THE NEXT CASE ON THE COURT'S CALENDAR IS VEST VERSUS TRAVELERS INSURANCE. MR. KINSEY.

MAY IT PLEASE THE COURT. COUNSEL. THIS CASE AROSE AS A RESULT OF AN AUTOMOBILE ACCIDENT THAT OCCURRED IN WHICH THOMAS VEST WAS KILLED. DR. VEST'S WIDOW AND HIS PERSONAL REPRESENTATIVE FILED A CLAIM FOR UNINSURED MOTORIST BENEFITS AGAINST TRAVELERS INSURANCE COMPANY, WHO IS THE RESPONDENT IN THIS CASE. AND ALSO, SIMULTANEOUSLY, FILED A CLAIM FOR THE TORT FOOESORS -- TORTFEASORS' LIABILITY INSURANCE. AFTER THE DEMAND WAS MADE, THE TORTFEASOR REMANDED ITS LIABILITY INSURANCE AND THE REMAND WAS TO ALLOW BOTH THE PLAINTIFF OR THE WIDOW TO IS ACCEPT THOSE LIMITS --

IN WHAT. WAS THE TENDER?

THE TENDER WAS MADE IN A WRITTEN LETTER.

NOW, THIS WAS AN ESTATE CLAIM. CORRECT?

THIS WAS A CLAIM BAY THE PERSONAL REPRESENTATIVE ON -- CLAIM BY THE PERSONAL REPRESENTATIVE, ON BEHALF OF THE SURVIVORS, AND THERE WAS, ALSO, AN ESTATE CLAIM, AS WELL.

AND APPARENTLY, AT LEAST AS INDICATED IN THE DISTRICT COURT OF OPINION, THERE WAS A FEELING THAT IT HAD TO BE APPROVED BY THE TRIAL COURT, THE SETTLEMENT, WITH THE TORTFEASOR? ANOTHER TRIAL COURT ALWAYS, ACTUALLY, THE TRIAL COURT --

YOU WENT TO THE PROBATE COURT AND GOT IT SETTLED?

ACTUALLY AT THAT POINT --

APPROVED?

ACTUALLY, AT THAT POINT IF TIME, WHEN THE ORIGINAL OFFER WAS MADE BY THE TORTFEASOR, THERE WAS NO SETTLEMENT, WAS THERE WAS NOT A GLOBAL SETTLEMENT OF PROPERTY DAMAGE ISSUES THAT WERE INVOLVED. THE SETTLEMENT OF THE TORTFEASOR ISSUE DID NOT OCCUR UNTIL SOME MONTHS LATER, AFTER THAT TIME PERIOD.

SO WHAT I AM CONCERNED ABOUT, TWO THINGS. LET ME GET DIRECTLY TO IT.

ALL RIGHT.

THAT IS ONE IS, AS I UNDERSTAND IT, THE CONFLICT JURISDICTION, HERE, BASED UPON BROOKINS, AND IN BROOKINS, THERE WAS A PAYMENT THAT ESTABLISHED THE APPROPRIATE AREA AND NECESSARY IN GLAMPBLING ARRESTED, FOR -- IN BLANCHARD, FOR THE ESTABLISH PRESIDENT OF THE LIABILITY, ON THE PART OF THE TORTFEASOR. NOW, HERE, THIS CASE IS REALLY DIFFERENT THAN BROOKINS, BECAUSE IN ORDER TO GET THIS SETTLEMENT FINALIZED IT HAD TO BE APPROVED, AND THAT WASN'T DONE AND COULDN'T BE DONE AT THE TIME OF THE TENDER, IN THAT YOU HAD TO GO TO THE COURT TO GET IT APPROVED, SO DOESN'T THAT DISTINGUISH THIS CASE FROM BROOKINS, AND SECONDLY, HOW DO YOU IMMEDIATE THE CRITERIA OF BLANCHARD, IN ORDER TO GET THIS BAD FAITH CLAIM?

I THINK WE ARE, AND I AM GLAD THAT YOU ASKED THAT QUESTION, BECAUSE I THINK IT POINTS TO THE PROBLEM THAT HAS OCCURRED IN THIS CASE, BOTH FROM A MISUNDERSTANDING OF THE TRIAL JUDGE ON SUMMARY JUDGMENT, AND A MISUNDERSTANDING OF THE DISTRICT COURT OF APPEAL, ON THE DIFFERENCE BETWEEN THE ACTS CONSTITUTING THE WRONGS THAT RESULT IN THE CAUSE OF ACTION AND THE CRUEL OF THE CAUSE OF ACTION OF. THE CRUEL OF THE BAD FAITH CAUSE OF ACTION HAS ABSOLUTELY NOTHING TO DO WITH THE SETTLEMENT OR THE TERMINATION OF THE LITIGATION OR THE CLAIM AGAINST THE TORTFESAOR UNDER I AM MOVE OR -- TORTFEASOR, UNDER IMHOFF OR UNDER BLANCHARD. THE OPERABLE EVENT THAT RESULTS IN THE CRUEL OF THE CAUSE OF ACTION FOR BAD FAITH IS THE SETTLEMENT OR THE TERMINATION OF THE UNDERLYING INSURANCE CLAIM, WHICH, IN THIS CASE, WOULD BE THE UNDER INSURED CLAIM, THIS WAS THE SAME EVENT THAT OCCURRED IN BROOK I NS. THAT IS NOT -- IN BROOKINS. THAT IS NOT, REALLY, THE ISSUE THAT WAS BEFORE THE COURT IN THIS CASE. THE BAD FAITH ISSUE, ALTHOUGH IT WAS FILED AT THE TIME, THE 6.1244 ACTION, ALTHOUGH IT WAS FILED AT THE SAME TIME AS THE LAWSUIT FOR THE UNINSURED OR UNDER INSURED MOTORIST BENEFITS IN THIS CASE, THAT SECOND COUNT OF BAD FAITH HAD BEEN STAYED BY THE TRIAL COURT, BY THE PREVIOUS JUDGE, UNTIL THERE WAS A CONCLUSION OF THE UNDER INSURED MOTORIST CLAIM, ITSELF. WHAT THE DISTRICT COURT FOCUSED ON AND WHAT THE TRIAL COURT FOCUSED ON, IN THIS PARTICULAR CASE, AND APPLIED IMHOFF AND BLANCHARD TO, WAS THE FAILURE TO COMPLETE THE CLAIM AGAINST THE TORTFEASOR, WHICH IMHOFF AND BLANCHARD DON'T DEAL WITH THAT AT ALL, AND THIS COURT AND OTHER COURTS, A LONG LINE OF CASES IN FLORIDA, SAY THERE IS NO CONNECTION BETWEEN THE UNDERLYING UNDER INSURED MOTORIST CLAIM AND THE CASE AGAINST THE TORTFEASOR. YOU CAN BRING THE UNDER INSURED MOTORIST CLAIM FROM THE GET-GO.

WHAT WE ARE CONCERNED ABOUT IN THIS CASE, AS I UNDERSTAND IT, IS THE ARISING OF THE CAUSE OF ACTION FOR BAD FAITH, UNDER 624.155.

THAT IS CORRECT.

NOW, IN ORDER FOR THAT CAUSE OF ACTION TO ARISE, THERE HAS TO BE OR DOES THERE HAVE TO BE AN OBLIGATION ON THE PART OF THE UNINSURED MOTORIST ACT, TO PAY AT A POINT IN TIME?

THAT IS ABSOLUTELY CORRECT. AND THAT OCCURS FROM THE MOMENT THAT THE ORIGINAL CAUSE OF ACTION AGAINST THE TORTFEASOR ACCUSE -- CREWS, BECAUSE THE UNDER INSURED ACTION CREWS AT THE SAME TIME. THIS ACTION IS SET FORTH IN KILL BREATH AND LITTLE IS -- IN KILBREATH AND ALSO OCCURS IN WOODALL.

