

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> WE TURN NOW TO THE THIRD CASE
ON THE DOCKET, AMERICAN SOUTHERN
HOME INSURANCE COMPANY VERSUS
LENTINI.
>> I'M RAOUL CANTERO FOR
AMERICAN SOUTH HOME INSURANCE
COMPANY.
THE CAN COLLECT VEHICLES CAN
LIMIT COVERAGE WITH ACCIDENTS
OCCURRING WITHIN THAT VEHICLE.
WE SUBMIT THEY CAN.
WE ASKED THE COURT TO APPROVE
THE MARTINS DECISION THAT THE
SECOND DCA DECISION IN MARTIN TO
QUASH THE DECISION IN THIS CASE.
LET ME EXPLAIN THE POLICY.
1992 CORVETTE, THERE WAS
\$300,000 IN UM COVERAGE.
ON PAGE 8 OF THE APPENDIX THERE
IS POLICY OVERVIEWED, EXPLAINS
TO THE INSURED EXACTLY WHAT IS
COVERED AND HOW THE POLICY IS
LIMITED.
IT IS A SPECIALTY POLICY
SPECIFICALLY DESIGNED FOR
COLLECTOR VEHICLES.
ON THIS CAR, MILEAGE WAS LIMITED
TO 1000-MILES PER YEAR.
IT COULD NOT BE THE PRIMARY
VEHICLE USED BY THE INSURED.
THE POLICY SPECIFICALLY
REQUIRED, ON PAGE 56 OF THE
APPENDIX, THAT THE INSURED HAVE
A PRIMARY VEHICLE FOR EVERYDAY
USE.
THE CAR CANNOT BE USED AS
SUBSTITUTE FOR THAT PRIMARY
VEHICLE.
IT WAS, IT ALSO HAD TO BE STORED
IN A FULLY ENCLOSED AND LOCKABLE
PERMANENT STRUCTURE.
AND COULD NOT BE THE PRINCIPLE
MEANS OF TRANSPORTATION.
>> CAN I ASK YOU A QUESTION?
WHAT IS UNINSURED MOTORIST
COVERAGE MEANS AS USED IN THE

STATUTE?

>> UNINSURED MOTORIST COVERAGE MEANS WHEN SOMEONE IS INJURED BY A TORTFEASOR WHO DOES NOT HAVE INSURANCE OR WHOSE INSURANCE IS NOT SUFFICIENT TO COVER THE DAMAGES, MEANING UNDERINSURED, IT WOULD COVER THE DAMAGES FOR THAT.

>> THAT'S TRUE IF THE PERSON IS INJURED IN A DIFFERENT CAR OR INJURED BY A PEDESTRIAN IS UNINSURED, CORRECT?

>> NO THE NORMAL CASE, YES.

>> THAT IS WHAT IT MEANS, RIGHT?

>> YES.

>> IF THAT IS WHAT IT MEANS AND THE STATUTE REQUIRES THAT, AND THAT IS THE SCOPE OF WHAT UNINSURED MOTORIST COVERAGE IS, DOESN'T EVERY POLICY THAT IS AUTOMOBILE INSURANCE POLICY, IN OTHER WORDS ANY POLICY HAVE TO INCLUDE THOSE, INCORPORATE THOSE THINGS?

UNLESS SPECIFICALLY WAIVED UNDER SUBSECTION 9?

>> THAT LEADS DIRECTLY TO THE CASE.

THE STATUTE ITSELF DOES NOT REQUIRE UNDERINSURED MOTORIST COVERAGE TRAVEL WITH THE INSURED.

>> I ASKED YOU THAT QUESTION. I AM FOCUSED ON THE STATUTE. THE STATUTE USE AS TERM. USES UNINSURED MOTORIST COVERAGE.

>> STATUTE SAYS EVERY POLICY PROVIDED IN FLORIDA HAS TO INCLUDE UNINSURED MOTORIST COVERAGE.

>> RIGHT.

>> IT DOES NOT SAY THAT THE COVERAGE HAS TO INCLUDE OTHER VEHICLES.

IT DOESN'T MENTION THAT AT ALL.

>> SO WHAT IS YOUR BEST UNDERSTANDING OF WHAT THAT TERM MEANS?

TO ME THAT, TO ME AT LEAST,
THAT'S A DISPOSITIVE QUESTION
OF--

>> YES.

>> POLICY, ANY AUTOMOBILE POLICY
HAS TO COVER WHAT THE STATUTE
REQUIRES.

>> THE STATUTE JUST, IS SILENT
WHETHER IT REQUIRES, WHEN YOU'RE
A PASSENGER IN THE VEHICLE, WHEN
YOU'RE DRIVER IN VEHICLE OR WERE
IN ANOTHER VEHICLE.

>> LET ME ASK YOU THIS, DOES
SUBSECTION 9 TELL US WHAT IT
MEANS?

IN OTHER WORDS SUBSECTION 9 SAYS
YOU CAN EXCLUDE THESE THINGS
UNDER CERTAIN CONDITIONS.

YOUR POINT IS YOU CAN DO IT
UNDER OTHER CONDITIONS TOO, IF
IT MEANS YOU CAN EXCLUDE UNDER
THESE THINGS, DOESN'T IT HAVE TO
INCLUDE THOSE THINGS UNLESS
EXCLUDED?

>> THAT IS INTERESTING POINT
HERE, YOUR HONOR, THE STATUTE,
SECTION 9, THE ONLY POSSIBLE
PROVISION THAT WOULD APPLY IS
9-D.

>> I THINK EVERYONE AGREES WITH
THAT.

>> 9-D SAYS, I WON'T READ WHOLE
THING UNINSURED MOTORIST
COVERAGE WAS NOT PURCHASED.
DEPENDS ON YOUR READING OF NOT
PURCHASED.

BUT IN THE DOUGLAS CASE THE
INSURED DID NOT PURCHASE ANY AT
ALL.

>> RIGHT.

>> WE, OUR INSURANCE POLICY DOES
NOT CONTEMPLATE THAT THE INSURED
WOULD NOT ARE ANY AT ALL.

IT CONTEMPLATES THAT THEY WOULD
HAVE A SEPARATE POLICY WITH
UNINSURED MOTORIST COVERAGE.

>> IF YOU ANSWER MY QUESTION
THOUGH.

I WANT YOU TO GET THAT, PLEASE
GET TO THE POINT YOU WERE

MAKING, DO YOU AGREE WITH ME AT LEAST UNINSURED MOTORIST COVERAGE USED IN THE STATUTE HAS TO INCLUDE THOSE THINGS WHICH SUBSECTION 9 ALLOWS TO BE EXCLUDED?

>> GENERALLY.

