

>> ...ATTENTION YOU WILL BE HEARD.
GOD SAVE THE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN FLORIDA SUPREME COURT PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO FLORIDA SUPREME COURT.

OUR FIRST CASE TODAY IS 2023 - 1540 GEICO VERSUS GLASSCO.

>> IF IT PLEASES THE COURT I'M JOHN ARENA APPEARING THIS MORNING WITH MY PARTNERS LINDSEY AND MATT AND WE REPRESENT GEICO.

I RESERVE FIVE MINUTES FOR REBUTTAL.

THE FLORIDA MOTOR VEHICLE REPAIR ACT USES THE WORD CUSTOMER 65 TIMES.

THE WORD CUSTOMER IS A TERM UNDER THE ACT DEFINED AS THE PERSON WHO SIGNS THE WRITTEN REPAIR ESTIMATE OR ANY OTHER PERSON WHO THE PERSON SIGNS A WRITTEN REPAIR ESTIMATE DESIGNATES ON THE WRITTEN REPAIR ESTIMATE AND THE PERSON WHO MIGHT AUTHORIZE THE WORK.

THE LEGISLATURE PRESENTS WHO DEFINES THE TERM CUSTOMER.

ONE, THEY WOULD IN FACT REPAIR THIS AND THAT SOMEONE WOULD BE SIGNING THE THIS CASE DEALS WITH WHAT TO DO WHEN A WINDSHIELD REPAIR SHOP DOESN'T GIVE AN ESTIMATE ANYBODY SO NO ONE CAN FIND ONE AS WELL AS COMMIT ADDITIONAL VIOLATION TO THE ACT.

THE 11th CIRCUIT HAS TWO CERTIFIED QUESTIONS IN THESE CIRCUMSTANCES.

TURNING TO THE FIRST QUESTION WHICH IS CAN GEICO BRING A DIRECT CLAIM UNDER THE ACT AND THEY CERTAINLY CAN.

SECTION 921 ONE OF REPAIR ACT GIVES A PRIVATE RIGHT OF ACTION TO ANY CUSTOMER WHO IS DAMAGED BY A VIOLATION OF THE ACT THEY DON'T GIVE AN ESTIMATE ANYONE TO NO ONE CAN SIGN ONE AND THEN THERE.

>> I WANT TO ASK YOU SOMETHING ABOUT THIS ESTIMATE.

IT SAYS WHEN A CUSTOMER PERFORMS REPAIR WORK ON A MOTOR VEHICLE THE COST WILL EXCEED \$100 TO THE CUSTOMER.

IT IS THE OPERATIVE LANGUAGE.

IT GETS US OFF GOING DOWN THE PATHWAY.

AM I WRONG?

>> NO, YOU ARE CORRECT YOUR HONOR.

>> IS NOT THE CASE IN THESE CIRCUMSTANCES THAT THE CUSTOMER JUST GIVEN THE WAY THAT THE RESOURCES ARE SET UP AND THE REQUIREMENTS THAT THERE WOULD BE NO DEDUCTIBLE UNDER THESE COMPREHENSIVE POLICIES THAT THE CUSTOMER WON'T PAY ANY POINT.

>> THE CUSTOMER WILL PAY NO DEDUCTIBLE.

>> NOTHING RIGHT?

AND SO THERE IS NO WAY IT WILL EXCEED \$100 TO THE CUSTOMER.

>> THAT IS NOT CORRECT IN THIS CASE YOUR HONOR.

IN THIS CASE IF YOU LOOK AT THE ASSIGNMENT OF BENEFIT THEY HAVE THESE IF SHORT SIGNS AND IT IS BY STATE.

I FURTHER UNDERSTAND AND AGREE THAT IF MY INSURANCE COMPANY IGNORES THIS OR FAILS TO PAY ALL AMOUNTS HERE AFTER I WILL DIRECTLY PAY ALL AMOUNTS DUE.

>> THIS IS AN ASSUMPTION THAT YOU WOULD VIOLATE THE WALL?

>> NO SIR.

>> YOUR CLIENT?

>> NOT MINE, NO.

>> OKAY WELL BY NOT PAYING THE INSURER AND NOT PAYING WITH THE INSURER IS REQUIRED TO PAY.

>> YOUR HONOR, THE INSURANCE IS NOT LIMITLESS.

THERE ARE LIMITS OUR INSURANCE.

SURE THERE IS NO DEDUCTIBLE BUT THERE ARE LIMITS ON INSURER AND, YOU KNOW, THEY ARE NOT TELLING THE INSURED HOW MUCH THEY ARE ON THE HOOKE FOR.

THE ASSIGNMENT OF BENEFIT IS DOCUMENT 20 PAGE 548 OF THE RECORD IT IS SPECIFICALLY SAYING THAT THEY ARE KEEPING THEM ON THE HOOKE FOR ALL AMOUNTS DUE HEREAFTER BUT THEY ARE NOT SAYING HOW MUCH OF THE AMOUNT DUE HEREAFTER MAY BE THEY ARE CHASING GEICO NOW BUT THEY HAVE NOT RECOVERED EVERYTHING ON THESE INVOICES.

>> WHAT WOULD GEICO DO IF THE CUSTOMER DECIDED THEY WANTED TO PAY AN INVOICE.

WOULD GEICO INTERROGATE THE CUSTOMER TO SAY WERE YOU ACTUALLY LEGALLY REQUIRED TO PAY THIS AND IF THE ANSWER IS NO BECAUSE IT WAS NOT GIVEN NOTICE THAT WOULD GEICO THAN THE CAN THEN DENY THE CLAIM.

>> IF THEY SUBMITTED THE CLAIM WITHIN THE GEICO WOULD PAY LIMITS TO LIABILITY.

>> REGARDLESS OF IF THE CUSTOMER - LET'S ASSUME THE STATUTE WAS NOT COMPLIED WITH, THEN WHAT WOULD GEICO DO AND WHAT THEY SAY WELL YOU DIDN'T ACTUALLY OWE IT SO WE ARE NOT PAYING IT?

>> THAT IS CORRECT.

IF IT CAME TO GEICO'S ATTENTION THAT IN FACT THE STATUTE WAS NOT COMPLIED WITH THEY DID NOT GIVE THE APPROPRIATE NOTICES AND THEY DID NOT GET THE ESTIMATE THAT WAS REQUIRED AND THEY DID NOT SEND IT IN BUT THEY CLAIM THE CUSTOMER IS INSURED BUT THEY DID NOT SEND THE INVOICE TO THE INSURED AND THEY GAVE THEM NO NOTICE AT ALL THAN THE STATUTE IS DESIGNED FOR TRANSPARENCY.

