GOOD MORNING. THE CHIEF JUSTICE WILL NOT HEAR THE FIRST CASE, BUT HE WILL HEAR THE TAPE, SO HE WILL BE DELIBERATING ON THE CASE. JUSTICE LEWIS IS REACCUSED. PROCEED, PLEASE.

MAY IT PLEASE THE COURT. MY NAME IS MARK BROWN WITH CARLTON FIELDS, ARGUING ON BEHALF OF THE APPELLANTS. I HAVE RESERVED FIVE MINUTES FOR REBUTTAL TODAY. THIS IS AN APPEAL OF A TRIAL COURT DECISION, PRESENTING AN ISSUE FOR DE NOVO REVIEW. IN PLACE FOR APPROXIMATELY 35 YEARS IN PLACE, THE SUPREME COURT HAS TWICE, WITHIN SEVEN YEARS, REAFFIRMED AND REFINED THAT APPROACH, TO PROTECT THE PUBLIC INTEREST FROM THE LIKES OF DEVELOPERS AND HOME BUILDERS WHO SEEK TO FORCE ECONOMIC PRESSURES INTO THE DELIBERATE AND CAREFUL UNDERWRITING OF TITLE RISKS FOR THE PUBLIC IN FLORIDA. THEY HAVE DECIDED THAT THOSE PRESSURES RISK TITLE TO PEOPLE'S HOMES AND BUSINESSES. BECAUSE THIS IS A FACIAL CONSTITUTIONAL CHALLENGE, THIS COURT NEED ONLY DECIDE WHETHER THERE WAS ANY CONCEIVABLE, RATIONAL BASIS FOR THE LEGISLATURE'S NEAR UNANIMOUS CHOICE TO PROTECT THE PUBLIC IN THIS FASHION.

I REALIZE THAT WE HAVE DENIED A MOTION FOR DISMISS OTHER -- DISMISS OR A MOTION TO DENY THIS TO DENY THIS TO THE TRIAL COURT, BUT WOULD YOU, IN YOUR PRESENTATION, PLEASE COMMENT ON THE RELEVANCY OF ANY CHANGES THAT WERE MADE IN THE LAST LEGISLATIVE SESSION, WITH REFERENCE TO THIS.

YES, YOUR HONOR. I WOULD BE HAPPY TO DO THAT NOW. THE -- AS I UNDERSTAND THE CASES THAT WE CITED IN OUR MOTION, THIS COURT IS TO APPLY THE LAW AS IT EXISTS TODAY, AND THAT WOULD BE WITH THE CHANGES THAT WERE MADE BY THE 1999 LEGISLATURE. THE 1999 LEGISLATURE, AWARE OF THIS DECISION, WENT BACK TO THE STATUTES, TO MAKE ABSOLUTELY CLEAR, ON THE FACE OF THE STATUTES, THAT THERE IS ABSOLUTELY NO COMMISSION WITHIN THE RISK PREMIUM, WHICH IS SHARED BETWEEN THE AGENT AND THE INSUROR. IT IS STATED EXPLICITLY. SECOND OF ALL, THE '99 LEGISLATURE EXPRESSLY STATED WHY IT WAS FURNISHING ASSURED RATE OF RETURN FOR AGENTS IN THE RISK PREMIUM, AND IT STATED THAT THE SPECIFIC UNDERWRITING SERVICE THAT AGENTS PROVIDE, WHICH IS NOT INCLUDED AMONG THE RELATED TITLE SERVICES, IS THE DETERMINATION OF INSUREABILITY. AND EXPRESSLY FOUND THAT THAT DETERMINATION OF INSUREABILITY, WHICH FROM THE SEARCH, THE EXAMINATION AND THE CLOSING, IS ESSENTIAL TO SOUND UNDERWRITING OF TITLE INSURANCE, AND CONSEQUENTLY WILL HAVE A DIRECT IMPACT ON WHETHER PEOPLE'S HOMES, INDEED, HAVE GOOD TITLE, WHETHER NET INSURANCE PREMIUMS ARE GOING TO HAVE TO GO UP BECAUSE THERE WILL BE MORE CLAIMS AND LOSSES, AND WHETHER INSURORS' SOLVENCY, ITSELF, COULD BE AT-RISK. ACCORDINGLY, THE '99 LEGISLATURE SOUGHT SPECIFICALLY TO MAKE THAT VERY CLEAR, THAT THEY WERE TRYING TO PROTECT THE PUBLIC INTEREST, BY MAKING SURE THE RATE OF RETURN IN THE RISK PREMIUM, IS ASSURED TO AGENTS AND CANNOT BE REBATED AS A RESULT OF ECONOMIC PRESSURES FROM DEVELOPERS AND HOME BUILDERS, WHO SEEK TO INTRODUCE THOSE SORTS OF PRESSURES INTO THE UNDERWRITING PROCESS, THAT AGENTS NEED TIME AND CAREFUL DELIBERATION TO PERFORM, FOR THE PUBLIC GOOD.

OBVIOUSLY THE TRIAL COURT DID NOT HAVE, BEFORE IT AT THE TIME IT MADE ITS RULING, THOSE CHANGES THAT WERE SUBSEQUENTLY MADE. SHOULD WE CONSIDER THE NEW LEGISLATION? DO YOU BELIEVE IT WOULD BE MORE APPROPRIATE FOR US TO REMAND IT TO THE TRIAL COURT FOR A RECONSIDERATION, IN VIEW OF THOSE CHANGES? OR THAT WE GO AHEAD AND ADDRESS THOSE CHANGES?

I BELIEVE, UNDER THE CASE LAW, THIS COURT CAN CHOOSE TO GO EITHER WAY. THE STANDARD THAT IS TO BE APPLIED HERE, IS WHETHER THERE IS ANY CONCEIVABLE RATIONAL BASIS FOR THE LEGISLATION. ACCORDINGLY, IT IS NOT A FACT FINDING COURTROOM FACT FINDING PROCESS THAT NEEDS TO BE GONE THROUGH, AND YOU NEED NOT REMAND TO THE TRIAL COURT, TO DEVELOP A FACTUAL RECORD ON THESE POINTS. IT IS TRULY AN INTELLECTUAL EXERCISE, WHETHER THIS COURT CAN CONCEIVE OF ANY RATIONAL BASIS FOR HOW THIS LEGISLATION PROMOTES THE PUBLIC INTEREST. IF IT CAN, THE STATUTES ARE CONSTITUTIONAL. ACCORDINGLY, IT IS NOT NECESSARY THAT IT BE REMANDED TO THE TRIAL COURT. HOWEVER, AS I UNDERSTAND THE CASE LAW, THIS COURT CERTAINLY HAS THE KITS KREINGS, IF IT -- THE DISCRETION IF IT WISHES, TO REMAND IT BACK TO THE TRIAL COURT, TO PASS UPON THAT QUESTION, AS TO WHETHER THERE IS ANY CONCEIVABLE RATIONAL BASIS FOR THE FIRST TIME, AND THEN HAVE THE BENEFIT OF THE TRIAL COURT'S THINKING, IN REVIEWING THAT DECISION.

CAN WE USE -- GO RIGHT AHEAD.

CAN WE USE THE 1999 PREAMBLE TO THE STATUTE TO DETERMINE WHETHER OR NOT THERE IS3c A RATIONAL BASIS AND WHETHER OR NOT THIS IS IN THE PUBLIC INTEREST?