LET ME FOLLOW-UP FOR A MINUTE. ASSUMING THAT YOU WERE ALLOWED TO CONTINUE WITH THIS CASE, WHAT DAMAGES ARE A SEEKING AS A RESULT OF TRAVELERS' ALLEGED BAD FAITH FAILURE TO SETTLE AT THE TIME THAT YOU REQUESTED THE $200,000?

OKAY. THE DAMAGES THAT WE ARE SEEKING AT THIS POINT ARE THOSE THAT ARE ALLOWED, BOTH BY 624.155 AND 627.727. THOSE DAMAGES INCLUDE THE DELAY DAMAGES FROM THE PAYMENT, THE ATTORNEY'S FEES ASSOCIATED WITH HAVING TO, THEN, FILE A LAWSUIT AND PROCEED WITH THAT PAYMENT, THE COST ASSOCIATED WITH THAT, IN ADDITION TO THAT, ARE THE POTENTIAL EXCESS DAMAGES IN RESULTING THAT THIS CLAIM IS WORTH A GREAT DEAL MORE.

OKAY. NOW THAT, IS WHAT I REALLY WANT TO GET TO, AND I AM TRYING TO UNDERSTAND AND SEE HOW, IF WE PUT THIS IN A THIRD PARTY SETTING, WHAT WOULD BE DIFFERENT AND HOW IT WOULD GO. IF YOU HAD A THIRD PARTY CASE FOR, AND YOU -- THE PLAINTIFF HAD MADE A DEMAND FOR SETTLEMENT FOR THE POLICY LIMITS.

CORRECT.

THAT WOULD BE, AND THEY FAILED TO PAY, YOU COULDN'T BRING YOUR BAD FAITH CLAIM, IF YOU WERE SEEKING TO GET DAMAGES OVER AND BEFORE THE POLICY LIMITS, UNTIL THERE WAS AN AMOUNT ESTABLISHED IN EXCESS OF THE POLICY LIMITS, AND THAT WOULD BE -- THAT WOULD BE, LIKE, IN BLANCHARD, WHAT WE HAVE DONE, IN LITIGATING THE EXCESS DAMAGES. BUT AS I AM HEARING YOU, THAT WOULD NOT PRECLUDE YOU FROM HAVING CLAIMED, EARLIER, THAT THERE WAS BAD FAITH IN NOT SETTLING AT AN EARLIER TIME.

THAT IS ABSOLUTELY CORRECT. THAT IS WHERE I THINK THE DISTRICT COURT MADE A MISTAKE AND THE TRIAL COURT MADE A MISTAKE HERE.

FOR EXAMPLE IF TRAVELERS WANTS TO SAY, WELL, WE COULDN'T SETTLE, WE COULDN'T GIVE THE $200,000, BECAUSE THEY STILL HAD TO RESOLVE THE ESTATE HAD TO BE PROBATE AND THERE HAD TO BE AN APPROVAL, AND THAT IS WHY WE COULDN'T PAY, THAT WOULD BE EITHER A JURY QUESTION OR, MAYBE, A SEPARATE ISSUE AS TO WHETHER, LEGALLY, THEY COULD HAVE PAID AT THAT POINT IN TIME OR NOT. CORRECT?

THAT'S CORRECT. BUT THAT ISSUE WAS NOT RAISED PIE TRAVELERS AT ANY POINT. IT MAY HAVE BEEN ADDRESSED BY THE DISTRICT COURT AS MATTER OF ASIDE, BUT IT HAS NOT BEEN RAISED BY TRAVELERS AT ANY POINT DURING THIS LITIGATION, AS A DEFENSE TO THE BAD FAITH CLAIM.

BUT IT IS YOUR CLAIM THAT YOU COULD, IN A BAD FAITH CAUSE OF ACTION, BE BOTH LITIGATING THE AMOUNT OF THE TOTAL CLAIM, AS WELL AS THE OTHER DAMAGES, AND THAT THAT -- IT WOULD BE ESTABLISHED IN ONE ACTION, WHICH WOULD MAKE THAT DIFFERENT THAN A THIRD PARTY BAD FAITH CASE, WHERE THERE WOULD FIRST BE THE ESTABLISH PRESIDENT OF DAMAGES OR THE BLANCHARD SITUATION, WHERE THOSE EXCESS DAMAGES WERE ESTABLISHED.

WELL, AND THIS COURT HAS RECOGNIZED, IN CUNNINGHAM, THAT IT, ALSO, CAN BE DONE IN A THIRD PARTY CONTEXT, BAY AGREEMENT OF THE PARTIES. THAT IS NOT, REALLY, AN ISSUE -- BY AGREEMENT OF THE PARTIES. THAT IS NOT, REALLY, AN ISSUE HERE, BUT IN OUR SITUATION, WE ARE NOT RESOLVING THE UNDERLYING UNINSURED MOTORIST CLAIM AT THIS POINT IN TIME. THE PAYMENT BY TRAVELERS OF THE $200,000 WAS A PAYMENT BY TRAVELERS WITH NO STRINGS ATTACHED AND WITH NO RELEASE AND NO SETTLEMENT AND NO PREJUDICE TO PROCEEDING WITH THE UNDER INSURED MOTORIST --

GO AHEAD. I AM SORRY.

I WANT TO GET TO SOMETHING REALLY BASIC. WHAT DO YOU ALLEGE OR WHEN DO YOU ALLEGE THE ACTUAL BAD FAITH OCCURRED?

IN OUR OPINION, THE BAD FAITH FIRST OCCURRED, NOW -- WE CONTEND THAT THERE IS A CONTINUING COURSE OF BAD FAITH BY TRAVELERS UP UNTIL THE TIME THAT THEY PAID THEIR $200,000 IN THIS PARTICULAR CASE, BUT OUR CONTENTION THAT THE BAD FAITH FIRST OCCURRED THAT IS ACTIONABLE UNDER THE STATUTE, WHEN THE 60 DAYS ELAPSED AFTER WE HAD MADE THE NOTICE OF INSUROR VIOLATION WITH THE CARRIER AND WITH THE INSURANCE COMMISSIONER.

SO THEIR FAILURE TO RESPOND WHEN YOU HAD THE TENDER OFFER?

NO, MA'AM.

BUT AFTER YOU GOT THE TENDER OFFER, AND THEN YOU ASKED THEM IF YOU COULD SETTLE AND DEMANDED THE $200,000. CORRECT?

THEY APPROVED THAT.

THEY DID NOTHING.

NO. WE OFFERED TO, WHEN WE GOT THE TENDER OFFER, WE ASKED THEM TO APPROVE THE SETTLEMENT. AT THAT POINT IN TIME. WHICH THEY DID. AT THAT POINT IN TIME. THEY AGREED TO ALLOW US TO ACCEPT THE 1.1 MILLION AT THAT POINT IN TIME. WHAT WE ARE CONTENDING, THE FAILURE THAT WAS THE BAD FAITH, WAS THAT STARTED, IT STARTED AT THAT POINT, BECAUSE WE, ALSO, DEMANDED THEIR $200,000 IN LIMITS, AND WE CONTEND THAT THIS CASE WAS CLEARLY WORTH FAR IN EXCESS OF THE $1.3 MILLION COVERAGE THAT WAS AVAILABLE, THE $1.1 MILLION ON THE TORTFEASOR AND THE $200,000 THAT TRAVELERS HAD ON THEIR COVERAGE.

YOU TOOK IT AT THAT POINT IN TIME?