THAT IS WITH THE WHOLE STATUTE CENTERS AROUND.
BUT YES, YOUR HONOR GEICO WOULD NOT BE OBLIGATED TO PAY UNDER THE
LAW IF THEY KNEW THAT THE SERVICES BASICALLY WERE NOT LAWFUL IN
THE FIRST SENTENCE.
>> AGAIN, THE PREDICATE HERE IS INJURY TO THE CUSTOMER.
AND I AM STRUGGLING TO SEE ANY INJURY THAT YOU COULD RAISE OUR
THAT CUSTOMER WOULD WANT TO RAISE.
THERE ARE NO CUSTOMER COMPLAINTS ABOUT ANY OF THIS.
ONLY IT IS THE INSURER'S COMPLAINT.
IT APPEARS FROM WHAT HAS BEEN HAPPENING IN THE LOWER COURTS THAT
YOU DECIDED THAT THE INSURER DECIDED THAT WE WOULD LOWBALL ON
THESE CLAIMS AND WE WOULD PAY LESS THAN THE AMOUNT INVOICED AND AM
I WRONG?
IN REACHING THE CONCLUSION THAT EVERY COURT, EVERY COURT THAT HAS
CONSIDERED WHETHER THE INSURER PAID ENOUGH WHEN THERE WAS A
DISPUTE ABOUT IT HAS DECIDED THAT THE INSURER WAS NOT ENTITLED TO
PAY LESS AND AMOUNT THAT THEY PAID.
>> WE HAVE WON SOME TRIALS IN THE COUNTY COURT.
NOT EVERY COURT HAS MADE THE DETERMINATION.
ONLY ONE CASE IS ACTUALLY GOING TO JURY TRIAL AND THE JURY CAME
BACK FOR GEICO IN THAT SITUATION.
THE JUDGE OVERTURNED THE VERDICT AND WENT ON APPEAL AND REINSTATED
THE VERDICT.
YOU ARE RIGHT YOUR HONOR WE ARE LOSING THE GREAT MAJORITY OF THE
CASES BUT WE ARE WINNING SOME AND WE WANT TO JURY TRIAL.
BUT THE OTHER POINT IS, YOUR HONOR, THESE CASES ARE NOT
CONSIDERING THE REPAIR ACT.
IN THE COUNTY COURTS THEY DON'T HEAR THE REPAIR ACT AT ALL.
THEY EITHER STRIKE IT OR RAISE SUMMARY JUDGMENT.
SO NO ONE HEARS ABOUT THE REPAIR ACT.
WE WERE NOT ALLOWED TO RAISE IT IN THE CASE WE TRIED TO A JURY.
>> SO, YOU THINK IT HAS BEEN IMPROPERLY STRICKEN?
>> I DO.
>> THAT IS SUBJECT TO APPEAL.
>> SOME OF THEM ARE ON APPEAL NOW AND THAT HAS BEEN STAYED.
I DON'T KNOW HOW MANY.
THERE ARE SEVERAL.
THEY HAVE BEEN STAYED PENDING THIS COURT'S DETERMINATION.
>> I GUESS MY PROBLEM IS MORE FUNDAMENTAL.
CAN WE TALK ABOUT JUST THE TEXT.
I DO NOT SEE A PRIVATE RIGHT OF ACTION TO ANYONE BUT A CUSTOMER IN

THE STATUTE AND I DO NOT SEE HOW GEICO IS A CUSTOMER.
HELP ME UNDERSTAND THOSE BRUTE REALITIES OF THE TEXT.
>> REMEMBER, THE CUSTOMER IS A DEFINED TERM AND IT IS BACK FACT SPECIFIC.
>> IS GEICO'S POSITION EVER BEEN AND IT IS HERE TODAY THAT IT IS A CUSTOMER?
>> I THINK UNDER THESE CIRCUMSTANCES WE SHOULD BE CONSIDERED.
>> WHICH CIRCUMSTANCES.
>> THE CIRCUMSTANCE OF WHERE THE STATUTE WAS NOT COMPLIED WITH. REMEMBER WE HAVE NO CUSTOMER.
>> YOUR ARGUMENT IS WHENEVER THE CAUSE OF ACTION ONLY LIES WHEN THE STATUTE HAS NOT BEEN COMPLIED WITH.
IT IS A CAUSE OF THE STATUTE.
>> CORRECT.
>> YOUR ARGUMENT CONSUMES ITSELF BEGINNING WITH ITS OWN TAIL. THE CAUSE OF ACTION ONLY EXISTS WHEN THERE HAS BEEN A VIOLATION OF THE STATUTE AND THOSE OF THE CIRCUMSTANCES YOU ARE SAYING WE SHOULD IGNORE THE WORD CUSTOMER AND SUBSTITUTE PAYER FOR CUSTOMER. UNFORTUNATELY, THAT IS NOT WHAT THIS TEXT SAYS AND THE BRIEFING, IF I MAY SAY SO, IT DOES NOT SQUARE UP TO JUST THE BRUTE REALITY OF THE TEXT.
INSTEAD IT ASKS US TO CONSIDER LEGISLATIVE INTENT AS WELL AS ALL SORTS OF CONSIDERATIONS ABOUT WHAT MIGHT BE LURKING BEHIND THE TEXT.
BUT I HAVE NOT SEEN GEICO SQUARE UP TO THE ACTUAL WORD OF THE STATUTE AND SAY WE ARE A CUSTOMER OR WE ARE NOT AND I'M GIVING YOU THE OPPORTUNITY TO DO THAT HERE.
>> WE SHOULD BE CONSIDERED CUSTOMER IN THESE CIRCUMSTANCES.
>> WERE EVER THERE WAS A CAUSE OF ACTION?
>> NOT JUST THAT BUT UNDER THESE CIRCUMSTANCES WERE NO CUSTOMER EXISTS BECAUSE OF THE INSURER IS NOT CUSTOMER EITHER.
NO ONE IS A CUSTOMER UNDER THE PLAIN TEXT OF THE STATUTE.
THE CUSTOMER IS THE PERSON WHO SIGNS A WRITTEN REPAIR ESTIMATE OR THEIR DESIGNEE.
>> WHO ARE -
>> IF IT IS NOT COVERED BY THE STATUTE THEN WE MAKE IT UP?
>> I'M NOT ASKING YOU TO MAKE IT UP.
>> IT'S HARD FOR ME TOO SEE WHAT YOU ARE DOING IS ANYTHING OTHER THAN ASKING US TO FILL IN SOME IS NOT COVERED BY THE STATUTE.
I DON'T UNDERSTAND HOW TO DECODE YOUR ARGUMENT IN ANOTHER WAY.
>> HAVE YOU READ OUR CASES PREVIOUSLY WE TALK ABOUT THE PRIVACY OF

THE TEXT?

YOU BRIEFING DOES NOT SEEM TO INDICATE THAT.

>> WE HAVE AN SUPREMACY OF THE TEXT WE REALIZE WE START WITH SUPREMACY OF THE TEXT BUT YOU DON'T TAKE IT TO THE DEGREE WHERE THE STATUTE BECOMES MEANINGLESS.

>> I THINK THE ISSUE WITH YOUR INTERPRETIVE ARGUMENT YOU PRESENTED THIS ENTIRE ARGUMENT AND IT WAS IN THE 11th CIRCUIT AND HERE AND IT'S A MATTER OF INTERPRETATION AND IT SOUNDS LIKE WHAT YOU'RE SAYING IS LIKE THERE IS A RIGHT WITHOUT A REMEDY AND PEOPLE MAKE THE ARGUMENTS AND IT'S NOT A MATTER OF INTERPRETATION IT IS A COMPLETELY DIFFERENT CHALLENGE THAT IS BASED ON CONSTITUTIONALITY OF A STATUTE AND, SO, WHY SHOULD WE CONTORT A STATUTORY ANALYSIS TO MAKE THIS ARGUMENT THAT YOU HAVE NOT MADE.

>> THE DISTRICT COURT CALLED THIS A HOLE IN THE STATUTE AND WENT BEYOND THE PLAIN TEXT AND CONSTRUED IT NARROWLY AND DECIDED THAT IN THESE CIRCUMSTANCES THEY BASICALLY FILLED IN A CUSTOMER AND SAID IT COULD ONLY BE THE INSURED.

I DO NOT THINK IT IS CORRECT BUT THAT IS WHAT THE DISTRICT COURT DID.

THEY RECOGNIZED THAT, YOU KNOW, THEY AGREED TO THE CONCLUSION THAT THEY HAVE NO CUSTOMER THAT THERE IS NO REPAIR.

