WE NOW MOVE TO THE NEXT CASE ON
OUR DOCKET.
>> RECOVER CONSEQUENTIAL
DAMAGES, THAT IS DAMAGES ABOVE
WHAT THE POLICY PROVIDES IN A
BREACH OF CONTRACT ACTION
WITHOUT HAVING TO FILE A BAD
FAITH CASE.
WE SUBMIT THE ANSWER TO THAT
QUESTION HAS TO BE KNOWN.
I THINK THE COURT CAN ANALYZE
THIS FROM TWO DIFFERENT LINES OF
CASES THAT WILL GET YOU TO THE
STARTING POINT.
THE FIRST LINE IS THE DAY
ASSOCIATES, WE ARE TOLD
INTERPRETING THAT INSURANCE
POLICY, WITH REASONABLE
EXPECTATIONS, AND DO NOT REQUIRE
EVIDENCE TO RESOLVE AMBIGUITIES,
THE INSURANCE CONTRACT IS
UNAMBIGUOUS THAN OTHER CONTRACTS
YOU READ ACCORDING TO THE
EXPRESS CHOICE.
IF IT IS AMBIGUOUS WE DON'T LOOK
AT THAT EVIDENCE, WE INTERPRET
IT IN THE MOST FAVORABLE.
SO ASSOCIATES ANSWER THE
QUESTION OF HOW DO YOU INTERPRET
AMBIGUITIES IN A INSURANCE
POLICY ACCORDING TO TERMS
INTERPRETING IN FAVOR OF THE
INSURED.
REASONABLE EXPECTATIONS DOESN'T
APPLY.
A DOCTRINE THE DISTRICT COURT
IMPOSED WHICH MANNER HOUSE
WISHES THIS COURT TO ADOPT IS
EXTRACONTRACTUAL CONSEQUENTIAL
DAMAGES ARE PERMISSIBLE IF THEY
ARE WITHIN THE CONTEMPLATION OF
THE PARTIES AT THE TIME OF THE
CONTRACT.
THERE IS NO DIFFERENCE
PRACTICALLY, LEGALLY OR
LOGICALLY BETWEEN BEING IN
CONTEMPLATION OF THE PARTIES AND
WITH THE PARTY'S REASONABLE
EXPECTATIONS WERE.
YOU HAVE TO LOOK AT PAROLE

EVIDENCE EITHER WAY SO UNDER ASSOCIATES LINES OF CASES YOU CAN'T GET THERE, YOU CAN'T CONSIDER WITH THE PARTY IS CONTEMPLATING, THEREFORE EXTRA CONTRACTUAL DAMAGES ARE IMPERMISSIBLE.
THE COURT CAN ALSO COME AT IT FROM ANOTHER MINE OF CASES WHICH THE ENTERPRISE CASES ALSO FROM THE FLORIDA SUPREME COURT, IN 2006, TALENT WAS IN 2000 AND IN THOSE CASES THE COURT DECIDED OR THE COURT NOTED UNDER COMMON LAW THE ONLY DAMAGES AVAILABLE FOR BREACH OF CONTRACT WHERE THE DAMAGES STATED IN THE POLICY ITSELF.
THEY SAID THE ONLY COMMON-LAW ACTION AVAILABLE WAS BREACH OF CONTRACT ACTION AGAINST THE INSURER IN WHICH DAMAGES WERE LIMITED TO THOSE CONTEMPLATED BY THE PARTIES IN THE INSURANCE POLICY, PAGE 455-56.
>> CAN YOU DISTINGUISH THE DAMAGES CONTEMPLATED BY PARTIES IN THIS CASE FROM THE DAMAGES CONTEMPLATED BY THE PARTIES IN THE LIFE INVESTORS INSURANCE COMPANY VERSUS JOHNSON CASE, OR OTHER CASES WHERE THE INSURANCE INTENDED POLICY TO ENSURE THAT PAYMENTS CONTINUE IS PROTECTED AGAINST.
HOW IS THIS CASE DIFFERENT?
>> WHEN YOU TALK ABOUT THE OTHER CASES THERE ARE NO OTHER FLORIDA CASES OTHER THAN LIFE INVESTOR VERSUS JOHNSON, THE FIRST PARTY CONTEXT YOU CAN HAVE CONSEQUENTIAL DAMAGES.
THAT IS A 1982 CASE THAT WAS DECIDED NOT UNDER THE CONTEMPORARY SCHEME OF 624 AND 155, THAT CASE DID NOT DISTINGUISH BETWEEN INSURANCE CONTRACTS AND OTHER CONTRACTS AND THIS COURT HAS NOTED IN OTHER CASES THE DIFFERENCE THAT

I AM THINKING ABOUT, HAS NOTED
THE DISTINCTION COMMON-LAW HAS
MADE BETWEEN INTERPRETING
INSURANCE POLICIES AND OTHER
POLICIES.
THERE ARE A LOT OF DIFFERENCES
IN INSURANCE POLICIES AND THAT
IS WHY THIS COURT SAID BECAUSE
OF THE UNIQUE INSTITUTIONAL
NATURE OF INSURANCE POLICIES WE
HAVE INTERPRETED THOSE POLICIES
DIFFERENTLY AND SOME OF THE
DIFFERENCES, WHAT I JUST SAID,
YOU DON'T INTERPRET INSURANCE
POLICIES, IF THERE IS ANY
AMBIGUITY THE INSURANCE COMPANY
LOSES, THAT'S DIFFERENT FROM THE
RUN-OF-THE-MILL CONTRACT AND
THEY CAN HAVE A PREVAILING
ATTORNEY FEE IN THIS CONTRACT OR
THE INSURED FROM GETTING
ATTORNEYS FEES, THE STATUTE FROM
428, WHICH CITIZENS WERE SUBJECT
TO PROVIDES ATTORNEYS FEES TO A
PREVAILING BREACH OF CONTRACT
ACTION BUT NOT TO A PREVAILING
IN SURE, THAT IS ANOTHER
DISTINCTION.
THE COURT MADE ANOTHER
DISTINCTION, THERE IS NO
COMMON-LAW IN INSURANCE CONTRACT
BECAUSE WE HAVE STATUTE 624-155
AND COMMON-LAW THERE WAS NO BAD
FAITH ACTION IN FIRST PARTY
CONTEXT.
THE INSURANCE CONTRACTS WERE
HIGHLY REGULATED AND HAVE TO BE
APPROVED, CHANGES HAVE TO BE
APPROVED BY THE DEPARTMENT OF
INSURANCE REGULATION.
INVESTORS DISTINGUISH NONE OF
THESE CASES.
IT WAS DECIDED UNDER A PRIOR
SCHEME EVEN THOUGH WAS WHAT
1982, IT WAS ENACTED, MOVING
WITH THE STATUTE, THE CONTRACT,
NO FLORIDA COURT SINCE LIFE
INVESTORS HAS FOLLOWED THAT
CASE.
THAT CASE IS AN OUTLIER AND THE

