

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

MARK INCH GOD BLESS THE UNITED
STATES AND THE GREAT STATE OF
FLORIDA.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WHO HAVE CAUSE
TO PLEAD, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA, PLEASE
BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
ARE CASES 22-735, ALLSTATE
INSURANCE COMPANY VERSUS REVIVAL
CHIROPRACTIC.

>> GOOD MORNING.
MAY IT PLEASE THE COURT, MY NAME
IS RICHARD GODFREY.

AS THE COURT KNOWS, WE ARE HERE
ON A CERTIFIED QUESTION FROM THE
CIRCUIT COURT OF APPEALS.

YOU ARE FAMILIAR WITH A
CERTIFIED QUESTION, ALLSTATE'S
ALTERNATIVE FOR RAISING.

>> SPEAK UP A LITTLE BIT.

>> I APOLOGIZE.

>> MY YEARS ARE PROJECTED.

>> I'M NOT OUT AND ACCUSED OF
BEING SOFT-SPOKEN.

AS YOU ALL KNOW, THE CERTIFIED
QUESTION, AND PREPARING FOR THIS
ARGUMENT, ANOTHER WAY OF
THINKING ABOUT THIS.

AND IN THE FIFTH STATUTE, 100%
OF ALL PROVIDERS MEDICAL COSTS,
THE STATUTORY MANDATE IS 80%,
THERE ARE NO EXCEPTIONS TO THAT
WITH THE NARROW EXCEPTION THE
INSURANCE COMPANY MAY IF IT SO
CHOOSES PAY 100%, LESS THAN THE
FEE SCHEDULES.

THAT'S THE GUTS OF THIS CASE.

WE SUBMIT THIS COURT, NOT
DIRECTLY ON POINT, AND THE COURT
AND ASSOCIATES, AND THEY
FUNDAMENTALLY DISAGREE WITH THE
REVIVAL ROLE FEDERAL DISTRICT
COURTS, NUMBER ONE, THE COURT
REJECTED THE NOTION THERE ARE

TWO MUTUALLY EXCLUSIVE PAYMENT
METHODOLOGIES WHICH IS REJECTED.
THAT'S NOT WHAT THE STATUTE SAYS
AND THE COURT REJECTED.
THIS COURT REAFFIRMED
OVERARCHING STATUTORY MANDATE IS
80% PAYMENT.

THAT IS WHAT THE STATUTE SAYS,
CLEAR, FINE FIGURES.

THIRD, THIS COURT HELD THAT,
QUOTE, A REASONABLE READING OF
STATUTORY TEXT REQUIRES
REIMBURSEMENT TO TAKE ON THE
MAXIMUM CHARGES BE UNDERSTOOD AS
STATE FARM CONTESTS.

CAPPING REINVESTMENTS RATHER
THAN AN EXCLUSIVE METHOD OF
DETERMINING REIMBURSEMENT RATES.
BY ITS VERY NATURE, LIMITATION
BASED ON A SCHEDULE OF MAXIMUM
CHARGES ESTABLISHES A CEILING
BUT NOT A FLOOR.

PAGE 584-585 OF THE SUPREME
COURT, REVIVAL HOLDS AN EFFECT
OR JUST THE OPPOSITE FROM
FEDERAL DISTRICT COURT.

IN FEDERAL DISTRICT COURT, THAT
JUDGE DID NOT HAVE THE BENEFIT
OF THIS COURT.

WE SUBMIT REGARDLESS OF THIS.

>> CUT I HAVE FOCUS ON TWO WORDS
IN THE EXCERPT YOU JUST READ?
THE WORDS OPTIONAL WHICH SEEMS
LIKE AN ODD CONSTRUCTION INDEED,
ONE CORE QUESTION I HAVE FOR YOU
IS WHEN WOULD AN INSURER EVER
OPT TO ALLOW ONE HUNDRED% OF THE
CAPPED FEE, WHEN AN 80%
OR 80% PAYMENT IS CONSISTENT?
IS THAT A TROUBLING CONSEQUENCE
HOW YOU ARE ASKING US READ THE
STATUTE?

>> NOT AT ALL, THERE ARE THREE
ANSWERS TO THAT.

ONE IS THAT WAS A LEGISLATIVE
DETERMINATION.

NUMBER 2, I COULD POSTULATE ANY
NUMBER OF ECONOMIC REASONS THAT
AN INSURER WOULD DO THAT.

THE LOWEST COST PROVIDER BY A
SUBSTANTIAL MARGIN, IN
PARTICULAR GEOGRAPHIC AREA.
I ENCOURAGE OTHERS TO REDUCE
THEIR FEES TO MATCH THE

REASONABLENESS OF THAT FEE SO
ONE HUNDRED% TO ENCOURAGE THAT.
AS WE ARTICULATE THOSE REASONS,
THAT IS NOT A JUDICIAL ISSUE, IT
IS A POLICY DECISION.

YEARS AGO, A LARGE PETROLEUM
COMPANY, THEY CHERISH LESSER
GASOLINE TO PAY CASH, WHY WOULD
YOU DO THAT.

IT IS COUNTERINTUITIVE, THEY
GAIN MARKET SHARE.

IT WAS COUNTERINTUITIVE.
CASES CAME OUT, AND THE SAME GOT
QUESTION WHICH, WHY WOULD AN
INDUSTRY DO SOMETHING LIKE THAT
AND IT CHANGED THE INDUSTRY.

I DON'T KNOW IF INSURANCE
COMPANIES HAVE DONE THAT STUDY
BUT THE POSSIBILITIES, THE
RECORD REFLECTS IT'S NOT A
TRADITIONAL DECISION BUT A
POLICY DECISION BUT REGARDLESS,
WHETHER THE LEGISLATURE MADE A
MISTAKE, YOU LOOK AT THE
LANGUAGE WHERE DOES IT SAY YOU
WILL PAY 100%?

