

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

JUST A MOMENT. WE WILL WAIT UNTIL THE STUD EBLTS LEAVE. -- WE WILL WAIT UNTIL THE STUDENTS LEAVE. I HOPE COUNSEL DOES NOT TAKE THE FACT THAT THE AUDIENCE IS DIMINISHING PERSONALLY. ALL RIGHT. COUNSEL. MR. SCHROPP, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. MY NAME IS CHARLES SCHROPP. I AM HERE REPRESENTING THE AUTO-OWNERS INSURANCE COMPANY. WITH ME AT OUR FABLE TAIBL IS AMY FARRIOR OF OUR OFFICE. THIS IS FROM THE ELEVENTH CIRCUIT COURT OF APPEALS CERTIFIED QUESTIONS, AND THE FACTS ARE UNDISPUTED. IT IS A TRACTOR-TRAILER RIG THAT WAS OWNED BY CRAIG BISHOP AND UNDER A SINGLE POLICY OF INSURANCE BY THE AUTO-OWNERS INSURANCE WAS TRAVELING DOWN THE LEFT-HAND LANE OF I-75. MS. ANDERSON TRIED TO PASS IT ON THE RIGHT. WHILE SHE WAS DOING THAT, THE TRAILER CHANGED TO THE RIGHT HAND LINE AND SHE SWERVED OFF THE ROAD TO AVOID THE COLLISION AND WAS SERIOUSLY INJURED. THE ISSUE IS NARROWLY DEFINED. DOES THE AUTO OWN OTHERS INSURANCE POLICY PROVIDE ONE POLICY OR TWO FOR THIS ACCIDENT?

CAN I ASK YOU A QUESTION? CONCEPTUALLY, IF YOU HAVE A TRACTOR AND TRAILER, HERE, AS, OPERATING AS A COMBINED RIG, IF THIS WAS A SITUATION WHERE THERE WERE TWO TRACTORS SIDE-BY-SIDE, BOTH INSURED BY AUTO-OWNERS, AND BOTH SEPARATELY CONTRIBUTING TO CAUSE THE INJURES, SEPARATE TORTFEASORS UNDER THE AUTO AUTO-OWNERS POLICY, IS IT YOUR POSITION THAT THE SAME EXACT SECLUSION WOULD REQUIRE ONLY \$750,000 IN --

YOUR HONOR, IT WOULD DEPEND ON A DETERMINATION, IF THERE WAS ONE OCCURRENCE INVOLVED. IN OTHER WORDS ONE OF THE CASES I AM GOING TO POINT OUT TO THE COURT, TODAY, INVOLVED JUST THAT. INVOLVED A CONVOY OF TRACTORS, AND THE COURT HELD THAT, WHEN THERE WAS A SINGLE ACCIDENT, THAT THERE WAS ONE OCCURRENCE INVOLVED, AND THEREFORE ONLY ONE POLICY LIMIT. NOW, SO, IN OTHER WORDS, IT WOULD REALLY DEPEND ON HOW THE FACTS OF THOSE TRACTORS WERE INVOLVED. IF, YOU KNOW, TWO ACCIDENTS THAT OCCURRED, THEN YOU WOULD, SINCE THERE IS AN OCCURRENCE-BASED POLICY, YOU WOULD HAVE MULTIPLE OCCURRENCES.

NOVEL. UNDER MY HYPO, THERE IS ONE ACCIDENT.

OKAY. THE ANSWER IS, IF THERE IS ONE ACCIDENT, THIS IS ONE ACCIDENT, ONE OCCURRENCE AND ONE LIMIT, REGARDLESS OF WHETHER IT IS A TRACTOR TRAIL OR OR WHETHER IT IS TWO TRACTORS.

I WANTED TO BE SURE ABOUT, FROM YOUR POINT OF VIEW, THE FACT THAT THE TRACTOR AND THE TRAILER ARE OPERATING IN TANDEM ISN'T REALLY THE ISSUE HERE. IT IS YOUR CONTENTION IS THAT YOUR LIMITATION OF LIABILITY IS, LIKE, THE OTHER CASES, WHERE THEY SAY THAT NO MATTER HOW MANY VEHICLES ARE INVOLVED, OF OUR INSURED VEHICLES ARE INVOLVED IN AN ACCIDENT, THERE IS ONLY ONE LIMIT.

ACTUALLY THEY DON'T SAY THAT, AND I WILL POINT THAT OUT WHEN WE GET TO IT. THEY JUST SIMPLY DEAL WITH VEHICLES INVOLVED IN THE ACCIDENT AND ARE TALKING ABOUT, LIKE, THESE INTERSTATE CHAIN COLLISIONS, WHEN THEY TALK ABOUT COVERED VEHICLES. THEY USE A DEFINED TERM AUTOS, BUT THE POINT, I GUESS, THAT I AM MAKING, YOUR HONOR, JUSTICE PARIENTE, IS THAT THIS IS AN OCCURRENCE-BASED POLICY AND THAT THAT THAT IS THE ANALYSIS. THE FACT HERE THAT WE HAVE A TRACTOR-TRAILER RIG THAT WAS ACTING IN TANDEM MAKES IT OBVIOUS THAT WE ARE ONLY TALKING ABOUT ONE OCCURRENCE. IN OTHER

WORDS THAT IS THE SIGNIFICANCE OF THAT FACT.

WHEN YOU SAY "OCCURRENCE", I MEAN, IN OTHER PARTS OF YOUR ARGUMENT, YOU SAY ACCIDENT. SO WHAT YOU ARE USING "OCCURRENCE", IS THE SAME AS ONE ACCIDENT. I TAKE IT, BUT WHERE IS THAT IN YOUR POLICY THAT "OCCURRENCE" MEANS ACCIDENT?

THE TERM "OCCURRENCE" IS NOT DEFINED HERE. HOWEVER, IT IS CLEAR IN THIS PARTICULAR CONTEXT THAT, YOU KNOW, IN OTHER WORDS, LET ME SAY THIS. IT IS WITH RESPECT TO THE OCCURRENCE. FIRST OF ALL, THERE REALLY ISN'T A SERIOUS ISSUE. I DON'T THINK THAT WE ARE TALKING ABOUT MORE THAN ONE OCCURRENCE HERE, JUSTICE QUINCE. IS IN THE TRIAL COURT, IN FACT, YOU KNOW, ANDERSON CONCEDED THAT IN HER PAPERS, AS WE POINT OUT IN OUR BRIEF. THE DISTRICT COURT FOUND THAT THEY WERE ACTING, YOU KNOW, IN TANDEM AS A SINGLE UNIT. THE CHAMBLIN CASE POINTS OUT THAT THE ACCIDENT AND THE TERM "OCCURRENCE" DEFINE THE EVENT AND ARE NOT DEPENDENT ON THE NUMBER OF THINGS OR PERSONS INVOLVED, AND, ALSO, FLORIDA, HAS, IN THE AMERICAN INDEMNITY VERSUS McQUAIG AND OTHER CASES HAS FILED WHAT THEY CALL THE CAUSE THEORY OF OCCURRENCE. HERE, FOLLOWING THAT CAUSE THEORY, WE HAD A SINGLE CAUSE OF MRS. ANDERSON'S INJURES, A SINGLE ACCIDENT, SO THE TERM OCCURRENCE IS NOT DEFINED, BUT WHAT I AM SAYING TO YOU IS THAT THE PLAIN, ORDINARY MEANING OF THAT APPLIED TO THIS FACTS ARE THE ACCIDENT. I MONEY -- I MEAN, I DON'T KNOW HOWLS YOU WOULD BE ABLE TO APPLY THAT, BECAUSE THE OCCURRENCE HERE, BECAUSE MRS. ANDERSON'S INJURES WAS, YOU KNOW, SWERVING TO AVOID THIS TRACTOR-TRAILER RIG THAT WAS MOVING INTO HER LABOR LANE. AS I SAID, THE ISSUES NARROW-INTO HER LANE. AS I SAID, THE ISSUES NARROWED AND IT HASN'T BEEN ADDRESSED IN FLORIDA, AND THAT IS WHY THE CERTIFIED QUESTIONS HERE, BUT WHILE IT HASN'T BEEN ADDRESSED IN FLORIDA, IT HAS BEEN ADDRESSED IN A NUMBER OF STATES ACROSS THE COUNTRY, AND THEY ARE ESSENTIALLY UNANIMOUS THAT UNDER THESE CIRCUMSTANCES THERE IS ONLY ONE POLICY LIMIT AVAILABLE, AND WE CITED --

YOU DO AGREE, DON'T YOU, THAT ACROSS THE COUNTRY, THESE CLAUSES, SOME OF THESE CLAUSES INCLUDE THE PHRASE "WITHOUT REGARD TO THE NUMBER OF VEHICLES INVOLVED" AS WELL. IT IS A DIFFERENT PHRASE. SO THIS IS A DIFFERENT CLAUSE. YOU CONCEDE THAT?