YES.

EXCEPT--

>> IF I TAKE THAT ONE STEP FURTHER, IF WE WERE TO FIND ONE OF THOSE THINGS IN SUBSECTION 9 WAS SUBJECT TO HERE AND, AND FORM THAT IS SUPPOSED TO BE USED BY SUBSECTION 9 WASN'T IN FACT USED, THEN THAT WOULD INCLUDE, UNINSURED MOTORIST COVERAGE WOULD COVER THAT AND THIS POLICY WOULD BE CONTRARY TO THAT.

>>> NOT NECESSARILY.

>> TELL ME WHERE I'M WRONG THERE.

>> THERE ARE VARIOUS ANSWERS TO THAT I KNOW THAT IS REALLY THE CRUX OF THE ISSUE HERE. IT IS GOOD WE'RE GETTING INTO IT I AM MILD.

NUMBER ONE, IT CAN'T BE LOST ON THE COURT THAT IN MARTIN THE SECOND DCA HAD THIS ISSUE. DECIDED THAT YOU DIDN'T NEED TO PROVIDE THE COMPREHENSIVE COVERAGE.

THAT CASE HAS STOOD FOR 21 YEARS UNTIL THE LENTINI CASE FROM THE FIFTH DCA.

INACTIONS BY THE LEGISLATURE FOR THAT PERIOD, IN INTERPRETATION OF THE STATUTE WHICH THEY COULD HAVE EASILY FIXED, IS A DETERMINATION BY THE LEGISLATURE THEY'RE OKAY WITH THAT INTERPRETATION.

THAT THEY DON'T NEED TO CHANGE IT.

AND SO THIS COURT HAS SAID IN MALOU, OTHER CASES THAT WE'VE CITED THAT THE LEGISLATURE'S INACTIVITY AFTER A CASE INTERPRETING A STATUTE IS

EVIDENCE THAT THAT'S A CORRECT
STATUTORY INTERPRETATION AND NO
REASON FOR THE COURT--

>> IT IS TRUE OUR CASES HAVE
TALKED ABOUT THAT.

I HAVE A LITTLE TROUBLE
UNDERSTANDING THE CONCEPT OF
ACTION BY INACTION, IN THE
CONTEXT OF THE LEGISLATURE WHERE
IT CAN BE THE CASE ONE PERSON IN
THE LEGISLATURE WILL HAVE POWER
TO STOP ACTION.

THAT IS THE WAY THE PROCESS
WORKS.

SO TO DRAW CONCLUSION ABOUT THAT
WHICH THE LEGISLATURE ORIGINALLY
INTENDED HAS TO BE ARGUMENT,
SEEMS TO BE PROBLEMATIC.

HOW DO YOU RESPOND TO THAT?

>> YOUR HONOR, UNFORTUNATE FOR
ME WE HAVE FORMER STATE
REPRESENTATIVE ON THE COURT THAT
KNOWS THE WORKINGS BUT THE CASES
FROM THIS COURT DON'T MAKE THAT
DISTINCTION.

THEY HAVE, THERE ARE MORE THAN
ONE CASE THAT SAYS THAT
LEGISLATIVE INACTION IS EVIDENCE
THAT OF ACQUIESCENCE WITH THE
DECISION.

SO THE MAJORITY OF THE COURT IN
OTHER CASES HAS NOT SAID, THAT
WELL, SOMEBODY HAS THE ABILITY
TO STOP IT IN ITS TRACKS IT IS
NOT REALLY EVIDENCE.

THEY SAID IT IS EVIDENCE.

>> LET ME SHIFT TO ANOTHER
QUESTION.

THIS MAY HAVE NO RELEVANCE TO
ANY OF THE ISSUES HERE.

AM I CORRECT IN UNDERSTANDING
THAT THE POLICY AT ISSUE HERE
WAS A STACKED POLICY?

>> YES.

DID SAY STACKED BUT THE STACKED,
IN THE CONTEXT OF THIS POLICY
WAS STACKED IN THE EVENT THAT
THE INSURED OBTAINED ANOTHER
COLLECTOR VEHICLE.

>> WHERE IS THAT WRITTEN?

>> IT ISN'T WRITTEN ANYWHERE.
>> THAT IS JUST YOUR POSITION.
WHAT WAS STOCKED ORDINARILY
MEAN?
>> I'M SORRY.
>> WHAT WOULD STACKED ORDINARILY
MEAN?
>> STACKED WITH OTHER INSURANCE.
>> THERE IS A SPECIAL, SPECIAL
KIND OF STACKING HERE?
>> YES.
>> IF IT HAD THE REGULAR KIND OF
STACKING THAT WOULD NOT BE
CONSISTENT WITH YOUR POSITION,
RIGHT?
>> THE, YES.
YES, IT IS CLEAR THIS IS A
SPECIAL, STAND-ALONE POLICIES.
IT IS NOT ONE OF THOSE POLICIES
THAT YOU HAVE DIFFERENT OPTIONS
WHAT TO DO.
IF YOU WANT COMPREHENSIVE
COVERAGE YOU GET A FULL POLICY
AND CHARGED A FULL PREMIUM,
INCLUDING PREMIUM FOR UNINSURED
MOTORISTS BENEFITS.
THE CONSEQUENCE RULING THIS IS
VOID IS THAT INSUREDS, SOMEBODY
WITH A COLLECTOR VEHICLE WON'T
BE ABLE TO GET CHEAP INSURANCE
ON A COLLECTOR VEHICLE THAT
THEY'RE ONLY GOING TO DRIVE AT
MOST, 1000 MILES A YEAR.
>> COULDN'T THEY DO THAT, IF THE
INSURANCE COMPANY JUST HAD THE
CONSENT FORMED SIGNED AS TO THAT
ISSUE?
>> WELL THIS POLICY HAS MORE
LIMITATIONS THAN JUST THAT
ISSUE.
IT HAS LIABILITY LIMITATIONS AS
WELL.
>> RIGHT.
BUT ISN'T THE ISSUE HERE YOU
HAVE TO HAVE CONSENT IF YOU
DON'T WANT UNINSURED MOTOR
VEHICLE COVERAGE, YOU HAVE TO
SPECIFICALLY CONSENT IN WRITING
THAT YOU DECLINE THE COVERAGE?
>> YES, IF THAT PROVISION

APPLIES WHICH WE DON'T THINK IT DOES, DEPENDING HOW YOU READ THE, WHICH, FOR WHICH UNINSURED MOTORIST COVERAGE WAS NOT PURCHASED.

>> BUT IN THIS DECLARATION IT SPECIFICALLY INCLUDES UNINSURED MOTORIST COVERAGE, DOES IT NOT?