THE WORD MAY WAS -- COULD HAVE
SAID SHALL PAY, THEY DIDN'T,
THEY SAID MAY.

THAT ANSWERS THE QUESTION OR I
HOPE IT ANSWERS THE QUESTION.

MRI, A PRINCIPAL PATTERN
ADDRESSES WHAT IS WRONG WITH THE
DISTRICT COURT'S OPINION AND IT
DID NOT BENEFIT THIS COURT BUT
WHEN YOU LOOK AT IT, THE FEDERAL
DISTRICT COURT MADE FOUR
FUNDAMENTAL ERRORS THAT ARE
SOMEWHAT INEXPLICABLE.

IT REWROTE THE STATUTE.

WE ALL KNOW THAT IT IS NOT THE
PROVINCE OF THE JUDICIARY, YOU
MAY THINK THE STATUTE MAKES A
LOT OF SENSE AND THE PROVINCE OF
THE JUDICIARY TO REWRITE IT.

WHAT WERE THE REWRITTEN PARTS?
THEY ELIMINATED THE OVERARCHING
80% PAY OBLIGATION, 100% PAYMENT
OBLIGATION.

REWROTE THE STATUTE FOR THE
MANDATE OF PAYMENTS.

A STATUTORY DECISION TO MAKE
THAT DECISION TO MAKE THE
JUDGMENT BUT THE LEGISLATURE

DIDN'T DO THAT.

THIS IS CONTRARY TO VIRTUAL IMAGING, REWROTE THE STATUTE TO REWRITE THE WORD MAY INTO MUST OR SHALL, CAN'T READ THAT SECTION OF THE STATUTE, THAT MEANS MUST OR SHALL AND REWROTE THE STATUTE TO PRIVATE INSURANCE COMPANIES FOR POLICY LANGUAGE. THE FEE SCHEDULE AMOUNT IS 80%. IT RECOGNIZED ALLSTATE'S POLICY EXPRESSLY PROVIDED, LESS THAN THE SCHEDULE AMOUNT.

>> IT DOESN'T NEED TO PAY 80% OF THE BUILD AMOUNT.

IT ESSENTIALLY GIVES TWO SPECIFIC WAYS TO DETERMINE THAT, WHAT IS FACT SPECIFIC, WITH CONSIDERATIONS, TO REVIEW THOSE CONSIDERATIONS FOR MEDICAL EXPENSES.

IT IS A BRIGHT LINE RULE.

ALLSTATE'S POLICY GIVES TWO BRIGHT LINE RULES, TO SEE ANY KIND OF ANALYSIS, 80% OF THE AND WHAT IS BILLED.

HOW WOULD YOU DESCRIBE THAT SORT OF DISCREPANCY?

>> TWO RESPONSES, THE PREDICATE OF YOUR QUESTION ASSUMES A BINARY EXCLUSIVE CHOICE METHODOLOGY.

MRI ASSOCIATES, THE HYBRID MODEL, THE LOWER COURTS ACTUALLY PHRASED IT BETTER AND I WILL READ THAT.

MIAMI MEDICAL GROUP CASE DIRECTLY MATCHES YOUR HONOR'S QUESTION THAT, QUOTE, A MEDICAL PROVIDER IS PROHIBITED BY FLORIDA STATUTE SECTION 627-736-85, TO ENSURE MORE THAN A REASONABLE CHARGE, THEY ARE OBLIGATED TO PAY MORE THAN 80%, ANY OTHER INTERPRETATION OF THE FLORIDA STATUTE SECTION 627-736 ETC.

MEDICAL PROVIDER CHOSE TO BILL IT, ALLSTATE ASSUMED A REASONABLE AMOUNT, HAS A PROVISION IN ITS CONTRACT, A NOTICE OF 80% TO BUILD THEM OUT OF.

OTHERWISE, IF YOU ASSUME THERE'S

ONLY TWO CHOICES OR MIXED BAG,
ALLSTATE CAN DO THAT, HAS TO PAY
100%, AND IN THE STATUTE, IS
THERE AN EXCEPTION THAT SAYS AN
INSURANCE COMPANY MUST PAY 100%
LODZ GIVEN THE CENTRALITY, THE
IMPORTANCE OF THE HEART OF THE
STATUTE, THE CENTRALITY, AND
A MANDATORY% PAYMENT.

THOSE APPELLATE DECISIONS HAVE
THE PROBLEMS WE IDENTIFIED IN
THE BRIEFS WITH THAT POLICY
LANGUAGE AND JUDGE BLOOM.

>> THEY ARE DEALING WITH A GEICO
POLICY BUT SEEM TO BE DETACHED
FROM THE LANGUAGE.

THEY DON'T SEEM TO FOCUS ON THAT
LANGUAGE.

AM I WRONG IN UNDERSTANDING
THAT?

>> YOU ARE 100% CORRECT.

A CASE CALLED GERBER ONE NEVER
REACHED THE STATUTORY
INTERPRETATION QUESTION, IT
REQUIRED THEM TO PAY 100% OF
STATUTORY INTERPRETATION.

BASICALLY SAID THE CONTRACT IS
THE CONTRACT.

YOU ARE CORRECT.

ONE PROBLEM, THEY SEEM TO BE
DETACHED FROM THE LANGUAGE AND
THEY MISS READ THE STATUTE.

THE PROGRESSIVE VERSUS OTHER
CASE VERSUS THE OTHER THREE
CASES, VERY HANDS-ON.

THEY ARE IRRECONCILABLE.