I VERY MUCH BELIEVE THAT YOU SHOULD CONSIDER THAT PREAMBLE, YOUR HONOR. THE STATUTE, AGAIN, BEING WHETHER THERE IS ANY CONCEIVABLE RATIONAL BASIS. IT IS NOT NECESSARY THAT THERE BE ANYTHING IN THE LEGISLATIVE HISTORY TO SUPPORT WHAT THIS COURT FINDS IS A CONCEIVABLE RATIONAL BASIS, NOR THAT THERE BE ANY FINDINGS BY THE LEGISLATURE, BUT BEGIN THAT THEY HAVE GONE OUT OF THEIR WAY TO PRESENT THEIR FINDINGS AS TO WHY THEY BELIEVE THERE IS A RATIONAL BASIS FOR THE LEGISLATION, CERTAINLY THE COURT SHOULD CONSIDER THAT AND DETERMINE IF, IN FACT, THAT IS A CONCEIVABLE RATIONAL BASIS.

ARE YOU -- DID YOU SAY, EARLIER, THAT WHAT WE WOULD BE DOING IS ACTUALLY DECIDING WHETHER OR NOT THE 1999 CHANGES ARE CONSTITUTIONAL? THAT WE ARE GOING TO BE LOOKING AT THE CONSTITUTIONALITY NOT OF THE STATUTE, THAT JUDGE LEWIS DECLARED UNCONSTITUTIONAL, BUT THE NEW STATUTE?

IT IS OUR UNDERSTANDING, YOUR HONOR, THAT THIS COURT IS TO APPLY THE LAW THAT IS IN EFFECT AT THE TIME THE ISSUE IS PRESENTED ON APPEAL, WHICH WOULD MEAN THE 1999 STATUTE. WE APPLIED TO THE COURT, GIVEN THOSE CASES, AND SUGGESTED THAT, GIVEN THE CHANGE IN THE LEGISLATION, THAT THIS COURT VACATE THE LOWER COURT'S JUDGMENT AS MOOT. THIS COURT DECLINED TO DO SO, AND SO WE HAVE BRIEFED BOTH THE '97 VERSION, WHICH WAS THE SUBJECT OF THE TRIAL COURT'S DECISION, AS WELL AS THE '99 STATUTE.

SO WHEN YOU SAY -- WHAT YOU ARE REALLY SAYING IS THERE IS A DE NOVO REVIEW HERE, BECAUSE WHAT YOU ARE SAYING IS IT DOESN'T MATTER WHETHER OR NOT THE 1997 STATUTE WAS CONSTITUTIONAL OR NOT. WE ARE ONLY TO BE CONCERNED WITH THE 1999 STATUTE?

WE ARE VERY FIRMLY OF THE OPINION THAT THE 1997 STATUTE WAS CONSTITUTIONAL, AS BEING SUPPORTED BY A CONCEIVABLE, RATIONAL BASIS. THE '99 STATUTE SIMPLY MAKES THOSE RATIONAL BASIS EVEN MORE CLEAR.

IF YOUR ARGUMENT THAT ANY CONCEIVABLE RATIONAL BASIS WOULD GIVE RISE TO A PRESUMPTION OF CONSTITUTIONALITY OR SUFFICIENT, ACTUALLY, JUST TO UPHOLD THE CONSTITUTIONALITY, BUT WOULDN'T THAT HAVE BEEN THE SAME AS TO THE CASE THAT YOUR OPPONENTS RELY ON, THAT THE TRIAL COURT RELIED ON, CONCERNING LIFE INSURANCE AGENT? I AM SURE IT IS DADE COUNTY CASE.

THAT CERTAINLY WAS THE STANDARD IN DADE COUNTY. THE --

WOULDN'T THERE HAVE BEEN A CONCEIVABLE RATIONAL BASIS FOR NOT GRANTING REBATES TO -- FOR LIFE INSURANCE AGENTS?

THREE JUSTICES BELIEVED THAT THERE WERE AND FOUR BELIEVED THAT THERE WERE NOT. HOWEVER, THERE IS A SIGNIFICANT DISTINCTION BETWEEN THE LIFE INSURANCE AGENT SERVICES AND TITLE INSURANCE AGENT SERVICES, AND, IN FACT, IF YOU LOOK AT DADE COUNTY, THE TEST BY WHICH THAT PARTICULAR CASE WAS JUDGED LAID OUT A ROAD MAP FOR WHERE YOU WOULD HAVE A CONSTITUTIONAL PROHIBITION AGAINST REBATING, AND THE COURT SPECIFICALLY SAID THAT LIFE INSURANCE AGENTS' COMMISSIONS CANNOT AFFECT NET INSURANCE PREMIUMS OR THE SOUNDNESS OF LIFE INSURANCE POLICIES. ACCORDINGLY, IT FOUND NO CONCEIVABLE RATIONAL BASIS. IN THIS CASE, WE FIT PRECISELY THAT ROAD MAP OF WHAT THEY SAID THE LIFE INSURANCE AGENT'S COMMISSIONS DID NOT MEET. IN THIS CASE, IT IS UNDISPUTED THAT THE WORK BY TITLE INSURANCE AGENTS HAS AN IMMEDIATE AND DIRECT BEARING ON NET INSURANCE PREMIUMS AND THE SOUNDNESS OF TITLE INSURANCE POLICIES.

WELL, IT IS THAT DISTINCTION, THAT, AS I UNDERSTAND, IS REALLY THE BOTTOM LINE OF THIS CASE, IS IT YOUR POSITION THAT DADE COUNTY, IN THE 1999 STATUTE, CAN LIVE IN HARMONY.

PRECISELY, YOUR HONOR. I BELIEVE DADE COUNTY SUPPORTS THE '99 LEGISLATION.

AND BECAUSE -- GIVE US JUST A VERY THUMBNAIL DIFFERENCE BETWEEN TITLE INSURANCE AND LIFE INSURANCE THAT YOUR CONTENTION IS THEY CAN LIVE SIDE-BY-SIDE.

ALL RIGHT. WHEN A PARTY TO A TITLE TRANSACTION IS SEEKING TO ACQUIRE A HOME FOR THAT FAMILY OF THAT CONSUMER, THEY RELY UPON THE TITLE AGENT ON DO A SEARCH -- TO DO A SEARCH OF THE TITLE RECORDS, TO DO AN EXAMINATION, BASED UPON THAT SEARCH, TO SEE WHAT MAY AFFECT THE TITLE TO THAT HOME, AND THEN TO EXAMINE THE PROPOSED DEED THAT IS GOING TO GO TO THAT CONSUMER, AND TO SAY, FOR EXAMPLE, THE GRANT OR IS A HUSBAND, AND TITLE APPEARS TO BE IN THE NAME OF THE HUSBAND, BUT WE KNOW THIS PARTY IS MARRIED, AND THEY HAVE A WIFE. THE TITLE AGENT HAS TO MAKE THE DECISION, WHEN DETERMINING INSUREABILITY, IF THE WIFE HAS TO JOIN IN THAT DEED OR NOT.

WELL, NOW, THE BASIC, THE BASIC DIFFERENCE, AS I HAVE ALWAYS VIEWED TITLE INSURANCE, HAS BEEN THAT THE AGENT, IN TITLE INSURANCE, IS REALLY INDEMNIFYING THE WORK, AND THEREFORE IS THE ULTIMATE INSUROR. ISN'T THAT BASICALLY CORRECT?