I WILL PUT IT THIS WAY. IF YOU LOOK AT THESE, YOU WILL FIND THAT EVERYONE OF THEM IS DIFFERENTLY PHRASED. IN OTHER WORDS THERE ARE NO TWO, IN ALL OF THOSE CASES THAT ARE EXACTLY THE SAME, BUT THE COURTS FIND THAT THE INTENT IS THE SAME. THEY, ALSO, ADDRESS THE EXACT ARGUMENTS THAT WERE MADE HERE, TO ATTEMPT TO BEAT, YOU KNOW, THE LIMITATION.

SO YOU DON'T SEE A DIFFERENCE BETWEEN A CLAUSE, SUCH AS THIS, THAT INCLUDES THE PHRASE THAT WE ARE LIMITING OUR LIMIT OF LIABILITY, REGARDLESS OF THE NUMBER OF VEHICLES INVOLVED. THAT DOESN'T, AT ALL, CHANGE THIS CLAUSE?

I DON'T THINK SO. LET ME EXPLAIN WHY, JUSTICE LEWIS. IN FACT, IF I CAN, LET ME QUOTE ONE, SO THAT THE ENTIRE COURT, I THINK, UNDERSTANDS WHAT YOU ARE REFERRING TO. IN THE SUE CASE, THE SUE VERSUS DENNIS CASE, THIS IS WHAT THEIR LIMITATION OF LIABILITY CLAUSE SAYS. "REGARDLESS OF THE NUMBER OF COVERED AUTOS, INSURED'S, PREMIUMS PAID, CLAIMS MADE OR VEHICLES INVOLVED IN THE ACCIDENT, THE MOST WE WILL PAY FOR ALL DAMAGES RESULTING IN ANY ONE ACCIDENT IS THE LIMIT OF INSURANCE FOR LIABILITY COVERAGE SHOWN IN THE DLAINGS DLAINGSS."

AND THAT IS DIFFERENT FROM WHAT YOU HAVE.

AS I SAID, IT IS VERY CLOSE TO THE LANGUAGE THAT I HAVE HERE, EXCEPT FOR THE "REGARDLESS ""CLAUSE THAT IS AT THE BEGINNING, THAT GIVES A LIST OF EXCEPTIONS. THE FIRST THING IS, IF YOU ANALYZE THE EXCEPTIONS, THEY DON'T REALLY APPLY. REMEMBER IT

TALKS ABOUT NUMBER OF COVERED AUTOS. THAT IS ACTUALLY INSURED VEHICLES. IN OTHER WORDS THE VEHICLES INVOLVED IN AN ACCIDENT IS OTHER VEHICLES THAT ARE NOT INSURED UNDER THE POLICY, BUT THE FUNDAMENTAL POINT, I THINK, ABOUT A "REGARDLESS" CLAUSE, IS THAT ALL IT WILL IS A LIST OF EXAMPLES OF THINGS THAT DO NOT AFFECT THE LANGUAGE THAT GOES AFTER IT. IN OTHER WORDS I WOULD SUBMIT TO YOU, YOU KNOW, AND SO TO ARGUE THAT THE PRESENCE OR ABS OF A REGARDLESS CLAUSE CHANGES THE RESULT, TO ME, IS INAPPROPRIATE. IN OTHER WORDS A POLICY THAT SAYS THE MOST WE WILL PAY IS "X" AND A POLICY THAT SAYS REGARDLESS OF ANYTHING ELSE OR REGARDLESS OF THE CIRCUMSTANCES OR REGARDLESS OF ANYTHING, THE MOST WE WILL PAY IS "X", BOTH OF THOSE SAY EXACTLY THE SAME THING.

IT APPEARS TO ME THAT WHERE JUDGE HODGES WAS COMING FROM WAS THE FACT THAT THIS WAS NOT A POLICY IN WHICH YOU HAD A NUMBER OF AUTOMOBILES LISTED. YOU EVEN HAD SEPARATE PREMIUMS LISTED, BUT IT SAID THAT THE LIMIT OF LIABILITY WAS \$750,000. THIS WAS A POLICY WHICH, IN MY EXPERIENCE, IN LOOKING AT A LOT OF THESE POLICIES OVER MY PRACTICE, IT IS SOMEWHAT UNUSUAL, BECAUSE IT LISTED \$750,000 EACH OCCURRENCE, AT THE POINT THAT IT LISTED EACH AUTO. AND SO WHY ISN'T IT, BY REASON OF THAT KIND OF A LISTING, AT LEAST AMBIGUOUS, AS TO WHETHER YOUR LIMIT OF LIABILITY IS \$750,000 FOR EACH OCCURRENCE INVOLVING THAT PARTICULAR VEHICLE?

WELL, YOUR HONOR, IT IS THIS RIGHT HERE, IF YOU WILL. IT IS WHAT THE CASES, AND I NEED TO GO BACK TO THE PODIUM SO THAT YOU CAN HEAR ME, IS WHAT THE CASES POINT OUT, IN OTHER WORDS, THAT THE SAME TYPE OF ARGUMENT THAT JUDGE HODGES BOUGHT WAS MADE IN ALL OF THESE CASES, IN WEIMER AND SUE AND ALL OF THEM AND REJECTED, IS WHAT THOSE CASES POINT OUT THAT, WHERE YOU HAVE TO LOOK IS THE LIMIT OF LIABILITY SECTION. AND WHEN YOU READ THIS FIRST PARAGRAPH, THIS FIRST SENTENCE, THE LIMIT OF LIABILITY STATED IN THE DECLARATIONS IS THE MOST WE WILL PAY FOR ALL DAMAGES, INCLUDING DAMAGES FOR EXPENSES, CARE, AND LOSS OF SERVICE, AND LOSS OF USE, AS THE RESULT OF ANY ONE OCCURRENCE.

THAT MAKES PERFECT SENSE IS, IF YOU HAVE GOT A DEC PAGE THAT ONLY LISTS \$750,000 ONCE, BUT HERE YOU HAVE GOT A DEC PAGE THAT LISTS \$750,000 IN MULTIPLE TIMES.