>> YES, IT DOES HAVE UNINSURED MOTORIST COVERAGE FOR THOSE DRIVING VEHICLE, PASSENGERS IN THE VEHICLE, NO QUESTION, YES. I THINK JUSTICE HAD A QUESTION.

>> WE'RE TRYING TO FIGURE OUT WHAT UNINSURED MOTORIST COVERAGE MEANS UNDER THE STATUTE.

SOUNDS LIKE FROM SOME OF THE QUESTIONS AND ANSWERS HERE, THERE IS A SUGGESTION THAT WE HAVE TO SORT OF INFER WHAT IT MEANS LOOKING AT THIS SUBSECTION 9.

IN THE ABSENCE OF THAT, THERE MIGHT BE MORE LEEWAY TO KIND OF, TO TRY TO FIGURE OUT OTHER WAYS FIGURING OUT WHAT THE TERM MEANS.

CAN YOU KIND OF WALK US THROUGH THE EVOLUTION OF THE STATUTE? BECAUSE I'M, I'M TRYING TO FIGURE OUT, IF WE DON'T, SORT OF DEFINE UNINSURED MOTORIST COVERAGE RELATED TO SECTION 9, I'M TRYING TO UNDERSTAND HOW ELSE WE WOULD FIGURE THAT OUT? WHAT THE TERM MEANS?

>> YOUR HONOR WE START WITH THIS COURT'S DECISION IN MULLIS. IN MULLIS THAT THE STATUTE ITSELF DOESN'T SAY THE UM COVERAGE DOESN'T TRAVEL WITH CLASS ONE INSURED.

THE ISSUE IN THE CASE WHETHER IT CAN BE LIMITED TO THE CAR OR FAMILY POLICY.

WE DISTINGUISH MULLIS ITSELF TALKS ABOUT FAMILY PROTECTION. THAT IS THE NORMAL POLICY YOU GET WITH COMPREHENSIVE COVERAGE. BUT IN MULLIS FOR FIRST TIME AN

UNINSURED MOTORIST BENEFIT HAS TO COVER NOT JUST WHEN A PASSENGER IN THE CAR BUT ANYWHERE THAT YOU ARE BECAUSE IT IS DESIGNED TO PROTECT, JUST AS IF YOU'RE LIABLE UNDER THE INSURANCE POLICY, EVEN IF DRIVING ANOTHER CAR, YOU HAVE TO BE PROTECTED FROM, FROM DAMAGES EVEN IF YOU'RE NOT DRIVING ANOTHER CAR.

SO THAT WAS NOT IN THE STATUTE. THE COURT INTERPRETED THE STATUTE THAT WAY.

AFTER MULLIS IS WHEN SUBSECTION 9 WAS ENACTED AND UNDER THE, THE CASES THAT HAVE INTERPRETED INCLUDING THIS COURT'S CASE IN HARRINGTON, NINE IS ESSENTIALLY A STACKING PROVISION, ALLOWED STACKING OF UNINSURED MOTORIST COVERAGE.

WHAT STACKING MEANS YOU CAN SAY THE LIMITS ON MY UNINSURED MOTORIST COVERAGE ARE NOT JUST, FOR EXAMPLE, THE \$300,000 BUT ALSO, WHATEVER THE LIMITS ARE ON OTHER CARS THAT I OWN FOR WHICH I HAVE UNINSURED MOTORIST COVERAGE.

IF I HAD 300,000 ON ANOTHER CAR IN MY HOUSE, THE LIMITS ARE \$600,000, OR I CAN BUY UNSTACKED FOR CHEAPER, WHICH THE LIMITS REMAIN \$300,000.

SO THE CASES SAID THIS 9 PROVISION IS ESSENTIALLY A STACKING PROVISION THAT ALLOWED FOR THE CHOICES OF STACKING OR NOT.

>> BUT DOES THE, I MEAN, IS THE EXCLUSION THAT WE'RE TALKING ABOUT HERE, IS THAT ESSENTIALLY AN ANTI-STACKING PROVISION? I MEAN IS THAT FUNCTIONALLY WHAT IT IS DOING?

>> THE COURT, I DON'T THINK HAS INTERPRETED IT AS AN ANTI-STACKING PROVISION. IN THE DOUGLAS CASE, THERE WAS A

BIG DISCUSSION BETWEEN THE MAJORITY AND THE THREE DISSENTERS, ABOUT WHAT KIND OF A PROVISION IT WAS, BECAUSE THE DISSENTERS SAID, LOOK, THIS IS STACKING PROVISION AND NOW YOU'RE READING IT AS IF, IN THE MIDDLE OF A THROUGH E THAT ARE ABOUT STACKING NOW YOU HAVE THIS D THAT YOU SAY IS MORE THAN JUST ABOUT STACKING BUT EVEN IF IT IS ABOUT MORE THAN STACKING AND JUST, SAYS YOU HAVE TO GET THE CONSENT, THE WAY WE READ IT IS, IF YOU HAVE TO GET THAT CONSENT, OR YOU CAN GET THAT CONSENT WHERE THEY HAVE NOT PURCHASED ANY, THERE IS A CAR WHERE THEY HAVEN'T PURCHASED ANY UNINSURED MOTORIST COVERAGE AS HAPPENED IN THE DOUGLAS CASE.

AND HERE WE REQUIRE THE INSURED TO HAVE UNINSURED, ANOTHER CAR WITH, WHICH IS THEIR PRIMARY VEHICLE, WHICH WOULD THEN HAVE ALL THE LIABILITY AND ALL THE UM COVERAGE.

SO THAT'S WHY, OUR ARGUMENT IS THIS DOES NOT UPSET ANYTHING THAT MULLIS INTENDED TO DO PROTECTING LAST ONE INSURED WHICH ARE THE INSURED AND THE FAMILY OF THE INSURED.

PROTECTS CLASS ONE INSURED NO MATTER WHERE THEY ARE BECAUSE THEY WILL STILL HAVE A FAMILY VEHICLE WITH FAMILY PROTECTION ON THAT CAR.

THIS IS SUPPOSED TO BE A VERY NARROW, VERY LIMITED POLICY WITH COMMENSURATE VERY CHEAP PREMIUMS FOR THAT POLICY WHICH WERE \$58 FOR THE YEAR IN THIS CASE.

>> I DON'T THINK THERE IS ANY QUESTION ABOUT WHAT THE POLICY WAS TRYING TO DO.