THAT IS BASICALLY CORRECT. HOWEVER, THERE IS THE ADDITIONAL FACTOR, YOUR HONOR, WHICH IS THAT THEY ACTUALLY PERFORM THE UNDERWRITING SERVICE. THEY ARE THE ONES WHO MAKE THE JUDGMENTS.

AND IT IS THEIR, THEORETICALLY, THEIR ERRORS AND OMISSION CARRIER THAT IS STANDING BY THEIR OPINION.

THAT IS TRUE AS WELL.

BUT IS THERE ANY PROVISION IN THE LEGISLATION THAT REQUIRES THAT AGENT TO BE INSURED?

THERE IS, YOUR HONOR. THERE IS A STATUTE WHICH IS UNIQUE AMONG ALL FORMS OF INSURANCE, ONLY APPLICABLE TO TITLE INSURANCE AGENTS, WHICH REQUIRES THAT EVERY LICENSED TITLE INSURANCE AGENT OBTAIN ERRORS AND OMISSIONS COVERAGE OF AT LEAST $250,000.

AND SO IT WOULD BE YOUR POSITION THAT THAT WOULD, IN ESSENCE, CONVERT THIS INTO KIND OF A REINSUROR SITUATION.

IN A CERTAIN SENSE, THAT IS TRUE, YOUR HONOR.

ISN'T THAT AN AWFULFULLY THIN, THOUGH, ARGUMENT TO DISTINGUISH THIS CASE FROM THE DADE COUNTY CASE, IN THE SENSE THAT, IF WE CARRY THAT ARGUMENT TO ITS LOGICAL EXTREME, WE WOULD HAVE SORT OF A THEORY THAT ANY AGENTS WHO ARE INSURED WITH REFERENCE TO THEIR CONDUCT, ERRORS AND OMISSIONS OR WHATEVER, ARE, THEN, GOING TO CHARGE LESS PREMIUMS OR BE MORE COMPETITIVE, BECAUSE THEY HAVE A BACKUP, IF THEY MAKE A MISTAKE. ISN'T THAT, REALLY, STRAINING, AT A THEORY, TO DISTINGUISH THIS DADE COUNTY SITUATION? I MEAN IF THAT IS THE LOGICAL -- IF THAT IS WHERE WE ARE GOING WITH THIS. THAT BECAUSE THERE IS INSURANCE TO BACK THAT UP, IF WE CARRY THAT ACROSS THE BOARD, IT SEEMS TO ME THAT THAT IS AN AWFULFULLY THIN COVER FOR DISTINGUISHING THIS FROM THE LIFE INSURANCE.

YOUR HONOR, IT IS BUT ONE OF MANY DISTINCTIONS.

HOW ABOUT ADDRESSING THE SORT OF CORE HOLDING OF THE DADE COUNTY CASE, WHICH, IF I UNDERSTAND IT, IT, IN ESSENCE, SAYS WE HAVE GOT A FREE MARKET OUT THERE, AND IF THIS IS THE AGENT'S COMMISSION, IF THIS FUND BELONGS TO THE AGENT, THEN WHAT ROLE DOES THE GOVERNMENT HAVE IN RESTRICTING WHAT THE AGENT DOES WITH ITS FEE AND WHETHER IT WANTS TO GIVE SOME OF THAT FEE BACK TO THE CUSTOMER OR NOT. THAT IS BETWEEN THE CUSTOMER AND THE AGENT. ISN'T THAT THE CORE HOLDING, REALLY, OF OUR PREVIOUS CASE, THAT THE GOVERNMENT REALLY HAS --

YES, YOUR HONOR, WITH RESPECT --

HOW ABOUT TAKING THAT HEAD ON AND SAYING, WELL, THAT JUST DOESN'T APPLY IN THE CASE OF TITLE INSURANCE, BECAUSE -- NOW WHY DOESN'T IT APPLY?

IT DOES NOT APPLY WITH RESPECT TO TITLE INSURANCE, BECAUSE, AND I HAVE GOT TO BREAK IT DOWN INTO SEVERAL PARTS. FIRST OF ALL, IF THE SRNS INDUSTRY IS ONE OF THE MOST HEAVILY REGULATED INDUSTRIES IN THE HISTORY OF THIS GOVERNMENT, AND IT IS WELL RECOGNIZED FROM THIS COURT, AS WELL AS THE UNITED STATES SUPREME COURT, THAT IT IS VERY HEAVILY CLOTHED IN THE PUBLIC INTEREST. EVERY INDIVIDUAL. EVERY BUSINESS IS RELYING UPON INSURANCE. THAT IS NUMBER ONE. SO IT IS EXTENSIVELY REGULATED. NUMBER TWO, TITLE INSURANCE, IN PARTICULAR, BEARS UPON PEOPLE APARTMENTS TITLE TO THEIR HOMES, THEIR FAMILY'S HOMESTEAD, AND ACCORDINGLY, IS VERY, VERY IMPORTANT TO THE CITIZENS OF THE STATE OF FLORIDA. NUMBER THREE, THE WORK THAT IS DONE IN EVALUATING IF SOMEONE'S HOME IS GOING TO BE SUBJECT TO A TITLE CLAIM OR NOT, IS DONE BY A TITLE AGENT, AND THE LEGISLATURE DETERMINES DETERMINED -- DETERMINED THAT THEY DIDN'T WANT THAT CAREFUL AND DELIBERATE PROCESS OF EVALUATING IF SOMEONE'S HOME IS GOING TO BE SUBJECT TO A CLAIM OR NOT, SUBJECT TO THE TYPES OF ECONOMIC PRESSURES THAT WERE OCCURRING IN THIS STATE, BACK IN 1988 TO 1990.

DOES A LAND PURCHASER HAVE TO GET TITLE INSURANCE?

IF THEY WANT A FEDERALLY INSURED MORTGAGE, THEY DO.

WELL, I MEAN, IF THEY -- AS A MATTER OF FACT, THEY DON'T HAVE TO HAVE TITLE INSURANCE, DO THEY?

IT IS WELL RECOGNIZED THAT THE VAST MAJORITY OF EVERY TRANSACTION IN THE -- REALLY -- REAL ESTATE TRANSACTION -- TECHNICALLY, NO. IF YOU WANT A FEDERAL MORTGAGE, IT IS REQUIRED.

YOU WANTED TO SAVE 5 MINUTES FOR REBUTTAL. YOU ARE INTO REBUTTAL.

THANK YOU VERY MUCH, YOUR HONOR.