I UNDERSTAND THAT, YOUR HONOR. WELL, FIRST OF ALL, IF YOU LOOK, IT INSURANCE BOTH TRACTORS AND TRAILORS, AND THE REASON THAT THEY NEED TO LIST THEM SEPARATELY IS YOU WILL NOTICE THAT THERE ARE SEPARATE LEVELS OF COVERAGE FOR THEM, BECAUSE, FOR EXAMPLE, A TRAILER DOESN'T REQUIRE PERSONAL INJURY PROTECTION AND THINGS OF THAT NATURE, SO THAT IT ISN'T THERE. THAT IS WHY THEY ARE LISTED SEPARATELY, BUT WHAT IT SAYS IS, EVEN THOUGH WE ARE PUTTING \$750,000 THERE, EACH TIME IT SAYS \$750,000 EACH OCCURRENCE. AND THEN IT SAYS THE MOST WE WILL PAY FOR ANY ONE OCCURRENCE IS A LIMIT OF LIABILITY. IN OTHER WORDS SO I DON'T SEE WHERE, IN OTHER WORDS, WHAT IT CONTINUES TO EMPHASIZE IS THAT THIS IS AN OCCURRENCE-BASED POLICY. IN OTHER WORDS, IS IT THE NUMBER OF LIMITS THAT YOU HAVE AVAILABLE TO YOU IS BASED ON ON THE NUMBER OF OCCURRENCES. IN OTHER WORDS THERE ARE ALL SORTS OF WAYS THAT, YOU KNOW, THAT POLICY LIMITS CAN BE BASED, BUT WHAT THIS POLICY SAYS IS THAT THIS ONE IS DETERMINED BY OCCURRENCES. AND THAT IS WHY JUSTICE PARIENTE'S QUESTION, WHEN SHE ORIGINALLY ASKED ME, I SAID IT, REALLY, DEPENDS HOW THIS OCCURS. YOU CAN HAVE A SITUATION, HERE, WHERE ONE VEHICLE IS INVOLVED IN TWO ACCIDENTS. YOU KNOW THE SITUATION WHERE, BOOM, YOU HAVE ONE AND THEN AFTER A PERIOD OF TIME, IT WOULD HIT ANOTHER VEHICLE, AND YOU WOULD HAVE TWO LIMITS, EVEN THOUGH THERE IS ONLY ONE VEHICLE INVOLVED, BECAUSE THIS IS AN OCCURRENCE-BASED POLICY.

LET ME ASK YOU A QUESTION. OCCURRENCE-BASED POLICY MEANS SOMETHING TO YOU, AND IT MEANS SOMETHING TO A LOT OF LAWYERS THAT ARE INVOLVED IN INSURANCE DISPUTES.

NORMALLY I WOULD THINK IF YOU ARE LOOKING FOR WHAT THE COMMON, EASY TERM TO USE, ACCIDENT IS WHAT MOST LAY PEOPLE WOULD THINK ABOUT, AND I FIND THE DIFFICULTY HERE THAT AUTO OWNERS SAYS, ACTUALLY, IN THE BEGINNING OF ITS POLICY, THAT THEIR NEW POLICY PRESENTS A SINCERE EFFORT TO REDUCE, TO CLEAR, UNDERSTANDABLE LANGUAGE, THE BROAD COVERAGE OF OUR INSURANCE CONTRACT, SO WE HAVE A SITUATION, HERE, WHERE INSURED GETS AND PACE SEPARATE PREMIUMS FOR NUMEROUS VEHICLES, AND THERE IS NO QUESTION THAT THE TRACTOR AND TRAILER ARE LISTED SEPARATELY, EACH REPRESENTING, UNDER THE POLICY, A SEPARATE VEHICLE, WITH A SEPARATE PREMIUM AND A SEPARATE "EACH OCCURRENCE". I AM READING THIS LANGUAGE OF THE LIMITATION OF LIABILITY, AND DESPITE WHAT YOU SAY ABOUT THE USE OF THE CLARIFYING PHRASE "REGARDLESS", IT IS HARD FOR ME TO GET AROUND THE FACT THAT THAT, WHEN I AM READING THAT, IT JUST DOESN'T POP OUT WHAT THAT MEANS. AS OPPOSED TO SAYING REGARDLESS OF THE NUMBER OF VEHICLES THAT WE INSURE AND THAT ARE COVERED AND REGARDLESS OF THE NUMBER OF OUR INSURED VEHICLES INVOLVED IN THE ACCIDENT, WE WILL PAY ONLY ONE LIMIT OF LIABILITY FOR EACH ACCIDENT. ISN'T -- I MEAN, YOU ARE SAYING, NO, THAT WOULD NOT MAKE IT CLEARER. IT SEEMS TO ME IT MAKES IT VERY CLEAR, WHEN YOU HAVE THE CLARIFYING PHRASE "REGARDLESS" IN THIS.

WELL, AND, PERHAPS, THAT IS WHY IT IS INCLUDED. BUT LET ME SAY THIS, JUSTICE PARIENTE. THINK ABOUT DECIDING THIS CASE ON THE BASIS OF THE PRESENCE OR ABS OF THE "REGARDLESS" CLAUSE -- OR ABSENCE OF THE "REGARDLESS" CLAUSE. WHAT YOU ARE THEN SAYING IS, ON THE POLICY, IF THEY DON'T PUT OR LIMIT ALL OF THE FACTORS THAT DON'T AFFECT IT, THEY RUN THE RISK OF HAVING COVERAGE THAT, YOU KNOW, THAT THE LANGUAGE, ITSELF, SAYS ISN'T THERE, BECAUSE ALL "REGARDLESS" CLAUSE SAYS IS THAT WE MEAN WHAT WE SAY, AND THESE EXAMPLES DO NOT AFFECT IT. THERE ARE AN INFINITY NUMBER OF FACTORS. YOU KNOW, THAT DON'T AFFECT ANY PARTICULAR POLICY LANGUAGE. AND YOU WOULD THERE FOR HAVE, IF YOU WILL, YOU KNOW, AND OPEN AN ALMOST UNBELIEVABLE CAN OF WORMS IN A SITUATION IN WHICH, EVERY TIME, SOMEBODY COULD ARGUE THE PARTICULAR FACTOR THAT I AM RELYING ON WASN'T INCLUDED IN THE "REGARDLESS" CLAUSE, AND IF YOU ACTUALLY LOOK AT THESE POLICIES, YOU WILL SEE THE DIFFERENT PHRASEOLOGY IN THE "REGARDLESS ""CLAUSES IN SOME OF THE POLICIES. IN OTHER WORDS SOME OF THEM DON'T HAVE THE PHRASE "NUMBER OF VEHICLES INVOLVED IN THE ACCIDENT". SO IS THAT POLICY AMBIGUOUS THEN, BECAUSE IT DOESN'T USE THAT PARTICULAR PHRASE?

WELL, DO YOU THINK, THOUGH, FOLLOWING UP ON WHAT JUSTICE WELLS SAYS, THAT THE USE OF HOW THE DECLARATIONS SHEET AND THE NUMBER OF VEHICLES LISTED AND THE FACT THAT EACH ONE SAYS EACH OCCURRENCE CONTRIBUTES TO AN AMBIGUITY AS TO WHETHER THIS PARTICULAR CLAUSE IS ONLY AN ANTI-STACKING CLAUSE, WHICH IS ANOTHER VALID USE OF THESE LIMITATIONS, WHICH IS TO SAY THAT WE ARE NOT GOING TO GIVE YOU \$750,000 FOR EACH OF THE COVERED VEHICLES, THAT THAT IS, ALSO, A REASONABLE INTERPRETATION OF THIS POLICY?

NO, MA'AM. FIRST OF ALL, IF YOU JUST USE THE PRINCIPLE OF SUBSTITUTION, THE FIRST THING TALKS ABOUT THE LIMITED LIABILITY STATED IN THE DECLARATIONS. TAKE THAT AND INSTEAD PUT EXACTLY WHAT IT SAYS. COMBINED LIABILITY, \$750 EACH OCCURRENCE, IS THE MOST WE WILL PAY FOR ALL DAMAGES, AS THE -- \$750,000 IS THE MOST WE WILL PAY FOR ALL DAMAGES, AS TO ANY ONE OCCURRENCE. I DON'T SEE ANY AMBIGUITY THERE.

ARE YOU SUGGESTING THAT THIS IS NOT THE CLASSIC ANTI-STACKING CLAUSE?