I THINK THE CHALLENGE IS IS THAT THE STATUTE SAYS, ANY, ANY INSURANCE POLICY AND THE CHALLENGE THAT I THINK WE'RE

HAVING IS, IS THIS SUBSECTION 9
A DE FACTO SORT OF COMPREHENSIVE
REGULATION OF WHAT UNINSURED
MOTORIST COVERAGE HAS TO MEANS
IN THE ABSENCE OF SOMEONE GOING
THROUGH-- THAT THIS IS A
LIMITED, SORT OF MENU OF
EXCLUSIONS THAT ARE AVAILABLE
AND IF THE CUSTOMER AND
INSURANCE COMPANY WANT TO
BARGAIN FOR THAT, IT HAS TO BE
PURSUANT TO THE SPECIFIC FORM
AND WITH THE CONSENT AND
EVERYTHING.

I THINK THAT IS, I THINK THAT IS
THE STRUGGLE.

THE STRUGGLE IS NOT WHAT THE
POLICY SAID OR THE BARGAIN WAS,
THE QUESTION IS DOES THE LAW
TRUMP THAT.

>> RIGHT.

>> YOU'RE COMING, YOUR ARGUMENT
I GUESS IS 9 ISN'T WHAT I HAVE
JUST DESCRIBED.

I WANT TO SEE WHAT THE BEST CASE
FOR THAT WOULD BE?

>> SO I CAN'T ARGUE THAT IT IS A
STACKING PROVISION BECAUSE IT
JUST DOESN'T SEEM TO BE A
STACKING PROVISION BY THE PLAIN
LANGUAGE OF THAT, BUT WE'RE
SAYING IT DOESN'T APPLY IN OUR
CASE.

WE'RE ALSO SAYING, DESPITE THE
CHIEF JUSTICE'S RESISTANCE THAT
MARTIN HAS BEEN OUT THERE FOR 21
YEARS AND FOR 21 YEARS IT WAS
THE LAW IN FLORIDA BECAUSE THERE
WAS NO CONTRARY DECISION AND
THEREFORE ALL THE COURTS IN
FLORIDA HAD TO APPLY IT AND THE
LEGISLATURE, FOR 21 YEARS NEVER
HAD A PROBLEM WITH IT, AND NEVER
FIXED THAT.

SO THE LEGISLATURE SEEMS
COMFORTABLE WITH HAVING
COLLECTOR VEHICLE POLICIES, JUST
LIKE BUSINESS POLICIES THAT
LIMIT UM COVERAGE AS WELL.

WE CITED STERLING AND THE WEISS

CASE BOTH UNINSURED MOTORIST PROVISIONS.

BOTH WERE BUSINESSES POLICY, SAID NO, YOU CAN LIMIT A BUSINESS POLICY, THEY SEEMED COMFORTABLE WITH THAT CONCEPT AND HAVEN'T DEEMED IT NECESSARY TO CHANGE THE LAW.

>> AT ONE POINT IN YOUR BRIEF SEEMS LIKE THERE IS A LOT OF POLICY ARGUMENTS YOU'RE MAKING, JUST BUSINESS SORT OF COMMON SENSE ASPECT OF THIS BUT YOU DO SAY A COUPLE TIMES IN YOUR BRIEFING THAT YOUR POSITION BEST ACCORDS WITH THE TEXT.

AND IT DOESN'T SEEM TO ME THAT YOU KNOW, MARTIN DOESN'T SEEM LIKE A PARTICULARLY TEXT-BASED DECISION.

I'M JUST, CAN YOU GIVE US YOUR BEST ARGUMENT FOR WHY IF WE'RE FOCUSED ON THE TEXT YOU SHOULD WIN?

>> WELL, BECAUSE NUMBER THE REQUIREMENT THAT ALL, WE FULFILLED THE REQUIREMENT OF UNINSURED MOTORIST.

THERE IS NOTHING IN THE STATUTE THAT REQUIRES IT TO FOLLOW CLASS ONE INSUREDS.

THAT WAS A DECISION BY THE COURT IN MULLIS WE THINK IT IS FINE FOR FAMILY VEHICLES BUT DOESN'T NEED TO BE APPLIED IN THIS CONTEXT.

>> IS THERE ANYTHING IN THE TEXT THAT SUPPORTS THAT DISTINCTION?

>> IT DOESN'T, THE TEXT DOESN'T SUPPORT A CLASS ONE---

>> WE GET THAT LAW.

THAT IS OUR LAW, RIGHT?

MULLIS IS OUR LAW?

>> CORRECT.

>> IS THERE ANY ANYTHING IN THE TEXT THAT SUPPORT THE DISTINCTION YOU TRY TO IMPOSE IN MULLIS?

WHAT IS IN THE TEX SUPPORTS THE DISTINCTION YOU'RE MAKING.

>> THE TEXT DOESN'T REQUIRE UNINSURED MOTORIST COVERAGE TO FOLLOW THE UNINSURED. DIDN'T SAY ANYTHING ABOUT THAT.

>> THAT IS TRUE FOR EVERY POLICY AS IT WOULD BE TRUE FOR THIS. SO I DON'T UNDERSTAND, YOU'RE SAYING THAT ONLY APPLIES THERE, DOESN'T APPLY HERE. WHAT IN THE TEXT SUPPORTS IT APPLYING THERE BUT DOESN'T APPLY HERE?

>> NO. I'M SAYING THAT THE STATUTE REQUIRES THAT ALL CARS IN FLORIDA, GARAGED IN FLORIDA, WITH POLICIES IN FLORIDA, HAVE UNINSURED MOTORIST COVERAGE AND WE DO THAT HAVE.

>> YOU'RE SAYING IT DOESN'T BECAUSE IT'S A SPECIALTY CAR. IT IS NOT APPROPRIATE IN THE POLICY ITSELF SAYS, THERE IS NO COVERAGE OTHER THAN FOR THE CORVETTE, CORRECT?

>> YES.

>> IT DOESN'T APPLY TO ANY OTHER VEHICLES YOU MAY HAVE, BECAUSE THIS IS SHORT PREMIUM, SMALL PREMIUM FOR A COLLECTOR CAR, THEREFORE IT DOESN'T GO WITH THAT OTHER CAR, IF THERE IS ANOTHER VEHICLE, IF THERE IS AN ACCIDENT?

>> YES. I'M SAY THERE IS NOTHING IN THE STATUTE PROHIBITS IT, AUTHORIZES IT, IT IS SILENT ON THAT. I WILL--

>> DO YOU SAY MULLIS IS WRONG?

>> IT SHOULD BE PROVIDED FOR FAMILY VEHICLE PROTECTION WHICH IS OVERWHELMING NUMBER OF POLICIES IN FLORIDA.

>> WHAT IN THE TEXT SO CONFINES IT? THAT IS MY QUESTION.

>> THERE IS NOTHING IN THE TEXT THAT SUPPORTS THE MULLIS IN THE FIRST PLACE.