MAY IT PLEASE THE COURT. MY NAME IS TOM GUILDAY. I REPRESENT MR. CLARK BUTLER AND THE FLORIDA HOME BUILDERS. WE BROUGHT THIS CHALLENGE. LET ME START, BEFORE I GET INTO MY ARGUMENT, JUST RESPONDING TO A COUPLE OF THE QUESTIONS THAT YOU POSED. OBVIOUSLY I THINK THAT IS WHAT YOUR FOCUS IS. I THINK THE QUESTION IS A GOOD ONE, IN TERMS OF THE QUESTION THAT YOU JUST ASKED, REGARDING ISN'T THIS A REGULATED INDUSTRY, AND WHAT WAS THE CORE HOLDING OF DADE COUNTY CASE? SHOULDN'T AGENTS BE ABLE TO BASICALLY DO, WITH THE PREMIUM, WHAT THEY WANT? LET ME ANSWER THAT IN THIS WAY. YOU NEED TO LOOK AT THE STATUTORY SCHEME THAT WE HAVE HAD. WHAT THE STATUTORY SCHEME PROVIDES IS THAT, 30% OF THE PREMIUM MUST GO TO THE INSUROR, AND THAT IS A RESULT OF LEGISLATION THAT WAS PASSED IN 1992, IN WHICH THE LEGISLATURE DETERMINED THAT, IN ORDER TO PROTECT THE SOLVENCY OF INSURANCE COMPANIES, THEY HAD TO RETAIN AT LEAST 30% OF THE PREMIUM, AND WITH THAT PREMIUM, THEY HAVE TO MAINTAIN CAPITAL, $1.5 MILLION MINIMUM. THEY HAVE TO USE THAT POLICY IN PLACE OF PRESERVES TO PROTECT AGAINST INSOLVENCY. THEY HAVE TO PARTICIPATE IN THE STATE GUARANTEE ASSESSMENT, 234 IN CASE THERE IS AN INSOLVENCY, AND SO THE LEGISLATURE -- IN CASE THERE IS AN INSOLVENCY, AND SO THE LEGISLATURE CRAFTED THE 30%, IN TERMS OF THE INSUROR. IT WAS CAREFULLY LEGITIMATED.

WHAT WAS THE LEGISLATION PRIOR TO 1992?

PRIOR TO 1992, THE STATUTES DIDN'T ADDRESS WHAT PERCENT OF THE PREMIUM THAT WAS COLLECTED BY THE INSURANCE COMPANY HAD TO BE KEPT BY THE INSURANCE COMPANY TO PAY CLAIMS, AND WHAT WAS OCCURRING AND IS CLEARLY IN THE LEGISLATIVE HISTORY, IT IS CLEARLY IN THE RECORD PRESENTED TO JUDGE LEWIS, IS THAT COMPETITIVE PRESSURES TO PAY AGENTS TO REFER BUSINESS TO THE INSURANCE COMPANY WAS RESULTING IN SITUATIONS IN WHICH 80% TO 90% OF THE PREMIUM WAS PAID TO THE AGENT FOR REFERRAL OF BUSINESS. AND THE LEGISLATURE CAME IN AND PUT A STOP TO THAT AND SAID, NO, THAT IS GOING TO ENDANGER SOLVENCY, AND THEREFORE INSURORS MUST MAINTAIN A MINIMUM OF 30% OF THE PREMIUM. NOW, THEY ARE NOT ACTUALLY RESTRICTED TO 30%. IT COULD INCREASE, IF THERE WERE SOLVENCY CONCERNS. NOW, IN ADDITION TO THAT, THE LEGISLATE LURE CAREFULLY REGULATES OR, EXCUSE ME, THE DEPARTMENT CAREFULLY REGULATES THAT PREMIUM. IT REQUIRES THAT INSURORS REPORT INFORMATION THAT GOES THROUGH AND CHECKS WHETHER OR NOT THERE IS SUFFICIENT -- EMPLOYEE AN ACTUARY TO REVIEW WHETHER THAT PREMIUM IS ACCEPTABLE. CONTRAST WITH AGENTS WHO RETAIN 70% OF THE PREMIUM, BY LAW. FIRST OF ALL, IT IS NOT DISPUTED THAT MOST OF THE THATHS ISSUE TITLE INSURANCE POLICIES ARE MY BREATH REN LAWYERS, WHO ARE NOT -- BRETHEREN LAWYERS, ARE NOT SPECIFICALLY EXEMPT IN THE REGULATORY REQUIREMENT OF INSURANCE. THEY HAVE NO REQUIREMENT THAT THEY REPORT, NO REGULATION OR REQUIREMENT OR ANYTHING ELSE, AND SUBSEQUENTLY THEY HAVE NO RESTRICTIONS ON WHAT THEY DO WITH THEIR 70% PREMIUM. THERE IS NOTHING IN THE STATUTE THAT SAYS THE PREMIUM COLLECTED BY THE AGENT MUST BE USED TO FURTHER THE PUBLIC INTEREST. THE AGENT IS FREE TO USE THE MONEY ANY WAY THEY WANT.

CAN I ASK YOU, DO YOU SEE ANY SIGNIFICANCE IN THE 1999 CHANGE THAT TATES -- THAT STATES THAT, WITHIN THE PREMIUM, THAT THE AGENT IS CHARGING FOR THE PERFORMANCE OF THE PRIMARY TITLE SERVICES? THAT IS TO DETERMINE INSUREABILITY? THAT THE 70% IS GOING TOWARDS ACTUAL WORK THAT IS PERFORMED? IS THAT SIGNIFICANT AT ALL?

LET ME ADDRESS THAT, AND THE REASON THAT WE ARE HERE, AND DIDN'T ASK TO BE SENT BACK FOR FURTHER CONSIDERATION, BY THE TRIAL COURT, IS THE TRIAL COURT CONSIDERED THE SUBSTANCE OF WHAT IS IN THE '99 AMENDMENTS, AND TO UNDERSTAND THAT, YOU HAVE TO UNDERSTAND WHAT WAS PRESENTED TO THE COURT, AND I THINK YOU HAVE TO UNDERSTAND WHAT IS THE TERM "COMMISSION" THAT IS USED SOMETIMES AND SOMETIMES NOT. THE

LEGISLATURE HAS USED IT AND THE COURTS HAVE USED IT. I THINK JUDGE LEWIS GOT IT CORRECT, WHEN HE ENTERED HIS ORDER CLARIFYING, IN WHICH HE SAID WHAT I AM TALKING ABOUT IS THE PORTION OF THE PREMIUM RETAINED BY THE AGENT. AND WHAT THAT PORTION OF THE PREMIUM RETAINED BY THE AGENT IS, AND IT HAS ALWAYS BEEN, THIS GOING BACK TO 1965, WITH THE EARLIER CASES, AND THE DESCRIPTION, IT IS THE PAYMENT OF THE AGENT FOR ITS SERVICES, AND THAT WAS POINTED OUT THAT MAY INCLUDE PRODUCTION OF THE BUSINESS, WHICH MAY BE SOLICITATION. IT INCLUDES THE PREPARATION OF THE DOCUMENTS, THE COMMITMENT OR THE POLICY. NO DIFFERENT THAN ANY OTHER AGENT WOULD DO. IT, ALSO, INCLUDES DETERMINING WHETHER OR NOT THE POLICY CAN BE I SHOULD WITHIN THE UNDER WRITING GUIDELINES OF THE INSUROR. THAT IS WHAT INSUREABILITY IS, IS THE AGENT IS PROVIDED CONTRACTUAL PROVISIONS AND GUIDELINES AS TO WHETHER OR NOT A POLICY CAN BE I SHOULD UNDER CERTAIN CIRCUMSTANCES, PURSUANT TO THE INSUROR'S UNDERWRITING GUIDELINES.

THAT IS DIFFERENT THAN, WHAT, SAY, A LIFE INSURANCE AGENT WOULD DO.