IT IS ONE OF THE PURPOSES THAT IT SERVES, BUT IT GOES BEYOND THAT. IN FACT THAT IS THE ARGUMENT THAT THE OTHER SIDE MAKES, THAT THIS IS THE REASON WHY WE DON'T HAVE NINE POLICY LIMITS OR NINE VEHICLES INSURED. THE ANSWER IS, IF YOU INTERPRET IT AS THAT, IT HAS NO MEANING AT ALL, BECAUSE IT IS ALREADY FLORIDA LAW THAT YOU CAN'T STACK

LIABILITY COVERAGE VEHICLES THAT ARE NOT INVOLVED IN THE ACCIDENT.

BUT ISN'T THAT BECAUSE OF CONTRACTUAL LANGUAGE? THAT IS NOT JUST BECAUSE THAT IS THE LAW. IF A CONTRACT DOES NOT CONTAIN THIS KIND OF ANTI-STACKING CLAUSE AND HAS THE DIFFERENT LANGUAGE?

I BELIEVE, FRANKLY, THAT THAT JUST IS A GENERAL PRINCIPLE. I DON'T THINK THAT IT NEEDS TO BE EXPRESSED IN SO MANY WORDS, JUSTICE LEWIS, IF I AM ACCURATE, BUT WHAT I AM SAYING IS THAT IS ONE OF THE PURPOSES OF THIS PARTICULAR CASE, THAT THIS POLICY, THIS LANGUAGE SERVES. I MEAN, IN OTHER WORDS, WE TALK ABOUT ONE OCCURRENCE, BUT IT ISN'T THE ONLY PURPOSE THAT IT SERVES. IN OTHER WORDS IT TURNS THIS INTO AN OCCURRENCE-BASED POLICY, SO THAT THE LIMITS THAT YOU HAVE IS BASED ON HOW MANY OCCURRENCES YOU HAVE, AND I WOULD HAVE TO SAY, GIVEN THE FACT OF THIS CASE, I DON'T THINK THERE IS A SIGNIFICANT OR SUBSTANTIAL ARGUMENT THAT THERE IS OTHER THAN ONE OCCURRENCE.

YOU STRESS THAT FIRST SENTENCE IN YOUR POLICY HERE. WHY ISN'T THAT FIRST SENTENCE, JUST STANDARD BOILERPLATE, THAT YOU SEE IN ALL LIABILITY POLICIES? THAT HAVE A LIMIT, YOU KNOW, FOR A MAXIMUM OR SINGLE OCCURRENCE?

ARE YOU REFERRING, JUSTICE ANSTEAD, TO THE "REGARDLESS" CLAUSE?

NO. WHAT I AM REFERRING TO IS THE FACT THAT THERE IS NOTHING -- ONE CONSTRUCTION OF THAT SENTENCE, IS THAT THERE IS NOTHING UNIQUE ABOUT IT. THAT IS THAT AT SOME POINT, EVERY INSURANCE COMPANY HAS TO TELL THEIR INSURED OR ATTEMPTS TO TELL THEIR INSURED, YOU KNOW, WHAT THE LIMIT IS FOR ANY SINGLE OCCURRENCE.

OKAY.

AND THEY HAVE JUST DONE THAT. YOU KNOW. IN THAT YOU AGREE, DO YOU NOT, THAT, IF AJACKS INSURANCE COMPANY INSURED THE TRAILER AND YOUR COMPANY INSURED THE CAB, THE ACTUAL VEHICLE, THAT WE WOULD HAVE DOUBLE THE COVERAGE HERE.

EACH ONE OF THEM WOULD HAVE --

EACH ONE OF THEM.

-- WOULD HAVE THE ONE-OCCURRENCE LIMITS. NO QUESTION. YES, SIR.

BUT WE WOULD HAVE THE SAME SITUATION, THAT IS WE WOULD HAVE LANGUAGE LIKE THAT IN BOTH POLICIES, I MEAN, COULD THAT -- THAT IS NOTHING UNUSUAL?

IT COULD BE.

THERE IS NOTHING UNUSUAL ABOUT THAT SENTENCE.

NO.

IN AN INSURANCE POLICY, IS IT?

NO. I DON'T THINK SO.

AND WE WOULD HAVE SEPARATE PREMIUMS PAID FOR EACH OF THOSE VEHICLES. SO WHAT DISTINGUISHES THE SITUATION, HERE?

THAT YOU HAVE ONE POLICY.

I MEAN, IN OTHER WORDS --

THAT YOU HAVE ONE POLICY.

ARE WE TALKING ABOUT THAT THE INSURANCE COMPANY HAS CHARGED A LESSER PREMIUM, BECAUSE THEY HAVE THAT PROVISION?

YES. ACTUALLY YES. THERE IS AN AFFIDAVIT IN THE FILE HERE. THERE IS AN AFFIDAVIT IN THE RECORD IN THIS CASE FROM AUTO OWNERS THAT THE ADDITIONAL PREMIUM, YOU KNOW, IS COMMENCE RAT WITH THE ADDITIONAL -- IS COMMENCE RAT WITH THE ADDITIONAL RISK. IN OTHER WORDS YOU HAVE GOT NINE VEHICLES ON THE ROAD.

WHERE HAVE YOU EVER TOLD THE INSURED THAT? WHERE HAVE YOU EVER SAID IN THE POLICY WHAT YOU ARE GOING TO DO IS THAT, EVEN THOUGH TWO OF YOUR VEHICLES, TWO OF YOUR AUTOMOBILES, THE WAY YOU USE THAT PHRASE, MAY BE INVOLVED IN THE SAME ACCIDENT, AND YOU HAVE PAID TWO SEPARATE PREMIUMS. YOU DON'T GET TWO SETS OF COVERAGE HERE.

SIR, I THINK THAT IT IS ABOUT AS CLEAR AS I THINK IT CAN BE SAID, IN THE SECOND SENTENCE. CHARGING PREMIUMS UNDER THIS POLICY FOR MORE THAN ONE AUTOMOBILE, WHICH IS IT, DOES NOT INCREASE THE LIMIT OF OUR LIABILITY, AS STATED, FOR EACH OCCURRENCE. IN OTHER WORDS WE ARE RIGHT BACK --

WHAT I SUGGESTED BEFORE, WHY ISN'T THAT RELATED TO STACKING?

IT IS. IN OTHER WORDS, YOU SEE, I AGREE WITH YOU. IT, ALSO, PREVENTS VEHICLES THREE TO NINE FROM BEING THERE, BUT IT PREVENTS VEHICLE, TWO, AS WELL, BECAUSE IT SAYS YOU GO BACK TO THE OCCURRENCE EVENT.

THE QUESTION THAT IS BEING ASKED, AND OF COURSE WE ARE GOING TO HAVE TO LOOK AND LOOK AND SEE WHERE IS -- YOUR COMPANY COULD HAVE MADE THIS ARTICULATED THIS IN A CLEARER FASHION. COULD IT HAVE NOT?

YOUR HONOR, IN RETROSPECT, YOU CAN ALWAYS SAY THAT SOMETHING COULD BE CLEARER. I WOULD RESPECTFULLY SUBMIT, THOUGH, THAT IT IS CLEAR HERE, AND WHEN YOU LOOK AT THIS, AND IN OTHER WORDS AS WE SAID, WE HAVE HAD DIFFERENT WORDINGS ALL ACROSS THE COUNTRY THAT HAVE BEEN SIMILAR TO THIS, AND THE ANSWER IS THEY HAVE UNANIMOUSLY FOUND THAT WE ARE TALKING ABOUT ONE POLICY LIMIT UNDER THESE CIRCUMSTANCES. AND THE SAME ARGUMENT HAS ALWAYS BEEN MADE THAT, YOU KNOW, IN OTHER WORDS, THAT IT IS AMBIGUOUS, AND IT HAS BEEN REJECTED ON THE GROUNDS THAT, WHEN YOU HAVE AN OCCURRENCE-BASED POLICY AND ONE OCCURRENCE, YOU HAVE ONE POLICY LIMIT.

