEDULE.
MOREOVER, YOU CAN'T DIVORCE GENERAL CLAIMS HANDLING FROM THE ASSESSMENT OF THE CHARGE EVEN FOR A CARRIER WHO LIMITS REIMBURSEMENT UNDER THE SCHEDULE.
BECAUSE, FOR EXAMPLE, ONE OF THE OTHER FACTORS IN 5A IS A CATCH-ALL, IT'S ALL INFORMATION RELEVANT TO THE REASONABLENESS OF THE CHARGE.
SO, FOR EXAMPLE, PUTTING ASIDE WHAT SOURCE THEY MIGHT GO TO TO FIND A CHARGE, AN INSURED HAS TO LOOK AT THE CHARGES AND ASSESS THE REASONABLENESS OF TO MEDICAL SERVICES THAT WERE PROVIDED, THE

DESCRIPTION IN THE MEDICAL NOTES
MATCH UP WITH THE PRICE THAT HAS
BEEN CHARGED OR THE CODE THAT
HAS BEEN ASSIGNED, IS THERE
DUPLICATION, DOES THERE APPEAR
TO BE UNFAIR BUNDLING OF
SERVICES.
SO, ESSENTIALLY, THE
PETITIONER'S VIEW IS WE SHOULD
DIVORCE ALL FACTUAL CLAIMS
HANDLING FROM PRICING.
THAT BILL SHOULD COME IN THE
DOOR, AND WE SHOULD SIMPLY LIMIT
THEM BASED ON THIS SCHEDULE.
AND TO YOUR POINT, THAT SYSTEM
DOES-- TO THE EXTENT THAT THIS
COURT WANTED TO FIND AN
AMBIGUITY IN STATE FARM'S
POLICY, IT'S NOT AMBIGUOUS, IT
FOLLOW THE TEXT OF THE STATUTE.
BUT ALSO AN ELECTION-- AS,
ESSENTIALLY, MY OPPONENT HAS
ARGUED-- BENEFITS THE INSUREDS
OF FLORIDA IN THREE SIGNIFICANT
WAYS.
WHEN A INSURER CAN LIMIT BASED
ON THE SCHEDULE, THAT DECREASES
THE INSURED'S CO-PAY.
WE HAVE MRIs WHERE THIS MRI
PROVIDER ESSENTIALLY SENT BILLS
FOR 400% OF MEDICARE.
STATE FARM LIMITED THOSE TO 200%
OF MEDICARE WHICH ON ITS FACE IS
NOT AN UNGENEROUS AMOUNT.
AND, YES, THE LIMITATION ON THE
SCHEDULE ALLOWED STATE FARM TO
PAY LESS, BUT IT ALSO MEANT THAT
STATE FARM'S INSURED-- BECAUSE
PIP IS A CO-PAYMENT COVERAGE--
THE INSURED'S 20% WAS ALSO LESS.
IN ADDITION, TO THE EXTENT THAT
EACH INCREMENTAL PAYMENT IS
GOING TO BE LESS BASED ON THE
SCHEDULE LIMIT, THAT MEANS THAT
THE INSURED'S BENEFITS ARE
DEPLETED MUCH LESS QUICKLY.
PIP A FINITE COVERAGE THAT
EXHAUSTED EITHER $10,000 OR
$2500 IF THE INSURED DOES NOT
HAVE AN EMERGENCY MEDICAL

CONDITION, SO A LOWER PRICE FOR
EACH INCREMENTAL VISIT MEANS
THAT THE BENEFITS LAST LONGER.
AND FINALLY, IT BENEFITS THE
INSURANCE BECAUSE PURSUANT TO
SUBSECTION 5A-4 THE INSURED
CANNOT BE BALANCE BILLED FOR ANY
OVERAGE BEYOND THE SCHEDULE IF
THE INSURER HAS MADE THE
ELECTION.
IT IS STATE FARM'S POSITION THAT
ITS POLICY LANGUAGE IS QUITE
CLEAR.
IT FOLLOWS THE TEXT OF THE
STATUTE.
EVERY INSURER MUST ELECT
REASONABLE, BUT IT THEN ELECT
ARES TO LIMIT REIMBURSEMENT
BASED ON THE SCHEDULE, AN OPTION
THAT IS AVAILABLE TO IT IN 5A-1.
BY REFERENCE TO FACTORS IN
DEFINITION, THAT CANNOT BE
WRITTEN OUT OF ITS POLICY OR ITS
ADJUSTMENT PROCESS.
VIRTUAL AND ORTHOPEDICS, UNDER
THOSE DECISIONS STATE FARM'S
POLICY WE WOULD NOT REACH ANY
DIFFERENT RESULT.
I DO NOT BELIEVE, ACTUALLY, THAT
EITHER OF THOSE CASES MAKE THESE
MUTUALLY-EXCLUSIVE METHODS.
THERE'S LANGUAGE IN VIRTUAL THAT
PROVIDERS IS HAVE USED TO
EXPLOIT OVER THE YEARS, BUT
THERE IS ALSO LANGUAGE THAT
MAKES IT VERY CLEAR THAT CASE
WAS A NOTICE CASE.
IN FACT, THE COURT REDESIGNED
THE CERTIFIED QUESTION IN THAT
CASE TO ADDRESS THE FACT-- THEY
CHANGED IT FROM CAN THE INSURER
DO THIS RATHER THAN THAT TO A
CAN AN INSURER USE THE SCHEDULE
AS A LIMIT WITHOUT SAYING SO AND
PROVIDING NOTICE IN ITS POLICY.
SO, FIRST OF ALL, VIRTUAL WAS A
NOTICE CASE.
SECONDLY, THERE IS LANGUAGE IN
THAT POLICY THAT THEY DON'T USE
THE WORDS MUTUALLY-EXCLUSIVE,