NOT REALLY. I MEAN, THERE IS A SUBTLE DISTINCTION, AS THERE WOULD BE BETWEEN ANY INSUROR, BUT IF YOU THINK ABOUT WHAT A LIFE INSURANCE AGENT DOES OR A CASUALTY INSURANCE AGENT DOES, IT GOES WITH THE INSURED'S, AND IT OBTAINS INFORMATION. IF, FOR INSTANCE, FOR MYSELF, MY AGENT WOULD WANT TO KNOW WHAT MY PLIER -- PRIOR CLAIMS HISTORY IS AND KNOW WHETHER OR NOT I WOULD FIT WITHIN THE UNDERWRITING GUIDELINES OF THAT PARTICULAR INSUROR AND WHETHER OR NOT I COULD ISSUE A POLICY, SO IS THERE A DISTINCTION, IS IT A DISTINCTION WITH REAL SUBSTANCE? WE WOULD SAY NO, AND WE THINK THAT IS THE WAY JUDGE LEWIS CONSIDERED IT, WHEN HE HEARD ALL OF THE EVIDENCE. NOW, LET ME GET TO YOUR QUESTION IN KIND OF A ROUNDABOUT WAY. WHAT DO THE LEGISLATIVE AMENDMENTS DO AND DO THEY ADD ANY REAL SUBSTANCE HERE? IN ESSENCE IT SEEMS TO ME THAT THERE WERE TWO CHANGES THAT THE LEGISLATURE MADE. FIRST WAS THEY DEFINED THE TERM PRIMARY TITLE SERVICES, AND THAT TERM IS TO DEFINE, TO INCLUDE THE CONCEPT OF DETERMINING WHETHER OR NOT THE TITLE CAN BE I SHOULD WITHIN THE UNDERWRITING GUIDELINES OF THE INSUROR, INSUREABILITY, IF YOU WANT TO CALL IT THAT. THAT WAS THOROUGHLY CONSIDERED, ARGUED, AND DISCUSSED BELOW. THAT HAS ALWAYS BEEN PART OF AN AGENT'S FUNCTION. THERE ARE TWO SPECIFIC STATUTES, 626.841 AND 626.7845, 627.6845, HAVE ALWAYS MADE DETERMINING INSUREABILITY THE FUNCTION OF THE AGENT. THE AGENT HAS ALWAYS BEEN PAID FOR THOSE FUNCTIONS, AND SO THAT WAS THOROUGHLY CONSIDERED BY JUDGE LEWIS, A BE MERELY PUTTING -- AND MERELY PUTING THAT IN A STATUTE WHICH NOW DEFINES THE AGENT WILL PERFORM THIS FUNCTION AS WELL AS DETERMINE WHETHER THERE ARE DEFECTS AND WHETHER THEY CAN BE RESOLVED, AS WELL AS TAKE CARE OF THE MINISTERIAL FUNCTIONS OF DELIVERING THE POLICY, PREPARING THE COMMITMENT, THOSE ARE THE FUNCTIONS THAT WERE CONSIDERED BELOW, AND THEY ARE REALLY NO DIFFERENT IN THE STATUTE. NOW, THE OTHER SECTION OF THE STATUTE IS THE LEGISLATURE HAS CHOSEN TO DELETE THE WORD COMMISSION. THE LEGISLATURE HAS NOT DEFINED WHAT IT CONSIDERS A COMMISSION TO BE. HISTORICALLY, AS USED BY THE LEGISLATURE AND BY THE COURTS, AND AS NOTED IN THE FOOTNOTE, IN THE DADE COUNTY DECISION, AT THE DISTRICT COURT LEVEL, IN FOOTNOTE THREE, THE COMMISSION TALKS ABOUT THE SERVICES OF THE AGENT. WHICH ARE THE THINGS THAT WE ARE -- FOR THE INSURANCE AGENT, IN THE DADE COUNTY CASE, WAS ACQUIREING THE INFORMATION, PREPARING THE INSURANCE BINDER, PREPARING THE POLICY, COLLECTING THE PREMIUMS, THOSE PARTICULAR SERVICES, SO IF THE LEGISLATURE MEANT THAT COMMISSION IS TO BE PAYMENT FOR SERVICES, IT IS OBVIOUSLY INCONSISTENT WITH THE OTHER PORTIONS OF THE STATUTE. I DON'T THINK THAT IS WHAT THE LEGISLATURE MEANT, BECAUSE IN THAT STATUTE, WHEN IT DESCRIBES PREMIUM, IT SAYS THE DEPARTMENT IS GIVEN THE AUTHORITY TO SET A PREMIUM AND MAY INCLUDE PRIMARY TITLE SERVICES WITHIN THAT, AND THEN YOU GO TO 627.782, DESCRIBES HOW YOU SET THE PREMIUM. AND THE FACTORS THAT YOU GO THROUGH TALKS ABOUT, IN FACT, THE DEPARTMENT OF INSURANCE HAS FILED, IN THIS CASE, A STATEMENT INDICATING THAT CONSIDERATION OF THE AGENT'S EXPENSES,

SOLICITATION EXPENSES, ET CETERA, HAS ALWAYS BEEN PART OF THAT RATE SETTING FACTOR AND REMAINS SO. SO WE DON'T BELIEVE THAT THE LEGISLATIVE CHANGES, REALLY, ALTER OR AFFECT, SUBSTANTIVELY THE QUESTION BEFORE THE COURT, AND I THINK WHAT THIS CASE REALLY COMES DOWN TO, WHEN YOU TAKE A LOOK AT THE PREAMBLE THAT IS CONTAINED IN THE NEW LEGISLATION THAT WAS PLACED IN THERE BY THE LEGISLATURE, IN WHICH THE LEGISLATURE HAS SAID THAT THE DETERMINATION OF INSUREABILITY IS A FUNCTION WHICH AFFECTS THE PUBLIC INTEREST, AND I THINK YOU HAVE TO EXAMINE THAT, FIRST OF ALL, AND WHETHER THAT REALLY MEANS ANYTHING, BECAUSE IN SEVERAL OF THE CASES THAT DADE COUNTY CITES TO, THERE WERE LEGISLATIVE PREAMBLES, IN WHICH THE LEGISLATURE MADE STATEMENTS THAT CERTAIN ACTIVITIES, SUCH AS PRICE MAINTENANCE SCHEME FOR BARBERS, AFFECTED THE PUBLIC INTEREST, WAS IN THE IVES INDICATES -- CASE, AND, ALSO, ONE OF THE OTHER CASES, HAD A LEGISLATIVE PREAMBLE, WHICH THE COURT, THIS COURT, FELT FREE TO NOT FOLLOW, BECAUSE IT WASN'T BACKED UP FACTUALLY, AND WHAT WE HAVE HERE, WHEN YOU TALK ABOUT INSUREABILITY, IS, FIRST, THE COURT CONSIDERED IT, JUDGE LEWIS CONSIDERED IT BELOW AND CONCLUDED THAT THAT WASN'T A SUFFICIENT BASIS TO JUSTIFY AN AGENT RECEIVING A GUARANTEEED PREMIUM, SO I THINK IT HAS BEEN CONSIDERED THERE, AND IF YOU THINK ABOUT WHAT WE ARE REALLY TALKING ABOUT, YOU HAVE TO FOCUS ON THIS. FIRST OF ALL, AS I INDICATED, DETERMINATION OF INSUREABILITY, THE AGENT DETERMINES WHETHER OR NOT THE POLICY THAT THEY ARE GOING TO ISSUE FALSE WITHIN THE UNDERWRITING GUIDELINES. WHAT IS THE LEGISLATURE REALLY SAYING, AND/OR WHAT THEY ARE SUGGESTING IS WHAT HAS BEEN ARGUED IN THIS CASE FROM THE OUTSET, IS THAT, IF YOU DON'T PAY THE AGENT A PREMIUM OR A PROFIT, THE AGENT IS NOT GOING TO DO ITS WORK. IT IS GOING TO CUT CORNERS, AND THIS DETERMINATION THAT THEY MAKE AS TO WHETHER OR NOT THE POLICY CAN BE I SHOULD UNDER THE -- CAN BE ISSUED UNDER THE GUIDELINES, IS GOING TO RESULT IN MORE CLAIMS.