>> OH, SO MAYBE YOU THINK MULLIT IS WRONG?

>> IT IS FIND FOR FAMILY VEHICLE PROTECTION.

>> BUT NOT IN THIS CASE.

>> IF THE STATUTE DOESN'T DRAW THOSE DISTINCTIONS, WHY ISN'T MULLIS WRONG?

>> MULLIS WAS NOT BASED, AS I READ MULLIS I DON'T KNOW HOW IT IS CONNECTED TO THE TEXT.

>> YOU MAY FIND MULLIS WRONG BUT YOU DON'T HAVE TO RULE IN MY FAVOR.

THAT IS WHAT I'M SAYING.

I WILL SAVE WHATEVER TIME REMAINS FOR REBUTTAL.

>> I WILL AFFORD YOU TWO MINUTES.

>> THANK YOU, YOUR HONOR, APPRECIATE IT.

>> MAY IT PLEASE THE COURT, JOHN BOGDANOFF FOR THE LENTINI ESTATE.

THIS COURT IS ASKED TO RESOLVE THE CONFLICT TO DETERMINE WHETHER MARTIN CORRECTLY ADOPTED, INSURED CREATED IMPOSED VERSION OF LIMITED UNINSURED MOTORIST FOR A CLASS ONE INSURED WHO OWNS A SPECIALTY MOTOR VEHICLE.

THEY DID IT ON THE BASIS THAT, THERE WERE POLICY CONSIDERATIONS, PRIMARILY THAT WARRANTED THAT RECOGNIZING THAT TYPE OF EXCEPTION.

AND I BELIEVE AS JUSTICE MUNIZ HAS INDICATED, THE WORDING OF THE STATUTE, THE UNINSURED MOTORIST STATUTE IS CLEAR, IT DOES ENCOMPASS ANY MOTOR VEHICLE.

A SPECIALTY VEHICLE IS ANY MOTOR VEHICLE.

THERE IS NO EXCEPTION IN THE STATUTE.

>> THAT IS THE EASY PART OF THE QUESTION.

THE HARD PART, CLEARLY POLICY

CLEARLY COVERS IT, I CAN ONLY
SPEAK FOR MYSELF.

THE HARD PART IS WHAT IS
UNINSURED MOTORIST COVERAGE.
THAT IS THE STRUGGLE THAT I
HEAR.

I DON'T KNOW THE ANSWER, BUT AT
LEAST IT SEEMS TO ME AT LEAST
HAVE TO COVER WHAT'S THE
NEGATIVE IMPLICATION OF
SUBSECTION 9.

IN OTHER WORDS, IF SUBSECTION 9
SAYS YOU CAN CONSENT AROUND
THESE THINGS, THEN THE
LEGISLATURE SEEMS TO BE SAYING
THESE THINGS ARE IN UNINSURED
MOTORIST COVERAGE, WOULD YOU
AGREE WITH THAT?

>> YES.

AND I BELIEVE THAT DERIVES FROM
THE FACT IN 1971 THIS COURT
ISSUED THE MULLIS DECISION WHERE
THE COURT INDICATED THAT
UNINSURED MOTORIST FOLLOWS
INSURED.

DOES NOT FOLLOW--

>> WHERE IS THAT?

>> I WAS GOING TO ASK, I
APOLOGIZE.

THAT THE IS LEGISLATURE'S--
ATTEMPT TO TRY TO CODIFY WHAT'S
IN MULLIS TO SAY THIS IS WHAT IS
INCLUDED.

YOU CAN CONSENT AROUND THESE
THINGS BY FILLING OUT A FORM,
GIVING INFORMATION TO THE
INSURED?

>> RIGHT.

MULLIS.

SUBSECTION 9 RECOGNIZES WE
RECOGNIZE THESE FOUR EXCLUSIONS
ASSUMING THERE IS KNOWING AFFIRM
TIM REJECTION.

WHICH THE LEGISLATURE IN 1982
REQUIRED BE IN WRITING.

>> WHICH WOULD APPLY HERE?

WHAT AS I UNDERSTAND IT,
EVERYONE SEEMS TO BE ARGUING
AROUND SUBSECTION 9-D AND YOUR
OPPOSING COUNSEL IS SAYING 9-D

DOES NOT APPLY BECAUSE THERE WASN'T A PURCHASE OF A POLICY HERE AS INTERPRETED BY DOUGLAS AND SOME OF THE OTHER CASES. IF YOU CAN RESPOND TO THAT, FOR ME.

>> THE FIFTH DCA IN THEIR OPINION INDICATED SUBSECTION D BUT NOTED THERE WAS NO WRITTEN REJECTION.

SO I THINK THAT IS WHAT THE FIFTH DA HAS DETERMINED.

>> DO YOU THINK THAT IS RIGHT?

>> I DON'T KNOW WE NEED TO DECIDE THAT BECAUSE IN THE ABSENCE OF A WRITTEN REJECTION I DON'T KNOW THAT IS REALLY CONTROLLING IN THIS CASE.

>> BUT THAT DEFINES THE SCOPE OF MULLIS, IF IN OTHER WORDS, THAT IS THE LEGISLATURE'S ATTEMPT TO FIND THE SCOPE, THIS IS OUTSIDE THE SCOPE OF WHAT NEEDED TO BE CONSENTED TO, ISN'T THIS NOT UNINSURED MOTORIST COVERAGE? IS THIS SOMETHING ELSE?

>> NO, THIS IS WELL WITHIN THE SCOPE OF MULLIS AND WELL WITHIN THE SCOPE OF THE STATUTE.

IF YOU READ THEM BOTH TOGETHER, THERE ARE ONLY A FEW EXCLUSIONS THAT CAN BE AGREED UPON.

THAT DID NOT OCCUR IN THIS CASE, BECAUSE THERE WAS NO COMPLIANCE. MULLIS IS VERY CHEER, THERE ARE NO EXCLUSIONS TO BE USED TO WHITTLE AWAY UNINSURED MOTORIST COVERAGE BECAUSE THE PURPOSE OF UNINSURED MOTORIST COVERAGE TO COMPENSATE THE INSURED IN THE EVENT THE INSURED SUFFERS DAMAGE OR THERE IS A WRONGFUL DEATH SITUATION CAUSED BY AN UNINSURED MOTORIST.

IT FOLLOWS THE INSURED, NOT THE VEHICLE.

>> MY QUESTION IS WHERE IN THE TEXT DOES IT SAY THAT UNINSURED MOTORIST COVERAGE FOLLOWS INSURED OTHER THAN IN THE MULLIS

DECISION?

>> IT DOESN'T.