IF YOU WISH TO SAVE SOME TIME, I DON'T KNOW HOW MUCH.

YES, SIR. I WAS RESPONDING TO JUSTICE ANSTEAD.

THANK YOU. MR. FARKASH.

MAPTS COURT. MY NAME IS TOM FARKASH. I AM ACCOMPANIED, HERE, TODAY, BY DONNA ERNST, ON BEHALF OF KAREN ANDERSON. WHAT IS BEFORE THE COURT IS A POLICY, AND I AM TRYING TO INTERPRET THE PLAIN, NATURAL LANGUAGE OF THIS POLICY, THIS UNIQUE POLICY, AND WE LOOK TO THE CONTRACT. AND IN THE CONTRACT, WE HAVE, IN THE DLAINGSS, SPECIFICALLY, COVERAGE FOR -- IN THE DECLARATIONS, SPECIFICALLY, COVERAGE FOR EACH VEHICLE INVOLVED. THE TRACTOR AT \$7.

,000 FOR EACH OCCURRENCE AND A SEPARATE PREMIUM NUMBER PAID, AND A TRAILER AT

\$750,000, AND A SEPARATE PREMIUM, AND A SEPARATE LISTING FOR EACH OF OWES TWO VEHICLES, AND THEN IN THE OVERALL -- OF THOSE TWO VEHICLES, AND THEN IT STATES IN THE OVERALL POLICY WE WILL COVER FOR ANY OF YOUR VEHICLES HAD THAT ARE INVOLVED IN A LOSS. WHEN YOU LOOK AT THE NATURAL, STRAIGHTFORWARD LANGUAGE OF THIS POLICY, IT IS CLEAR ON ITS FACE THAT THERE IS COVERAGE FOR THE TRACTOR, COVERAGE FOR THE TRAILER INVOLVED IN THIS LOSS, AND THERE IS NO SECLUSION. THERE IS NO EXCLUSION IN THE BODY OF THE POLICY OR IN THE CHRAINGSS WHICH IN ANY WAY LIMITS THIS COVERAGE. YOU CAN SEARCH, AND YOU CAN'T FIND IT. IT IS NOT THERE. THERE IS NO DEFINITIONAL EXCLUSION OR LIMITATION. THERE IS NO LIMIT OF LIABILITY PHRASE, SAYING THE MOST WE ARE GOING TO PAY, NO MATTER WHAT, IS A CERTAIN DOLLAR AMOUNT. THERE IS NO LIMITATION SAYING THAT, NO MATTER HOW MANY VEHICLES ARE INVOLVED, WE ARE ONLY GOING TO PAY FOR ONE VEHICLE. IT SIMPLY ISN'T THERE.

WHAT WOULD YOU THINK WOULD BE THE PURPOSE OF THIS LANGUAGE HERE? WHAT SIGNIFICANCE WOULD YOU ATTRIBUTE TO THAT, IF ANYTHING?

I HAVE STRUGGLED WITH THIS LANGUAGE, YOUR HONOR, FOR THREE YEARS, AND TO ME, IT IS ONLY CONFUSING. THE MOST -- THE ONLY INTERPRETATION THAT CAN BE READ INTO THIS LANGUAGE IS THAT IT EXCLUDES VEHICLES THAT ARE NOT ACTUALLY INVOLVED IN A LOSS. IT EXCLUDES THOSE OTHER VEHICLES. IN THE OVERALL POLICY, IT IS AN ANTI-STACKING PROVISION THAT DOES NOT INCLUDE THE VEHICLES. THERE ARE NINE VEHICLES ON THIS POLICY. IT IS A FLEET POLICY. AND YOU COULD INTERPRET, UNDER THE WAY THE OTHER LANGUAGE IS IN THIS POLICY THAT, ALL NINE VEHICLES COULD BE COVERED IN THIS VERY LOSS THAT IS BEFORE THE COURT.

WELL, IF THIS POLICY HAD, RATHER THAN THE WAY IT SAYS, LIMIT OF LIABILITY, \$750,000 EACH OCCURRENCE, STACKED NEXT TO THE, ON THE DECLARATION PAGE, IT JUST HAD LIMIT OF LIABILITY, \$750,000, AND THEN IT LISTED ALL OF THESE SEPARATE VEHICLES, AND LISTED THE PREMIUM FOR THEM. YOU WOULDN'T HAVE AN ARGUMENT, WOULD YOU?

IT WOULD BE MUCH THINNER, YOUR HONOR. IT WOULD BE VERY THIN.

WELL, THEN, ISN'T THE SENSE, THOUGH, OF THIS POLICY, WHEN YOU READ IT AS A WHOLE, THAT, WHAT THEY ARE DOING IS THAT, IF ANY OF THESE VEHICLES THAT ARE LISTED IN THIS POLICY ARE INVOLVED IN AN ACCIDENT, ONE ACCIDENT, THAT IS AN OCCURRENCE, AND THEREFORE SIMPLY BECAUSE THEY HAVE GOT A NUMBER OF VEHICLES THAT ARE COVERED FOR THE ACCIDENT, UNDER THIS SAME POLICY, THAT THEIR LIMIT OF LIABILITY, EACH TIME, IS \$750,000. FOR THE OCCURRENCE. FOR THE ACCIDENT.

ONLY, BUT, BEYOND THAT, THEY SAY THEY WILL COVER VEHICLES INVOLVED IN THE ACCIDENT. AND THAT IS THE KEY. HERE. BECAUSE IT STATES, WHEN YOU LOOK TO THIS LANGUAGE, IT STATES WE ARE GOING TO COVER YOU FOR ANY ONE OCCURRENCE. WHAT DOES THAT MEAN? BEYOND THAT THEY GO "AS STATED IN THE DECLARATIONS". SO THEY DON'T DEFINE THE OCCURRENCE. THEY SEND YOU THE DECLARATIONS. AND WHEN YOU GO TO THE DECLARATIONS, YOU DON'T FIND ANY SINGLE WRITTEN PHRASE. WHAT YOU FIND IS EACH VEHICLE, EACH OCCURRENCE, AND NO LIMITATION. SO WE GO IN A CIRCLE, AROUND AND AROUND, WITH NO LIMITATION, EXCEPT SIMPLY THE DECLARATIONS ARE WHAT WE ARE LEFT WITH, AND WE LOOK TO THAT TO FIND WHAT IS THE COVERAGE FOR EACH VEHICLE, AND WE FIND EACH VEHICLE IS COVERED FOR EACH OCCURRENCE, AND WHETHER THERE IS ONE OCCURRENCES OR TWO OCCURRENCES, WE COULD TALK ABOUT THAT ALL DAY, AND THAT REALLY DOESN'T MATTER. IF IS THERE ONLY ONE OCCURRENCE, EACH OF THOSE TWO VEHICLES ARE INVOLVED IN THAT ONE OCCURRENCE, AND YOU CAN ARGUE THE SAME WAY JUDGE HODGES FOUND, THAT IT WAS AMBIGUOUS AND EACH OCCURRENCE WASN'T DEFINED IN THIS ACCIDENT. DEFINING OCCURRENCE INVOLVEING COVERAGE, THIS COURT HAS SPOKEN TO, IN DALZHEIMERS, IT IS

CLEARLY ESTABLISHED THAT NARROW LIMITATION WOULD NOT BE ALLOWED, IN TERMS OF CONSTRUCT I HAVE.