WHAT PROGRESSIVE POINTS OUT, IT
CAN'T UNDERSTAND WHY NONE OF
THOSE THREE APPELLATE COURT
CASES STARTS WITH THE
OVERARCHING MANDATE OF PAYING
80%.

NOT ONLY MAKES YOUR HONOR'S
POINT BUT THE POINT THEY SEEM
DIVORCED FROM THE LANGUAGE OF
THE STATUTE AND GOES THROUGH
THAT.

OBVIOUSLY WE AGREE WITH THE
PRESIDENT'S DECISION, ONE OF THE
KEY ISSUES, IT IS IMPORTANT TO
MAKE THIS OBSERVATION THAT
THROUGHOUT THEIR BRIEF THEY
REVERT TO CONTRACT LANGUAGE
WHERE THEY SAY ALLSTATE

EXCLUSIVELY SHOWS THE PIECE SCHEDULE.

THEY SAY THIS 30 TIMES.

THE DISTRICT COURT SAID THAT. DIFFICULT TO UNDERSTAND BECAUSE THIS IS BASED ON AN ACTUAL STIPULATION, ENTRY 26, AND IT DOESN'T SAY THAT.

WE QUOTED IN OUR BRIEF WHERE ALLSTATE SAYS IF A BILL AMOUNT IS LESS THAN THE SCHEDULED AMOUNT, AND ALLSTATE AGREED TO THIS.

THE STIPULATION SPEAKS FOR ITSELF AND SAYS THE CONTRARY. HOW DISTRICT COURT GOT THIS SO LONG, DON'T UNDERSTAND THAT. THAT IS THE FALLBACK POSITION.

>> WHEN YOU COME DOWN TO IT, WHAT IS THE STATUTORY PURPOSE? TO BENEFIT INSURERS.

NOT SURVIVORS, NOT INSURANCE COMPANIES.

AND HERE, REVIVAL ARGUES WE ARE ELIMINATING CO-PAY.

FEDERAL STUDIES WHICH WE CITED IN OUR BRIEF AND POINTED OUT FARMERS INSURERS BECAUSE THE INCREASED PREMIUMS CONSISTENT WITH LEGISLATIVE HISTORY OF THE FLORIDA LEGISLATURE.

WE KNOW THAT WHAT IS HAPPENING HERE, REVIVAL DOES NOT PICK CO-PAY PAYMENT, ELIMINATING THE CO-PAY, AND THE LEGISLATIVE PURPOSE, AND IN THE END INCREASED PREMIUMS AND DUTIES BENEFITS FOR INSURERS.

CONTRARY TO THE PURPOSES OF THE STATUTE, IT IS UNIMPORTANT AND IRRELEVANT BECAUSE WE GO WITH STATUTORY TEXT, OPPOSITION IS THE STATUTORY TEXT IS CRYSTAL CLEAR AND DOES NOT SUPPORT THE ARGUMENTS ACCEPTED BY FEDERAL DISTRICT COURT AND REVIVAL OPINION.

AND SOME IT IS INCOMPATIBLE WITH THE DECISION OF DISTRICT COURT AND THE FEDERAL DISTRICT COURT DECISION IS PREDICATED ON FOUR AREAS OF LAW IN WHICH THE COURT REWROTE THE STATUTE.

IN THE END, REWRITING THE

STATUTE DOESN'T BENEFIT A GROUP AT THE EXPENSE OF TWO OTHERS. MEDICAL PROVIDERS AT THE EXPENSE OF INSURANCE AND ALLSTATE BECAUSE THEY HAD SPECIFIC PROVISION TO FIND HOW WE WOULD PAY UNDER WHAT CIRCUMSTANCES. 5 MINUTES AND 34 SECONDS LEFT.

>> LET'S ASSUME THERE WAS A CONTRACT, THEY WERE ONLY GOING TO CHOOSE THE PATH OF THE FEE SCHEDULE APPROACH.

>> LIKE THE GEICO POLICY?

>> WHAT WORK IN THE MAY PAY? WHY WOULD THE LEGISLATURE NEED TO GIVE THEM POSITION TO PAY 100%?

>> THE SIMPLE ANSWER IS YOU HAVE AN OVERARCHING STATUTORY MANDATE TO PAY 80%.

IF YOU ARE GOING TO PAY SOMETHING HIGHER THAN 80% YOU NEED AN EXCEPTION TO CARVE OUT AND THERE IS A MANDATORY EXCEPTION, IN THIS CASE THE LEGISLATURE IS CHOSEN TO BE PERMISSIVE.

THERE IS AMBIGUITY, AND SOMEONE IN THE LEGISLATURE THOUGHT ABOUT THAT, WE ARE NOT GOING TO MANDATE IT BUT THAT'S THE ANSWER FOR STATUTORY AMBIGUITY.

>> YOU ADDRESS THIS, DIDN'T REALLY FOLLOW THE ANSWER. ABSENT THE PERMISSION, THAT THEY WOULD HAVE, THAT WAS BILLED AND WHAT IS THE ANSWER FOR THE REAL WORLD SCENARIO, OBLIGATED UNDER THE STATUTE.

>> ARTICULATED IN OUR BRIEF, A NUMBER OF ECONOMIC REASONS TO JUSTIFY THAT AND LET'S SAY WE HAVE FIVE WHERE ONE IS THE LOWEST COST PROVIDER. THE PROVIDER, THAT PUTS COMPETITIVE PRESSURE ON THE OTHERS.

ULTIMATELY, THAT THE JUDGMENT OF THE LEGISLATURE. IT BECOMES SHALL.