IT SAYS IT IN THE MULLIS
DECISION.

BUT OVER 48 YEARS, NOT ONLY HAS
THE LEGISLATURE AMENDED THE
STATUTE, MANY, MANY TIMES BUT
THEY HAVE EVEN STRENGTHENED THE
REQUIREMENTS OF MULLIS SAYING IN
1982 ANY REJECTION HAS TO BE IN
WRITING.

IT CAN'T BE ORAL.

SO THE LEGISLATURE HAS INDICATED
FULL AGREEMENT WITH THE DECISION
OF MULLIS.

THAT UNINSURED MOTORIST IS
EXTREMELY BROAD CONCEPT.

IT IS TO BE LIBERALLY CONSTRUED
AND IT IS NOT TO BE WHITTLED
AWAY BY EXCLUSIONS.

WHICH IS EXACTLY WHAT HAPPENED
IN THIS CASE.

>> THEY HAVE NOT DONE THE SAME
FOR CONFLICT, SECOND DCA
DECISION?

>> WELL, NO, BECAUSE MULLIS, IT
IS NOT ONLY MULLIS.

IT WAS A SERIES OF DECISIONS OUT
OF THIS COURT.

MULLIS, DOUGLAS, YOUNG, THERE
ARE OTHERS WE CITED IN OUR
BRIEF, THAT HAVE ESTABLISHED AND
CONTINUE TO RECOGNIZE THAT
PRINCIPLE.

AND SO OVER TIME, OVER THIS 48
HOURS, IT HAS BEEN A STEADY, AND
VERY FIRM STATEMENT OF PRINCIPLE
AND THE LEGISLATURE HAS NOT ONLY
APPEARS TO HAVE AGREED WITH IT,
THEY MADE IT STRONGER IN 1982
MAKING WRITTEN REJECTIONS PART
OF IT.

IT HAS BEEN MADE VERY CLEAR,
THERE IS NO REAL DISPUTE HERE,
THE FACT THESE ARE THE
PRINCIPLES OF UNINSURED MOTORIST
COVERAGE AND THEY'RE THE
PRINCIPLES THAT GUIDE POLICIES
WRITTEN IN THE STATE OF FLORIDA.

>> LET ME ASK YOU THIS, COULD

THE INSURANCE COMPANY AND THE INSURED HAVE AGREED TO THE LIMITED COVERAGE AS IT PURPORTS TO EXIST UNDER THIS POLICY BY SIGNING A CONSENT OR WAIVER UNDER 9-D?

>> WELL I, I DON'T--

>> THAT IS EASY YES OR NO?

>> I DON'T THINK SO.

BECAUSE I THINK THAT WOULD BE WHITTILING AWAY THE EXCLUSION CREATING, AN EXCLUSION THAT ISN'T AUTHORIZED.

IF IT IS AUTHORIZED UNDER 9.

DID AND THE FIFTH DCA DID INTERPRET AND ADDRESS 9-D, MAYBE THAT THE INSURANCE COMPANY HAVE DONE THAT BY WAY OF APPROPRIATE WRITTEN REJECTION, BUT THAT DID NOT HAPPEN IN THIS CASE.

SO WHAT WE HAVE IS AN INSURED--

>> I HEAR YOU SAY IF THEY HAD DONE THAT, YOU WOULD HAVE SAID IT WOULD BE INEFFECTIVE BECAUSE 9-D DOESN'T EXPRESSLY ADDRESS THIS, YES?

>> YES.

THAT ISSUE WASN'T FULLY FLESHED OUT.

>> RIGHT.

>> SO LIKE I SAID, I DON'T KNOW THAT WE NEED TO ADDRESS THAT BECAUSE I THINK THE ISSUE HERE IS, DOES, DOES MARTIN IN CREATING A JUDICIAL EXCEPTION TO SECTION 627.733, DID THEY CROSS THE LINE INTO LEGISLATING INSTEAD OF JUST INTERPRETING THE STATUTE?

BECAUSE THEY JUST DIDN'T INTERPRET, THEY CREATED AN EXCEPTION.

>> BUT I DO, I DO THINK IT IS IMPORTANT BECAUSE WHAT YOU'RE ASKING US TO ESSENTIALLY TERM A, THE STATUTE IN A WAY THAT WOULD MAKE IT A VERY STRANGE STATUTE IN TERMS OF WHAT THE LEGISLATURE WAS TRYING TO DO BECAUSE IT'S

CLEAR THAT YOU CAN COMPLETELY,
WITH THE PROPER INFORMED CONSENT
YOU CAN COMPLETELY DENY
UNINSURED MOTORIST COVERAGE ALL
TOGETHER, RIGHT?

THE INSURED CAN AGREE THEY'RE
WAIVING IT?

>> WITH A WRITTEN AFFIRMATIVE--
>> SO I CAN WAIVE IT ENTIRELY OR
I CAN OPT FOR ONE OF THESE
EXCLUSIONS THAT ARE SPECIFICALLY
LISTED IN 9-D.

BUT IF I WANT TO NEGOTIATE, IF
THE INSURANCE COMPANY AND I WANT
TO GET TOGETHER AND AGREE TO
SOMETHING SORT OF IN BETWEEN
THAT, THERE IS 100, YOU KNOW,
GOOD PREMIUM.

100% INFORMATION, UNDERSTANDING
WHAT I'M DOING, YOU'RE SAYING
THAT THE LEGISLATURE INTENDED
NOT TO, NOT TO LEAVE THAT AS AN
OPTION FOR THE PARTIES TO THIS
CONTRACT?

>> I THINK THE LEGISLATURE SET
OUT THE PARAMETERS FOR UNINSURED
MOTORIST.

>> DOES THAT MAKE SENSE TO YOU?
>> YES.

BECAUSE I THINK THEY EMPOWERED
THE INSURED TO MAKE THE DECISION
IN THE CONTEXT OF THE UNINSURED
MOTORIST STATUTE.

SO THE INSURED HAS THE ULTIMATE
DECISION MAKING, NOT THE
INSURANCE COMPANY.

IN THIS CASE THE INSURANCE
COMPANY MADE THE DECISION TO
IMPOSED THE LIMITED UNINSURED
MOTORIST COVERAGE IT DID.

THERE IS NO WRITTEN REJECTION.