REASON IT DOESN'T MATTER IS
BECAUSE OF THE BAD FAITH
STATUTE.
ANY CASE EXCEPT FREE CITIZENS
CASE WHICH IS WHY WE ARE HERE,
CAN FILE BAD FAITH ACTION, GET
ATTORNEYS FEES, MORE DAMAGES
THAN BREACH OF CONTRACT ACTION
AND CONSEQUENTIAL DAMAGES AND
EVEN GET PUNITIVE DAMAGES UNDER
CERTAIN CIRCUMSTANCES IF YOU
LOOK AT SUBSECTION 5, THOSE
CIRCUMSTANCES HAVE TO BE MET,
THAT IS POSSIBLE TO GET PUNITIVE
DAMAGES UNDER THE BAD FAITH
STATUTE.
THAT IS WHY NO CASE THAT
FOLLOWED JOHNSON IN THE YEARS
SINCE IT WAS DECIDED -- TO YOU
HAVE A QUESTION?
>> DID YOU HAVE ANYTHING ELSE TO
SAY IN RESPONSE?
>> NOW EXCEPT IN SOME CASES
FOLLOWED IT.
ALL THOSE CASES CAN BE
DISTINGUISHED, THE ELEVENTH
CIRCUIT CASE, LOOK AT NOTE 12,
THEY DIDN'T DECIDE THE CASE ON
CONSEQUENTIAL DAMAGES.
THEY SAID BECAUSE WE DECIDED
THIS WE NEED NOT DETERMINE
WHETHER CONSEQUENTIAL DAMAGES
ARE AVAILABLE WITH BREACH OF
CONTRACT ACTION.
THE OTHER CASES, WE'VE DONE THAT
IN OUR BRIEF.
>> WHICH OF THE TWO PASTY YOU
OUTLINE, WHICH WOULD BE NARROW
WHERE IN THE SENSE OF HAVING FEW
WERE BROAD FOR CONSEQUENCES?
>> I DON'T THINK ANY OF THEM
WOULD HAVE BROAD CONSEQUENCES
BECAUSE YOU'RE KEEPING THE
STATUS QUO.
THERE'S NOTHING IN THOSE CASES,
FOR EXAMPLE WHEN DANNY - YOU
DON'T HAVE A DOCTRINE OF
REASONABLE EXPECTATIONS AND THAT
HAS BEEN THE LAW SINCE 1998.
TO EQUATE CONSEQUENTIAL DAMAGES

THEY CONTEMPLATED AT THE TIME OF THE CONTRACT WITH REASONABLE EXPECTATIONS –
>> IN THAT CASE, OBVIOUSLY THE CASE HAS THAT LINE IN THEIR BUT IT DOES SEEM LIKE THERE WAS ANALYSIS OR THOUGHT THAT WENT INTO IT.
THAT ONE LINE IN THE MIDDLE OF THE PARAGRAPH, IT IS ENOUGH, THE FIFTH DCA, THOSE WERE GOOD JUDGES THAT THE CONCEPT IF IT IS THAT BASIC, IT EITHER LOOTED THEM.
I AM CURIOUS DO YOU VIEW THE TWO PATHS, WHAT WOULD BE THE ARGUMENT FOR CHOOSING ONE PATH OR ANOTHER?
>> THEY ARE BOTH BASED ON TWO CASES FROM THIS COURT, EQUALLY BASED ON PRECEDENT FOR THIS COURT THAT WAS ESTABLISHED NOT JUST ONE CASE OR MORE THAN ONE CASE, JUST AS LEGITIMATE, NOT GOING TO PRESENT ANY CONSEQUENCES IN OTHER CASES AND THAT IS THE ONE THAT SAYS IN THE CONTEXT OF AN INSURANCE POLICY THE DAMAGES PROVIDED FOR IN THE INSURANCE POLICY UNDER COMMON-LAW.
YOU GET EXTRACONTRACTUAL AND NOT CONSEQUENTIAL DAMAGES SO THAT LINE OF CASES IS JUST AS LEGITIMATE.
LET ME MAKE ONE THING CLEAR.
I DON'T THINK ANYTHING YOU DO TODAY WILL HAVE A HUGE EFFECT BECAUSE THIS HAS NOT BEEN AN ISSUE FOR THE LAST 38 YEARS.
JOHNSON HAS NOT BEEN FOLLOWING THE FLORIDA COURT AND THE REASON, THEY HAVE THE BAD FAITH ACTION TO RECOVER THEIR CONSEQUENT OF DAMAGES.
WE DON'T DISPUTE THE FACT, NOBODY HAS, CONSEQUENTIAL DAMAGES ARE AVAILABLE UNDER THE BAD FAITH ACTION.
EVEN MORE OR AVAILABLE, PUNITIVE