>> I JUST -IT SEEMS ODD THAT YOU ARE SAYING THE ROLE OF THIS COURT IS TO FILL IN RULES AND STATUTE RATHER THAN PROTECT CITIZENS RIGHTS.

>> I THINK YOU DO. GOING TO TEXT AS WRITTEN BUT YOU DON'T TAKE IT TO THE EXTREME THAT THERE IS IN FACT NO STATUTE.

YOU BASICALLY WRITE OFF THE STATUTE.

SO YOUR ARGUMENT TURNS ON THE ABSURDITY DOCTRINE.

>> THE ABSURDITY DOCTRINE YES AND THE AMBIGUITY.

IT IS NOT THAT MAKES THE STATUTE AMBIGUOUS IT IS THE LACK OF ANY GUIDANCE OF WHAT HAPPENS WHEN THEY VIOLATE THE REPAIR ACT.

THERE IS NO WRITTEN ESTIMATE SO YOU DO NOT HAVE A CUSTOMER IN THE STATUTE DOES NOT TELLS WHAT TO DO IN THOSE CIRCUMSTANCES AND THAT IS WHAT THE DISTRICT COURT DID.

>> IT SEEMS TO ME, TO BUILD ON WHAT THE COLLOQUY OF JUSTICE ASSET IS THAT WE ARE HAVING, IT SOUNDS LIKE A GREAT ARGUMENT FOR ACROSS THE STREET.

I DO NOT UNDERSTAND WHY THEY ARE BEING MADE HERE.

IF THERE IS A HOLE IN THE STATUTE AND YOU SAY IT IS A NULL SET WHERE THERE IS NO CUSTOMER IN THIS WEIRD CIRCUMSTANCE OF WINDSHIELD REPAIR BECAUSE OF WHERE THE MARKET HAS PLAYED ITSELF

OUT IT SOUNDS A LEGISLATIVE ISSUE.

DO YOU AGREE?

>> IT IS.

>> HIRE A LOBBYIST, GO ACROSS THE STREET.

>> IT IS A LEGISLATIVE ISSUE AND THE LEGISLATURE HAS DEALT WITH THESE ISSUES GOING FORWARD.

THE LEGISLATURE RECENTLY TOOK AWAY THE ASSIGNMENT OF BENEFITS.

THEY BASICALLY CUT THE GLASS INDUSTRY OFF AT THE KNEES.

THEY TOOK AWAY THE ASSIGNMENT THE BENEFITS AS OF MAY 2023.

THEY RECOGNIZE THE ISSUE AND THEY DEALT WITH A GOING FORWARD BUT THERE IS STILL BACKLOGGED HERE WITH THE CASES THAT ARE STILL PENDING.

BASICALLY, WOULD BE DOING IS ALLOWING UNLAWFUL SERVICES TO BE COMPENSATED.

>> I WANT TO ASK YOU ABOUT THAT BECAUSE TO ME IT SEEMS LIKE AN EASIER TEXTUAL ARGUMENT THAT ALSO IS A PROBLEM FOR YOU WHICH IS IT SEEMS LIKE THIS GOES BACK TO A CASE FROM 86 WHERE IT WAS ASSUMED THAT WHERE THE NOTICE REQUIREMENTS ARE NOT IN COMPLIANCE ESSENTIALLY THE CUSTOMER OWES NOTHING AND THAT IS DEFINITELY I DO NOT SEE IT INDICATED IN THE TEXT.

THE CIVIL REMEDY TALKS ABOUT WHERE THE CUSTOMER IS INJURED.

WE NOW HAVE THE SUBSET THAT HAS BEEN ADDED AND BASICALLY IT INSTRUCTS THE ENFORCING GOVERNMENT AUTHORITY THAT WERE IN FACT THE CUSTOMER WAS ON NOTICE OF WHAT WAS GOING ON AND A LEGITIMATE SERVICE WAS PROVIDED THE COMPANY GETS CREDIT FOR THAT AND SO IF WE THINK THAT THAT WHOLE PREMISE IS WRONG THAT THE CUSTOMER OWES NOTHING IN THESE CIRCUMSTANCES THEN WHAT DOES IT DO FOR YOUR CASE? I THINK FOR QUESTION NUMBER TWO IT WOULD BASICALLY YOU WOULD LOSE ON IT.

>> IF IT WAS YOUR DECISION.

>> BUT I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

WHAT IS YOUR TAKE ON IT?

>> I THINK THERE ARE TWO ISSUES AND ONE IS THE STATUTE DOES NOT CONTAIN AN EXPRESS AVOIDING PENALTIES SAYING YOU CANNOT GET PAID IF THIS HAPPENS BUT IT DOES SAY YOU CANNOT START WORK UNTIL YOU HAVE SATISFIED THE REQUIREMENT TO GET THE WRITTEN DISCLOSURE AND TO GET THE ESTIMATE.

>> BUT WE ARE STILL JUST BACK AT THE SAME POINT IF THE STATUTE IS NOT COMPLYING WITH WHAT IS THE REMEDY.

IT SEEMS LIKE THE REMEDIAL PART OF THE STATUTE SAYS IF THE CUSTOMER CAN PROVE THAT THEY WERE INJURED BY IT THEN THEY GET

WHATEVER THE REMEDIES ARE.

IT SEEMS THIS WHOLE AREA HAS BEEN PREMISED ON A MISTAKE AT THE BEGINNING BACK IN O'STEEN.

>> I DON'T KNOW IF I CHARACTERIZE IT AS A MISTAKE BUT EVERY COURT THAT HAS BEEN CONSIDERED FOR THIS ISSUE.

>> ESSENTIALLY, JUST CITING IT I MEAN POSTING ITSELF YOU HAVE TO ADMIT THERE IS NO REASONING IN THERE IT JUST ASSUMES IT.

>> IT SAYS IT IS A REMEDIAL STATUTE AND EFFECTUATE THE PURPOSES THAT WE WILL NOT ALLOW PAYMENT FOR AND THAT IS WHAT THE LINE OF CASES HAVE FOLLOWED.

BUT THE LEGISLATURE HAS DEEMED TO BE AWARE OF THE INTERPRETATION OF THE STATUTE AND LIKE YOU'RE HONOR POINTED OUT THEY AMENDED THE STATUTE TO ADD SECTION 921.7 RIGHT?

9217 IS AN EXCEPTION LIKE YOU'RE HONOR SAID UNDER SECTION 921 TO SEVEN OF THE STATUTE YOU CAN GET PAID UNDER LIMITED CIRCUMSTANCES FOR THINGS, ONE, THE WORK WAS ACTUALLY APPROVED, TOO, THE COST WAS APPROVED ORALLY OR IN WRITING AND THREE THE CUSTOMER BENEFITED AND NUMBER FOUR THE WORK WAS UNSATISFACTORY.

SO WHY WERE THE LEGISLATURE PUT IN AN EXCEPTION TO ALLOW PAYMENT UNDER CERTAIN CIRCUMSTANCES.

THE LEGISLATURE INTENDED THAT YOU COULD NOT GET PAID AND THE LEGISLATURE INTENDED THAT YOU COULD GET PAID EVEN IF YOU VIOLATED THE STATUTE.

WHY WOULD THEY PUT IN AN EXCEPTION UNDER THOSE CIRCUMSTANCES?

>> WHY WOULD THEY SAY YOU HAVE TO BE INJURED?

IF WELL, HOW DO YOU EXPLAIN IT?

>> I THINK THE INSURED IS INJURED.