>> THE WAY YOU'RE DESCRIBING IT
AS SORT OF A BATTLE BETWEEN THE
COMPANY AND THE INSURED BUT
SEEMS TO ME YOU'RE ALSO
SUGGESTING THAT THE LEGISLATURE
HAS GIVEN THE PARTIES TO THIS
AGREEMENT A VERY LIMITED RANGE
OF OPTIONS AND THE ONES THAT YOU
HAVE PUT OUT FOR US, IT US WHY

DOESN'T SEEM TO MAKE SENSE.
WHY WOULD THE LEGISLATURE IF I
HAVE YOU THE ABILITY TO WAIVE IT
ALL TOGETHER BUT NOT HAVE IT, A
KNOWING BARGAIN FOR SOMETHING
THAT WAS SOMETHING IN BETWEEN
WAIVING IT ALL TOGETHER AND THIS
MENU IN SUBSECTION 9?

>> WELL I THINK THE LEGISLATURE
SET OUT THE FORMAT AND WHAT THEY
WANT TO MAKE SURE IS THAT
INSUREDS KNOW WHAT THEY'RE, WHAT
THEY'RE GETTING OR KNOW WHAT
THEY'RE WAIVING.

IN ORDER TO DO THAT THERE IS A
STATUTORY MECHANISM.

>> ARE YOU ESSENTIALLY SAYING
THAT YOU MAY BE RIGHT, THAT'S
BAD POLICY, IT WOULD MAKE A LOT
MORE SENSE IF CONSUMERS HAD MORE
OPTIONS AND INSURANCE COMPANIES
HAD MORE OPTIONS BUT THERE IS NO
STATUTORY BASIS FOR MAKING THAT
DISTINCTION?

>> I THINK THAT WOULD BE A
LEGISLATIVE ISSUE, WHICH IS WHY
I THINK THIS WHOLE ISSUE IS
APPROPRIATE FOR THE LEGISLATURE.
IT IS BECAUSE WHETHER THERE IS
GOING TO BE LIMITATION FOR
SPECIALTY VEHICLES, IS SOMETHING
THAT THE LEGISLATURE WOULD BE
THE MOST APPROPRIATE BODY TO DO
AFTER CONDUCTING A STUDY, AFTER
GETTING INFORMATION, AFTER
MAKING A DETERMINATION AS TO
WHETHER PUBLIC POLICY WARRANTS
SUCH AS EXCEPTION.

THAT IS NOT WHAT OCCURRED HERE.
THE WAY THE STATUTE'S WRITTEN
NOW THERE IS NO EXCEPTION FOR
THESE TYPES OF VEHICLES AND
COMPLIANCE WITH THE STATUTE IS
REQUIRED.

THAT DIDN'T OCCUR HERE.
IF THERE IS GOING TO BE AN
EXEMPTION, THAT EXCEPTION SHOULD
BE ADDRESSED ACROSS THE STREET
BY THE LEGISLATURE WHICH CAN
EASILY ADDRESS THAT AND MAKE A

DETERMINATION BASED ON,
DETERMINATION OF PUBLIC POLICY
AS TO WHETHER SUCH AN EXCEPTION
IS WARRANTED.

>> ISN'T SOME REASON FOR THAT
BECAUSE THESE FORMS OF INSURANCE
CANNOT BE DONE IN A VACUUM, THEY
HAVE TO BE APPROVED BY THE
DEPARTMENT OF INSURANCE IN
REGULATORY FASHION IN SOME WAY,
RIGHT?

>> RIGHT.

THE FORMS HAVE TO BE APPROVED,
THAT ARE USED HAVE TO BE
APPROVED.

SO IT IS NOT JUST A CASE OF
WRITING DOWN SOMETHING ON A
PIECE OF PAPER.

>> IMPACTS ADMINISTRATIVELY HOW
THOSE PREMIUMS CAN BE CHARGED,
WHAT CAN BE APPROPRIATELY
CHARGED AND THAT IS IN A
REGULATORY FORMAT AS WELL?

>> YES.

THIS IS ALL PART AND PARCEL OF
THE STATUTORY SCHEME, WHICH IS A
DETAILED SCHEME.

WHICH EVERYBODY KNOWS, AND IT IS
DESIGNED TO PROTECT THE INSURED.
FOR INSTANCE, IN THIS CASE, IT
MAY BE THAT THE INSURED WANTED,
WOULD HAVE AGREED TO A LESSER
FORM OF, UNINSURED MOTORIST
COVERAGE THAT IS NOT PROVIDED
FOR BY THE STATUTE, WE HAVE TO
GO BY WHAT THE STATUTE SAYS AND
IN THIS CASE THE STATUTE SAYS
ALL MOTOR VEHICLES, THIS IS
MOTOR VEHICLE.

THERE IS NO RECOGNIZED EXCEPTION
FOR IT.

AND THE SECOND DCA IN MARTIN
COMING UP WITH ITS POLICY
RATIONALES ACROSS THE LINE AND
GOT INTO AN AREA WHERE, AS THE
FIFTH DCA SAID, IT IS
APPROPRIATE FOR THE LEGISLATURE
TO MAKE THAT DETERMINATION AND
THAT KNOWS NOT WHAT OCCURRED
HERE.

>> LET ME ASK YOU MORE OF A PHILOSOPHICAL QUESTION, POLICY CONSIDERATIONS IN MARTIN ARE SENSIBLE AND THERE IS NO QUESTION THAT YOU KNOW, THAT WAS THE LAW IN FLORIDA ONCE THE MARTIN COURT ISSUED THAT OPINION.

THAT IS THE ARGUMENT ON THE OTHER SIDE.

SO IT IS UNDERSTANDABLE THAT PARTIES WOULD CONDUCT THEIR AFFAIRS IN ACCORDANCE WITH THE LAWS AND INSURANCE FORMS WOULD BE APPROVED IN ACCORDANCE WITH THE LAW AND WE'RE ADDRESSING A STATUTORY CONSTRUCTION ISSUE AND THE STATUTE SAYS WHAT IT SAYS. WHAT IS THE RIGHT WAY TO CONSIDER THE FACT THAT THE LAW HAS BEEN WHAT IT HAS BEEN AND PEOPLE HAVE, ECONOMIC EXPECTATIONS THAT ARE, THAT FORM AROUND THE LAW AS PRONOUNCED IN OPINIONS, BUT IT IS STILL INCONSISTENT WITH WHAT THE STATUTE SAYS?

HOW DO YOU--

>> I THINK A DISTRICT COURT OF APPEAL DECISION IS JUST THAT, IT IS A DISTRICT COURT OF APPEAL DECISION AND ANOTHER DISTRICT COURT CAN COME ALONG AND DISAGREE WITH THAT.

THAT'S WHAT OCCURRED HERE.

THE INSURANCE COMPANY HAD THE OPTION, IN FACT WERE PROBABLY IN THE BEST POSITION IF THEY FELT MARTIN NEEDED TO BE IMPLEMENTED STATUTORILY TO GO TO THE LEGISLATURE AND SAY, LOOK, HERE'S AN ISSUE WE HAVE, YOU KNOW, WE THINK YOU NEED TO AMEND THE UNINSURED MOTORIST ACT TO PROVIDE FOR THESE SPECIALTY VEHICLES.