DAMAGES UNDER CERTAIN
CIRCUMSTANCES AND THAT IS WHY NO
ONE SHARES ABOUT CONSEQUENTIAL
DAMAGES, THEY JUST FILE A BAD
FAITH LAWSUIT.
THE REASON IT IS IMPORTANT IN
THIS CASE IS YOU CAN'T SUE
CITIZENS FOR BAD FAITH.
THIS IS THE ONLY WAY TO GET
CONSEQUENTIAL DAMAGES, BY MAKING
IT PART OF THE BREACH OF
CONTRACT.
THIS DETERMINATION IF YOU RULE
IN OUR FAVOR PRACTICALLY
SPEAKING WILL ONLY AFFECT
CITIZENS, IF YOU WILL AGAINST US
IT WILL AFFECT CITIZENS IN A
MAJOR WAY BECAUSE ESSENTIALLY
YOU WILL BE GIVING -- GIVEN
INSURED A BACKDOOR MECHANISM TO
OBTAIN BAD FAITH DAMAGES.
IT IS EVEN WORSE, UNDER THE BAD
FAITH LAW AS YOU FILE
THIRD-PARTY BAD FAITH ACTION
UNDER COMMON-LAW, DISMISSES
THOSE, AND BREACH OF CONTRACT
ACTION WHEN YOU ARE AVAILABLE
YOU ARE ENTITLED TO CERTAIN
DISCOVERY BY BAD FAITH ACTION
YOU ARE NOT ENTITLED TO BREACH
OF CONTRACT ACTION OR THE CLAIM
FILE.
THE CLAIM ADJUSTER DURING THE
CLAIMS PROCESS.
THOSE DAMAGES IN BREACH OF
CONTRACT ACTION.
AND SO RULING IN OUR FAVOR IS
NOT GOING TO DO MUCH TO
INSURANCE LAW IN FLORIDA.
ONLY AGAINST US, DEVASTATING
CONSEQUENCES ON CITIZENS WHICH
IS DESIGNED TO BE THE INSURER OF
LAST RESORT AND THE ONLY COMPANY
THAT IS REQUIRED TO TRY TO
PROVIDE AFFORDABLE INSURANCE TO
PROPERTY OWNERS IN FLORIDA.
ANY OTHER QUESTIONS I WILL
RESERVE THE REST OF MY TIME FOR
REBUTTAL.
WE ASK ABOUT THE CERTIFIED

QUESTION.
>> YOU MAY PROCEED.
>> ON BEHALF OF MANOR HOUSE.
WE ARE ASKING THE COURT ANSWER THE CERTIFIED QUESTION, THE CONSEQUENTIAL DAMAGES ARE APPROPRIATE, FOR FIRST PARTY BREACH OF CONTRACT CASE.
PRIOR TO THE ENACTMENT OF 624 ONE 55 CONSEQUENTIAL DAMAGES WERE A REMEDY UNDER THE JOHNSON CASE IN A FIRST PARTY BREACH CASE.
WHERE I DISAGREE IS SUBSEQUENT FOLLOWING THAT LINE OF REASONING, WE SEE THAT WITH TRAVELERS VERSUS WELLS WERE THE COURT RELIED ON TV ADS VERSUS THE ELEVENTH CIRCUIT WHICH WITH THE OPINION CITED WITH APPROVAL JOHNSON VERSUS LIFE INVESTORS, FEDERAL COURTS IN FLORIDA WHICH ARE NOT BINDING FOR WHAT THEY ARE PERSUASIVE HAVE A PROBLEM WITH THE LINE OF REASONING TO RECOGNIZE THAT AS A BASELINE POOL, THIS REMEDY IS AVAILABLE IN A FIRST PARTY BREACH CASE, AN INSURANCE POLICY, A CONTRACT.
CONTRACT LAW GOVERNS RIGHTS AND OBLIGATIONS TO THAT POLICY.
CONTRACT LAW PROVIDES CONSEQUENTIAL DAMAGES AS AVAILABLE REMEDY IN THE EVENT OF A BREACH OF CONTRACT.
WE LEARNED OUR FIRST LAW AND THAT IS WHAT THE LIFE INVESTORS VERSUS JOHNSON CASE DREW ON WHEN IT HELD AS THE BASELINE OR THE BASELINE REMEDY.
THE ENACTMENT OF 624 ONE 55 DOES NOT MATERIALLY CHANGE THE AVAILABILITY OF THAT REMEDY.
EVEN MY OPPONENT NOTED JOHNSON CASE WAS DECIDED PRIOR TO THE STATUTE'S ENACTMENT WHICH WAS IMPORTANT BECAUSE SUBSECTION 8 OF 624155 IN NON-AMBIGUOUS TERMS, NOTHING WILL PREEMPT COMMON-LAW REMEDY THAT EXISTS

AND WE CAN SEE AS MY OPPONENT CAN SEE, RECOGNIZE THAT CONSEQUENTIAL DAMAGE WAS A COMMON-LAW REMEDY, BREACH OF INSURANCE CONTRACT FILE TO THE STATUTE ENACTMENT AND THAT IS SOMETHING THIS COURT HAS ALSO RECOGNIZED IN TIMELINE VERSUS BURGER, THE COURT STATED PRIOR TO THE ENACTMENT OF SECTION 624155, BREACH OF CONTRACT DAMAGES WERE AVAILABLE.
MY OPPONENT WANTS TO RELY ON REASONABLE EXPECTATION DOCTRINE LINE OF CASES TO SAY THAT'S WHAT WE ARE TRYING TO DO, TO RECTIFY AND WORK ON REASONABLE EXPECTATIONS OF THE PARTIES BUT THE REASONABLE EXPECTATION IS NOT A DAMAGES DOCTRINE LIKE IT WASN'T PART OF THIS COURT'S TRUE HOLDING WHICH WAS DISCUSSING THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING EXISTS IN THIS POLICY AND IT IS INDEPENDENT OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING WHICH MEANS REGARDLESS OF WHETHER THAT IMPLIED COVENANT EXISTS IS ENTITLED TO HAVE CONSEQUENTIAL DAMAGES AS A REMEDY OF BREACH OF CONTRACT CASE.
AND REASONABLE EXPECTATION DOCTRINE, WE ARE NOT TALKING ABOUT ANY SORT OF THING LIKE THAT HERE.
MY OPPONENT TALKS ABOUT IF THIS COURT RULES IN MY CLIENT'S FAVOR, TO GET INTO THE CLAIM MATERIALS AND BREACH OF CONTRACT CASE AND THIS IS NOT GOING TO BE THE CASE, SOMETHING FOR MY CLIENTS TO SATISFY AND RECOVER CONSEQUENTIAL DAMAGES, FOCUSED ON A SET MOMENT IN TIME, WHEN THE POLICIES ISSUED.
IT IS SUBSEQUENT TO THE ISSUANCE OF THAT POLICY IS IRRELEVANT.
THE HANDLING OF ANY SORT OF CLAIM IS IRRELEVANT TO