THEY HAVE BEEN SENT BILLS FOR THINGS THAT ARE NOT PAYABLE UNDER THE REPAIR ACT.

>> HOW IS THE INSURER INJURED?

>> WELL, THE INSURED IS INJURED BECAUSE THEY ARE STILL ON THE HOOK LIKE I SAID FOR AMOUNTS THAT WERE NEVER DISCLOSED TO THEM.

YOUR HONOR WHO KNOWS WHAT WOULD HAVE HAPPENED IF THEY SAID HERE IS A WRITTEN ESTIMATE AND THIS IS WHAT WE WILL CHARGE YOU.

THAT IS WHAT THE ACT IS DESIGNED FOR.

TRANSPARENCY.

WHO KNOWS WHAT WOULD HAVE HAPPENED IF THEY SAID WE WILL CHARGE YOU \$1,000 FOR THIS WINDSHIELD.

MAYBE THE INSURED SAYS IT SOUNDS LIKE A LOT AND I DON'T KNOW IF.

MAYBE I'LL CALL UP MY INSURANCE COMPANY AND SEE IF IT'S COVERED OR MAYBE I DON'T WANT TO MAKE A CLAIM THAT LARGE AGAINST MY INSURANCE

POLICY SO I WILL GO DOWN THE ROAD AND SEE IF I CAN GET IT FOR LESS.

>> THIS IS A PROPHYLACTIC STATUTE.

IF EVERY SINGLE PIECE OF MATERIAL INFORMATION WAS DISCLOSED ORALLY AND THERE WAS COMPLETE KNOWLEDGE BY THE CUSTOMER FOR THEM TO GO THROUGH THESE THOUGHT PROCESSES THAT YOU ARE TALKING ABOUT THERE WOULD STILL BE A VIOLATION AND YOU WOULD STILL BE SAYING THE CUSTOMER OWES NOTHING AND THEREFORE YOU OWE NOTHING.

>> IF IT HAD BEEN DISCLOSED OR ORALLY IT MAY BE SUBJECT TO THE BUT IT NEVER WROTE IN.

>> IN SOME WAY, ALL THESE FACTUAL THINGS SORT OF KIND OF CONFIRMS THE WISDOM OF WHY IT REALLY DOES NEED TO BE THE CUSTOMER.

YOU EITHER NEED TO STAND IN THE SHOES OF THE CUSTOMER WHICH THROUGHOUT THIS ENTIRE LITIGATION YOU HAVE NOT.

YOU SAID WE HAVE NO SUBROGATION WHATSOEVER.

THIS IS YOU GUYS COME IN ON YOUR OWN.

SO BASICALLY YOU ARE TRYING TO ASSERT ALL THESE THINGS THAT REALLY ONLY THE CUSTOMER IS IN A POSITION TO ASSERT.

>> BUT IT STILL COMES BACK YOUR HONOR UNDER THESE FACTS THERE IS NO CUSTOMER IN THE COURTS ARE JUST ASSUMING.

>> I DON'T KNOW THAT WE NEED TO AGREE THAT THE DEFINED TERM OBVIOUSLY IN THE NOTICE CONTEXT IT MAKES SENSE BUT THERE'S ALL KINDS OF STUFF IN HERE THAT SAYS YOU CANNOT PUT A FALSE THING ON THE CREDIT CARD OR WHATEVER.

I THINK OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES WANT TO GO AFTER COMPANY FOR DOING THAT I DON'T KNOW THAT THE COMPANY WOULD BE ABLE TO SAY IT DOESN'T PROTECT THE CUSTOMER OR IT ONLY PROTECTS SOMEONE WHO SIGNED THERE IS NO SIGN SO THEREFORE YOU CAN PUT THESE CHARGES I THINK IT IS ARGUABLE WHETHER WE NEED TO BE THAT LITERAL ABOUT THE DEFINED TERM BUT IT STILL DOES NOT GET YOU THERE.

>> IF THAT IS WHAT THE COURT THE COURT WILL DETERMINE BUT I THINK WE SHOULD BE ABLE TO ASSERT AN AFFIRMATIVE.

YOU'RE RIGHT WE HAVE NOT RAISED SEGREGATION IT IS NOT ON THE TABLE BUT IT DOES NOT MEAN THAT WE DON'T STAND IN THE SHOES OF OUR INSURER.

IF OUR INSURER DOES NOT OWE ANYTHING THEN HOW DOES GEICO OWE ANYTHING?

IF I HAVE AN INSURANCE POLICY AND I DON'T KNOW ANYTHING UNDER THE INSURANCE POLICY MY INSURER DOES NOT HAVE TO PAY.

>> IF WE DISAGREE WITH YOU ON THE PREMISE THAT THE CUSTOMER WOULD

NOT OWE ANYTHING ABSENT INJURY THEN WE CAN JUST ANSWER I GUESS NO TO THESE QUESTIONS AND BE DONE WITH IT.

>> I DON'T BELIEVE YOU SHOULD ANSWER NO TO THESE QUESTIONS.

>> BUT WE COULD.

THAT WILL BE THE CORRECT ANSWER.

IF THE PREMISE IS THAT ESSENTIALLY YOUR REMEDY IS YOU HAVE TO SHOW AN INJURY ET CETERA ET CETERA THEN AT LEAST THE ANSWER TO QUESTION NUMBER TWO WOULD BE NO.

>> IF YOU HAVE TO BE A CUSTOMER AND YOU ARE SAYING WE ARE NOT A CUSTOMER.

>> EVEN IF YOU WERE CUSTOMER THE QUESTION I THINK ASSUMES IT IS JUST PER SE IF I SHOWED THESE FIVE SPECIFIC VIOLATIONS AND THE CLAIM IS SUBMITTED WHETHER IT'S BY CUSTOMER OR BY THE INSURING COMPANY OR WHOEVER THE INVOICES SENT IS EITHER TO A CUSTOMER TO THE INSURANCE COMPANY THEN ESSENTIALLY WHO EVER THE RECEIVING ENTITY IS THEY OWE NOTHING.

THAT IS YOUR ARGUMENT RIGHT?

ONCE YOU HAVE SHOWED THE NOTICE IS COMPLIED.

>> YES ONCE THERE IS A MATERIAL VIOLATION OF THE REPAIR ACT THERE IS NOTHING OWED UNDER THE LAW.

THE LAW DOES NOT PERMIT THIS WORK TO BE DONE BEFORE WRITTEN ESTIMATE BEFORE THE WRITTEN DISCLOSURE IS SATISFIED.

THE LAW DOES NOT PERMIT IT.

>> YOU CAN TAKE 30 SECONDS AND WE WILL GIVE YOU THREE MINUTES OF A REBUTTAL.

>> I WILL JUST SIT FOR MY REBUTTAL TIME.

>> GOOD MORNING.

I REPRESENT THE APPELLEES IN THIS PARTICULAR CASE.

AS THE COURT IS INDICATED GEICO'S INTERPRETATION OF THE STATUTE IS TO BE COMPLETELY REJECTED BASED ON THIS COURT'S PRECEDENT.

THE QUESTION CERTIFIED BY THE 11th CIRCUIT ARE EASILY ANSWERABLE BY TURNING STRAIGHT TO THE PLAIN LANGUAGE OF THE TAX AND THOSE PLAIN LANGUAGE OF TEXT TAKEN AS A WHOLE THE WORDS ENACTED BY THE LEGISLATURE TELL US WHAT THE LEGISLATURE'S INTENT WAS.