YOU HAVE AN EXCEPTION, THE ACTION ACCORDING TO HANDS ON PAYING GET 119% AND NO JUSTIFICATION INCLUDED, IT WAS

NOT ONLY OKAY TO WILL LAMINATE
THE CO-PAY ON WHICH IT IS BASED
THAT LED TO LOWER PREMIUMS.
THIS IS 100%.

>> DON'T THINK IT IS A
LEGISLATIVE JUDGMENT, WHAT DOES
THE STATUTE MEAN, ANYBODY IS
DENYING --

>> I AGREE WITH THAT.

>> WE BELIEVE WHAT IS SAID, WHAT
IS THE RATIONALE BEHIND THIS?
THE CO-PAY ISSUE STUDY AFTER
STUDY, WE CITED THE FEDERAL
GOVERNMENT STUDY, TO REDUCE
MEDICAL COSTS AND WHEN YOU THINK
ABOUT IT, ONE OF THE
IMPLICATIONS OF THE READ WITH
THE CO-PAYS WHICH WERE LONG-TERM
WOULD INCREASE PAYMENT AND
DECREASE BENEFIT.

>> THERE IS ALWAYS THE SCHEDULE,
ALWAYS A.

THAT WAS 80% OF THE SCHEDULE.
THERE'S ALWAYS A CAP ON WHAT THE
INSURANCE COMPANIES HAVE TO PAY
FOR THE STATUTE.

>> THE BILL WAS LESS THAN THE
PAYING 100%.

THE DEFINITION SHOULD BE A
REASONABLE CHARGE.

YOUR ELIMINATING CO-PAY SO THE
INSURED GETS 100% OF INSURANCE
BENEFITS FASTER, AND THE
STATUTORY PARADIGM AND
LONG-TERM, INCREASED PREMIUMS
WERE BENEFITS.

IT IS CONSISTENT WITH
LEGISLATIVE HISTORY.

THE STUDY CITED BY THE FEDERAL
GOVERNMENT, IT INCREASES
PREMIUMS.

AN INDIVIDUAL CASE, I AGREE WITH
YOU.

IN THE MACRO SENSE, THEY DEAL
WITH MACRO ISSUES.

IN THE MACRO SENSE THERE ARE NO
DELIRIOUS EFFECTS.

THANK YOU VERY MUCH.

>> 5 MINUTES FOR REBUTTAL.

>> GOOD MORNING, MAY IT PLEASE
THE COURT.

MY NAME IS CHAD BARR, AND I HAVE
THE PRIVILEGE OF REPRESENTING
THE RESPONDENT IN THIS CASE,

REVIVAL CHIROPRACTIC.
IT IS A PRIVILEGE TO APPEAR
BEFORE THIS COURT AND THANK YOU
FOR GIVING US TIME ON THIS ISSUE
THAT IS IMPORTANT TO BOTH OF US.
THE PROVISIONS OF THE STATUTE AS
THE COURT STATED AT MRI
ASSOCIATES, AND THE PERMISSIVE
SCHEDULE.

>> I'M SORRY.

I HATE TO CHOP YOU OFF AT THE
LEGS.

RESPOND TO ALLSTATE'S STATEMENT
THAT IS CENTRAL TO THIS CASE.

WHERE IN THE STATUTE DOES IT SAY
THE INSURANCE COMPANY MUST PAY
100% OF WHAT IS PRESENT HERE?

>> THE EASY ANSWER IS IT
DOESN'T, DOESN'T SAY YOU MUST.
THAT'S NEVER BEEN THE POSITION.
THAT'S WHERE THE TRUE DIVERSIONS
IN THE PROGRESSION OF THIS CASE
HAS BEEN.

WE DON'T HAVE TO PAY ONE
HUNDRED%.

YOU DON'T%.

YOU DON'T HAVE TO PAY 100%.

THE OPTIONS ARE 80% OF 200% OF
MEDICARE, PUT IN PLACE TO
LITIGATE THE REASONABLENESS OF
THIS, THE OTHER OPTION IS 100%
OF THE CHARGE SUBMITTED.

OUR POSITION IS NOT ALLSTATE HAS
TO PAY, 100% OF THE CHARGE, THE
COURT IS ENFORCING THE LOWEST
POSSIBLE OPTION AGAINST ALLSTATE
WHICH IS TO SHOW THE AMOUNT
SUBMITTED.

IN THE INSTANCE WHERE WE HAVE A
CHARGE, TO GIVE YOU AN EXAMPLE
IN REAL TIME, THE SERVICE, \$150
AND 80% IS \$150, ALLSTATE HAS
TWO OPTIONS, THEY PAY 80% OF
200% % OF MEDICARE OR THE AMOUNT
OF THE CHARGE.

AND, ARGUE THIS IN THE SECOND
LEVEL OF APPEAL AT THIS ISSUE,
NO ONE ARGUED IT IS MANDATORY,
THAT'S NEVER BEEN OUR POSITION.

>> YOUR ARGUMENT IS A
REQUIREMENT, STATUTE USES THE
WORD MAY INSTEAD OF MUST OR
SHALL.

THE STATUTE DOES NOT REQUIRE

THEM.

>> THE STATUTE REQUIRES ONE OF TWO THINGS.

THAT OUR POSITION.

>> IT SEEMS THIS IS ALL

PREDICATED ON THE ARGUMENT THAT ALLSTATE STIPULATED THAT ITS INSURANCE POLICY STATES THE SCHEDULE IS THE METHOD OF CALCULATING REIMBURSEMENT.

WHERE DOES THAT COME FROM?

I'VE GOTTA STIPULATION HERE.

>> IT'S A COMBINATION OF POLICY AND WHAT THEY CHOSE TO DO WHICH IS REIMBURSED PURSUANT TO FEE SCHEDULE.

>> THEY STIPULATED.