DETERMINING WHAT WAS
CONTEMPLATED WILL, WHEN THE
POLICY WAS ISSUED.
AT THE BOTTOM THE WAY CITIZENS
AND ANY INSURANCE COMPANY GET
AROUND THIS EXPOSURE IS TO DO
WITH THE REST OF THE WORLD DOES,
CITIZENS HAS IN ITS POLICY, THE
POLICY EXCLUDES CITIZENS FROM
HAVING TO PAY MORE CONSEQUENTIAL
DAMAGES AND CITIZENS DESPITE
HAVING THAT POLICY LANGUAGE
AVAILABLE TO IT PROMPTED NOT TO
USE IT IN THE PROPERTY COVERAGE
FORM DESPITE KNOWING THE CASES
LIKE JOHNSON, TRAVELERS VERSUS
WELLS AND ALL THE OTHER CASES
THAT RECOGNIZE THE DAMAGE IS AN
AVAILABLE REMEDY AND USING IT
WHICH IS PROOF THAT CITIZENS WAS
WILLING TO ACCEPT EXPOSURE OF
CONSEQUENTIAL DAMAGES IF
BREACHED.
>> WITH YOU FURTHER EXPLAIN FOR
US WHY THIS CLAIM, THE CLAIM YOU
ARE MAKING IS NOT ESSENTIALLY A
BAD FAITH CALL?
>> IT IS NOT --
>> I UNDERSTAND THAT IS YOUR
POSITION BUT WHEN I LOOK AT IT
AND COMPARE THE ALLEGATIONS YOU
ARE MAKING WITH THE ALLEGATIONS
THAT ARE MADE, IT LOOKS LIKE ONE
TO ME.
HELP ME UNDERSTAND WHY IT IS
NOT.
>> STARTING POINT FOR THAT
ANSWER BEGINS WITH THE COURT'S
DECISION IN BLANCHARD WHERE THE
COURT SAYS BAD FAITH CLAIM IS
GROUNDED ON THE DUTY TO ACT IN
GOOD FAITH WHICH WE KNOW IS
UNDER 64 ONE 55 WERE BREACH OF
CONTRACT CLAIM IS PREDICATED ON
FAILURE TO PERFORM A CONTRACTUAL
OBLIGATION.
HERE WE HAVE IN COUNT ONE THREE
EXPRESS PROVISIONS OF THE POLICY
THAT CITIZENS FAILED TO PERFORM.
FIRST THE POLICY REQUIRES THE

PARTIES GO TO APPRAISAL IN THE AMOUNT DISPUTED.
IT IS NOT PERMISSIVE BUT MANDATORY.
THOSE CITIZENS HAS TO GO.
SECOND, CITIZENS HAS TO PAY THE APPRAISAL AWARD WITHIN 30 DAYS.
THAT IS JUST A BRIEF, YOU PAY IN THE TIME FRAME IT OBLIGATED TO DO SO OR IT DIDN'T.
THIRD, CITIZENS FAILED TO PAY THE UNDISPUTED SUMS OWED WITHIN 20 DAYS.
THE LATTER TWO CONTRACT ALLEGATIONS ARE PREDICATED ON THE LOST DIVISION WHICH REQUIRE PAYMENT AND ACTIVE PERFORMANCE WITHIN SPECIFIED TIME FRAME.
THEY FAILED TO PERFORM WHICH IS THE CONTRACTUAL OBLIGATIONS THAT ARE INDEPENDENT FROM THE DUTY TO ACT IN GOOD FAITH UNDER 621155 WHICH PLACES US IN THE BREACH OF CONTRACT CONTEXT AND FURTHERMORE EVEN CITIZENS TOLD THE TRIAL COURT, AFTER THE SUMMARY JUDGMENT HEARING COUNT ONE WAS A BREACH OF CONTRACT CASE AND THAT AND THAT IS A DIRECT QUOTE FROM RECORD 4807, LINES 18-20, A PURE BREACH OF CONTRACT CASE.
WE HAD A SEPARATE COUNT FOR THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING WHICH WE RECOGNIZED AFTER IT WAS NO LONGER VIABLE, SO WE'RE NOT PURSUING THAT NUMB.
BUT WE STILL HAVE THE COUNT ONE BREACH OF CONTRACT THAT WE HAVE PREDICATED ON THESE PROVISIONS.
NOW, I KNOW THAT CITIZENS WANTS TO FOCUS ON THE WHERE FOR CLAUSE AND PREDICATED ON THE FAILURE TO TIMELY PAY.
AND, JUSTICE CANADY, TO YOUR QUESTION THE REASON WHY THAT ALLEGATION FAILURE TO TIMELY PAY IS NOT A BAD FAITH ALLEGATION IN THIS CASE IS BECAUSE WE HAVE THE LOSS SETTLEMENT PROVISIONS OF