WE HAVE TO FOCUS ON THOSE WORDS AND THAT REQUIRED THAT THIS COURT ANSWERED BOTH OF THE CERTIFIED QUESTIONS AND THE NEGATIVE.

I WILL START FIRST WITH WHETHER GEICO WAS A CUSTOMER.

>> WHAT IF WE AGREE WITH YOU THAT GEICO IS NOT BUT THAT THERE IS NO CUSTOMER FOR THE PURPOSES OF THE STATUTE.

>> I DON'T THINK THAT YOU CAN DO THAT READING THE TEXT OF THIS PARTICULAR STATUTE.

>> HELP ME UNDERSTAND HOW THAT IS TRUE OF KNOWN SIGNS REPORT.
>> THE STATUTE IN AND OF ITSELF CONTEMPLATES THESE CIRCUMSTANCES WHERE CUSTOMER IS NOT TO SIGN A WRITTEN ESTIMATE.

THERE ARE CIRCUMSTANCES BY IT'S PLAIN TEXT AS THE MENTIONED THAT IN SECTION 559.905 WRITTEN ESTIMATE SIGNED BY THE CUSTOMER WITH THE REQUIRED DISCLOSURES IS ONLY REQUIRED WHEN THERE WILL BE CHARGES TO THE CUSTOMER IN EXCESS OF \$100.

>> THAT'S RIGHT.

BUT NOW LET'S ANSWER THE ARGUMENT THAT YOUR OPPONENT MAKES WHICH IS OF COURSE THOSE CHARGES ARE THERE PERHAPS A BAKED INTO WHAT THEY ARE PAYING FOR A COMPREHENSIVE COVERAGE AND JUST BECAUSE THEY ARE NOT PRESENTED WITH A DEDUCTIBLE DOESN'T MEAN THERE IS NOT A CHARGE.

THERE IS A CHARGE AND CUSTOMERS MAY NOT HAVE TRANSPARENCY INTO WHAT IT IS YOU ARE SEEKING ON THE BACKEND.

YOU ARE NOT ARGUING THAT THERE GLASCOW GETS PAID.

>> I THINK THIS GOES TO THE SECOND QUESTION OF WHETHER THERE IS AVOIDING PENALTY AND WHETHER THE CUSTOMER STILL ON THE HOOKE. SO, THE ANSWER THAT QUESTION IS AGAIN AND THE REPAIR ACT ITSELF. THE LANGUAGE OF THE REPAIR ACT IS CLEAR.

IF, IN THIS CASE IT IS UNDISPUTED THAT THERE WAS A WRITTEN ESTIMATE WHICH WAS SIGNED THAT SAID ZERO TO THE CUSTOMER AND THE CUSTOMER ALSO WAIVED THE RIGHT TO WRITTEN ESTIMATE.

SO, LET'S ASSUME GLASCOW GOES AND SUBMITS A BILL TO GEICO AND GEICO DOES NOT PAY IT AND GLASCOW THEN PURSUES AND DOES NOT RETURN THE CARD.

IT HASN'T HAPPENED IN THIS CASE.

OR SHOES ON THE REPAIR INVOICE.

THE CUSTOMER THEN OR SUES ON THE REPAIR INVOICE.

THE CUSTOMER THEN SAYS ON 559.905 I DID NOT GET THE RIGHT ESTIMATE I WAS ESTIMATED AT ZERO CHARGES.

YOU ARE NOW WANTING TO CHARGE ME \$1,000.

THE PENALTY PROVIDED BY THE STATUTE IS NOT AVOIDING PENALTY.

THE PENALTY PROVIDED SPECIFICALLY IN 559909 SAYS THAT WHERE THE CUSTOMER DOES NOT OBTAIN THIS WRITTEN ESTIMATE.

WHERE THE REPAIR SHOP DOES NOT DO IT THEIR LIABILITY IS LIMITED TO \$10 OR 10 PERCENT NOT TO EXCEED \$50 SO, EVEN IN A CASE WHERE A CUSTOMER WERE NOT TO GET A WRITTEN ESTIMATE A PENALTY PROVIDED BY THE PLAIN TEXT OF THE REPAIR ACT IS TO LIMIT THE REPAIR SHOPS CHARGES TO \$50.

THIS IS A STATUTORY PENALTY WHEN A REPAIR SHOP DOES NOT COMPLY

WITH THE WRITTEN ESTIMATE TO THE CUSTOMER.

>> WOULDN'T YOU THEN BE DOING LABOR?

SING TO THE CUSTOMER YOU WAIVE YOUR RIGHTS HERE?

>> IF UNDER THE FACTS UNDER THIS PARTICULAR CASE, UNDER THIS PARTICULAR CASE THE CUSTOMER HAS TO DO THE WAIVER IN WRITING AND I BELIEVE IT AS A MATTER OF RECORD THE ACTUAL INVOICES AND PLAIN LANGUAGE OF THE REPAIR ACT PERMITS A CUSTOMER TO WAIVE THE WRITTEN ESTIMATE IN WRITING AND I BELIEVE ALL THESE WRITTEN ESTIMATES ALSO CONTAIN A WRITTEN WAIVER OF WRITTEN ESTIMATE BY THE CUSTOMER. THE CUSTOMER IS NOT ONLY SAYING LOOK YOU CAN REPAIR MY CAR AND YOU CAN BUILD GEICO, YOU WILL CHARGE ME NOTHING, I WAIVE THE WRITTEN ESTIMATE UNDER THIS PARTICULAR STATUTE AND -

>> BUT WHAT WOULD YOU GUYS CHARGE IN THE SCENARIO FOR WHATEVER REASON THE INSURANCE COMPANY DID NOT PAY AND YOU PULL OUT THE ASSIGNMENT OF BENEFITS THING AND IT SAYS THE CUSTOMER STILL ON THE HOOKE AND WHAT DO YOU CHARGE THEM?

NOT \$50 WOULD YOU?

>> IT WILL BE LIMITED BY LAW TO IT.

>> BUT WHAT WOULD YOU SAY?

WOULDN'T YOU SEND THEM THE SAME BILL THAT YOU SEND THE ATTORNEY?

>> CORRECT.

ASSUMING THAT GEICO DENIES THE CLAIM AND DOES NOT PAY IT THAN THE CUSTOMER GETS THE SAME EXACT BILL.

>> IT SEEMS LIKE I MEAN YOUR POSITION THE - THE MORE ABSURD I HATE THE WORD ABSURD.

BUT THE MORE IRRATIONAL YOU MAKE THE STATUTORY SCHEME SOUND BY GETTING INTO ALL THESE COUNTERFACTUAL ISN'T IT REALLY WHAT IS YOUR POSITION ON THIS THING AND AT THE END OF THE DAY IS IT THE PROBLEM?

BECAUSE IT SEEMS LIKE IT REALLY WOULD BE IN A RATIONAL STATUTE AND A CRAZY WORLD IF UNDER THE SAME FACT PATTERN IF GLASGOW SENDS A BILL TO THE CUSTOMER THAN THE CUSTOMER OWNS NOTHING THEN THEY SEND THE EXACT SAME BILL TO THE INSURANCE COMPANY AND THE INSURANCE COMPANY HAS TO PAY 100 PERCENT OF THE BILL.

NO LEGISLATURE WITH ANY FORESIGHT WOULD EVER MAKE THAT THE RULE. DO YOU AGREE WITH ME ON THAT?

>> I DO AGREE WITH YOU ON THAT BUT I DO NOT AGREE ON THIS CASE. IN THIS CASE PRESENTS TO US IN A PROCEDURAL POSTURE WHERE WE ARE ASSUMING BASED UPON THE 11th CIRCUIT CERTIFIED QUESTION THAT THERE ARE IN FACT VIOLATIONS.