>> YOU CAN'T CITE ME TO A PLACE OF THE STIPULATION IT SAYS THAT.

>> NOT IN THIS AREA.

>> YOUR WHOLE ARGUMENT IS ASSUMING ONCE YOU GO WITH THE SCHEDULE YOU ARE OFF UNDER THAT RUBRIC ENTIRELY AND IF YOU DON'T ACCEPT THE SCHEDULE AMOUNT, THE MAY PROVISION LEAVES OUT THE REST OF THE STATUTE, IN THE MRI OPINION, THE WAY OF GOING ABOUT THIS, ONE OF THOSE, JUST LEAVING OUT, IT SEEMS TO ME IS THE PREMISE OF WHAT YOU ARE ARGUING. WHAT ARE WE MISSING?

>> THE QUESTION THAT THEY ARE ASKING IS, WISE THE LEGISLATURE, INCLUDING THE PROVISION IN THE STATUTE THAT GIVES THE INSURANCE COMPANY THE OPTION TO PAY MORE. IF YOU TAKE ALLSTATE'S ARGUMENT LITERALLY, WHAT ALLSTATE IS SAYING, THEY HAVE THE OPTION TO PAY 80% FOR REASONABLE CHARGE OR THEY CAN PAY 100% OF THE CHARGE. WHY WOULD THE LEGISLATURE DO THAT?

>> I UNDERSTAND THE ARGUMENT AND I UNDERSTAND THAT PROVISION RAISES QUESTIONS, BUT YOUR ANSWER TO THE QUESTIONS THAT IT RAISES IS TO TRANSFORM OUT MADE TO HER SHE.

OKAY?

WHEN WE HAVE A QUESTION HOW TO INTERPRET A STATUTE THAT IS UNCERTAIN EXACTLY WHAT THIS WAS

MEANT TO ACCOMPLISH, SEEMS LIKE ONE OF THE LAST THINGS WE OUGHT TO DO IS CHANGE MAY TO SHALL.

>> WE START FROM THE BEGINNING.

>> WHAT YOU ARE SAYING, AT THE END OF THE DAY, WHAT YOU ARE SAYING IS ONCE THEY ELECTED THE SCHEDULE, NOT EXCLUSIVELY, I GUESS YOU CONCEDED THEY HAVEN'T DONE THAT EXCLUSIVELY BUT ONCE THEY ARE UNDER THE SCHEDULE, THEY INVOKED THE SCHEDULE OR SAID THEY WOULD USE THE SCHEDULE TO LIMIT THEIR CHARGES, THEN, IF WE GET ONE OF THESE BILLINGS THAT IS BELOW THE SCHEDULED AMOUNT AUTHORIZED, THEY ARE CONSTRAINED BY THIS PROVISION THAT SAYS THEY MAY PAY SOMETHING.

SO THE MAY BECOMES A SHALL. HOW IS IT ANYTHING OTHER THAN THAT?

>> I WANT TO START WITH THE POLICY.

I DON'T AGREE, THERE'S NOT A STIPULATION, I DON'T AGREE THE POLICY DOESN'T EXCLUSIVELY ELECT THE FEE SCHEDULE BECAUSE OF WHAT IT SAYS, THE PORTIONS THAT THEY HIGHLIGHTED INDICATES THAT THEY WILL PAY PURSUANT TO 80% OF THE FOLLOWING SCHEDULE OF CHARGES WITH TRACKS 5 A1.

THE METHODOLOGY FOR DETERMINING THE AMOUNT ALLSTATE WILL PAY FOR SUCH EXPENSES SHALL BE LIMITED 80% OF THE MAXIMUM CHARGES.

THEY ARE TELLING THE INSURER THEY WILL PAY PURSUANT TO THE SCHEDULE.

>> THEY SAY IF THEY GO ON IN PARAGRAPH 10 OF THE STIPULATION, THE PORTION OF THE POLICY, FROM THE AMOUNT LESS THAN THE AMOUNT, WE WILL PAY 80% OF THE CHARGE THAT WAS SUBMITTED.

RIGHT THERE IN THE KING'S ENGLISH.

>> THEY ARE REWRITING 585 AND THAT'S WHAT THEY CAN'T DO, THEY CAN'T TAKE A PROVISION OF THE STATUTE WHICH PROVIDES THE MINIMUM AMOUNT OF BENEFITS AND

REDUCE THAT.

THEY CAN'T SAY WE ACKNOWLEDGE WE
WILL PAY PURSUANT TO 5 A1, IF
YOU'RE GOING TO PAY THAT YOU
HAVE TO PLAY BY THE RULES AND
TURN AROUND IN YOUR POLICY AND
SAY WE WILL TAKE 585 AND PARSE
OUT THE SECTION THE DOESN'T
BENEFIT US TO PAY LESS THEN WHAT
THE STATUTE REQUIRES US TO PAY.
THAT IS WHAT THEY ARE DOING.

>> AGAIN, COUNSEL, THAT SEEMS TO
IGNORE WHAT IT SAYS AT THE
BEGINNING OF THIS STATUTE, WHERE
IT SAYS, THE REQUIRED BENEFITS
SUBSECTION 1 OF 627.

736, IT SAYS RIGHT THERE,
REQUIRED BENEFITS WOULD PUT
PAYMENTS AS FOLLOWS, 80% OF ALL
REASONABLE MEDICAL EXPENSES.
THAT'S RIGHT THERE, THAT IS
FOUNDATIONAL.

WE SAID THAT.