WE OFFERED TO TAKE IT AT THAT POINT IN TIME, AND ALTHOUGH WE OFFERED TO TAKE THE TORTFEASOR'S COVERAGE, THEY DIDN'T RESPOND WITH THE OFFER OF $200 THOU. WE, THEN, FILED OUR VIOLATION THAT WAS NECESSARY, IN ORDER TO ESTABLISH THIS BAD FAITH CLAIM UNDER 621.115, BECAUSE IT IS BAD FAITH TERRITORY, AND AFTER THAT TIME WITHOUT SATISFYING THE POLICY LIMITS OR EVEN BEGINNING TO NEGOTIATE AT THAT POINT IN TIME, THEIR RESPONSE TO US WAS THAT IT WAS PREMATURE AND THEY DIDN'T HAVE ANY OBLIGATION TO PAY BECAUSE WE HAD NOT SETTLED WITH THE TORTFEASOR. THAT IS WHERE WE RESPOND AT THAT POINT IN TIME THAT THE BAD FAITH BEGAN.

WHAT I AM HAVING TROUBLE WITH IS THERE ARE TWO POSITIONS, ONE IN BLANCHARD, THAT SAYS THE FIRST PARTY ACTION AGAINST THE INSUROR'S BENEFITS AGAINST THE INSUROR MUST BE RESOLVED FAVORABLY TO THE INSURED BEFORE THE CAUSE OF ACTION FOR BAD FAITH IN SETTLEMENT NEGOTIATIONS CAN ACCRUE.

CORRECT.

AND HERE I DON'T SEE WHERE THERE WAS A DETERMINATION ON THE LIABILITY OF THE PART OF THE TORTFEASOR, AND SECONDLY, THE QUESTION, THE STATEMENT IN IMHOFF, WHICH SAYS THAT TO THE EXTENT THAT A COMPLAINT FOR A BAD FAITH CLAIM REQUIRES AN ALLEGATION THAT THERE HAS BEEN A DETERMINATION OF DAMAGES. NOR WAS THERE A DETERMINATION OF DAMAGES. IN THE SENSE THAT I MAKE OF THAT, IF YOU COULD SPEAK TO, IS THAT WHAT YOU ARE DEALING WITH IN AN UNINSURED MOTORIST CONTEXT, AS OPPOSED TO A THIRD PARTY BAD FAITH CLAIM, IS THAT YOUR UNDERLYING CLAIM IS A BREACH OF CONTRACT ACTION. AGAINST THE UNINSURED MOTORIST CARRIER, THAT HAS TO HAVE THE RIGHT TO DEFEND ON THE CONDITIONS OF THE CONTRACT. WHY -- HOW DO YOU GET AROUND THAT?

WELL, THEY DO HAVE A RIGHT TO DEFEND, BASED UPON THE CONDITIONS OF THE CONTRACT. BUT 624.155 IMPOSES, UPON THEM, AN OBLIGATION TO SETTLE THE CASE, WHEN, UNDER ALL OF THE CIRCUMSTANCES, THEY SHOULD. OR TO AT LEAST, AS IMHOFF SAYS, AT LEAST TO NEGOTIATE THE CASE AT THAT POINT. NOW, THE IMHOFF DECISION, BLANCHARD HAS SOME LANGUAGE IN IT THAT MIGHT BE TROUBLING, BECAUSE THEY TALK ABOUT, AND IMHOFF, AS WELL, WHERE THE COURT, THIS COURT TALKED ABOUT THERE MUST BE A FINDING OF LIABILITY AND DAMAGES, IN ORDER FOR THERE TO BE THERE. GOOD SON -- GOODSEN, THE BROOKINS VERSUS GOODSEN CASE SAYS THAT THE FAILURE BY THE CARRIER ESTABLISHES THAT FACT AT THAT POINT. AT LEAST IT ESTABLISHEST FACT THAT THERE WAS A CLAIM IN EXCESS OF THE POLICY LIMITS OF THE TORTFEASOR, AND THAT IS SHOWING THAT THE PLAINTIFF, IN THAT PARTICULAR CASE, HAD A LEGITIMATE CLAIM TO THE UM POLICY LIMITS, AND THAT THE UM CARRIER HAD AN OBLIGATION. WE ARE ONCE AGAIN, YOUR HONOR, AND I MUST POINT THIS OUT, THE CRUEL OF THE CAUSE OF ACTION IS ONE THING. WE MAY NOT HAVE BEEN ABLE TO BRING THIS CAUSE OF ACTION, AND THE COURT HAD ABATED IT AT THAT POINT IN TIME, UNTIL SUCH TIME AS WE CONCLUDED THE UM CLAIM. WE, IN TRUTH AND IN FACT, WE MAY OR MAY NOT HAVE CONCLUDED THE UM CLAIM AT THIS POINT, ALTHOUGH THEY HAVE, I THINK, UNDER BROOKINS, LEGISLATEMIZED OUR UM CLAIM

BY PAYING THEIR $200,000 POLICY LIMITS. WE STILL HAVEN'T AGREED THAT WE ARE THROUGH WITH IT YET. I THINK THAT WE HAVE GOT A DETERMINATION, IF THIS COURT REVERSES IT AND SENDS IT BACK, AS TO WHICH WAY WE ARE GOING TO GO, AS FAR AS PROVING UP THE DAMAGES. ARE WE GOING TO GO ON WITH THE UM CLAIM, WHICH IS PROBABLY WHAT WE WOULD ELECT TO DO, TO GET A NUMBER, IS TO GO ON AND TRY THE UM CLAIM AT THIS POINT, TO GET THAT NUMBER THAT IS THERE, THAT IS NECESSARY. AN AT THAT POINT WE WILL KNOW, IN THE BAD FAITH CLAIM, WHAT THE POTENTIAL DAMAGES ARE, AND BOTH PARTIES CAN MOVE ON, BUT IT IS THE CONDUCT THAT OCCURS BEFORE THAT THE COURT HAS FOUND IS NOT ACTIONABLE. WELL, IF YOU ARE GOING TO INSULATE AN INSUROR FROM ITS CONDUCT OCCURRING PRIOR TO THE CRUEL OF THE CAUSE OF ACTION, THEN THERE IS NEVER A CAUSE OF ACTION.

LET ME ASK YOU, DOES BLANCHARD ACTUALLY SUPPORT YOUR POSITION? BECAUSE IN BLANCHARD THEY HAD TO BRING THEIR CAUSE OF ACTION UNDER 624.155, FWAU IS A FIRST PARTY CASE -- BECAUSE IT IS A FIRST PARTY CASE, YET IN BLANCHARD, THE ALLEGED BAD FAITH WAS PRIOR TO THE VERDICT BEING IN THE AMOUNT OF $396,000. THE COURT SPECIFICALLY SAYS THAT IT WAS FOLLOWING STATE FARM'S ALLEGED REFUSAL TO MAKE A GOOD FAITH OFFER TO SETTLE THEIR CLAIM THAT THE BLANCHARDS THEN FILED THE CASE, SO DOESN'T BLANCHARD RAE, ALTHOUGH THERE IS SOME LANGUAGE ABOUT WHEN YOU CAN BRING THE BAD FAITH CAUSE OF ACTION, REALLY SUPPORT YOUR ARGUMENT THAT THE BAD FAITH FAILURE TO SETTLE OCCURRED PRIOR TO THE VERDICT BEING ESTABLISHED IN THE AMOUNT OF $396,000?

NOT ONLY BLANCHARD, BUT, EVEN MORE TO THE POINT, IS THE LAFERAY DECISION OUT OF THIS COURT. THAT CASE INVOLVED THE DECISION WHERE THE BAD FAITH WAS A DENIAL OF COVERAGE, AND YOU HAD TO CONCLUDE THE DENIAL OF COVERAGE LAWSUIT BEFORE THE BAD FAITH CAUSE OF ACTION WOULD ACCRUE, WHICH OCCURRED IN THAT PARTICULAR CASE.