THEY DIDN'T.

AND HERE AGAIN WE CAN SPECULATE, MAYBE THEY FELT, OKAY WE HAVE A DECISION THAT IS BINDING ON ALL

TRIAL COURTS THROUGHOUT THE STATE OF FLORIDA, EVEN THOUGH IT'S A DISTRICT COURT OF APPEAL DECISION WE'LL STAY WITH THAT. WE WON'T TO OVER TO THE LEGISLATURE TO TRY TO DO SOMETHING, MAYBE IT IS NOT GOING TO WORK.

MAYBE THEY WILL REQUIRE CERTAIN THINGS WE'RE NOT GOING TO BE HAPPY ABOUT.

SO WE'LL LIVE WITH MARTIN AND IT IS BINDING ON ALL THE TRIAL COURTS IN THE STATE AND YOU KNOW, WE'LL TAKE OUR CHANCES. BUT THEY PREVAILED IN MARTIN AND, FOR WHATEVER REASON, DID NOT GO TO THE LEGISLATURE.

SO HERE WE ARE.

I THINK TODAY IT'S APPROPRIATE AS THE FIFTH DCA SAID FOR THIS ISSUE TO GO TO THE LEGISLATURE TO MAKE A DETERMINATION AS TO WHETHER THESE SPECIALTY VEHICLES SHOULD BE ACCEPTED.

THERE AGAIN, THAT'S AN ISSUE OF SEPARATION OF POWERS.

I DON'T KNOW THAT BARON MONTESQUIEU EVER THOUGHT HIS NAME WOULD BE ASSOCIATED WITH UNINSURED MOTORIST COVERAGE, BUT HERE WE ARE.

SEPARATION OF POWERS, IT APPLIES TO A MORE MUNDANE SUBJECT JUST AS IT APPLIES TO MORE GLAMOROUS ISSUES THAT ARE NOT BEFORE THIS COURT TODAY.

SO WE BELIEVE THAT'S WHERE THE REMEDY LIES.

>> HAS THERE BEEN ANY SORT OF ADMINISTRATIVE REVIEW OR APPROVAL OF THIS SPECIFIC CONTRACT, THIS SPECIFIC POLICY?

>> NOT THAT I'M AWARE OF.

I DON'T BELIEVE THE RECORD INDICATES THAT.

>> AND THE MOTORCYCLE ACCIDENT THAT LED TO THE INSURED'S DEATH, DID THAT INVOLVE THE NEGLIGENCE OF A THIRD PARTY?

>> YES.

YES.

SO IF THERE ARE ANY OTHER
QUESTIONS?

THANK YOU SO MUCH FOR YOUR TIME.

>> REGARDING THE MOTORCYCLE, THE
EVIDENCE IN THE RECORD, THERE
WERE REQUESTS FOR ADMISSIONS IN
THE RECORD SOMEWHERE, THEY WERE
ATTACHED, I BELIEVE, TO THE
MOTION FOR SUMMARY JUDGMENT.
BUT THE REQUEST FOR ADMISSIONS,
THE RESPONSE-- WHICH IS AT
RECORD 134-- ADMITS THAT THE
MOTORCYCLE HE WAS OCCUPYING AT
THE TIME OF THE FATAL ACCIDENT
WAS A LISTED VEHICLE ON A POLICY
OF INSURANCE ISSUED BY ANOTHER
CARRIER.

SO IT IS THE CASE THAT HE DID
HAVE INSURANCE ON THAT
MOTORCYCLE.

THERE'S NOTHING IN THE RECORD
ABOUT ANY OTHER OWNED CARS
EXCEPT FOR THE FACT THAT OUR
POLICY REQUIRED THAT THERE BE A
PRIMARY VEHICLE.

>> DO YOU KNOW IF IT WAS
UNINSURED MOTORIST COVERAGE?

>> WE DON'T, WE DON'T.

THE RECORD IS PRETTY SPARSE IN
THIS CASE--

>> THAT'S PRETTY IMPORTANT
THOUGH.

AND THE FIFTH--

[INAUDIBLE]

FIFTH SEEMED TO SUGGEST THAT IT
WASN'T PURCHASED REGARDING--

>> YEAH, I DIDN'T SEE ANYTHING
IN THE RECORD ONE WAY OR THE
OTHER.

THIS COURT, IN HARRINGTON AND
FLORES, HAS ALSO SAID THAT A
POLICY MAY CONTAIN OTHER
CONDITIONS OR EXCLUSIONS ON
COVERAGE AS LONG AS THEY ARE
CONSISTENT WITH THE PURPOSES OF
THE U.M. STATUTE.

AND I SUBMIT TO YOU THAT THIS
KIND OF COVERAGE IS CONSISTENT

WITH THE PURPOSES OF THE U.M. STATUTE, AND EVEN WITH MULLIS BECAUSE IT REQUIRES THERE BE A PRIMARY VEHICLE WITH FAMILY PROTECTION WHICH INCLUDES ALL OF THE U.M. BENEFITS.

SO THERE IS NO PREJUDICE TO THE INSURED BY THIS POLICY AND, IN FACT, A LOT OF BENEFITS TO THE INSURED BY HAVING A POLICY LIKE THIS.

THERE AREN'T MANY, THERE ISN'T MUCH TESTIMONY IN THE RECORD, BUT AT R-494 THERE'S A DEPOSITION OF ONE OF THE INSURANCE COMPANIES THAT WAS A SERVICER FOR THIS, AND HE TESTIFIED AT PAGE 44 OF THE DEPOSITION THAT THIS COVERAGE WAS ABOUT 20% OF THE USUAL PREMIUM FOR U.M. COVERAGE.

SO IT ISN'T LIKE THE STATUTE REQUIRES THAT IN RETURN FOR THAT CONSENT THAT THE PREMIUM BE DISCOUNTED BY 20 AND 50, 20%. I THINK THE STATUTE SAYS HERE IT WAS 80%.

SO THIS WAS DESIGNED TO BE A TOTALLY DIFFERENT ANIMAL THAN IN THE USUAL FAMILY PROTECTION. AND IN RETURN FOR THAT, THE INSURED GETS VERY CHEAP COVERAGE.

AND I ASK YOU TO QUASH THE DECISION OF THE FIFTH DCA. THANK YOU VERY MUCH FOR YOUR TIME.

>> THANK YOU.

>> ALL RIGHT.

WE THANK YOU BOTH FOR YOUR ARGUMENTS IN THIS CASE.