THIS POLICY THAT MANDATE AN
EXPRESS TIME FRAME WITHIN WHICH
CITIZENS IS TO PERFORM.
SO WE'RE NOT CONCERNED ABOUT
LIKE WE WOULD BE IN A BAD FAITH
CASE WHETHER CITIZENS BREACHED
IN AN UGLY MANNER OR A NEGLIGENT
MANNER, WHETHER IT WAS WILLFUL
ENOUGH PERFORMING OR NOT
PERFORMING IN SOME MALICIOUS
MANNER.
MOTIVE IS IRRELEVANT HERE.
A BREACH IS JUST A BREACH.
AND THAT'S ALL WE'RE GOING TO BE
PROVING TO THE JURY.
IT'S GOING TO BE THREE SIMPLE
QUESTIONS; DID CITIZENS BREACH
THE POLICY BY FAILING TO GO TO
APPRAISAL, DID CITIZENS BREACH
THE POLICY BY NOT PAYING A
APPRAISAL AWARD IN 30 DAYS, DID
CITIZENS NOT PAY THE UNDISPUTED
SUMS IT OWED WITHIN 20 DAYS.
THOSE ARE THE CONTRACTUAL
OBLIGATIONS THAT CITIZENS
OBLIGATED ITSELF TO PERFORM.
AND IF CITIZENS WANTS A BETTER
RULE OF DAMAGES THAN THE REST OF
THE CONTRACTING WORLD THEN--
WHEN IT BREACHES A POLICY, IT
SHOULD DO SO THROUGH ITS
CONTRACT.
BUT AS WESTERN WORLD SAID,
ABSENT AN EXPRESS SORT OF
PROVISION IN THE POLICY THAT
LIMITS THE DAMAGES AVAILABLE IN
THE EVENT OF A BREACH, THE
ADHESIVE NATURE OF THE INSURANCE
POLICY PRECLUDES US FROM GETTING
INTO DOING THAT AND ENGAGING IN
THE SORT OF POST-LOSS REWRITING
OF THE POLICY THAT CITIZENS
WANTS TO DO HERE.
BECAUSE THE PLAIN LANGUAGE OF
THIS POLICY UNDISPUTEDLY DOES
NOT LIMIT ANY DAMAGES THAT
CITIZENS HAS TO PAY IF IT
BREACHES THIS POLICY.
WHICH THEN, TO GO BACK TO
CITIZENS' ARGUMENT ABOUT HOW,

YOU KNOW, WE NEED TO LOOK AT THE PLAIN LANGUAGE OF THE POLICY IN ITS EXPRESS TERMS, THE EXPRESS TERMS DON'T LIMIT WHAT CITIZENS PAYS IF IT BREACHES.
WHICH, AGAIN, I THINK THE COURT'S DECISION IN THOMAS V. WESTERN WORLD IS IMPORTANT ON THAT BECAUSE REALLY WHAT CITIZENS IS ASKING THIS COURT TO DO IS TO CREATE A SPECIAL RULE OF DAMAGES FOR INSURANCE COMPANIES THAT ARE DIFFERENT THAN THE REST OF THE CONTRACTING WORLD.
JUSTICE LAWSON, I THINK YOU'RE ON MUTE.
>> THANK YOU FOR RECOGNIZING THAT.
AM I CORRECT THAT THE DAMAGES THAT YOU WOULD BE SEEKING UNDER YOUR BREACH OF CONTRACT THEORY ARE DIFFERENT FROM THE PAYOUT THAT YOU WOULD BE ENTITLED TO IN THE POLICY INCLUDED LOST RENTS? IN OTHER WORDS, THEY'RE BOTH LOST RENTS, SO IT'S EASY TO GET CONFUSED.
BUT YOUR CLIENT WOULD BE ENTITLED FOR LOST RENTS FROM THE DATE OF LOSS, THE DATE THAT THE BUILDING WAS UNINHABITABLE.
>> CORRECT.
WE DON'T HAVE THAT IN THIS CASE.
LIKE I TOLD THE FIFTH DISTRICT--
>> THEY WOULD BE RUN FROM THE DATE OF, WELL, BASED ON THE DATE OF BREACH.
BUT ASSUMING-- SO YOU BREACHED HERE.
IF YOU HAD NOT BREACHED, WE WOULD HAVE BEEN ABLE TO HAVE PEOPLE INTO THESE APARTMENTS A YEAR LATER, AND SO WHAT WE'RE ASKING FOR IS THE LOST RENTS FROM THAT TIME PERIOD WHEN WE COULD HAVE HAD THEM IN AND WHEN WE ACTUALLY GOT FOLKS IN RATHER THAN WHAT YOU WOULD HAVE GOTTEN

UNDER THE POLICY WHICH IS THE ENTIRE PERIOD OF LOST RENTS, IS THAT CORRECT?
>> 100%, JUSTICE LAWSON.
THAT IS ABSOLUTELY CORRECT.
AND TO FURTHER YOUR QUESTION, WE HAVE ALREADY PROVIDED A CUTOFF DATE FOR THE LOST RENT DAMAGE WHICH IS IN 2010, AND THAT WAS FLUSHED OUT IN DISCOVERY AT THE TRIAL COURT LEVEL.
BUT YOUR HONOR HIT THIS RIGHT ON THE HEAD WITH YOUR QUESTION.
WE'RE NOT TRYING TO SAY THIS IS SOMETHING THAT IS COVERED BECAUSE OF HURRICANE FRANCIS.
WE'RE SAYING THIS IS SOMETHING THAT CITIZENS HAS TO PAY BECAUSE IT BREACHED.
AND THE STARTING POINT FOR THAT IS THE DATE OF THE BREACH.
NOW, THE JURY'S GOING TO HAVE TO DETERMINE WHAT THAT IS IN THIS CASE BECAUSE WE HAVE MULTIPLE BREACHES.
BUT THAT'S SOMETHING THAT JURIES DO IN BREACH OF CONTRACT CASES IN THE STATE OF FLORIDA ON A REGULAR BASIS, AND THERE'S GOING TO BE NO HARM OR DIFFICULTY DOING THAT IN THIS CONTEXT.
AND SO BECAUSE OF THAT, YOU KNOW, THE ONLY OTHER THING I WOULD NOTE IS WHEN I'M TALKING ABOUT HOW CITIZENS COULD HAVE CONTRACTED AROUND THIS DAMAGE, I WANT TO MAKE MYSELF CLEAR.
WE HAVE CASES LIKE JOHNSON, TRAVELERS V. WELLS, MARTIN V. MONARCH, TDS.
ALL THOSE CASES PREDATED THE TIME WHEN CITIZENS ISSUED THIS POLICY TO MY CLIENT.
SO IT KNEW THIS WAS AN EXPOSURE OUT THERE FOR IT IN THE EVENT THAT IT BREACHED.
AND YET IT STILL MADE THE DECISION NOT TO INCLUDE LANGUAGE THAT OTHER FLORIDA COURTS HAVE HELD WAS BROAD ENOUGH TO