NOW THAT, IS WHAT THEY HAVE SAID, AND THAT SEEMS TO BE WHAT THE LEGISLATURE IS SAYING. NOW, YOU ARE PROBABLY ABOUT TO TELL US WHY THAT REALLY WOULDN'T HAPPEN IN THE REAL WORLD, BUT AS FAR AS OUR REVIEW FUNCTION, AND THIS IDEA THAT, IF THERE IS ANY CONCEIVABLE RATIONAL BASIS, WE ARE DUTY BOUND TO UPHOLD THE LEGISLATION, HOW DO YOU GET AROUND THAT?

THE WAY I WOULD ADDRESSES THAT IS A COUPLE OF WAYS. FIRST OF ALL, I WOULD POINT OUT THAT THAT IS THE LOW-COST, LOW-QUALITY ARGUMENT THAT WAS REJECTED, BOTH AT THE DISTRICT LEVEL AND AT THE SUPREME COURT IN THE DADE COUNTY DECISION. THE SAME ARGUMENT WAS MADE THERE, THAT IF LIFE INSURANCE AGENTS ARE NOT PAID THEIR PREMIUM, ARE NOT ALLOWED TO RETAIN ALL OF THE COMMISSION THAT THEY RECEIVE, THEY WON'T DO THEIR JOB. THEY WON'T COUNSEL THEIR CLIENTS, AND THEREFORE THEY WILL BE -- THERE WILL BE A DETERIORATION IN SERVICES. THAT IS REALLY THE SAME ARGUMENT THAT WE ARE MAKING HERE.

YOU DON'T SEE THE DIFFERENCES, ASSUMING THAT YOU DON'T BUY THE DISTINCTION THAT WAS MADE AS TO THE FACT THAT THERE ARE FAR MORE SERVICES, AS FAR AS UNDERWRITING SERVICES THAT A TITLE AGENT PERFORMS? WHAT ABOUT THE VERY FACT THAT, WHEN YOU ARE TALKING ABOUT TITLE TO HOMES, WE ARE DEALING WITH A WHOLE OTHER ISSUE THAT IS FAR MORE CRITICAL TO THE WELL-BEING OF THE CITIZENS AND WHETHER THERE IS LIFE INSURANCE OF A PERSON. JUST DIFFERENT TYPE OF CIRCUMSTANCE.

ASSUMING THAT THERE IS A CONNECTION AND THAT THE LEGISLATURE HAS SO FOUND IT, THEN YOU HAVE TO ASK YOUR QUESTION DOES THE STATUTORY SCHEME ACCOMPLISH THAT RESULT? IN OTHER WORDS, DOES PAYING THE PREMIUM TO THE AGENT ENSURE THAT THEY WILL PERFORM THE INSUREABILITY FUNCTION CAREFULLY OR CORRECTLY? AND I WOULD SUBMIT TO YOU THAT IT DOESN'T, BECAUSE THERE IS NO CONNECTION BETWEEN THE STATUTES, BETWEEN THE PREMIUM AND THE PERFORMANCE OF THE INSUREABILITY FUNCTION. FIRST OF ALL, THERE IS

NOTHING IN THE STATUTE THAT REQUIRES THAT AN AGENT PERFORM THE DETERMINATION OF WHETHER OR NOT THIS POLICY CAN BE I SHOULD UNDER THE UNDERWRITING GUIDELINES. THERE IS NOTHING IN THE STATUTES THAT MANDATES THAT AN AGENT DOES IT. POINTED OUT BELOW TO JUDGE LEWIS, AND WHICH IS NOT IN DISPUTE, IN FACT, IN REALITY, MANY INSURANCE COMPANIES DEAL DIRECTLY WITH CONSUMERS AND DON'T USE AGENTS. THEY DO THEIR OWN DETERMINATION OF WHETHER OR NOT THERE IS AN INSUREABILITY.

BUT WHY ISN'T THAT A LEGISLATIVE DETERMINATION RATHER THAN A COURT DETERMINATION?

WELL, BECAUSE I THINK THE COURT, IN DADE COUNTY, SAID, WHEN WE HAVE ECONOMIC REGULATION, THAT AFFECT THE ABILITY OF CONSUMERS TO NEGOTIATE, WE OUGHT TO CAREFULLY REVIEW IT, AND WE OUGHT TO DETERMINE WHETHER THERE IS A RATIONAL BASIS FOR THE SCHEME AND WHETHER THERE IS A STATUTORY SCHEME THAT WE HAVE IMPLEMENTED THAT ACTUALLY ACHIEVES THE PUBLIC INTEREST, AND WE WOULD SUBMIT, IN THIS ONE IT DOES NOT, BECAUSE PAYING THE AGENT THE PREMIUM, THE GUARANTEED PROFIT, DOESN'T ENSURE THAT THE AGENT IS GOING TO PERFORM ANY OF THE FUNCTIONS MORE CAREFULLY, INCLUDING THE INSUREABILITY FUNCTION. THERE IS NO CONNECTION. THE AGENT IS PERMITTED TO SPEND THE MONEY HOWEVER THE AGENT WANTS. THE AGENT IS NOT REQUIRED. THE ATTORNEY IS NOT REQUIRED TO MAINTAIN CAPITAL, TO MAINTAIN RESERVES.

HE IS REQUIRED, AS AT LEAST YOUR OPPONENT MAINTAINS, HE IS REQUIRED TO BE INSURED.

WELL, LICENSED AGENTS ARE REQUIRED TO BE INSURED. ABOUT 80% OF THE TITLE AGENTS ARE NOT LICENSED AGENTS. THEY ARE ATTORNEYS. ATTORNEYS ARE NOT REQUIRED TO MAINTAIN ANY TYPE OF INSURANCE. AND SO FOR, YOU KNOW, THE MAJORITY OF THE AGENTS, THAT IS NOT APPLICABLE.

BUT THIS DETERMINATION OF WHAT AGENTS ARE LIKELY TO DO, THE COURT IS NOT IN A POSITION TO DO FACT FINDING RELATIVE TO THAT. BUT THE LEGISLATURE IS UNIQUELY EQUIPPED TO MAKE THIS TYPE OF DETERMINATION?