CHARGING PREMIUMS UNDER THIS POLICY FOR MORE THAN ONE AUTOMOBILE DOES NOT INCREASE THE LIMIT OF OUR LIABILITY, AS STATED, FOR EACH OCCURRENCE. THAT DOESN'T PUT YOU ON NOTICE AS TO --

WHAT THAT DOES, IT PUTS US ON NOTICE THAT, BECAUSE WE CHARGE PREMIUMS FOR MORE THAN ONE AUTOMOBILE, WE ARE NOT INCREASING OUR LIABILITY AS STATED FOR EACH OCCURRENCE, AND WHAT THEY STATE IN THEIR POLICY FOR EACH OCCURRENCE IS EACH VEHICLE, \$750,000, EACH OCCURRENCE. AND THEN THEY SAY WE WILL COVER YOU FOR YOUR INVOLVED AUTOMOBILES. IT PUTS US ON NOTICE THAT THE VEHICLES THAT ARE NOT INVOLVED ARE NOT COVERED, BUT IT DOESN'T PUT US ON NOTICE THAT THE VEHICLES THAT ARE ACTUALLY INVOLVED IN THE ACCIDENT ARE NOT COVERED. IT DOESN'T DO OR ACCOMPLISH THAT IN THE POLICY. IF YOU THINK ABOUT THIS POLICY FOR A MINUTE, AND THE WAY AUTO-OWNERS WOULD SUGGEST IT, IF YOU TOOK ONE OF THEIR TRACTORS AND YOU WENT DOWN THE INTERSTATE AND IT HAD A SEPARATE TRAILER BEHIND IT AND THERE WAS AN ACCIDENT, THERE WOULD BE NO QUARREL THAT THERE WAS \$750,000 COVERAGE, BUT IF YOU PUT ONE OF THEIR TRAILERS BEHIND SOMEBODY ELSE'S TRACTOR, AGAIN, THEY WOULD BE RESPONSIBLE FOR \$750,000, BUT THEY ARE SAYING THAT, WHEN WE PUT TWO OF THEM TOGETHER, SOMEHOW THAT BECOMES EITHER ONE VEHICLE OR SOMEHOW WE ARE ONLY GOING TO COVER ONE OF THOSE TWO VEHICLES, THE PROBLEM IS THEIR POLICY SIMPLY DOES NOT SAY THAT ANYWHERE.

THIS IS PROBABLY NOT DIRECTLY RELEVANT, BUT THERE IS AN EXCLUSION, NUMBER 11, THAT SAYS THAT IT EXCLUDES LIABILITY THAT DOES NOT APPLY TO YOUR MOTOR VEHICLE WHEN USED WITH A TRAILER WE DO NOT INSURE. SO IS THAT TELLING THE INSUROR THAT THEY CANNOT GO OUT AND INSURE THEIR TRAILERS WITH OTHER COMPANIES?

WHAT THAT IS TELLING THE INSURED IS THAT WE ARE GOING TO COVER THE TRAILERS THAT WE COVER, AND THAT WE DO INSURE WITH YOU AND WE WILL COVER THOSE, AND WE ARE GOING TO CALL THAT A SEPARATE VEHICLE, BECAUSE IN THEIR POLICY THEY DEFINE IT AS A SEPARATE VEHICLE, AND NOWHERE DOES IT SAY THAT, WHEN WE PUT THEM TOGETHER, IT BECOMES ONE VEHICLE. THERE IS NO DEFINITION TO REDEFINE A VEHICLE OR AN AUTOMOBILE.

NO. THIS DOESN'T, THIS SECLUSION ISN'T READ AS A REQUIREMENT THAT THEY HAVE TO INSURE THE TRACTOR AND TRAILER WITH ONE, WITH BOTH AUTO OWNERS?

IT CAN BE CONSTRUED THAT WAY, THAT IF YOU DON'T INSURE WITH AUTO OWNERS, THAT WE WON'T COVER THAT TRAILER. THAT IT IS NOT GOING TO BE A COVERED TRAILER.

OR THE TRACTOR.

AS WELL. THAT'S CORRECT.

SO THEY ARE REQUIRING THE TRACTOR AND TRAILER TO BE INSURED BY AUTO-OWNERS.

THAT IS A READING FROM THAT PARTICULAR EXCLUSION THAT CAN BE INTERPRETED. YES. AN I AM NOT SURE WHICH WAY THAT GOES, BECAUSE I HAD THOUGHT OF THAT SAME HYPOTHETICAL, IF YOU HAVE THE TRACTOR WITH ONE AND THE TRAILER WITH THE OTHER, THERE IS GOING TO BE COVERAGE, AND THEN I NOTED THIS EXCLUSION, SO I DIDN'T KNOW HOW THAT FIT INTO THE --

WITH THE HYPOTHETICAL THAT JUDGE HODGES WAS PRESENTED WITH AND, ALSO, WE SPOKE ABOUT AT THE ARGUMENT IN THE HEARING WE HAD ON THE CROSS SUMMARY JUDGMENT MOTIONS, WAS WHEN TWO TRACTORS FROM AUTO-OWNERS SIMULTANEOUSLY INFLICT AND HIT UPON ANOTHER VEHICLE, AND THE QUESTION WAS ARE BOTH TRACTORS COVERED. AT THAT

HEARING, AUTO OWNERS SAID, WELL, YES, THEY ARE, AND WE CAN'T REALLY SPEAK TO THAT. HERE, I GUESS, WE ARE DODGING THAT OR SOMEHOW TRYING TO SAY THAT MAYBE IF THERE IS A FRACTION OF A MOMENT THAT ONE VEHICLE HITS AND ATTRACTION FRACTION OF A MOMENT THAT THE OTHER VEHICLE HITS, MAYBE THERE IS TWO OCCURRENCES. I DON'T KNOW. BUT IT SEEMS TO SORT OF VARY A LITTLE BIT WITH WHAT IS BEING PRESENTED. BUT --

I THINK WHAT WE HAVE FOR THIS, WE HAVE GOT TO ASSUME THAT, EVEN THOUGH THEY ARE TRACTOR TRANLERS TOGETHER THAT, THE SAME -- AND TRAILERS TOGETHER, THAT THE SAME RESULT WOULD OCCUR, IF THE TWO TRACTORS WERE SEPARATE BUT THERE WAS A SINGLE ACCIDENT. I THOUGHT THAT WHAT MR. SCHROPP WAS TALKING ABOUT WAS THE SITUATION WHERE THERE MIGHT BE A SECOND ACCIDENT OR SOMETHING WITH THE OTHER TRACTOR, BUT I THINK THAT WE HAVE GOT TO ASSUME THAT THIS SECLUSION OR THIS LIMIT WOULD BE THE SAME, WE WOULD APPLY IT THE SAME, EVEN IF THERE WERE MULTIPLE INSURED VEHICLES INVOLVED IN A SINGLE ACCIDENT. CORRECT?

I AGREE. I DO AGREE. THE PRESENTATION BEFORE THE COURT SPOKE TO SEVERAL OTHER OUT-OF-STATE CASES, AND EVERYONE OF THESE CASES, SEVERAL OF THEM ARE SIMILAR, IN MANY RESPECTS. THEY, ALL, DO FIND THAT THERE IS NOT COVERAGE FOR TWO OR MORE VEHICLES INVOLVED, BUT THE REASON THAT THEY ALL FIND THAT IS THERE IS ALWAYS AN OVERRIDING CLAUSE IN EACH OF THOSE OUT-OF-STATE UNIQUE POLICIES THAT SAY NO MATTER HOW MANY VEHICLES ARE INVOLVED, NO MATTER WHAT THE LOSSES ARE, THE MOST WE ARE GOING TO PAY IS THIS AMOUNT, AND IT MIGHT BE A SPLIT LIMIT OF 100, 300, OR A SINGLE LIMIT OF 500, BUT IT IS CLEAR IN THE POLICY THAT THAT IS WHAT CLARIFIES THE AMBIGUITY.

YOU THINK THAT THE "REGARDLESS ""CLAUSE, BECAUSE I AM LOOKING, ALL OF THE OTHER POLICIES HAVE THAT "REGARDLESS ""CLARIFYING CLAUSE.