>> WHAT ELSE IS FOUNDATIONAL, WE
HAVE THIS GENERAL CONCEPT THAT
WE WILL REQUIRE 80% OF
REASONABLE EXPENSES BUT IT WOULD
SAY IF YOU'RE GOING TO NOT ONLY,
THE POLICY LANGUAGE, WHAT
ACTUALLY HAPPENS, THEY HAVE
CHOSEN TO PAY PURSUANT TO THE
SCHEDULE, THAT IS MORE IMPORTANT
TO THIS ANALYSIS THAN THE POLICY
SAYS.

ONCE YOU CHOOSE TO PAY PURSUANT

--

>> I DON'T UNDERSTAND THAT.
YOU SAID THEY'VE GOT THEIR
POLICY, THERE POLICY DETERMINES
WHAT THEY HAVE CHOSEN.

>> WHICH IS 5 A1.

WE'VE GOT THE GENERAL -- EXCUSE
ME, THE GENERAL EXPENSE MANDATE,
REASONABLE EXPENSE MANDATE, THE
MORE SPECIFIC 5 A1 PROVISION
WHICH WAS HELD TIME AND AGAIN,
SATISFIED THE REASONABLE EXPENSE
AND IN THAT SPECIFIC PROVISION,
RULES THE INSURANCE COMPANY HAS
TO FOLLOW.

IF YOU TAKE THEIR
INTERPRETATION, THEY ARE SAYING
YOU CAN PAY 100% OF THE CHARGE.

>> IT SEEMS THEY ARE RUNNING UP

AGAINST WHAT WE SAID IN MRI,
ONCE THEY ELECTED THE SCHEDULE
IT IS AN EXCLUSIVE ELECTION,
THEY CAN'T USE THESE OTHER
PROVISIONS OF THE STATUTE
INCLUDING THIS OVERARCHING
PROVISION AND I DON'T SEE HOW
THAT CAN BE SQUARED WITH WHAT WE
SAID ABOUT MRI.

>> WHAT IS THE PURPOSE OF 585?

WHAT'S THE PURPOSE OF 585 WHEN
WE LOOK AT THAT IN 3 SENTENCES,
THE FIRST TWO GOVERN HOW YOU
ELECT THE FEE SCHEDULE.

>> HOW DO YOU RECONCILE, YOU
HAVEN'T ASKED US TO RECEDE FROM
WHAT WE DETERMINED.

>> DOESN'T ADDRESS THIS ISSUE.

IT ADDRESSES HOW YOU
INCORPORATED THE SCHEDULE INTO
YOUR POLICY AND WHETHER THERE
ARE TWO EXCLUSIVE METHODS.

IT DOESN'T SAY IF YOU CHOOSE ONE
ROUTE YOU CAN AVOID THE RULES
SET FORTH IN THAT PROVISION.

IF YOU ELECT 581 YOU STILL PLAY
BY THE RULES.

THERE ARE REQUIREMENTS THE
PROVIDER HAS TO FOLLOW AS WELL.

>> LET ME TRY, TELL ME IF I AM
PICKING UP WHAT YOU ARE PUTTING
DOWN HERE.

THE MAY IS NOT A CONVERSION, NOT
REALLY MAY MASQUERADING AS A
MUST.

IT IS REFERENTIAL TO THE
PREVIOUS CHOICE, IF YOU CHOOSE
TO USE THIS OPTION YOU MAY PAY
THIS.

NOT THAT YOU MUST PAY THIS.

THE REFERENCE IS TO THE CHOICE
YOU MADE BY ELECTING TO PROCEED
WITH THIS SCHEDULE.

HAVE I STATED YOUR POSITION?

I MAY OR MAY NOT AGREE WITH THAT
BUT IF THAT IS THE STATEMENT OF

YOUR POSITION THAT STATEMENT IS
ACCURATE, SEEMS TO ANSWER, I

THINK I AM HEARING YOUR ANSWER.

THAT MAY REFERS TO THE CHOICE
YOU MADE A MINUTE AGO BY

SELECTING THE SCHEDULE.

SINCE YOU SELECTED THE SCHEDULE
YOU MAY PAY THIS.

>> OR YOU MAY NOT.
IN WHICH CASE YOU PAY 80%, 200%.
>> STILL STRUGGLING WITH HOW
YOUR ARGUMENT IS NOT A VARIATION
OF THE HYBRID METHOD ARGUMENT
THAT WE REJECTED IN MRI.
BASICALLY, ONE OR THE OTHER.
THAT IS IN TROUBLE, FOUNDATIONAL
TO YOUR ARGUMENT, AND THAT, WE
SAID NO.
THERE'S NOT A PROHIBITION OF
HAVING THE HYBRID METHOD.
>> THIS ISN'T A HYBRID METHOD.
IN THIS CASE IT IS NOT A HYBRID
MODEL, NOT A HYBRID METHOD, NOT
NOT A HYBRID METHOD OF
REIMBURSEMENT, THEY SAID WE ARE
GOING TO EXCLUSIVELY RELY ON 5
A1, DISREGARD THE LAST OF 585
AND PAY WHAT WE WANT.
>> THEY DIDN'T.
THEY SAID BASICALLY IF I
UNDERSTAND IT CORRECTLY, THE
SECOND DISTRICT EXPLAINS THIS
PRETTY WELL IN THEIR RECENT
OPINION, BASICALLY WHAT THEY ARE
SAYING IS WE ARE GOING TO ACCEPT
THE BILLED AMOUNT, WE ARE NOT
GOING TO FIGHT OVER IT, WE ARE
NOT GOING TO ARGUE ABOUT WHETHER
WHAT YOU BUILD IS BELOW WHAT WAS
ALLOWED UNDER THE SCHEDULE,
WHETHER THAT IS A REASONABLE
AMOUNT AND FOLLOW THE MANDATE OF
THE STATUTE TO REIMBURSE 80% OF
THE REASONABLE CHARGE THAT YOU
SUBMITTED WHICH WE ACCEPT AS A
REASONABLE CHARGE.
IT BOGGLES MY MIND THE PROVIDER
THAT BILLS A CERTAIN AMOUNT IS
IN A POSITION TO CLAIM IT'S NOT
A REASONABLE CHARGE.
>> THE ISSUE IS NOT A REASONABLE
CHARGE BUT REASONABLE
REIMBURSEMENT.
WHAT WE ARE DEALING WITH IN THIS
CASE, ALLSTATE SAYING THEY
DIDN'T DO A REASONABLE RISK
ANALYSIS AND SAY WE WILL PAY FOR
THIS BUT PURSUANT TO THE FEE
SCHEDULE.
>> WHAT HE IS SAYING IS THEY ARE
BASICALLY WAVING THE ABILITY TO
CHALLENGE, THE PROVIDER CAN'T BE