LET ME SEE IF I CAN RESTATE, SO WE CAN CUT THROUGH, AND OBVIOUSLY YOUR TIME IS GROWING SHORTER. YOUR THEORY OF ACTION AND BAD FAITH, HERE, IF I UNDERSTAND IT CORRECTLY, WHAT YOU ARE SAYING IS THAT THIS ACCIDENT OCCURRED, AND THAT THE LIABILITY WAS SO CLEAR ACTION AND THAT THE DAMAGES WERE SO GREAT -- WAS SO CLEAR, AND THAT THE DAMAGES WERE SO GREAT, THAT THE UNDER INSURED MOTORIST COVERAGE THAT YOUR PROPONENT, HERE, HAD AN OBLIGATION, IN GOOD FAITH, TO SETTLE WITH YOU AS SOON AS YOU CALLED THOSE FACTS AND CIRCUMSTANCES TO THEIR ATTENTION, AND THAT ALTHOUGH THERE IS A STATUTORY PROVISION THAT GIVES THEM AWAY OUT THAT YOU HAVE TO PUT THEM ON NOTICE ABOUT THAT, THAT THEY DIDN'T TAKE ADVANTAGE OF THAT, BUT THAT, BECAUSE THE LIABILITY AND THE DAMAGES WERE SO CLEARLY IN EXCESS OF THEIR UNDER INSURED COVERAGE, THAT THEY HAD THAT GOOD FAITH OBLIGATION THAT THEY VIOLATED. IS THAT --

THAT IS WHAT THE ALLEGATIONS OF OUR COMPLAINT ARE, YOUR HONOR, AND, YES, THOSE, AT THIS STAGE OF THE PROCEEDINGS, MUST BE ACCEPTED AS TRUE.

LET ME ASK YOU WHAT WOULD HAPPEN, IN THE EVENT THAT THE CLAIM AGAINST THE TORT FOOES OR HAD NOT -- TORTFEASOR HAD NOT BEEN RESOLVED. DID I UNDERSTAND YOU TO SAY THAT THAT HAD NOT BEEN RESOLVED HERE OR THAT HAS BEEN RESOLVED?

IT HAS BEEN RESOLVED. THAT IS WHEN THEY TENDERED THEIR LIMITS.

WHAT WOULD HAPPEN IN THE EVIDENCE OF THE CLAIM OF THE TORTFEASOR HAD NOT BEEN RESOLVED AND LATER THERE WAS A DETERMINATION OF NO LIABILITY OR LATER THERE WAS A DETERMINATION OF LESS DAMAGES THAN YOU WERE ASSERTING AGAINST THE UNDER INSURED CARRIER. WHAT WOULD HAPPEN IN THE EVENT?

OBVIOUSLY MY BAD FAITH CAUSE OF ACTION WOULD BE GONE, AND THAT IS TRUE IN A THIRD PARTY CONTEXT, AS WELL AS A FIRST PARTY CONTEXT, AND I AM INTO MY TIME.

BUT I AM HAVING TROUBLE, THOUGH, UNDERSTANDING WHERE YOU THINK THE RESOLUTION OF THAT IS TO TAKE PLACE, BECAUSE IF I UNDERSTAND IT CORRECTLY, YOU ARE SAYING THAT IS TO TAKE PLACE IN THE TRIAL FOR BAD FAITH AGAINST THE UNDER INSURED CARRIER, AND THAT IS THAT A JURY IS GOING TO MAKE A DETERMINATION AS TO THAT OR IS THAT NOT WHAT YOU ARE SAYING?

NO. THAT IS -- IN THIS PARTICULAR CASE, WE, STILL, HAVE THE UNDERLYING CLAIM STILL PENDING, BECAUSE THERE HAS BEEN NO SETTLEMENT OF THE UNINSURED MOTORIST CASE, ITSELF, SO THAT HAS TO BE TRIED. BUT IN EVERY BAD FAITH CASE, THE BAD FAITH IS GOING TO OCCUR, AND THE JURY MUST DETERMINE WHETHER THEY WERE IN BAD FAITH BY NOT PAYING THEIR LIMITS AT A CERTAIN POINT IN TIME. IF THERE IS NO EXCESS VERDICT IN THE THIRD PARTY CASE, THERE IS NO BAD FAITH CASE. THAT IS THE CRUEL. THAT IS THE LAST STEP. BUT THE CONDUCT OCCURRING UP UNTIL THAT POINT IN TIME IS RELEVANT, AND THAT IS WHAT THE COURT HAS SAID WE CAN'T EVEN PUT ON A CASE ABOUT. THEY HAVE SUMMARY US OUT, BASED UPON THAT.

IF YOU WISH TO SAVE, YOU MAY.

THANK YOU.

IF THE COURT PLEASE, I REPRESENT THE RESPONDMENTS THIS ARGUMENT. IF I CAN SUMMARIZE THE EARLY FACTS OF THIS CASE, THE ACCIDENT HAPPENED IN FEBRUARY OF 1995. LESS THAN THREE MONTHS LATER, THE PARTIES WERE NEGOTIATING, THE PLAINTIFF AND THE TORTFEASORS, AND THE TORTFEASORS' LIABILITY CARRIER, THEY WERE NEGOTIATING. THEY THOUGHT THEY HAD A SETTLEMENT. THE PLAINTIFFS CAME TO TRAVELERS AND SAID WOULD YOU APPROVE THAT SETTLEMENT SO WE DON'T WAIVE OUR UNINSURED MOTORIST BENEFITS? TRAVELERS GAVE ABSOLUTE PERMISSION, BUT SOMETHING HAPPENED WITH SETTLEMENT NEGOTIATIONS WITH THE PLAINTIFF, PETITIONER AND THE TORT FOOESORS -- AND THE TORTFEASORS. THAT CASE BROKE DOWN AND DID NOT SETTLE AT THAT POINT. IT WENT ON TO LITIGATION, AND THE PLAINTIFF FILED THEIR SUIT AGAINST THE TORTFEASORS AND TRAVELERS, BUT THE PLAINTIFF WENT AHEAD AND FILED THE 60-DAY CIVIL REMEDY NOTICE EVER VIOLATION LETTER AGAINST TRAVELERS WITHIN THREE MONTHS. THREE MONTHS AND FIVE DAYS AFTER THE ACCIDENT TOOK PLACE. THE SUIT WAS LATER FILED IN SEPTEMBER. THE UNDERLYING CASE, BY THE PLAINTIFFS, AGAINST THE TORTFEASORS, WAS SETTLED SOME SEVEN OR EIGHT MONTHS LATER, THEN, AFTER THE ACCIDENT OF THE ACCIDENT. TRAVELERS GAVE APPROVAL FOR THAT SETTLEMENT AND THEN ATTEMPTED TO TENDER THEIR UM LIMITS, THAT THEY WERE NOT ACCEPTED, AND THEN TRAVELERS SENT THEM, ANYWAY, WITH THE UNDERSTANDING THAT IT WOULD NOT BAR THE POTENTIAL BAD FAITH CASE.

IS IT YOUR POSITION THAT YOU MUST HAVE TOTALLY RESOLVED THE CLAIMS AGAINST THE TORTFEASORS BEFORE YOU CAN HAVE ANY ACCESS TO YOUR UNINSURED MOTORIST BENEFITS? IS THAT THE PREMISE?

NO, SIR. THAT IS NOT OUR POSITION. IN SOME RESPECTS IT IS, BUT I WOULD SURELY SAY RIGHT OFF THE BAT, AS WE HAVE SAID IN OUR BRIEFS THAT, ANY PLAINTIFF IN THIS STATE HAS EVERY RIGHT TO SUE THEIR UM CARRIER FIRST. THEY CAN DO IT BY WAY OF A CIVIL SUIT, WHICH IS DONE IN THIS CASE. THEY CAN DO IT BY WAY OF ARBITRATION, BUT IN THAT SETTING, IF THAT HAPPENED, THERE WOULD AND RESOLUTION, AT SOME POINT, OF COMPARATIVE NEGLIGENCE ISSUES, LIABILITY ISSUES AGAINST THE TORTFEASORS, DAMAGES ISSUES, AMOUNTS OF DAMAGES.