AS A MATTER OF RECORD HOWEVER.

>> BUT DON'T.

LET'S JUST TAKE THE CASE AS WE HAVE FOUND IT.

IT IS LIMITED TO THESE FIVE VIOLATIONS AND ESSENTIALLY THEY HAVE
TEED UP IT'S ALMOST LIKE AN ADVISORY OPINION TYPE THING.

ASSUMING THE VIOLATIONS ARE ON THE TABLE UNDER ALL THIS DCA
PRECEDENT THOSE VIOLATIONS TO BE ENOUGH FOR THE CUSTOMER TO OWN
NOTHING RIGHT?

>> INCORRECT.

>> WHY IS THAT?

>> FIRST THE STATUTE THAT YOU MENTION 559.920 SECTION KEY.

>> NONE OF WHICH THE PRESIDENT CONSIDERS.

THAT'S WHAT I'M SAYING.

I THINK THE PRESIDENT IS ALL WRONG.

EXCEPT I MEAN THE QUESTION WAS UNDER THE DCA PRECEDENT.

>> THERE IS LIEBERMAN'S.

>> WHAT DOES IT SAY?

>> LIEBERMAN IS THE FIRST CASE AND IT IS THAT REPAIR SHOP PREPARED
NO WRITTEN ESTIMATE AT ALL AND INSTEAD RELIED UPON AN ESTIMATE
WHICH OF THE INSURANCE COST ME WITH CUSTOMERS GOING TO PAY.

IS RELATED TO THE CUSTOMER THE LIEBERMAN'S IS IMPORTANT FOR TWO
POINTS BECAUSE IT EXTINGUISHES AND ESTABLISHES THAT THE
DISTINCTION BETWEEN THE INSURER AND THE CUSTOMER.

IN LIEBERMAN'S THERE WAS NO REPAIR ESTIMATE AT ALL.

A COMPLETE VIOLATION AS IT RELATES TO THE CUSTOMER.

THE INSURER HAD SEPARATELY PREPARED ESTIMATE THAT IT WAS GOING TO
PAY.

THE CUSTOMER ATTEMPTED TO COLLECT THE INSURANCE BENEFITS THAT WERE
OWED TO THE REPAIR SHOP FOR THE REPAIR AND ASSERTED THAT I DID NOT
GET A WRITTEN ESTIMATE.

THEREFORE I CAN KEEP THE INSURANCE MONEY THAT WAS PAID.

THERE LIEBERMAN SAID THAT THERE WAS SUBSTANTIAL COMPLIANCE WITH
THE STATUTE BECAUSE THE CUSTOMER UNDERSTOOD THE TRANSACTION AND
THE CUSTOMER UNDERSTOOD WHAT WAS HAPPENING AND UNDERSTOOD THAT THE
INSURER WOULD PAY AND THEREFORE THE REPAIR SHOP IN THAT CASE COULD
ENFORCE ITS LIEN AND REPAIR AND RECOVER ON ITS LIEN.

THAT IS IT'S FIRST CASE WHERE THE REPAIR SHOP WHERE THE
CUSTOMER KIND OF UNDERSTANDS THE TRANSACTION AND APPROVES IT AND
AGREES TO IT EVEN IF THERE IS NO TECHNICAL COMPLIANCE OR WRITTEN
ESTIMATE AT ALL THAT THE REPAIR SHOP CAN STILL RECOVER ON THEIR
INVOICE.

THE SECOND CASE IS KT CARS CASE AND THERE WAS A HANDWRITTEN NOTE.

THERE WAS SOME WRITTEN ESTIMATE.

IT WAS INCOMPLETE AND IT WAS BASIC.

IT DID NOT COMPLY WITH ALL THE ELEMENTS REQUIRED BY THE REPAIR SHOP.

THERE AGAIN THE COURT ALLOWED THE REPAIR SHOP TO AGAIN ENFORCE ITS LIEN AND THEREFORE RECOVER EVEN IN THE FACE OF VIOLATIONS ON ITS LIEN.

IT IS AN IMPORTANT DISTINCTION IN THE CASE BECAUSE THERE ARE TWO SECTIONS, THE LIEN PROVISIONS OF THE STATUTE AND THE REMEDY PROVISION.

YOU AS YOU SAID.

UNDER THE LIEN PROVISION A REPAIR SHOP IS SPECIFICALLY UNDER THE PLAIN TEXT OF THE STATUTE ENTITLED TO ENFORCE ITS LIEN IF IT IS IN IN A SUBSTANTIAL COMPLIANCE.

THAT IS TEXTBASED EVIDENCE AS IT RELATES TO LIEN STATUTE THAT THERE IS NO AVOIDING PENALTY IN THE STATUTE.

BECAUSE, EVEN AS IT RELATES TO A LIEN THEY CAN ENFORCE IT IN THE CASES HOLD THAT YOU CAN ENFORCE IT IN THE CASE OF SUBSTANTIAL COMPLIANCE.

HERE THEY USED SUBSTANTIAL COMPLIANCE.

IT DOES NOT MEAN TECHNICAL COMPLIANCE OR ANYTHING LIKE THAT AND I WOULD EVEN SUGGEST THAT O'STEEN FALLS IN LINE WITH THAT.

BECAUSE THE IMPORTANT CONSIDERATIONS UNDER THE STATUTE IS THAT THE CUSTOMER UNDERSTOOD WHAT WAS GOING ON AND RECEIVED A BENEFICIAL REPAIR AND NEW AND APPROVED OF IT AND WHEN THAT HAPPENS BOTH THE STATUTE IN THE CASE AUTHORITY CLEARLY SAY THAT THE REPAIR SHOP SHOULD BE ABLE TO RECOVER.

>> IN TERMS OF WHETHER GEICO IS A CUSTOMER OR NOT THE FIRST QUESTION, AGAIN, THE TEXT IS CLEAR AND THE LEGISLATURE HAS DEFINED CUSTOMER TO MEAN CERTAIN THINGS AND GEICO CLEARLY IS NOT.

I WOULD NOTE THAT THEY HAD ADMITTED BEFORE THE 11th CIRCUIT AND IN THEIR BRIEFS THAT THEY ARE NOT A CUSTOMER AS IT IS DEFINED.

>> WHAT DO YOU MAKE OF THEIR ARGUMENT THAT YOU ARE NOT A REPAIR SHOP?

>> WE ARE LICENSED REPAIR SHOP AND LICENSED REGISTERED REPAIR SHOP AND IF YOU READ THE PLAIN TEXT OF THE REPAIR ACT ITSELF WE CERTAINLY QUALIFY AS WHAT WOULD BE THE DEFINITION OF A REPAIR SHOP.

THEIR ARGUMENT THAT GLASCOW IS NOT A REPAIR SHOP HINGES ON THEIR FLAWED ARGUMENT AGAIN MISS READING.

>> IT HINGES ON YOUR BUSINESS MODEL.

AND THAT YOU ARE USING INDEPENDENT CONTRACTORS WHO IN TURN QUALIFY AS REPAIR SHOPS UNDER THE STATUTE.

THEIR ARGUMENT AS I UNDERSTAND IT IS THAT YOU ARE LIKE A BROKER.