PRECLUDE A CARRIER FROM HAVING
TO PAY CONSEQUENTIAL DAMAGES
WHICH IS WHAT THE LANDMARK CASE
HELD.
THERE WAS A CONSEQUENTIAL
LOSS EXCLUSION THAT STATED OR
THE COURT INTERPRETED WAS BROAD
ENOUGH TO PRECLUDE A CARRIER
FROM HAVING TO PAY N THAT CASE,
LOST RENT.
SO THERE IS MORE THAN ENOUGH
LANGUAGE IN THE MARKETPLACE FOR
CITIZENS TO HAVE UTILIZED AND,
IN FACT, IT DID UTILIZE IN A
DIFFERENT POLICY FORM AT THE
TIME IT ISSUED THIS POLICY TO MY
CLIENT, AND YET IT CHOSE NOT TO
DO SO.
WHICH, AGAIN, WE SUBMIT IS PROOF
THAT CITIZENS WAS WILLING TO
ACCEPT THIS EXPOSURE.
THE ONLY SECOND LINE OF CASES MY
OPPONENT TALKED ABOUT WAS
McCOLA.
AND HE NOTED ON PAGE 455 HOW
THIS COURT SAID WE'RE TALKING
ABOUT DAMAGES CONTEMPLATED IN
THE POLICY.
WHAT'S INTERESTING ABOUT THAT IS
THAT THAT PART OF McCOLA CITES
1281 OF PALETTE WHERE THE COURT
SAYS WE'RE TALKING ABOUT DAMAGES
CONTEMPLATED BY THE PARTIES TO
THE POLICY.
AND THAT'S REALLY THE IMPORTANT
PHRASE HERE BECAUSE THAT PHRASE
MIRRORS THE FLORIDA STANDARD
JURY INSTRUCTION ON
CONSEQUENTIAL DAMAGES IN A
BREACH OF CONTRACT CASE.
AND IT'S THAT JURY INSTRUCTION
THAT THIS COURT HAS APPROVED.
SO PALETTE OR McCOLA, NEITHER
ONE PRECLUDE THE RECOVERY OF
THIS DAMAGE BECAUSE THOSE
DECISIONS WERE TALKING ABOUT
WHAT REMEDIES ARE INTERPRETING
621455 WHICH IS NOT WHAT WE'RE
TALKING ABOUT IN THIS CASE.
AND IF WE WERE TO READ McCOLA

AND PALETTE IN THE MANNER IN
WHICH MY OPPONENT IS ASKING THIS
COURT TO DO, THEN WE WOULD
ESSENTIALLY BE READING OUT OF
SECTION 624155, SUBSECTION 8
WHICH, AS I'VE ALREADY NOTED TO
THE COURT, HAS SAID WE'RE NOT
GOING TO PREEMPT ANY COMMON LAW
REMEDY, AND IT WOULD BE RECEDING
FROM THIS COURT'S PRIOR
DECISIONS IN, FOR EXAMPLE, TIME
V. BERGER WHERE THIS COURT HAS
RECOGNIZED THAT PRIOR TO THIS
ENACTMENT OF 621455 BREACH OF
CONTRACT DAMAGES WERE ALREADY
AVAILABLE.
SO WITH THAT THEN, THE ONLY
OTHER POINT I WANT TO MAKE TO
THE COURT IS THESE DAMAGES,
THESE CONSEQUENTIAL DAMAGES ARE
NOT SOME SORT OF DISGUISED BAD
FAITH DAMAGE.
LIKE THE COURT IN BERGER SAID,
624155 PROVIDES MORE DAMAGES
THAN WERE ALREADY AVAILABLE TO
POLICYHOLDERS IN A BREACH OF
CONTRACT CASE.
AND MY OPPONENT GAVE, I THINK,
THE BEST EXAMPLE THAT I COULD
GIVE THIS COURT, PUNITIVE
DAMAGES.
WE KNOW THAT BREACH OF CONTRACT
DOES NOT ALLOW ANY NONBREACH OF
PARTY, POLICYHOLDER OR
OTHERWISE, TO RECOVER PUNITIVE
DAMAGES.
AND YET THAT IS AN AVAILABLE
REMEDY UNDER THE BAD FAITH
STATUTE--
>> COUNSEL, I'M SORRY TO
INTERRUPT YOU.
DO YOU AGREE WITH THE COUNSEL ON
THE OTHER SIDE THAT THE
PRACTICAL CONSEQUENCES OF THIS
CASE, REGARDLESS OF HOW WE RULE,
WOULD BE LIMITED JUST TO THE
CITIZENS CONTEXT?
>> BY AND LARGE, PROBABLY SO.
HOWEVER, I AM AWARE OF SOME
CASES-- AND WE'VE ACTUALLY