WE HAVE PUT THAT IN OUR BRIEF, YOUR HONOR, AND ON SOME LEVEL THAT DOES CLARIFY IN ALL OF THE OTHER POLICIES THAT ARE PRESENT. IN THE AMBIGUITY, IF YOU LOOK AT THE CASE OF WEIMAR, VERY SIMILAR TO THIS CASE, WHICH IS FOUND AT 575 NORTHWEST SECOND 466, A WISCONSIN CASE IN 1988, IN THAT CASE, VERY SIMILAR, FLEET POLICY, AND UNDER THE FLEET POLICY, THEY FOUND, THE COURT FOUND, SEPARATE COVERAGE FOR EACH VEHICLE. BUT WHAT THEY FOUND, FURTHER, WAS THAT, EVEN THOUGH THERE WAS SEPARATE COVERAGE FOR EACH VEHICLE THERE, IS A LIMITATION HERE THAT YOU CAN'T GO BEYOND, WHICH IS REGARDLESS OF HOW MANY VEHICLES INVOLVED, THE MOST WE WILL PAY IS THIS AMOUNT, SO IT CLARIFIED THAT AMBIGUITY. AUTO-OWNERS COULD VERY EASILY CLARIFIED THE AMBIGUITY HERE SEVERAL WAYS. THEY COULD HAVE SAID IF WE PUT TWO VEHICLES TOGETHER, THEY BECOME ONE. REDEFINE. THAT THEY COULD HAVE SAID THAT, WHEN TWO OR MORE VEHICLES ARE INVOLVED, WE WILL ONLY PAY ONE LIMIT. THEY COULD HAVE SAID THAT, REGARDLESS OF HOW MANY VEHICLES ARE INVOLVED, THE ONLY AMOUNT THAT WE WILL PAY IS THIS AMOUNT. NONE OF THAT WAS SAID AND NONE OF THAT IS PRESENT HERE IN THIS POLICY. YOU FIND YOURSELF GOING AROUND AND AROUND AND TRYING TO FIGURE OUT WHAT AN OCCURRENCE IS AND THE VEHICLES THAT WERE IN THE ACCIDENT AND WHETHER EACH OCCURRENCE BECOMES COVERED, IT BECOMES VERY CIRCTUTIOUS.

AS FAR AS THE DEFINITION OF OCCURRENCE, ARE YOU SAYING OCCURRENCE MEANS SOMETHING OTHER THAN ACCIDENT?

IT IS HARD FOR SAY WHAT OCCURRENCE MEANS IN THIS POLICY.

WHAT OTHER MEANING COULD OCCUR?

FROM THIS POLICY IT PROBABLY MEANS ACCIDENT. I WOULD SUGGEST THAT IS PROBABLY WHAT IT MEANS. IT IS NOT DEFINED. WE DON'T KNOW. AUTO-OWNERS COMES FORT AND GIVES US DIFFERENT DEFINITIONS FROM DIFFERENT DICTIONARIES. THEY TRY TO FIND MEANINGS FROM

OTHER CASES, BUT WE DON'T KNOW WHAT THE MEANING IS IN "OCCURRENCE". THE CASE THAT WAS FAIRLY RECENT, WHERE THERE WAS AN EFFORT TO DETERMINE WHAT AUTO ACCIDENT MEANT IN NATIONAL MERCHANDISE FIRST DCA, WHICH IS AT 400 SO.2D 526. THERE WAS A YOUNG MAN, A YOUNG BOY, WHO DIED AS A RESULT OF INGESTING DRUGS IN THE BACK OF A VEHICLE, AND THE QUESTION WAS HIS THAT ACTION, A STOPPED VEHICLE,, PLAYING IN THE BACK OF A RELATIVE'S VEHICLE THAT WAS A DRUG SALESMAN, AND THE QUESTION WAS WAS THAT AN AUTO ACCIDENT? AND THE COURT WENT ON TO SAY THAT THE TERMS "AUTO" AND ACCIDENT" HAVE GENERAL AND ACCEPTED MEANING, THE SAME WAY OCCURRENCE ACCIDENTS DO, AND OCCURRENCE IN OUR POLICY, THESE WORDS DO NOT HAVE A CLEAR MEANING AND PRECISE MEANING TO ENABLE COVERAGE DETERMINATIONS UNDER MANY EASILY IMAGINED CIRCUMSTANCES. CERTAINLY IT IS AN EASILY IMAGINED CIRCUMSTANCE THAT THEIR TRACTOR WOULD BE PULLING ONE OF THEIR TRAILERS, AND IT WOULD O'CLOCK EASILY IMAGINED -- AND IT WOULD BE EASILY IMAGINED THAT THAT COULD BE PUT IN THE CIRCUMSTANCE THAT IS NOT HERE AND SIMPLY NOT PRESENT. IT IS VERY REVEALING.

LET ME ASK YOU A QUESTION. IN TERMS OF WHAT IS STANDARD IN THE INDUSTRY, WHEN YOU HAVE A TRACTOR-TRAILER COMBINATION, DID YOUR RESEARCH REVEAL WHETHER IT IS STANDARD TO, FOR THE INSURANCE COMPANY, TO DEAL WITH THAT TRACTOR-TRAILER AS A SINGLE VEHICLE, WHEN ONE IS BEING PULLED BY THE OTHER?

THERE IS NO STANDARD. THERE IS DIFFERENT TREATMENTS. SOME POLICIES ARE SILENT, AND ONE EXAMPLE THAT IS ACTUALLY BRIEFED BEFORE THE COURT, IS IN THE FLORIDA CASE, THAT WENT TO THE FIFTH CIRCUIT, WHICH WAS THE GREER CASE, WHICH IS THE, FOUND AT 371 FEDERAL SECOND 29, 1967, THAT WAS A CASE WHICH WAS A FAMILY POLICY, TWO VEHICLES. CLEAR SPRABLT IN THE POLICY, BUT IN THAT -- CLEAR SEPARATEABILITY IN THAT POLICY, BUT IT DEFINED IT AND SAID WHEN THERE IS A TRACTER PULL AGO TRAILER, THEN THAT -- PULLING A TRAILER, THEN THAT IS ONE VEHICLE. IT IS NOT IN SOME POLICIES HOW THAT IS TREATED, BUT IT IS CLEAR ACROSS THE BOARD THAT THERE USUALLY IS SOME SORT OF LIMITATION OF LIABILITY CLAUSE THAT CLARIFIES IT, REGARDLESS OF HOW MANY VEHICLES ARE INVOLVED.

WHAT IS THE LIMIT OF THE UIM COVERAGE, UNDER YOUR VIEW, UNDER THIS POLICY?

THE UNINSURED MOTORIST COVERAGE WOULD APPLY, AS WELL, FOR EACH OF THESE TWO VEHICLES. IT WOULD APPLY SEPARATELY AS TO EACH OF THESE TWO VEHICLES.

WOULD IT APPLY FOR ALL OF THESE VEHICLES?

THERE IS AN ARGUMENT THAT IT COULD, YOUR HONOR, BASED ON THE FACT THAT IT IS NOT LIMITED, STACKING ALL OF OF THE VEHICLES, EVEN THOSE NOT INVOLVED IN THE ACCIDENT, THE PROBLEM OF THE PROVISION IN THE POLICY, SPEAKING TO THE GENERAL LIABILITY, WILL COVER VEHICLES INVOLVED IN AN ACCIDENT OR A LOSS OR OCCURRENCE. PROBABLY THAT PROVISION WOULD LIMIT IT TO THOSE VEHICLES INVOLVED IN AN OCCURRENCE, THE UM COVERAGE, HE HAVE THEN IT SPEAKS TO THE LIMIT OF LIABILITY COVERAGE, SO IT IS DIFFICULT TO SAY. I WANT TO POINT OUT TO THE COURT, ONE THING THAT IS, REALLY, VERY REVEALING IN THE REPLIED REPLY BY THE APPELLANT. ON PAGE 2 AND ON PAGE 8. THEY USE THIS SUBSTITUTION THEORY THAT I HEARD, AND THEY USE, THEY SAY, THAT WHEN YOU COMBINE LIABILITY, SUBSTITUTING THE LIMITS OF LIABILITY IN THE DECLARATIONS AS THE POLICY INSTRUCTS, THE POLICY ACTUALLY READS, QUOTE, THE COMBINED LIABILITY OF \$750,000 EACH OCCURRENCE IS THE MOST WE WILL PAY FOR ALL DAMAGES. THAT IS WHAT THEY SAY IT READS.