ALL OR NOTHING.
THAT IS WHAT HAS BEEN WRITTEN
INTO IT THROUGH LITIGATION.
AND IN ORTHOPEDIC SPECIALISTS,
THIS COURT WAS VERY CHEER THAT
REASONABLENESS, THE MANDATE OF
1A, CANNOT BE DISCLAIMED, THAT
AN INSURER MUST PAY REASONABLE,
BUT THAT THEY CAN CHOOSE TO
LIMIT THAT REIMBURSEMENT BASED
ON THE SCHEDULE OF MAXIMUM
CHARGES.
AND, INDEED, THIS COURT REJECTED
THE ARGUMENT THAT SOMEHOW THE
INSURER'S INCLUSION OF THE 5A
FACTORS TO ASSESS REASONABLENESS
I SOMEHOW DEFEATED THAT
ELECTION, REALIZING THAT THOSE
WERE THINGS THAT NEEDED TO BE
CONSIDERED AS PART OF THE BASIC
ADJUSTMENT PROCESS.
IT'S STATE FARM'S POSITION THAT
ITS POLICY LANGUAGE CLEARLY AND
UP EQUIVOCALLY ELECTS TO LIMIT
REIMBURSEMENT BASED ON THE
SCHEDULE.
THERE IS NO WAY THAT A PROVIDER
WHO READS ITS POLICY LANGUAGE
AND SUBMITS A BILL IN EXCESS OF
THE AMOUNT PROVIDED IN THE
SCHEDULE OF MAXIMUM CHARGES
COULD POSSIBLY BELIEVE THAT
THEY'RE GOING TO GET A PENNY
MORE THAN THE SCHEDULE.
THE POLICY SAYS BUT IN NO EVENT
WILL WE PAY MORE THAN 80% OF THE
FOLLOWING NO-FAULT ACTS SCHEDULE
OF MAXIMUM CHARGES.
IF THERE ARE NO OTHER
QUESTIONS--
>> I GUESS THERE ARE NO
QUESTIONS.
WE WILL GO TO REBUTTAL.
>> THANK YOU, YOUR HONORS.
LET ME ADDRESS SOME OF THE
COMMENTS MY OPPONENT MADE.
SHE SAID THAT THE FEE SCHEDULE
SHOULD BE USED AS A CAP.
THEY'RE NOT A CAP.
IN FACT, 5A-2 MAKES IT EXTREMELY

CLEAR THAT IT IS THE AMOUNT MUST
BE PAID.
THE FEE SCHEDULE AMOUNT MUST BE
PAID OR THE 2007 AMOUNT OF THE
FEE SCHEDULE, WHICHEVER'S
GREATER.
IT'S NOT A CAP.
IT'S THE MINIMUM, AS THE SECOND
DISTRICT HELD IN NATIONWIDE V.
AFO.
CO-PAYMENT, COUNSEL CLAIMED
THAT, OH, THIS IS BENEFITING
INSURED BECAUSE WHEN WE USE THE
FEE SCHEDULE METHOD, IT ALSO
REDUCES THE CO-PAYMENT.
5A-4 IN THE PIP STATUTE
SPECIFICALLY SAYS THAT THE FEE
SCHEDULING DOES NOT APPLY TO THE
TO CO-PAYMENT.
AND, JUSTICE CANADY, YOU JUST
HELD IN UNANIMOUS COURT THAT NO
PORTION OF A MEDICAL BILL THAT
THE INSURED HIMSELF SOLELY
RESPONSIBLE FOR IS COVERED BY
THE SCHEDULE OF MAXIMUM CHARGES.
IN THAT CASE IT WAS THE
DEDUCTIBLE.
THE FEE SCHEDULES ALSO DO NOT
PROVIDE A CO-PAYMENT OR
CO-INSURANCE, WHICH IS EXACTLY
WHAT THE STATUTE SAYS.
WE AGREE THAT STATE FARM'S
POLICY IS NOT AMBIGUOUS.
IT'S CRYSTAL CLEAR THAT THEY
WANT TO ADOPT BOTH METHODS AT
THE SAME TIME.
IN FACT, THE SECOND DCA
SPECIFICALLY HELD THAT THEY
TRACK BOTH METHODS.
STATE FARM NEVER ONCE TOOK THAT
POSITION IN THIS LITIGATION.
STATE FARM ALWAYS TOOK THE
POSITION THAT THEY ELECTED ONLY
THE FEE SCHEDULE METHOD, THE
SCHEDULE OF MAXIMUM CHARGES.
BUT AGAIN, THE PLAIN LANGUAGE OF
THEIR, OF THEIR POLICY SAYS THAT
THEY WILL LIMIT THEIR
REIMBURSEMENTS TO REASONABLE
CHARGES, AND THEY'LL ALSO LIMIT