CITED THEM IN OUR BRIEFS--
WHERE I THINK AS LATE AS 2018
THERE ARE POLICYHOLDERS OUT
THERE THAT ARE SEEKING
CONSEQUENTIAL DAMAGES FROM
NON-CITIZEN-INSURED POLICIES AND
A FIRST PARTY BREACH OF
INSURANCE CONTRACT CAUSE.
SO IT IS NOT SOMETHING THAT IS
SOLELY LIMITED TO CITIZENS.
THIS IS A REMEDY THAT
POLICYHOLDERS ARE SEEKING FROM
PRIVATE INSURANCE COMPANIES
INDEPENDENT OF 624155 AND ARE
DOING SO IN A FIRST PARTY BREACH
CASE.
AND I THINK THE MARA COURT
DECISION IS ALSO IMPORTANT
BECAUSE IT IS DECIDED AFTER
SHALFONTE WHICH IS FURTHER PROOF
THAT THIS COURT'S DECISION DID
NOT AFFECT OR IMPACT THE
AVAILABILITY OF THIS
CONSEQUENTIAL DAMAGE REMEDY IN A
FIRST PARTY BREACH CASE.
NOW, IN THE BRIEFING CITIZENS
WANTS TO DISTINGUISH CASES LIKE
MARA, TRIDENT HOSPITALITY OR
MONARCH ON THE BASIS THAT IT WAS
A MOTION TO DISMISS.
AND I SUBMIT THAT IS ONE WITHOUT
A DIFFERENCE BECAUSE OF THE FACT
THAT IF THIS REMEDY, AS MY
OPPONENT ARGUES, WAS AS A
BASELINE RULE NOT AVAILABLE,
THEN THE COURT WOULD OBSTRUCT
THOSE DAMAGES BECAUSE THERE
WOULD NOT BE A CAUSE OF ACTION
FOR THEM.
BUT THE COURT DID IT.
AND THE REASON IS, IS BECAUSE AS
WE'VE STATED, THIS IS A
CONTRACT.
CONSEQUENTIAL DAMAGES ARE A
CONTRACT REMEDY.
IT'S BEEN RECOGNIZED IN FLORIDA
FOR AT LEAST 38 YEARS IN THE
INSURANCE CONTEXT WHICH IS WHY
WE'RE ASKING THIS COURT TO
ANSWER THE CERTIFIED QUESTION IN

THE AFFIRMATIVE, AFFIRM THE
FIFTH DISTRICT AND HOLD THAT
CONSEQUENTIAL DAMAGES ARE A
REMEDY TO FIRST PARTY BREACH
CASES.
THANK YOU.
>> THANK YOU.
>> FIRST, LET ME RESPOND TO SOME
OF THOSE ARGUMENTS.
AS TO THE PALETTE CASE, WHICH
COUNSEL ALLUDED TO AND SAID ALL
IT TALKS ABOUT IS THAT THEY'RE
ALLOWED TO COVER DAMAGES
CONTEMPLATED BY THE PARTY TO THE
POLICY, THAT'S A QUOTE FROM ONE
SECTION OF THE CASE.
BUT THE CASE ALSO SAYS, AND I'M
GOING TO QUOTE, IN THE CONTEXT
OF A FIRST PARTY INSURANCE CLAIM
THE CONTRACTUAL AMOUNT DUE TO
THE INSURED IS THE AMOUNT OWED
PURSUANT TO THE EXPRESS TERMS
AND CONDITIONS OF THE POLICY
AFTER ALL OF THE CONDITIONS
PRECEDENT OF THE INSURANCE
POLICY IN RESPECT TO PAYMENT ARE
FULFILLED.
SO THAT CASE FROM 2000 IS
CRYSTAL CLEAR.
THOSE ARE THE DAMAGES YOU GET AT
COMMON LAW FOR BREACHES OF AN
INSURANCE POLICY.
SO THEIR CLAIM THAT, YOU KNOW,
WE DON'T ADDRESS 624155, PAREN
8, WHICH SAYS NOTHING IN THIS
STATUTE PRECLUDES A COMMON LAW
CAUSE OF ACTION, THAT JUST BEGS
THE QUESTION WHETHER THERE IS A
COMMON LAW CLAUSE OF ACTION.
SO SUBSECTION 8 IS NEITHER HERE
NOR THERE, JUST OFFERS NO
OPINION IN THAT REGARD.
THEY CITE TRAVELERS V. WELLS.
THAT WAS A BREACH OF CONTRACT TO
PROCURE AN ISSUE, A WORKER'S
COMPENSATION POLICY.
AND BECAUSE THE INSURANCE
COMPANY REFUSED TO ISSUE THE
POLICY, THEY HAD TO GO OUT OF
BUSINESS BECAUSE THEY HAD NO

WORKER'S COMP INSURANCE, AND
THEY SUED ON THAT BASIS.
THEY CITE TIME INSURANCE V.
BERGER.
THAT WAS A BAD FAITH CASE UNDER
SECTION 624155 WHICH HELD WHAT
DAMAGES ARE AVAILABLE IN THOSE
KINDS OF ACTIONS.
HE ARGUES THAT IN DENNY AND
SHALFONTE THEIR STATEMENTS WERE
NOT PART OF THE HOLDING?
WELL, IN DENNY IT WAS AN
INTEGRAL PART OF THE HOLDING AS
HOW TO INTERPRET AN AMBIGUOUS
POLICY DECISION.
THE COURT SAID YOU DON'T GO ON
THE SIDE OF THE POLICY, YOU
DON'T LOOK AT THE REASONABLE
EXPECTATIONS.
YOU STICK TO THE LANGUAGE OF THE
INSURANCE POLICY, AND IF THERE'S
AN AMBIGUITY, YOU INTERPRET IT
IN FAVOR OF THE INSURED.
COUNSEL ARGUED ABOUT HOW IT'S
NOT GOING TO AFFECT DISCOVERY IN
A CASE.
WELL, LET ME EXPLAIN WHAT
HAPPENED TO YOU AFTER--
HAPPENED TO US AFTER WE PAID THE
APPRAISAL AWARD WHICH WE PAID IN
JANUARY OF 2010, 36 DAYS AFTER
THE APPRAISAL AWARD.
SIX MONTHS LATER THEY FILED A
SECOND AMENDMENT COMPLAINT WHERE
THEY ASSERTED ALL OF THE
ALLEGATIONS WE'RE ARGUING ABOUT
NOW.
THAT WAS NOT FILED UNTIL AFTER
WE PAID APPRAISAL AWARD.
AND THEN FOR THE NEXT SEVEN
YEARS THERE WAS LITIGATION ON
THAT AMENDED COMPLAINT.
AND PART OF THAT LITIGATION, IF
WE LOOK AT THE DOCKET SHEET AND
THE RECORD, IS MOTIONS FOR
PROTECTIVE ORDER BECAUSE THEY
ARE SEEKING TO DISCOVER FROM US
WORK PRODUCT INFORMATION AND
ATTORNEY/CLIENT PRIVILEGE
INFORMATION.