YOU ARE SAYING THAT THERE MUST BE SOME RESOLUTION OF THOSE ISSUES BEFORE YOU CAN MAKE YOUR UNINSURED MOTORIST CLAIM AND SAY YOU SHOULD HAVE PAID ME THEN.

YES, SIR. WE WOULD IS SURELY SAY THAT, UNDER BLANCHARD AND IMHOFF DECISIONS BY THIS COURT, BEFORE YOU CAN HAVE A VALID, ACCRUED BAD FAITH OR GOOD FAITH CAUSE OF ACTION UNDER 624.155, BEFORE IT EVER AC CREWS, YOU HAVE TO HAVE A -- CREWS, YOU HAVE TO HAVE A -- BEFORE IT EVER AC CREWS, YOU HAVE TO HAVE A SETTLEMENT OF THE TRIAL SITUATION IN AN UNDERLYING CASE, AND UNTIL THAT HAPPENS --

LET ME ASK YOU THIS: DO YOU AGREE THAT THE SOURCE, THE HISTORY FOR UNINSURED MOTORIST COVERAGE IN THIS STATE CAME FROM WHAT IS KNOWN AS THE UNCOLLECTED JUDGMENT COVERAGE. DO YOU AGREE WITH THAT?

YES, SIR.

AND THAT WAS A SITUATION WHERE WE FORCED CITIZENS TO GO SUE THE TORTFEASORS AND THEN COME TO THE INSURANCE COMPANY WITH JUDGMENT IN HAND AND THEN SAY "PAY IT", CORRECT?

YES.

AND THAT WAS REPLACED, BY, DO YOU AGREE, UNDER INSURED MOTORIST COVERAGE.

I WOULD AGREE WITH YOU.

AND THAT WAS THE TYPE OF COVERAGE THAT SAID YOU DON'T HAVE TO GO CHASING PEOPLE AROUND. YOU HAVE THE CLAIM. YOU JUST ASK YOUR INSURANCE COMPANY TO PAY YOU. WE CAN AGREE THAT FAR.

YES, SIR.

AND THEN THE NEXT THING, REALLY, THAT HAPPENED, IS THAT A UNINSURED MOTORIST, NOW, INCLUDES SOMEONE THAT HAS INSURANCE BUT JUST NOT ENOUGH. ISN'T THAT A PRETTY FAIR STATEMENT?

YES.

AND DO YOU AGREE THAT, UNDER FLORIDA LAW, THAT THAT INSURED PERSON DOESN'T HAVE TO GO LOOK TO THE TORTFEASORS AT ALL. YOU CAN GO DIRECTLY TO YOUR UNINSURED MOTORIST CARRIER AND SAY PLEASE PAY ME, AND THEN YOU CAN HAVE THE SUBJUGATION RIGHTS AND DO WHATEVER YOU WANT TO TO -- THE SUBROGATION RIGHTS AND DO WHATEVER YOU WANT TO DO?

THAT'S CORRECT.

WHY IS IT THAT YOU CAN NOT HAVE A BAD FAITH CLAIM BASED UPON ASKING YOUR INSURANCE CARRIER, PLEASE PAY ME. THEN YOU CAN GO AND GET WHATEVER YOU NEED TO GET.

YES, SIR.

WHY WOULD -- WHAT IS WRONG WITH THAT KIND OF THOUGHT PROCESS HISTORICALLY AND LEGALLY, IN THIS STATE?

YOUR HONOR, I WOULD SUBMIT TO YOU THAT THE FACTS OF THIS CASE ARE VERY UNIQUE, AS THE TRIAL COURT FOUND, AND HIS FINDINGS OF FACT, WE SUBMIT, HAVE NEVER BEEN CHALLENGED ON APPEAL OR ALTERED IN ANY WAY BY THE FIRST DISTRICT OR EVEN RAISED BEFORE THIS COURT, BECAUSE IN THIS CASE, THE BAD FAITH YOU ARE ARGUING IS ONLY BAD FAITH DURING THE FIRST THREE MONTHS FOLLOWING THE DATE OF THE ACCIDENT, AND THAT

QUESTION WAS ASKED. THE CIVIL REMEDY NOTICE OF VIOLATION IS LIKE A PLEADING THAT, AND I WOULD SUBMIT THAT FRAMES THE ISSUES OF A CASE. THE CIVIL REMEDY NOTICE OF VIOLATION IS FILED THREE MONTHS AFTER THE ACCIDENT, AND IT SAYS WE ARE CLAIMING, ON THE PART OF THE PETITIONER, THAT THE VIOLATION OCCURRED SOMETIME BETWEEN THE DATE OF THE ACCIDENT AND THE THREE-MONTH LETTER. THE ONLY BAD FAITH THAT CAN BE CHARGED IN THIS CASE AGAINST TRAVELERS IS WHAT TOOK PLACE DURING THOSE THREE MONTHS, AND THIS CASE INVOLVED, OBVIOUSLY, A VERY TRAGIC ACCIDENT, BUT AN ACCIDENT WHERE THE DECEDENT DID NOT HAVE A SEAT BELT ON. HE WAS THE ONLY ONE INJURED IN THE ACCIDENT. EJECTED FROM THE VEHICLE. THE VEHICLE ROAD OVER ON HIM. THE TRIAL COURT FOUND, JUDGE TARBUCK, THAT, UNDER THOSE FACTORS, IT WAS OKAY. IT WAS PROPER. IT WAS PLAUSIBLE. IT WAS NOT BAD FAITH FOR TRAVELERS TO WAIT, AT LEAST TO THE SEE WHAT HAPPENED WITH THE UNDERLYING CASE, AS JUDGE -- JUSTICE ANSTEAD, I THINK, ASKED EARLIER, WHAT IS GOING TO HAPPEN, IF TRAVELERS PAYS EARLY, BEFORE THE SETTLEMENT OF THE UNDER LYING CASE, AND THAT CASE WENT TO TRIAL?

LET ME COME BACK, THOUGH. I AM NOT SURE THAT I HAVE UNDERSTOOD. DID YOU SAY THAT THERE WAS SOME EVIDENTIARY OR FACTUAL RESOLUTION OF THE REASONABLE REASONABLENESS OF THESE COMPANIES?

YES, SIR.

THERE WAS A TRIAL OF THAT?

YOUR HONOR, THE TRIAL JUDGE, IN ENTERING THE SUMMARY FINAL JUDGMENT --

THERE WASN'T A TRIAL. IS THAT CORRECT? WE ARE TALKING ABOUT ASSUMERY JUDGMENT HERE.

THAT'S CORRECT. BUT THE TRIAL -- A SUMMARY JUDGMENT.

THAT'S CORRECT. BUT THE TRIAL JUDGE DID FIND --

YOU TALK ABOUT THAT HE FOUND AND THAT THERE ARE FINDINGS, BUT WE ARE NOT TALKING ABOUT A TRIAL. OKAY.

THAT'S CORRECT.

WE ARE TALKING ABOUT A JUDGE DETERMINING THAT IT IS UNDISPUTED ON THE RECORD, AND THAT THAT MANDATES A JUDGMENT IN YOUR CLIENT'S FAVOR. IS THAT CORRECT?

WE WOULD SUBMIT, YOUR HONOR, THAT, BECAUSE JUDGE TARBUCK MADE THAT FINDING OF FACT, HE RULED --

THAT IS NOT IT. YOU CAN'T MAKE FINDINGS OF FACT IN ENTERING ASSUME RI -- A SUMMARY JUDGMENT, CAN YOU?

JUSTICE ANSTEAD, I WOULD SUBMIT TO YOU, THAT, AS YOU RESEARCH THE CASE --

POINT OUT WHAT IS UNDISPUTED.

YOU CAN POINT OUT WHAT IS UNDISPUTED, AND THERE ARE CASES AROUND THE COUNTRY WHERE SUMMARY JUDGMENT HAS BEEN ENTERED BY THE COURTS, WHERE THE COURT SAID WE ARE FINDING, AS AT PARTY OF LAW, THAT THESE FACTS DO NOT RISE TO A LEVEL OF BAD FAITH.