ARGUING WHAT THEY DID IS NOT REASONABLE.

ALL THEY ARE SAYING IS WE WILL ACCEPT THAT AND GO 80% OBLIGATION.

ISN'T IT REALLY, SEEMS LIKE THERE IS THIS AWKWARDNESS WITH THE WAY THEY ARE READING THE INSURANCE, THEY CHOOSE TO PAY MORE THAN THEY HAVE TO BUT AREN'T THEY PUTTING US IN THE SAME POSITION, THAT THE CHOICE IS I CAN EITHER PAY 80% OF THE FEE SCHEDULE AND THE BILL AMOUNT AS IF SOMEONE IS GOING TO SIT THERE AND DECIDE VOLUNTARILY, AREN'T WE LEFT -- SEEMS LIKE WE ARE NOT REALLY GETTING OURSELVES OUT OF THIS CONUNDRUM WITH AT LEAST INTUITIVELY KIND OF ODD REAL-WORLD EFFECT.

>> APPRECIATE THE QUESTION. THERE'S A DISTINCT WITH HOW WE LOOK AT THIS.

THE FIRST IS ALLSTATE SAYING WE NEED THIS OPTION TO PAY MORE IN CASE THESE THINGS THEY ARE DESCRIBING WHICH THEY DON'T NEED STATUTORY PERMISSION TO DO. AND ENCOURAGE THEM TO CHARGE LESS AND MEDICAL EXPENSES. AND THE SECOND SIDE OF THAT, AND KAREN P YOUR QUESTION.

>> ONE OF THE WEAKNESSES OF THEIR ARGUMENT, WHY WOULD YOU CHOOSE TO PAY THAT WHEN YOU CAN DO 80%.

WHAT I'M SAYING IS WHY, YOU ARE SAYING THE OTHER THING IS YOU HAVE THE OPTION OF PAYING 80% OF THE SCHEDULE OR THE BILL AMOUNT. WHY WOULD YOU EVER CHOOSE OPTION ONE IN THAT SCENARIO?

>> THE WHOLE POINT OF 585, WE CAN GO TO THE FIRST DECISION ON THIS ISSUE AND LOOK AT IT AND SAY THAT LAID THE GROUNDWORK FOR WHAT 581 REQUIRED FOR THE FEE SCHEDULE.

THEY DIDN'T HAVE THE OPPORTUNITY TO ADDRESS THE LESSER CHARGE ISSUE BY THE CORE PCA.

THE LEGISLATURE, OUR POSITION INCLUDED 585 TO PREVENT AS A

FAILSAFE NOT TO HAVE TO PAY MORE THAN A PROVIDER CHARGES IN THE EVENT THAT A PROVIDER CHARGES LESS.

OUR POSITIONS 585 IS IT IS NOT THE SAME AS WALL STREET ARGUED IN THEIR ARGUMENT.

585 AS A PROTECTION FOR THE INSURANCE COMPANY, GIVES THEM AN OPTION TO PAY LESS.

THAT IS DISTINGUISHABLE FROM WHAT THEY ARE ARGUING, THEY HAVE TO BE GIVEN THE OPPORTUNITY OR THE OPTION TO PAY MORE, DOESN'T MAKE SENSE, NO INSURANCE COMPANY IS IN THE BUSINESS OF PAYING MORE, AND IT IS SUPERFLUOUS. NO REASON TO ADD THAT.

>> THEY ANSWER THAT ARGUMENT, DON'T THEY?

MAYBE YOU SHOULD RESPOND TO THEIR EXPLANATION WHICH IS ECONOMICALLY RATIONAL REASONS TO PAY MORE SOMETIMES BUT THE LEGISLATURE MEANT TO GIVE US THAT OPTION, MAY WANT TO REWARD CERTAIN PROVIDERS IN A MARKET WHERE I GUESS MY QUESTION IS ARE THEY RIGHT ABOUT THE POLICY FREEDOM THEY HAVE BEEN GIVEN AND IF THAT POLICY FREEDOM HAS BEEN EXTENDED TO THEM BY LEGISLATURE, WHAT BUSINESS DO WE HAVE UNSETTLING IT?

>> I DON'T USE THE WORD IN MY REQUIREMENTS AND I APPRECIATE IT IS PART OF THE CASE LAW THAT DISCUSSES STATUTORY INTERPRETATION BUT IT IS AN ABSURD RESULT FOR THE LEGISLATURE TO INTERPRET THIS PROVISION INCLUDING AN OPTION TO PAY MORE FOR 80%.

80% OF REASONABLE EXPENSES OR THE AMOUNT OF THE CHARGE, WHICH IS MORE THAN THAT.

THERE IS NO RATIONAL INTERPRETATION THAT LEADS TO THAT RESULT.