REIMBURSEMENT TO THE SCHEDULE OF MAXIMUM CHARGES.
WHEN YOU LOOK AT THAT STATEMENT, THE TERM REASONABLE CHARGES IS A DEFINED TERM.
AND IF YOU LOOK AT THEIR EXPLANATION OF BENEFITS, EVERY ONE OF THE 19 CLAIMS IN THIS CASE, EVERY ONE OF THEM HAS AN EXPLANATION OF BENEFITS FORM WHICH IS ATTACHED TO OUR STIPULATION, AND THEY'RE AT 272-330 OF THE RECORD.
AND THEY ALL EXPLAIN THAT STATE FARM USED THE FACT-DEPENDENT METHOD TO PAY FOR THESE BILLS.
THEY DIDN'T EVEN RELY ON THE SCHEDULE OF MAXIMUM CHARGES FOR THIS BILL.
>> COUNSEL, IT JUST SEEMS LIKE A STRANGE ARGUMENT FOR YOU TO SAY THAT A COMPANY BASICALLY PARROTS THE STATUTE WHICH THE STATUTE ITSELF SAYS HERE'S WHAT YOU HAVE TO DO, HERE'S WHAT YOU MAY DO.
AND THEN IF THE POLICY SAYS HERE'S WHAT WE HAVE TO DO AND HERE'S WHAT WE MAY DO, FOR US TO TURN AROUND AND SAY THAT THAT'S ILLEGAL, THAT JUST DOESN'T SEEM TO MAKE ANY SENSE.
>> EXCEPT THAT THAT'S NOT WHAT THE STATUTE SAYS, YOUR HONOR.
THEY DON'T PARROT THE STATUTE, THAT'S THE PROBLEM.
THEY'RE SAYING THAT THEY WILL PAY NO MORE THAN THE SCHEDULE OF MAXIMUM CHARGES.
IF I OFFER TO CUT YOUR GRASS FOR $25 AND YOU SAY, DAVID, GO AHEAD AND CUT MY GRASS FOR $25 AND I'LL PAY YOU NO MORE THAN REASONABLE CHARGE, BUT IN NO EVENT WILL I PAY YOU MORE THAN $25, WE'RE NOT SAYING THE SAME THING.
YOU'RE TELLING ME THAT YOU'RE GOING TO PAY LESS.
STATE FARM'S NOT ALLOWED TO PAY LESS.

IF THEY ELECT THE FEE SCHEDULE METHOD, THEY SHOULD BE PAYING THE FEE SCHEDULE AMOUNT.
THEY ARE NOT.
THEY'RE PAYING WHATEVER THEY WANT TO A PAY.
THAT LEADS TO UNPREDICTABILITY AND AN INSURED PATIENT AND THEIR DOCTOR NEED TO KNOW HOW MUCH EACH ONE IS RESPONSIBLE FOR THE BILL.
THE INSURED NEEDS TO KNOW HOW MUCH ARE THEY GOING TO HAVE TO PAY.
AM I GOING TO BE BALANCE BILLED.
HOW MUCH MORE COVERAGE DO I HAVE HAVE LEFT.
>> COUNSEL?
YOU'RE NOW IN OVERTIME, BUT IF YOU-- I'LL GIVE YOU ANOTHER 30 SECONDS TO SUM UP.
>> I APPRECIATE THAT, JUSTICE CANADY.
I THINK THE ISSUES ARE VERY WELL BRIEFED HERE, SO I'M GOING TO HAVE TO FALL BACK ON MY BRIEFS.
FOR THE REASONS EXPRESSED IN THE BRIEFS AND TODAY, WE REQUEST THAT YOU ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE AND REVERSE THE SECOND COURT OF APPEAL ESPECIALLY ON THE ISSUE THAT THEY CAN'T DISCLAIM THE FACT-DEPENDENT METHOD.
OF COURSE THEY CAN.
AND REINSTATE THE TRIAL COURT'S JUDGMENT.
THANK YOU SO MUCH FOR YOUR TIME, I APPRECIATE IT.
>> WELL, WE THANK YOU BOTH FOR YOUR ARGUMENTS.
THE COURT WILL NOW TAKE A RECESS OF ABOUT TEN MINUTES.