>> I UNDERSTAND THAT THAT IS THEIR ARGUMENT BUT HERE AS IT RELATES TO INTERPRETATION OF THIS PARTICULAR STATUTE OF THE STATUTE DOESN'T HAVE A BLANKET PROHIBITION AGAINST THE USE OF SUBCONTRACTORS AND HAS NO PROHIBITION AGAINST THE USE OF INDEPENDENT CONTRACTOR AND I DON'T BELIEVE IT REALLY IS ISSUE HERE IN THIS PARTICULAR CASE BECAUSE IT IS NOT DEVELOPED ON THE RECORD ABOUT WHETHER INDEPENDENT CONTRACTORS ARE SUBCONTRACTORS AS THE TERM IS MEANT UNDER THIS PARTICULAR STATUTE BUT EVEN ASSUMING IT IS AN EVEN ASSUMING INDEPENDENT CONTRACTORS AND SUBCONTRACTORS ARE THE SAME UNDER THE STATUTORY LANGUAGE FOR PURPOSES OF MY ARGUMENT HERE TODAY WE ASSUME THAT.

THERE IS NO BLANKET PROHIBITION OF A REPAIR SHOP USING THEIR INDEPENDENT CONTRACTOR OR SUBCONTRACTOR IN THE PLAIN TEXT OF THE STATUTE PERMITTING IT AS LONG AS THE CUSTOMER KNOWS ABOUT IT AND APPROVES OF IT HERE ON THIS RECORD IN THIS CASE IN EVERY ONE OF THESE WITH THE INITIAL PAPERWORK THEY GOT CIRCUIT OPINION EVERY CUSTOMER RECEIVED THE DOCUMENT THAT SAID I AUTHORIZED TO SUBLET WORK TO BE DONE HERE AND SO IT IS NOT A VIOLATION OF THE REPAIR ACT.

AND, AGAIN, I DO UNDERSTAND THAT I COME TO THIS CASE AND THE POSTURE WHERE WE ARE ASSUMING FOR PURPOSES OF THIS QUESTION THAT THERE WERE VIOLATIONS BUT ON THE RECORD THERE REALLY WERE NOT VIOLATIONS.

A SUBCONTRACTOR VIOLATION CAN ONLY OCCUR IF THE INSURED DID NOT HAVE NOTICE OF IT BUT YET IS THE 11th CIRCUIT NOTICED IN ITS OPINION EVERY INSURED IN THE INITIAL PAPERWORK AUTHORIZE THE USE OF SUBLET WORK THEREFORE SUBCONTRACTORS.

SO, IT WOULD NOT BE A VIOLATION.

YOU KNOW, IT IS CONCEDED IN TERMS OF VIOLATION THAT THE INITIAL PAPERWORK IS ZERO TO THE CUSTOMER, PAPERWORK THAT WAS SIGNED, DID NOT HAVE AN ODOMETER READING ON IT.

BUT I THINK IT TURNS BACK TO THE REQUIREMENT THAT EVEN IF GEICO IS THE CUSTOMER THERE WOULD HAVE TO BE IN ORDER FOR THERE TO BE A STANDALONE CAUSE OF ACTION THERE WOULD HAVE TO BE AN INJURY RESULTING FROM IT.

ALL SELL THE STATUTE IS PLAYING ITSELF.

CUSTOMER WHO IS INJURED BY VIOLATION.

ANOTHER IMPORTANT PART JUSTICE ON THE INDEPENDENT SUBCONTRACTOR

ISSUE, THERE IS NOTHING IN THIS RECORD THAT ANY CUSTOMER OR GEICO ITSELF WAS INJURED BY THE DIFFERENCE IN THE WORK THAT WAS PERFORMED BY EITHER IF IT WAS GLASCOW W 2 EMPLOYER, W 2 EMPLOYEE, OR INDEPENDENT CONTRACTOR.

WHAT WOULD BE THE DIFFERENCE IN PRICE?

WHAT IS THE DIFFERENCE IN THE QUALITY OF WORK?

THERE IS NOTHING.

ON THIS RECORD ALL REPAIRS ARE FOR PERFORMED.

WHAT GEICO IS ATTEMPTING TO IS TURN THE STATUTE ON ITS HEAD BY THE INTERPRETATION.

ALL OF THE CUSTOMERS ARE SATISFIED.

ALL OF THE WORK WAS SATISFACTORILY WERE PERFORMED SATISFACTORILY PERFORMED AND GET IT DOES NOT WANT TO PAY.

THAT WOULD BE AGAINST SECTION SEVEN RIGHT?

AND IN ESSENCE A GUY GO CALL ITSELF NOT ONLY CUSTOMER BUT CALL ITSELF THE ENFORCING AUTHORITY.

>> THE WHOLE THING, THE LEGISLATURE CREATING MORAL HAZARD BY GIVING PEOPLE THE IMPRESSION THAT THIS IS GOING TO FREE THE WHOLE LOGIC OF THE STATUTE IS THAT IT'S GOING TO MATTER TO PEOPLE WHAT IT COSTS AND THERE MAY BE A NEGOTIATION ET CETERA ET CETERA.

IT IS REPLYING TO A SITUATION THAT DOES NOT FIT ALL THE PROPHYLACTIC STUFF AND EVERYTHING GOING ON.

EVEN THE FACT THAT THERE IS A LIMIT ON THE CHARGES THAT IS EMBEDDED IN THE NOTICE I MEAN THAT IS A PROBLEM WITH THE STATUTE THAT ESSENTIALLY WHEN YOU DON'T DO THESE DISCLOSURES THAN THERE IS NO CAP ON THE \$50 OR 10 PERCENT THING OR WHATEVER GOES AWAY RIGHT?

>> CORRECT.

AGAIN LEGISLATIVE.

>> IT'S NOT OUR PROBLEM.

>> IT'S NOT THIS COURTS PROBLEMS OR ISSUE AND THAT IS PROBABLY THE MOST IMPORTANT PART OF THIS PARTICULAR CASE IS THIS REALLY IS AN INSURANCE CLAIM TRANSACTION WHICH IS REGULATED BY OTHER STATUTE. NOT A REPAIR ACT TRANSACTION.

I WOULD UNDERSTAND HERE IF GEICO OWNED THE VEHICLE AND GEICO REQUESTED IT BUT ULTIMATELY THIS IS AN INSURANCE CLAIMS TRANSACTION WHICH IS GOVERNED BY ANOTHER POLICY OF INSURANCE AND INSURANCE CODE AND THE LEGISLATURE KIND OF KNEW THAT AND WE KNOW THAT THEY KNEW THAT AND AS IT RELATES TO THE O'STEEN CASE AND I THINK THE LEGISLATURE REACTED TO O'STEEN IN 1993 WHEN IT ADDED THAT PARTICULAR SECTION.

>> THE DCA DIDN'T NOTICE APPARENTLY.

>> ALL THE CASES YOU KNOW, O'STEEN, SAFARI, PEREZ, ALL CITED BY 1616.

>> THE LIEN CASES I GRANT YOU BUT PEOPLE ARE CONTINUING TO RELY ON THIS WHEN IT IS JUST PURE WHEN YOU'RE OUTSIDE THE LIEN CONTEXT IT IS A PURE ISSUE OF DOES THE CUSTOMER OWE ANYTHING AND IT SEEMS LIKE THEY STILL BELIEVE OR THEY DO BELIEVE THAT THE CUSTOMER OWES NOTHING.

THAT IS WHY I THINK THE 11th CIRCUIT CONTINUES THIS A TOUGH CASE. IF IT WAS NOT FOR THIS ANOMALY I DON'T KNOW THAT WE WOULD BE GETTING CERTIFIED QUESTIONS.

IT REALLY DOES NOT MAKE SENSE.

BUT THE ANSWER TO THAT IS TO.

>> I THINK ALL THE QUESTIONS PRESENTED HERE CAN BE ANSWERED CLEARLY BY TURNING TO THE PLAIN TEXT.