THAT IS TRUE, JUSTICE, BUT THE LEGISLATURE, AT LEAST UNDER THE HORSE MAN'S CASE THAT WE DISCUSSED EXTENSIVELY IN OUR BRIEF, THE COURT CAN LOOK AT WHAT THE LEGISLATURE HAS DONE AND CAN EVALUATE WHETHER THE PUBLIC INTEREST CAN BE SERVED BY THAT STATUTE OR WILL BE SERVED BY THAT STATUTE. AND WHAT WE HAVE HERE IS THAT, IF THE PUBLIC PURPOSE IS TO ENINSURE THAT AGENTS CAREFULLY -- TO ENSURE THAT AGENTS CAREFULLY DO THIS FUNCTION OR ANY OTHER PARTICULAR FUNCTION, WE HAVEN'T PUT IN PLACE A STATUTORY MECK NIFL THAT -- MECHANISM THAT ENSURES THAT THAT OCCUR. WHAT WE HAVE DONE IS THE LEGISLATURE HAS LEFT IT TO THE AGENT TO DETERMINE WHAT THEY WANT TO DO, AND WHAT THE COURT HELD IN THE HORSEMAN'S CASE, IS THAT YOU HAVE, IN HORSE RACING, WHAT WAS, IN MAINTAINING HORSE RACING AND REVENUE AND TOURISTS WAS IN THE PUBLIC INTEREST, BUT THAT ALLOCATING MONEY TO THE ASSOCIATION, WITHOUT ANY LEGISLATIVE GUIDANCE AS TO HOW THAT WAS TO BE YOUTHLIZED -- UTILIZED, DIDN'T AFFECT THE PUBLIC PURPOSE AND DIDN'T MAKE THAT SCHEME CONSTITUTIONAL. WE SUBMIT IT IS WHAT WE HAVE HERE.

IS THAT, YOUR STATEMENT, BEFORE, THAT THE STATUTE DOES NOT REQUIRE THAT THE AGENT PERFORM THE PRIMARY TITLE SERVICES, IS THAT SOMETHING THAT IS CRITICAL TO THE CONSTITUTIONAL SCHEME? IN OTHER WORDS, IN THE SITUATION THAT YOU MENTIONED, WHERE CERTAIN COMPANIES WILL DO THE UNDERWRITING IN HOUSE, ARE THEY, BECAUSE THE AGENT IS STILL THE ONE THAT IS GETTING THEM THE BUSINESS, STILL, THEN, REQUIRED TO PAY 70% OF THE PREMIUM?

I WOULD, BELOW THAT WAS THE TESTIMONY. THERE WERE EXAMPLES GIVEN OF WHAT GOES ON IN THE REAL WORLD. IS THE INSUROR, IN MANY CASES, DOES IT TOTALLY, AND IN OTHER CASES,

THE INSUROR WILL PREPARE FOR THE ATTORNEY OR AGENT WHO IS ISSUING THE POLICY, WILL DO THE TITLE EXAM, WILL DO THE DETERMINATION OF INSUREABILITY, IF YOU WILL, WILL PREPARE THE SCHEDULES AND COMMITMENT AND SEND IT TO THE ATTORNEY OR AGENT, AND THEY SIGN IT.

WELL, THE INSUROR IS REQUIRED TO KEEP 30%, BY STATUTE.

RIGHT.

DOES ANYTHING PROHIBIT THE INSUROR FROM WORKING OUT A DIFFERENT ARRANGEMENT WITH THE AGENT?

NO. I DON'T THINK THAT IT DOES. THAT THE INSURANCE COMPANY COULD ELECT, AND LET'S SAY THE CLAIMS INCREASED. THE INSURANCE COMPANY COULD ELECT TO SAY WE NEED TO KEEP 40% OF THE PREMIUM OR 50%, IN ORDER --

THERE IS NOTHING IN THAT ECONOMIC BARGAINING THAT IS RESTRICTED.

NO. I DON'T BELIEVE SO. AND THAT ALLOWS THE PUBLIC INTEREST TO BE SERVED, AND, AGAIN, YOU GET BACK TO WHAT IS THE INTEREST WE ARE HERE TO SERVE? THERE HAVE BEEN TWO ARGUMENTS ADVANCED. ONE IS MAINTAIN SOLVENCY. WELL, THE SOLVENCY IS INSURED BY -- IS ASSURED BY THE CAPITAL RESERVES AND OTHER THINGS. THE OTHER THING IS THAT HAS BEEN ADVANCED IS THAT WE WILL MAINTAIN THE TITLE DELIVERY SYSTEM. WELL, WITH REGARD TO AGENTS, THERE IS NO REQUIREMENT THAT ANY OF THE PREMIUMS THAT THEY RECEIVE BE UTILIZED IN ANY WAY TO MAINTAIN TITLE AGENCY DELIVERY SYSTEM. THEY CAN USE THE MONEY FOR WHATEVER THEY WANT. THEY CAN BE AN ATTORNEY THAT DOES A SINGLE TITLE POLICY, YOU KNOW, ON AN ONE-TIME IN THEIR CAREER, SO THERE IS NO CONNECTION THERE.

THIS IS AN ATTORNEY THAT WOULD DO THAT THAT WOULD KEEP 70% OF A PREMIUM, DO KNOW WORK, WOULDN'T THAT ATTORNEY COME UNDER THE REGULATION OF FLORIDA BAR FOR CHARGING EXCESSIVE FEE?

WELL, IT IS A PREMIUM MANDATED BY STATUTE. IT IS NOT A FEE. THE RELATED TITLE SERVICES THAT THEY PERFORM ARE NOT REGULATED. AND THEY ARE FREE TO CHARGE WHATEVER THEY WANT. IT IS JUST PREMIUM THAT --

IS THERE ANY LEGITIMACY TO THE ARGUMENT THAT THIS REBATE, ALSO, SERVES THE PUBLIC INTEREST, BY MAKING SURE THAT PEOPLE WHO HAVE TITLE INSURANCE, WHO HAVE SIMILARLY SITUATED PROPERTY, END UP PAYING THE SAME AMOUNT FOR THEIR TITLE INSURANCE, BECAUSE THE AGENT CAN'T DICKER WITH THEM AND SAY I WILL GIVE YOU BACK A CERTAIN PERCENTAGE OF IT?

YOU ARE TALKING ABOUT DISCRIMINATION.

YES.

AND THERE ARE STATUTES ON THE BOOKS THAT DEAL WITH NOT ALLOWING DISCRIMINATION OR ALLOWING DISCRIMINATION, WITHIN CERTAIN STATUTORY PARAMETERS. THEY HAVE BEEN HELD NOT APPLICABLE, AND THE LEGISLATURE MADE THEM NOT APPLICABLE TO TITLE INSURANCE, BUT BASICALLY I THINK ANTI-DISCRIMINATION PROVISIONS BASICALLY GREW OUT OF AN ATTEMPT TO PROTECT SOLVENCY OF THE INSUROR, SO THAT THE, YOU KNOW, THAT THE INSUROR WASN'T GRANTING DISCOUNTS, SUCH AS THEY WERE ENDANGERING THEIR OWN SOLVENCY. WE, NOW, HAVE OTHER PROVISIONS ON THE BOOK, WHICH PROTECT THAT, AND IF YOU THINK ABOUT IT, THE 30% THAT THE AGENT, THAT THE COMPANY RECEIVES, IS NOT SUBJECT TO REBATE. THEY CAN'T GIVE ANY PORTION OF THAT TO THE CUSTOMER, SO WE ARE ONLY TALKING ABOUT THE

PORTION THAT THE AGENT RECEIVES, WHETHER OR NOT THAT IS SUBJECT TO ANY TYPE OF DISCOUNT, AND THE COURT DIDN'T FIND, AT LEAST BELOW, DIDN'T FIND THAT THERE WAS ANY LEGITIMATE PUBLIC PURPOSE SERVED BY PRECLUDING NEGOTIATION OF THAT PORTION OF THE PREMIUM. ACCORDING TO MY CLOCK, I AM OVER MY LIMIT. IS THAT CORRECT?