WE SAID THAT IS NOT AVAILABLE TO
THEM NO MATTER THE ALLEGATIONS
THAT THEY ARE MAKING.
AND THE COURT GRANTED TO THOSE
MOTIONS FOR PROTECTIVE ORDER.
MY OPPONENT TALKS ABOUT
CONSEQUENTIAL LOSS AND HOW WE
EXCLUDED CONSEQUENTIAL LOSSES IN
OTHER PARTS OF THE POLICY.
THEY'RE CONFUSING CONSEQUENTIAL
LOSS, THE TERM CONSEQUENTIAL
LOSS FROM THE PERIL WITH
CONSEQUENTIAL DAMAGES FROM THE
INSURER'S CONDUCT.
THOSE ARE TWO DIFFERENT THINGS.
CONSEQUENTIAL LOSS IS DAMAGE
OCCURRING LET'S SAY FROM A
HURRICANE BUT INDIRECTLY FROM
THE HURRICANE.
IN OTHER WORDS, THE HURRICANE
PRODUCES SOME DAMAGE, THAT
PRODUCES OTHER INDIRECT DAMAGES.
INSURERS CAN EXCLUDE THOSE
CONSEQUENTIAL LOSSES.
IT'S NOT ABOUT CONSEQUENTIAL
DAMAGES AS A RESULT OF AN
INSURED'S CONDUCT.
IN FACT, AN INSURER WOULDN'T BE
ABLE TO DO THAT BECAUSE THEY
WOULD BE EXCLUDING THEMSELF OUT
OF 624155 WHICH DOES ALLOW
DAMAGES.
SO THAT COMPARISON DOES NOT
APPLY.
THEY TALKED ABOUT THE COMPLAINT
ALLEGING THAT WE FAILED TO MEET
THE LOST PAYMENT PROVISIONS.
WELL, IF YOU READ THE COMPLAINT,
THERE'S NOTHING IN THE COMPLAINT
THAT TALKS ABOUT NEW SPECIFIC
LOST PAYMENT PROVISION.
IN A BREACH OF CONTRACT, THEY
ASSERT BREACHES OF THE POLICY IN
GENERAL TERMS.
PARAGRAPH 56 THEY CLAIM BREACH
OF CONTRACT.
CITIZENS HAS FAILED TO FAIRLY,
HONESTLY AND PROPERLY ADJUST THE
LOSS THAT IS ASSURED, THEREBY
BREACHING THE POLICY.

PARAGRAPH 63 AND THE SECOND CITIZEN, CITIZENS' FAILURE TO PROCEED VOLUNTARILY TO PROCESS OF APPRAISAL CONSTITUTE A WRONGFUL DENIAL OF ABUSE CLAIM. NO LOSS PAYMENT PROVISION. CITIZENS-- AND THEN 64, CITIZENS' FAILURE TO TIMELY AND APPROPRIATELY PAY THE AMOUNT OF THE APPRAISAL AWARD CONSTITUTED A WRONGFUL DENIAL OF THE CLAIM. AND THEN 68C THEY SAY AS THE DIRECT AND FORESEEABLE RESULT TO THE PLAINTIFF'S PROPERTY, THEY WILL-- PLAINTIFF HAS SUFFERED AND WILL CONTINUE TO SUFFER CONSEQUENTIAL DAMAGES DUE TO THE DEFENDANT'S DELAY AND FAILURE TO PAY THIS CLAIM.
THAT'S EXACTLY WHAT A CLAIM UNDER 6241551B1 ALLEGES, WHICH IS THE FAILURE TO SETTLE.
AND THAT'S THE MOST COMMONLY USED PROVISION, FAILURE TO SETTLE UNDER CIRCUMSTANCES WHERE THEY COULD AND SHOULD HAVE DONE SO.
SO THEY DON'T ALLEGE ANY PARTICULAR POLICY PROVISION.
BUT IF YOU LOOK AT PARAGRAPH-- I MEAN, PAGE 45 OF OUR APPENDIX WHICH IS THE POLICY, THAT WILL GIVE YOU THE LOSS PAYMENT PROVISION.
AND WE'RE NOT OBLIGATED TO PAY ON ANY CLAIM UNTIL THERE'S AN AGREEMENT ON THE AMOUNT OF LOSS, NUMBER ONE, OR 30 DAYS A AFTER AN APPRAISAL AWARD.
AND IT'S UNDISPUTED IN THIS CASE THAT WE PAY 36 DAYS AFTER THE APPRAISAL AWARD.
SO, ARGUABLY, SIX DAYS LATE.
AND WE PAID MORE THAN THEY WERE ENTITLED TO.
THERE'S NO CLAIM THAT IT WAS INADEQUATE.
SO FOR THOSE REASONS, WE ASK YOU TO QUASH THE DECISION OF THE DCA AND ANSWER THE CERTIFIED

QUESTION IN THE NEGATIVE.
THANK YOU.
>> WE THANK YOU BOTH FOR YOUR ARGUMENTS TODAY.
THE COURT WILL NOW STAND IN RECESS FOR ABOUT TEN MINUTES BEFORE WE TAKE UP OUR NEXT CASE.