LET ME ASK YOU A HYPOTHETICAL THAT IS SORT OF SIMILAR TO JUSTICE LEWIS'S. LET'S TAKE A

HYPOTHETICAL CASE, ALL RIGHT, AND WHERE IT, LIABILITY IS JUST ABSOLUTELY CLEAR-CUT IN THE UNDERLYING ACCIDENT. YOU KNOW, THE NEXT DAY A WRITTEN PLEA OF GUILTY WAS ENTERED. THERE ARE 89,000 WITNESSES. AND YOU KNOW, IT IS ABSOLUTE CLEAR LIABILITY. THE DAMAGES ARE ENORMOUS, AND THAT IS CLEAR CUT. THAT THE DAMAGES ARE, YOU KNOW, A WHOLE LOT, AND THERE IS A DEMAND MADE, THEN, ON THE UNDER INSURED MOTORIST CARRIER, BECAUSE OF THOSE CIRCUMSTANCES, TO GO AHEAD AND PAY THE LIMITS OF THE POLICY, AND LET'S, YOU KNOW, TO HELP THE HYPOTHETICAL, I AM SAYING THAT THE DAMAGES ARE IN EXCESS OF $1 MILLION. THE KPIBLT IS CLEAR. THE UNDERLYING -- THE LIABILITY IS CLEAR. THE UNDERLYING TORTFEASORS HAD A POLICY OF $10,000, AND THE UNDER INSURED MOTORIST CARRIER HAS AN INSURANCE POLICY OF $10,000. NOW, WHAT IS TO PROHIBIT AN INJURED PARTY, IN THOSE CIRCUMSTANCES, FROM SAYING, TO HER INSURANCE COMPANY, HER UNDER INSURED MOTORIST INSURANCE COMPANY, IT IS PATENTLY REASONABLE, UNDER THESE CIRCUMSTANCES, THAT YOU GO AHEAD AND PAY WHAT YOU ARE CONTRACTUALLY LIABLE TO PAY TO ME, AND THAT IF YOU DON'T PAY IT, THAT WILL CONSTITUTE BAD FAITH? BECAUSE OF THE FACT THAT IT IS ALREADY APPARENT THAT THE LIABILITY IS CLEAR AND THAT THE DAMAGES ARE 100 TIMES WHAT THESE COVERAGES ARE, AND THAT IF THE INSURANCE COMPANY DOESN'T PAY, THAT THEY WOULD HAVE A CLAIM FOR BAD FAITH? WHAT -- WHERE IS THAT HYPOTHETICAL, IN THAT HYPOTHETICAL, WOULD YOU AGREE WITH THAT? IN THE HYPOTHETICAL? THAT THERE WOULD AND CAUSE OF ACTION FOR BAD FAITH?

YOUR HONOR, WE HAVE TRIED TO, AND I HAVE SURELY TRIED TO GO THROUGH HYPOTHETICALS, AND THAT IS THE TYPE ONE THAT I HAVE THOUGHT ABOUT, AND SURELY YOU STRUGGLE WITH THAT. THAT SEEMS SO CLEAR-CUT, SO STRAIGHTFORWARD, THAT THE UM CARRIER SHOULD NEVER WALK AWAY FROM THE OPPORTUNITY TO PAY THAT CLAIM PROMPTLY, UNDER THE CIRCUMSTANCES. BUT I WOULD JUST SAY TO YOU WHAT I THINK IS A KEY POINT IN THIS CASE OR ANY FIRST PARTY BAD FAITH CASE, THERE IS A PURPOSE FOR THE 60-DAY REMEDY NOTICE OF VIOLATION LETTER.

THAT WAS USED IN THIS CASE, WAS IT NOT, AND THERE WAS NO PAYMENT MADE WITHIN THE 60 DAYS. RIGHT?

YOUR HONOR, WE WOULD SUBMIT THAT IT WAS NOT PROPERLY USED, THAT WE DO NOT FIND ONE CASE, UNDER FLORIDA LAW, WHERE A 60-DAY REMEDY, NOTICE OF VIOLATION LETTER, WAS EVER SUBMITTED BEFORE THE SETTLEMENT OR RESOLUTION OF THE UNDERLYING TORT CLAIM.

THAT IS WHY I GAVE YOU THE HYPOTHETICAL.

YES, SIR.

BECAUSE WE HAVE GOT A DEAL WITH THE -- WE HAVE GOT TO DEAL WITH THE LAW, OKAY, NOT WITH THE PARTICULAR FACTS OF AN INDIVIDUAL CASE SO MUCH AS WHAT, YOU KNOW, WHAT ROOM THERE IS OUT THERE IN THE LAW. WOULDN'T YOU AGREE UNDER MY HYPOTHETICAL, THAT THERE WOULD BE NO NEED TO RESOLVE THE UNDERLYING CLAIM, IF, AND UNDER THE STANDARD THAT IS USED FOR BAD FAITH, YOU KNOW, WHETHER A REASONABLE INSURANCE CARRIER, KNOWING WHAT THEY KNEW, YOU KNOW, WOULD MAKE A SETTLEMENT WITH THEIR INSURED, AND SHOULD HAVE KNOWN AND PAID IT, THAT THAT IS WHAT IS DETERMINATIVE, YOU KNOW, OF THE STANDARD THERE, AND ALTHOUGH, BECAUSE YOU COULDN'T FIND ANYBODY TO SERVE A SUMMONS ON OR WHATEVER, AS FAR AS THE UNDERLYING INSURANCE IS CONCERNED, THAT SHOULDN'T DETERMINE WHETHER OR NOT YOUR CARRIER SHOULD HAVE PAID YOU, SHOULD IT?

YOUR HONOR, ALL I CAN SAY TO THAT, AND THAT IS OBVIOUSLY A HARD FACTUAL CASE THAT PRESSES THE STRUGGLE HERE WITH THE LAW, BUT THAT WE HAVE AN UM STATUTE AND AN UM SITUATION, HERE, THAT IS VERY UNIQUE. THERE ARE MOUNDS OF CASES, AS YOU KNOW, THAT INTERPRET THE U. M. LAW, AND THERE IS A STRUCTURE IN IT THAT WE BELIEVE TRAVELERS

FOLLOWED IN THIS CASE. WE BELIEVE THEY FOLLOWED THE STATUTES THAT REQUIRE A LEGAL DETERMINATION OF BEING -- FOLLOW AGAINST THE TORTFEASORS BEFORE THIS IS EVEN AN ESTABLISH PRESIDENT OF THIS CLAIM. WE FOLLOWED THE STATUTE AND THAT, ONCE THESE LIABILITIES LIMITS WERE TENDERRED, WE CONTEND THAT WE WORKED AGAINST PAYING THE U. M. POLICY LIMITS, AND, AGAIN, THE 60-DAY LETTER, WE CONTEND, WAS FAR, FAR PREMATURE IN THIS CASE.

YOU CONTEND THAT THERE WAS SOME KIND OF A TRAIL OR HEARING. OF COURSE YOU MAY -- OF A TRIAL OR HEARING. OF COURSE YOU MAY PREVAIL ON THE ARGUMENTS THAT YOU ARE PRESENTING, BUT WHY SHOULDN'T THERE BE A RESOLUTION BY A FACT FIND OR OF WHETHER OR NOT YOUR CONDUCT WAS REASONABLE UNDER THESE CIRCUMSTANCES?