CUSTOMER IS PLAINLY DEFINED AND REFERRED TO THROUGHOUT.

GEICO DOES NOT QUALIFY FOR IT.

THERE IS NO BASIS TO GO INTO INTENT OR ANYTHING LIKE THAT.

THE STATUTE UNDERSTANDS THERE WILL BE CIRCUMSTANCES WHERE AN INSURANCE COMPANY WILL PAY IT SAYS THAT BUT IT STILL DOES NOT EQUATE THEM WITH THE CUSTOMER.

PLAIN LANGUAGE THERE WAS AGAIN THE 2023 AMENDMENT ADDRESSING THE ISSUE WHICH IS A CRISIS RAISED IN THE BRIEF FOR THE ISSUES WHICH GEICO ALLEGES AND AND YET THE LEGISLATURE STILL DO NOT CHANGE THE DEFINITION OF CUSTOMER EVEN KNOWING WHAT'S GOING ON THEY CHANGE CERTAIN INSURANCE STATUTE AND REPEALED 67428 THE ATTORNEY FEE STATUTE AND ADDED A PROVISION INTO THE ASSIGNMENT THAT PROHIBITS ASSIGNMENTS FOR THESE TYPES OF INSURANCE CLAIMS BUT YET THEY DID NOT CHANGE THE FLORIDA MOTOR VEHICLE ACT.

IT SIMPLY TELLS US THE FLORIDA MOTOR VEHICLE ACT DOES NOT APPLY TO INSURANCE COMPANIES AND INSURANCE COMPANIES ARE NOT CUSTOMERS.

AS FOR THE AVOIDING PENALTY WE BEGIN AND END WITH THE PLAIN TEXT THERE.

THERE IS NO AVOIDING PENALTY EXPRESSLY ON THE TEXT AND OF ANALYSIS.

THE LEGISLATURE IN VARIOUS INSTANCES KNOWS EXACTLY HOW TO PENALIZE SOMEONE WHO IS NONCOMPLIANT WITH THE REGULATORY STATUTE.

THEY DID IN THE HEALTHCARE CONTEXT AND THE PIT CONTEXT AND VARIOUS OTHER CONTEXT AND THEY SAID IF YOU VIOLATE THE STATUTE AND SUBMIT A BILL TO AN INSURANCE COMPANY THAT IS NONCOMPENSABLE AND AVOIDABLE AND VARIOUS OTHER LANGUAGE ENDS OF THE LEGISLATURE DID NOT DO IT HERE.

>> THIS COURT'S PRESIDENT SAYS THE LEGISLATURE IF IT DOES NOT SAY IT THERE IS NO AVOIDING PENALTY.

AGAIN WE CAN TURN TO THE CLEAR LANGUAGE OF THE STATUTE, AGAIN, I HAVE REFERENCED OTHER PROVISIONS OF THE STATUTE WHERE EVEN WHERE THERE IS A VIOLATION THROUGHOUT VARIOUS PROVISIONS OF THE STATUTE THERE IS IT'S NOT THAT THE REPAIR SHOP RECOVERS NOTHING, THEY COULD BE AWARDED REASONABLE REPAIRS AND THEY COULD STILL GET \$50 FROM THE CUSTOMER AND IT IS NOT AVOIDING PENALTY AND IT CANNOT BE RECONCILED WITH THE IDEA AND EVEN IN THE ENFORCEMENT OF THE LEAN PROVISION THE LEGISLATURE HAS INTENDED THAT IF THERE IS A VIOLATION OF THE REPAIR ACT BUT YET SUBSTANTIAL COMPLIANCE AS WE HAVE SEEN IN LIEBERMAN'S AND KT PARK EVEN THE REPAIR SHOP CAN STILL ENFORCE THE LIEN WHICH IS AN ENTIRELY DIFFERENT REMEDY.

>> SIR, YOU CAN FINISH UP.

>> THANK YOU YOUR HONOR, WE REQUEST THAT THE PLAINTIFFS REQUIRE THE TWO CERTIFIED QUESTIONS BE ANSWERED IN THE NEGATIVE.

>> THANK YOU.

>> THERE ARE A COUPLE POINTS.

THE WRITTEN WAIVER, THERE IS NO WRITTEN WAIVER ON THE WORK ORDERS. LOOK AT DOCKET 20 PAGE 546 IT DOES NOT HAVE THE LANGUAGE THAT COUNSEL WAS REFERRING TO THAT SAYS CHECK A BOX AND YOU WAIVE THE ESTIMATE.

IT IS NOT ON THE WORK ORDER.

DOES NOT APPEAR ANYWHERE IN THE RECORD.

LIEBERMAN AND KATIE CARR FOUND SUBSTANTIAL COMPLIANCE.

ONE CASE THERE WAS A HANDWRITTEN NOTE THAT HAD THE COST ON IT AND THE CUSTOMER AGREED AND SIGNED OFF ON IT AND THE COURT SAID OKAY SUBSTANTIAL COMPLIANCE.

THE OTHER CASE THE INSURED TOOK AN ESTIMATE PREPARED BY THE INSURANCE COMPANY TO THE BODY SHOP IN THE BODY SHOP AGREED TO MAKE REPAIRS BASED ON THIS ESTIMATE.

THIS COURT SAID IT WAS COMPLIANCE.

IN THIS CASE THE COST WAS NEVER DISCLOSED.

THERE WAS NO SUBSTANTIAL COMPLIANCE IN THIS CASE.

THE TWO CASES DON'T CHANGE THE RULINGS OF THE PRIOR CASES THAT BASICALLY SAY YOU CANNOT RECOVER IF THERE IS A REPAIR ACT VIOLATION.

IT IS SECTION 909.

SECTION 909 DOES NOT SAY OKAY YOU CAN GET PAID A LITTLE BIT.

IT SAYS IT SHALL BE UNLAWFUL FOR A MOTOR VEHICLE REPAIR SHOP TO CHARGE MORE THAN THE WRITTEN ESTIMATE PLUS \$10 FOR 10 PERCENT.

IT SAYS IT IS UNLAWFUL.
IT DOESN'T ALLOW PAYMENT WHEN THERE HAS BEEN NO WRITTEN ESTIMATE.
IT SAYS IS UNLAWFUL TO CHARGE MORE THAN THAT AND WHAT DID THEY DO?
THEY CHARGED FAR MORE THAN ZERO BECAUSE IF THEY ARE WRITTEN
ESTIMATE IS ZERO THEY HAVE VIOLATED THE LAW.
THAT SECTION SAYS IT SHALL BE UNLAWFUL.
SECTION 993.
SO THIS IS NOT A SITUATION WHERE THEY CHARGE \$10 MORE THEN ZERO
THEY CHARGE 800 TO 900.
THEY CHARGE MORE THAN ZERO AND MORE THAN \$10.
559 AND 909.3 SAYS IT IS UNLAWFUL.
HOW CAN THEY RECOVER FOR UNLAWFUL CHARGES?
BECAUSE THAT IS WHAT THEY ARE SAYING.
THIS WORK ORDER IS THE ESTIMATE AND HAS ZERO ON IT.
IF IT SAYS ZERO THEY CANNOT RECOVER MORE THAN \$10.
IT IS UNLAWFUL TO BILL MORE THAN \$10 AND THAT IS WHAT THEY ARE
DOING.
IT IS AN UNLAWFUL CHARGE UNDER THE REPAIR ACT.
>> WE ASK THAT BOTH QUESTIONS BE ANSWERED.
>> THANK YOU VERY MUCH