YOU ARE.

THANK YOU.

THE TRUESTENS OF THIS APPEAL -- THE TRUE ESSENCE OF THIS APPEAL IS CAPTURE BY JUSTICE SHAW'S QUESTION OF COUNSEL FOR WILL APPELLEES, WHICH IS ISN'T THE QUESTION OF WHAT AGENTS ARE LIKELY TO DO PROPERLY IN THE REALM OF THE LEGISLATURE TO DECIDE, AND AREN'T THEY UNIQUELY EQUIPPED TO MAKE THOSE JUDGMENTS. CLEARLY THE QUESTION OF WHETHER ECONOMIC PRESSURES ON AGENTS WHO ARE DOING THEIR BEST TO TRY TO PROTECT AGAINST TITLE RISKS FOR PEOPLE'S HOPES, THE LEGISLATURE BELIEVES CAN, IN FACT, IMPACT THEIR DETERMINATION OF INSUREABILITY. AND ACCORDINGLY, THEY HAVE ELECTED TO REGULATE THAT FIELD AND REMOVE THE ECONOMIC PRESSURES THAT CAN BE PRESENTED BY DEVELOPERS AND HOME BUILDERS, AND, IN FACT, HAVE HISTORICALLY BEEN PROVEN TO HAVE OCCURRED IN THIS INDUSTRY, AS RECENTLY AS 1988 AND 1990, WHEN INSURORS WERE INCURRING MULTI-MILLION DOLLAR LOSSES, YEAR AFTER YEAR AFTER YEAR. AGENTS WERE SELLING THEIR SERVICES FOR BELOW COST, BECAUSE OF THOSE ECONOMIC PRESSURES. THE LEGISLATURE DECIDED TO REMOVE THOSE ECONOMIC PRESSURES, TO PROTECT THAT CAREFUL AND DELIBERATE UNDERWRITING SERVICE, WHICH HAS AN IMMEDIATE AND DIRECT BEARING ON WHAT CLAIMS ARE GOING TO BE FILED, WHAT INSURANCE PREMIUMS ARE GOING TO GO UP OR GO DOWN, WHETHER TITLE TO PEOPLE'S HOMES WILL BE GOOD OR TITLE RISKS ELIMINATED, AND WHETHER THE VERY SOLVENCY OF THOSE TITLE COMPANIES WILL BE AT STAKE. BECAUSE TOO MANY --

WHY ISN'T THIS -- AND I UNDERSTAND THE ARGUMENT THAT WE ARE NOT TO LOOK BEHIND, BUT WE SEEM TO HAVE DONE THAT IN DADE COUNTY, AND SO TO BE CONSISTENT, WE HAVE GOT TO LOOK AT THESE SAME QUESTIONS, WHAT ABOUT THE ARGUMENT THAT 30% IS NOW, AS OF 1992, RETAINED, AND IT IS THE INSUROR'S SOLVENCY THAT SHOULD BE THE CONCERN OF THE LEGISLATURE, AND THAT, IF 80% OF THE AGENTS ARE ATTORNEYS AND THEY ARE NOT REGULATED, THERE IS NOTHING THAT REQUIRES THOSE SERVICES BE DONE FOR THE PREMIUM THAT IS CHARGED. HOW DO YOU GET AROUND THAT?

IT IS THE UNIQUE FACT OF TITLE INSURANCE THAT THE WORK DONE BY THE AGENT AFFECTS THE RISK IMPOSED ON THE INSUROR. IF THE AGENT DOES NOT DO A DELIBERATE AND PRUDENT JOB, IT IS THE INSUROR THAT SUFFERS. EVERY MAJOR TITLE INSUROR IN THIS STATE HAS INTERVENED ON BEHALF OF THE APPELLANTS, TO UPHOLD THE STATUTORY SCHEME, BECAUSE IT IS THEIR RISKS THAT ARE BEING AFFECTED BY THE WORK OF THE AGENT.

BUT FROM AN INSURANCE STANDPOINT, STRICTLY AN INSURANCE STANDPOINT, ISN'T THERE A HOLE IN THE SCHEME, IN AN INSTANCE IN WHICH THERE IS NOT A REQUIREMENT TOTALLY ON THE WHOLE FIELD OF AGENTS TO BE INSURED? I MEAN, WE ARE NOT TALKING ABOUT WHETHER YOU ARE GOING TO DO IT CAREFULLY OR NOT. WE ARE TALKING ABOUT WHO IS GOING TO STAND BEHIND IT, IF THERE IS AN ERROR, AND YOUR OPPONENT SAYS THAT THERE IS A SUBSTANTIAL NUMBER OF THESE PEOPLE, BY REASON OF THE FACT THAT LAWYERS ARE NOT REQUIRED TO BE INSURED, THAT ARE NOT INSURED.

WELL, THERE ARE A COUPLE OF ASPECTS, YOUR HONOR, TO WHY THERE IS A RATIONAL BASIS FOR THE STATUTE. ONE IS BECAUSE THE WORK OF THE AGENT IMPACTS THE RISK ASSUMED BY THE INSUROR. AND THAT IS THE PRINCIPLE BASIS THAT WE HAVE BEEN URGING. THE SECOND BASIS IS THE ONE THAT YOUR HONOR HAS IDENTIFIED, WHICH IS THE FACT THAT THE AGENT, HIMSELF, IS

CONTRACTUALLY LIABLE TO THE INSUROR, IF A MISTAKE IS MADE, AND MR. GUILDAY IS ABSOLUTELY CORRECT. THE STATUTE, WHICH I REFERRED THE COURT TO, IS LIMITED TO LICENSED TITLE AGENTS AND NOT ATTORNEYS. THAT IS OF NO MOMENT. HOWEVER, THE ATTORNEYS ARE EQUALLY RESPONSIBLE FOR ANY ERRORS THAT MAY BE MADE IN THIS PROCESS. ACCORDINGLY THERE ARE TWO KEY GROUNDS THAT DISTINGUISH THIS CASE FROM DADE COUNTY, AND THAT IF YOU LOOK AT DADE COUNTY AND YOU FOLLOW THAT ROAD MAP, THE AGENTS HERE AFFECT WHAT RISK THE INSUROR WILL SUFFER. WHAT RISK CONSUMERS WILL SUFFER. THAT IS NIGHT AND DAY FROM DADE COUNTY, WITH A LIFE AGENT PERFORMING NONE OF THOSE SERVICES. HE SIMPLY SHIFTS IT UP TO THE UNDERWRITER, WHO, THEN, DETERMINES ITS OWN RISK, AND THERE WAS NOTHING THAT WAS AFFECTING THE UNDERWRITERS OF LIFE INSURANCE, AS TO HOW PRUDENTLY AND CAREFULLY THEY ANALYZEED THAT RISK, BUT THOSE VERY FACTORS ARE COMING INTO PLAY HERE, WITH AGENTS, AND THE TITLE INSURANCE CONTEXT, WHERE THE AGENTS ARE PERFORMING THOSE FUNCTIONS THAT DETERMINE THAT RISK FOR THE UNDERWRITER.

THANK YOU.

THANK YOU VERY MUCH, YOUR HONOR.