AGAIN, YOUR HONOR, THE TRIAL JUDGE HAS MADE A FINDING, AGAIN, A 6 -- ASSUMERY FINAL JUDGMENT THAT HAS NOT BEEN RAISED ON -- A SUMMARY FINAL JUDGMENT THAT HAS NOT BEEN RAISE ODD APPEAL IN THIS DISTRICT, AND -- RAISED ON APPEAL IN THIS DISTRICT, AND IT HAS NOT BEEN ALLEGED DURING THE PERIOD DURING WHICH TRAVELERS COULD HAVE ACTED IN BAD FAITH, THAT IT COULD NOT HAVE ACTED IN BAD FAITH, THAT THERE WERE PLAUSIBLE REASONS FOR TRAVELERS DOING WHAT IT DID, AND HIS FINDING HAS NOT BEEN DISTURBED.

ARE YOU FAMILIAR WITH JUDGE McDONALD'S DISSENT IN ONE OF THESE CASES THAT TALKS ABOUT THIS? I FORGET WHETHER IT IS BLANCHARD OR ONE OF THE OTHER CASES, WHERE HE DISSENTED AND HOLDING THAT THE UNDER INSURED MOTORIST CARRIER WAS ENTITLEED TO ASSERT ALL OF THEIR POLICY RIGHTS BEFORE A CAUSE OF ACTION COULD AGO CREW, DESPITE THE STANDARD -- COULD ACCRUE, DESPITE THE STANDARD. YOU ARE NOT MAKING THE SAME ARGUMENT THAT JUSTICE McDONALD WAS MAKING IN DISSENT, ARE YOU, OR ARE YOU?

I DON'T BELIEVE I AM, YOUR HONOR. I BELIEVE THAT I AM UNDERSTANDING WHAT YOU ARE SAYING THAT I AM TRYING TO MAKE THAT SAME ARGUMENT.

LET ME GO ON AND YOU ARE SAYING THAT THE BAD FAITH CONDUCT CAN OCCUR BEFORE THERE HAS BEEN A DETERMINATION OF THE AMOUNT OF THE VALUE OF THE CLAIM, AND I GO BACK TO, AND ASK YOU ABOUT BLANCHARD, AND IN BLANCHARD, THE INSURED'S ASKED STATE FARM TO PAY THE POLICY LIMITS OF $200,000. THE DECISION GOES ON TO SAY FOLLOWING STATE FARM'S ALLEGED REFUSAL TO MAKE A GOOD OFFER TO SETTLE THE CLAIM, THE BLANCHARDS THEN SUED AND THEY, THEN, WON THE VERDICT IN THE AMOUNT OF $396,000. THEREAFTER STATE FARM PAID ITS POLICY LIMITS OF $200,000. IF YOUR POSITION IS CORRECT, THEN ONCE STATE FARM PAID, WHICH, AFTER THE AMOUNT OF THE VERDICT WAS ESTABLISHED, THERE COULD BE NO BAD FAITH, BUT THIS DECISION GOES ON TO SAY THAT THAT IS WHEN, THEN, THEY COULD BRING THEIR BAD FAITH ACTION, WHICH IS AFTER THE AMOUNT OF DAMAGES WERE DETERMINED, BECAUSE THEY WERE SEEKING IN EXCESS. THEY WERE SEEKING THE EXCESS JUDGMENT. SO WHY ISN'T BLANCHARD EXACTLY WHAT ANY OF THESE SITUATIONS WHERE, THAT IS WHERE THE INSURED ASKS, EARLY ON, FOR THERE TO BE A SETTLEMENT FOR THE POLICY LIMITS, WHICH MAY OR MAY NOT HAVE BEEN WHAT THEY COULD HAVE GOTTEN, IF IT WAS SIMPLY A CONTRACTUAL ISSUE, BUT THE LEGISLATURE SAID, NO, THEY ARE GOING TO GET TO HOLD THEIR OWN INSURANCE COMPANIES TO NEGOTIATE IN GOOD FAITH, JUST LIKE THIRD PARTIES, SO WHY ISN'T THAT EXACTLY IN THE INTENT OF THE STATUTE TO REQUIRE, INSERT CASES, AND, AGAIN, AS JUSTICE ANSTEAD SAID, YOU MAY HAVE A GOOD DEFENSE, HERE, FOR WHY YOU DIDN'T OFFER YOUR $200,000, BUT THAT, THE DEFENSE CAN'T BE WE JUST DIDN'T HAVE TO, UNTIL AFTER EVERYTHING WAS FINISHED, AND I SEE TWO DIFFERENT ISSUES, BEING WHETHER YOU WERE IN GOOD FAITH IN THIS CASE BUT THE GREATER POLICY ISSUE IS WHETHER ANY INSURANCE COMPANY CAN EVER BE HELD LIABLE, IN BAD FAITH, FOR CONDUCT THAT OCCURRED PRIOR TO THE RESOLUTION OF THE UNINSURED MOTORIST CLAIM, AND IF YOUR ANSWER TO THAT IS IT NEVER CAN HAPPEN, THEN WE HAVE GOT A -- I THINK WE WOULD HAVE TO RECEDE FROM BLANCHARD.

YOUR HONOR, THE PROBLEM I HAVE WITH BLANCHARD OR THE STRUGGLE I HAVE WITH BLANCHARD IS IT DOESN'T GO IN ANY DISCUSSION OF THE IMPORTANCE OF THE 60-DAY CURE, NOTICE OF VIOLATION LETTER, UNDER 624.155, A BE WHEN THAT LETTER CAN BE -- AND WHEN THAT LETTER CAN BE SENT AT THE EARLIEST POSSIBLE DATE. NOW, THE TALLOT DECISION, THE TALLOT VERSUS AETNA CASE, THE MIDDLE DISTRICT COURT DECISION, JUST, IN RECENT YEARS, WE BELIEVE SUPPORTS WHAT WE ARE TRYING TO ARGUE IN THIS CASE. HUH A CLAIM AGAINST A COMMERCIAL FIRE CARRIER. YOU HAD ARBITRATION THAT THE UNDERLYING CLAIM WAS RESOLVED. THE COURT, THEN, SAID THAT THE 60-DAY NOTICE LETTER WENT OUT AFTER THE RESOLUTION OF THE UNDERLYING DISPUTE, AND THE CARRIER PAID THE CLAIM, WITHIN THE 60 DAYS, AND THEY TALKED ABOUT THE IMPORTANCE OF THE 60-DAY CURE LETTER, TO GIVE THE OPPORTUNITY TO TRAVELERS OR ANY OTHER CARRIER, TO CURE THE PROBLEM, AND IF I CAN SAY THIS, BECAUSE I JUST DON'T WANT TO MISS IT, YOUR HONOR, IF YOU CAN SEND A BAD FAITH 60-DAY CIVIL NOTICE OF VIOLATION LETTER WITHIN THREE MONTHS AFT DATE OF THE ACCIDENT, LIKE THE FACTS OF THIS CASE, WHAT IS THE VIOLATION, UNDER 624.155, THAT WE ARE SUPPOSED TO CURE, WHEN THERE HAS BEEN NO ACCRUAL OF A BAD FAITH CAUSE OF ACTION?

YOU SEE, THAT IS WHERE THE DEFENSE COMES IN. IF YOU ARE ABLE TO ESTABLISH AT TRIAL THAT THERE REALLY WAS NO LIABILITY, THEN YOU ARE OFF THE HOOK. JUST LIKE IN A THIRD PARTY ACTION, YOU TAKE YOUR CHANCES. YOU SAY, YOU KNOW WHAT? I GOT TWO -- I ONLY HAVE $10,000 HERE. I AM FACED WITH A MILLION. I BETTER PAY, BECAUSE YOU KNOW, THE LIABILITY CHANCES ARE TOO GREAT. YOU MAKE THAT DECISION. YOU JUST DON'T, YOU KNOW, OTHERWISE, ONCE THE AMOUNT IS ESTABLISHED, THERE IS NO, I MEAN, THERE IS NO -- THAT IS A NO-BRAINER AT THAT POINT. BUT UNLESS WE ARE GOING TO INTERPRET OUT THAT 624.155 TO MEAN THAT BAD FAITH OR GOOD FAITH SETTLEMENT IS REALLY NOT PART OF FIRST PARTY ACTIONS, I STILL GO BACK TO BLANCHARD. I THINK YOU ARE AGREEING WITH ME THAT BLANCHARD WOULD HAVE TO HAVE THE BAD FAITH OCCURRING, PRIOR TO THE ENTRY OF THE JUDGMENT FOR THIS DECISION TO MEAN ANYTHING. CORRECT?