>> I ASK YOU TO RESPOND TO THE ONE THEY OFFERED, THE RATIONAL EXPLANATION IS WE MAY CHOOSE TO PAY MORE, MORE TACTICAL BUSINESS INTEREST TO DO SO UNDER CERTAIN

CIRCUMSTANCES.

>> THEY CAN ALWAYS PAY MORE.
IF THEY TRULY WANTED THAT OPTION
THEY WOULD'VE INCLUDED IN THE
POLICY.

THEY TRIED TO DO THE OPPOSITE,
IT CUTS EXACTLY AGAINST WHAT
THEIR ARGUMENT IS TO HAVE THAT
OPTION.

IT WAS MEANT TO PROTECT
INSURANCE COMPANIES FROM HAVING
TO PAY A LESSER CHARGE OF 80%.

>> YOU SUBMITTED A BILL BY
DEFINITION, YOU THINK IT IS
REASONABLE, THIS UBER PRINCIPLE
IS THEY WANT REIMBURSEMENT IN
80%, WHY WOULD THE LEGISLATURE
RESULT WHERE YOU ARE SEEING 80%
OF WHAT YOU STIPULATE IS A
REASONABLE AMOUNT ISN'T ENOUGH?

>> THE RATIONAL EXPLANATION IS
THE LEGISLATURE DIDN'T WANT A
MEDICAL PROVIDER TO SUBMIT A
CHARGE THAT IS LESS THEN 80%
FROM BEING REIMBURSED AT THAT
RATE.

THEY WANTED TO GIVE THE
INSURANCE COMPANY THE OPTION OF
80% OR LESS.

>> MY TIME -- THANK YOU.

>> THAT WAS AN INTERESTING
EXCHANGE.

I WOULD LIKE TO START WITH A
QUESTION.

NOWHERE DOES THE STATUTE SAY
100%.

THERE ARE ANSWERS TO CHIEF
JUSTICE'S QUESTION, PAY 100% OR
119%, THAT IS ALLSTATE'S
OPTIONS.

THE STATUTE DOESN'T SAY THAT.
SECOND POINT, THE STIPULATION
DOESN'T SIMPLY HAVE THE LANGUAGE
ABOUT 80%, THE STIPULATION DOES
MORE THAN THAT, CLOSE TO THE
HYBRID, STATE FARM CASE.

IF YOU LOOK AT PAGE 2 OF THE
STIPULATION, PARAGRAPH 7, AFTER
IT SAYS METHODOLOGY FOR
DETERMINING THE AMOUNT WE WILL
PAY, PURSUANT TO THE FEE
SCHEDULE, LIMITATIONS UNDER
SECTION 607.

51 FOR THE STATUTE, AND ANY

OTHER LIMITATIONS ESTABLISHED BY SECTION 6.

736 AT THE OVERARCHING LIMITATION IS 80% AMOUNT.

THIS POLICY IS VERY ANALOGOUS TO THE ANALYSIS AND HAS ANY OTHER LIMITATIONS WHICH IS OVERARCHING 80% LIMITATION ADDITION TO THE FEE SCHEDULE PLUS PARAGRAPH 10 QUOTE WHICH JUSTICE CANNADY POINTED OUT SAYS WHAT IT SAYS, YOU CAN'T RUN AWAY FROM IT AND ITS FOUNDATIONAL TO THE REVIVAL ARGUMENT.

THIRD, WHEN YOU STRIP AWAY THE ARGUMENTS, THEY ARE ALL PREDICATED UPON A BINARY CHOICE AND THIS COURT HAS REJECTED THAT.

THE REASON THIS COURT REJECTED IT IS IF YOU DON'T RECHECK THAT, YOU HAVE TO DO WHAT THE FEDERAL DISTRICT COURT DID, REWRITE THE STATUTE IN FOUR RESPECTS. YOU HAVE TO ELIMINATE THE LIMITATION.

AND ILLUMINATE MORE BILLS. UNDER HIS INTERPRETATION, ALLSTATE'S CHOICE WAS TO PAY 100% OF A MEDICAL PROVIDER'S REASONABLE BILLS, AND 119, 2%. WHERE IN THE STATUTE IS THERE ANY SUGGESTION A REASONABLE MEDICAL BILL, WHICH THEY DO NOT CONTEST THIS WAS A REASONABLE NUMBER SHOULD BE PAID AT 100% OR HIGHER THAT IS THERE STATUTORY INTERPRETATION.

THE WORD MUST HAS BEEN TRANSFORMED INTO MUST.

WE'VE GIVEN YOU OUR INTERPRETATION BUT WITHOUT THAT LANGUAGE, THE STATUTE OF WHAT HAPPENED WHEN SOMEONE SUBMITS A BILL, LESS THAN THE PAY SCHEDULE, DOESN'T MAKE SENSE WHAT HE'S ARGUING BECAUSE NOWHERE IS IT SUGGESTED THERE WERE LEGISLATIVE POLICY DECISIONS TO ELIMINATE CO-PAYS, LONG-TERM INCREASE THE PREMIUMS FOR CITIZENS INSURED IN THIS STATE AND BECAUSE OF THAT, WE ASKED TO ANSWER THE CERTIFIED

QUESTION IN THE AFFIRMATIVE OR
THE 11TH CIRCUIT AND FINALLY
THIS IS MY THIRD TIME --

>> SORRY TO INTERRUPT.

>> THIS IS MY THIRD TIME IN THIS
COURT.

I AM PRIVILEGED TO COME DOWN
HERE.

EACH TIME I THINK IS THE LAST
BUT THANK YOU FOR THE PRIVILEGE,
ALWAYS A GREAT PLEASURE.

THANK YOU.

>> WE WILL ADJOURN FOR TODAY.