YES, MA'AM. YES, MA'AM.

SO WE WOULD HAVE TO, ACTUALLY, RECEIVE FROM BRANCH ARRESTED, TO GO ALONG WITH YOUR -- RECEIVE FROM BLANCHARD, TO GO ALONG WITH YOUR THEORY THAT THE BAD FAITH CAN ONLY OCCUR AFTER THE AMOUNT OF DAMAGES HAS BEEN ESTABLISHED.

WELL, THIS COURT HAS SAID YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES, OBVIOUSLY, AND THE STATE FARM VERSUS LAFERAY CASE, AND OUR CENTRAL ARGUMENT IN THIS CASE WAS THAT THERE WAS NO DUTY ON THE PART OF TRAVELERS, TO PAY THESE BENEFITS BEFORE SOME RESOLUTION OF THE UNDERLYING CLAIM, BASED UPON BLANCHARD AND IMHOFF AND OTHER CASES THAT FOLLOWED.

THE BLANCHARD SAYS YOU CAN'T BRING YOUR CAUSE OF ACTION. IT DOESN'T SAY THAT STATE FARM WAS EXEMPT FROM PAYING THE $200,000 BEFORE, OR ELSE THERE COULDN'T HAVE BEEN A BAD FAITH ACTION EVER BROUGHT.

YES, MA'AM.

I MEAN, WHAT WAS STATE FARM'S BAD FAITH IN THE BLANCHARD CASE THAT THEY COULD SUE UPON? BECAUSE THEY PAID THE 200, AFTER THE JUDGMENT FOR $396,000, SO WHERE COULD THEIR BAD FAITH HAVE BEEN, IF NOT PRIOR TO THE VERDICT?

THAT WOULD APPEAR TO BE THE CASE, YOUR HONOR. IT IS JUST A STRUGGLE TO TIE IN THE 60-DAY REMEDY LETTER. IT HAS GOT TO HAVE A PURPOSE, WE WOULD SUBMIT. THERE HAS GOT TO BE A VIOLATION, BEFORE YOU CAN SUBMIT THAT LETTER, AND IN OUR JUDGMENT AND INTERPRETATION OF THE STATUTE, AND WE DON'T SEE HOW THERE CAN BE A VIOLATION THAT

NEEDS TO BE CURED WITHIN 60 DAYS, BEFORE THERE HAS BEEN, EVEN, A A CRUEL OF CAUSE OF ACTION FOR -- A CCRUAL OF CAUSE OF ACTION FOR BAD FAITH, FIRST PARTY, OF BLANCHARD AND IMHOFF, AND I WOULD SUBMIT IN THIS CASE YOU DON'T HAVE A GRANTING JUDGMENT. YOU ARE GOING TO HAVE A TRIAL JUDGE ISSUING FINDINGS OF FACT TO BE I SHOULD BY THE JURY ON THE VALUE OF SEAT BELT NEGLIGENCE OR COMPARATIVE NEGLIGENCE OR VALUE OF THE CASE AND WHETHER THE TOTAL VALUE WOULD EXCEED THE UNDERLYING LIABILITY LIMITS, BUT IN THIS CASE, AND I THINK, ESPECIALLY BECAUSE OF THE EARLY DATE OF THE CIVIL REMEDY NOTICE OF VIOLATION COMING SO QUICKLY, JUDGE TARBUCK FOUND, AT THE TRIAL LEVEL, THAT HE COULD NOT FIND, AS A MATTER OF FACT, THAT THERE WAS BAD FAITH OR THAT PLAUSIBLE REASONS FOR TRAVELERS' ACTIONS COULD NOT HAVE BEEN FOUND AND WARRANTED, SO HE REACHED THE CONCLUSION HE DID. WE WOULD SUBMIT, AGAIN, TO YOU, THAT HAS NOT BEEN CHALLENGED. THE FIRST DISTRICT DID NOT REVERSE THAT FINDING, AND BASED UPON THE UNIQUE FACTS OF THIS CASE, WE BELIEVE THE FIRST DISTRICT'S DECISION AND THE TRIAL JUDGE'S DECISION SHOULD BE UPHELD. I THINK MY TIME IS OUT.

THANK YOU VERY MUCH.

REBUTTAL?

MAY IT PLEASE THE COURT. I THINK MR. DAVIS JUST MADE ONE STATEMENT THAT HE PITMIZES THEIR ARGUMENT -- THAT HE PITMIZES THEIR ARGUMENT -- THAT EPITOMIZES THEIR ARGUMENT AND HE SAID IN THEIR BRIEF HE DOES NOT SEE HOW THE 60 DAE DAY COULD BE -- THE 60-DAY COULD BE AN ACC RUAL BEFORE THE BAD FAITH, ITSELF. IT IS TOTALLY A CREATURE OF 624.1556789 YOU HAVE GOT TO EVEN GIVE A NOTICE, TO THEM, OF THE CONDUCT THAT IS INVOLVED UNDER THE STATUTE, BEFORE THE CAUSE OF ACTION CAN AC CREW AND THE -- CAN ACCRUE, AND IN OUR PARTICULAR CASE, IT DID NOT ACCRUE WHEN THAT 60 DAYS HAD ENDED, BECAUSE WE STILL NEEDED TO ESTABLISH THE UNINSURED MOTORIST CLAIM, AND THAT WAS STILL THERE. UNDER BROKINS, THAT WAS ESTABLISHED THE MINUTE THEY PAID THEIR $200,000, BUT I WANT TO GO BACK TO THIS ARGUMENT HE KEEPS MAKING ABOUT THE JUDICIAL FINDINGS, AND IT IS ARGUED IN OUR REPLY BRIEF TO THIS COURT THAT, THE TRIAL COURT HAD NO EVIDENCE, IN ORDER TO MAKE THOSE DETERMINATIONS. THE ONLY THING THAT WAS BEFORE THE COURT AT THAT POINT IN TIME WAS THE ALLEGATIONS OF THE COMPLAINT AND THE ANSWER A COUPLE OF AFFIDAVITS THAT WENT TO SIDE ISSUES, INCLUDING THE PAYMENT OF THE $200,000. THERE WERE NO FACTS, THERE, ABOUT COMPARATIVE NEGLIGENCE OR THE SEAT BELT DEFENSE OR ANY OF THOSE, AND THOSE ARE A PART OF THEIR DEFENSE OF THE BAD FAITH CASE, SO IT IS THERE. WHEN YOU LOOK AT THIS PARTICULAR CASE, AND TO THE ISSUE THAT IS, REALLY, HERE, AND THAT IS CAN THE CONDUCT OF THE INSUROR, IN NOT PAYING THE U. M. BENEFITS BEFORE THERE IS A TERMINATION OF THE CLAIM AGAINST THE TORTFEASORS, BE BAD FAITH UNDER THE STATUTE, AND THE STATUTE, ITSELF, SAYS THAT YOU MUST CONSIDER THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING IT, AND IN THIS PARTICULAR SITUATION, IF IT IS NOT THAT, THEN AN U. M. CARRIER CAN BE TOTALLY INSIDE LATED -- INSULATED BY THE BAD FAITH OF THE TORTFEASOR CARRIER.

THANK YOU. YOU NEED TO BRING YOUR REMARKS TO CONCLUSION.

AND NEVER HAVE TO PAY, IF THE CARRIER IS IN BAD FAITH, AS WELL, JUST AS WE HAVE IN THIS PARTICULAR CASE. THANK YOU VERY MUCH.

THANK. THE NEXT COURSE ON THE