EXCUSE ME. IS THE AGENT'S FILE, IS THE UNDERWRITING FILE IN THIS COURT FILE?

NO, YOUR HONOR.

SO WE DON'T KNOW WHAT THERE WAS IN TERMS OF REJECTION TO UNINSURED MOTORIST

COVERAGE?

CORRECT. WHEN THEY SEEK TO SAY THIS IS WHAT OUR POLICY REALLY SAYS, AND OUR POLICY IS, REALLY, AN OCCURRENCE POLICY, WHAT DOES THAT MEAN? THAT IS ACTUALLY NOT TRUE. WHAT IT IS IT IS AN OCCURRENCE POLICY, BUT IT IS, ALSO, A PER VEHICLE, PER ACCIDENT OCCURRENCE POLICY. IT IS BOTH. IT IS NOT LIMITED TO ONE OCCURRENCE, ONE AMOUNT. IT IS WE WILL COVER YOU FOR ANY ONE OCCURRENCE. WE ARE GOING TO COVER YOU FOR EACH OF THE VEHICLES THAT WE PROVIDE COVERAGE FOR IN THE DECLARATIONS THAT ARE INVOLVED IN THAT OCCURRENCE. SO THERE IS NO \$750,000 LIMIT, AS THEY SEEK TO SAY IS HERE. IT ISN'T THERE. IF THEY HAD PUT THAT LANGUAGE, ACTUALLY, THERE, WE WOULDN'T BE HERE. BUT THAT LANGUAGE IS NOT THERE. AND THERE IS NO SUGGESTION THAT YOU CAN SUBSTITUTE ONE OF THESE VEHICLES INTO THAT SENTENCE AND NOT SUBSTITUTE BOTH OF THE INVOLVED VEHICLES INTO THAT SENTENCE, OR IF THERE WERE THREE OR FOUR VEHICLES INVOLVED IN AN ACCIDENT INTO THAT SENTENCE, IN WHICH CASE IT WOULD BE EACH OF THE AMOUNTS OF THE LIABILITY COVERAGE, AND THE PREMIUMS PAID FOR EACH OF THOSE SEPARATE VEHICLES. I HAVE NOT SPOKEN TO WHETHER THIS IS ONE OR TWO VEHICLES. JUDGE, JUDGE HODGES WROTE A VERY WELL-REASONED, WELL-FOUNDED OPINION, AND HE ADDRESSED THESE VERY SAME TWO QUESTIONS THAT HAVE BEEN CERTIFIED TO THIS COURT FROM THE ELEVENTH CIRCUIT, AND HE FINDS, CLEARLY, THAT THERE ARE TWO VEHICLES INVOLVED. THE POLICY DEFINES TWO VEHICLES. EACH IS A SEPARATE VEHICLE. THE POLICY DOES NOT -- IT LISTS THEM EACH SEPARATELY. IT PROVIDES COVERAGE SEPARATELY. SO THERE IS CLEARLY TWO VEHICLES INVOLVED IN THIS ACCIDENT.

THAT ANSWERS THE FIRST OF THE CERTIFIED, THE FIRST PART OF THE CERTIFIED QUESTION. UNDER YOUR CONSTRUCTION OF THIS POLICY, WOULD IT BE NECESSARY TO REPHRASE THE CERTIFIED QUESTION? WHICH SAYS "WHETHER THE SINGLE ACCIDENT INVOLVING", SO IT HAS ALREADY BEEN FOUND AS A SINGLE ACCIDENT, INVOLVING THE TWO COVERED AUTOMOBILES AND RESULTING IN ANDERSON'S INJURES, CONSTITUTED TWO OCCURRENCES WITHIN THE MEANING OF THE POLICY?

IT WOULD, THE COURT IS NOT LIMITED TO THIS QUESTION.

HOW WOULD YOU SUGGEST --

I WOULD SUGGEST THE QUESTION SHOULD BE WHETHER THE AUTO-OWNERS INSURANCE POLICY AT ISSUE IN THIS CASE PROVIDES COVERAGE FOR EACH OF THE TWO VEHICLES, WHEN TWO VEHICLE RESPECT INVOLVED IN A LOSS, OR IN THE ALTERNATIVE, WHETHER THE AUTO-OWNERS POLICY IS AMBIGUOUS AND SHOULD BE COVERED CONSISTENT WITH THE FLORIDA LAW.

ALTHOUGH WE HAVE BEEN CERTIFIED THIS QUESTION FROM THE ELEVENTH CIRCUIT, IN TRUTH THIS IS WHAT YOU ARE STATING, IS THAT WE ARE NOT DEALING WITH A POLICY, A PUBLIC POLICY CONSIDERATION. WE ARE DEALING WITH WHAT THIS PARTICULAR INSURANCE CONTRACT, WHICH SEEMS TO HAVE SOMEWHAT UNIQUE LANGUAGE, IS TO BE CONSTRUED AS, IN FLORIDA.

EXACTLY. THIS IS NOT A PUBLIC POLICY. THIS IS MY CLIENT AND THIS CASE AND THIS POLICY, AND THAT IS IT, AND IT HAS NO REAL RAMIFICATION BEYOND THIS POLICY.

DID THEY JUST CERTIFY THIS ON THEIR OWN, OR DID SOMEONE ASK THAT THEY CERTIFY IT?

YOUR HONORS, WE STARTED --

THAT'S RIGHT. YOU DON'T HAVE TO ANSWER THAT.

WE WOULD HOPE THAT THE ELEVENTH CIRCUIT HAD ANSWERED THE QUESTION. I BELIEVE IT WAS A MATTER OF DEFERENCE TO THIS COURT, HAS NOT THAT IT IS NOT ACTUALLY THIS PARTICULAR

ISSUE HAS NOT BEEN RULED ON BY FLORIDA, AND THAT IS WHY I THINK THE MATTER IS BEFORE THE COURT, BY WAY OF CERTIFICATION, AND IT IS NOT BECAUSE IT COULDN'T VERY EASILY BEEN HANDLED BY THE ELEVENTH CIRCUIT, BECAUSE WE ARE SIMPLY INTERPRET AGO CONTRACT UNDER WELL-ESTABLISHED RULES OF CONTRACT INTERPRETATION AND WHETHER COVERAGE IS APPLICABLE UNDER THIS POLICY. THAT IS THE QUESTION. WE ASKED THE COURT, WE WOULD DEFER TO THE VERY WELL-REASONED OPINION OF JUDGE HODGES. WE ASK THE COURT TO FOLLOW THAT OPINION. AND TO AFFIRM IT, AND TO FIND COVERAGE IN THIS MATTER FOR MY CLIENT. THANK YOU, YOUR HONOR.

THANK YOU. YOU HAVE A FEW SECONDS REMAIN REMAINING.

THANK YOU, YOUR HONOR. WHAT I WOULD LIKE TO DO, IF I CAN, IS BRIEFLY QUOTE FROM THE SUE DECISION, BECAUSE I THINK IT GIVES WHAT, I BELIEVE, IS THE PROPER ANALYSIS, AND, ALSO, ADDRESSES THIS ARGUMENT THAT THE KEY DISTINGUISHING FACTOR IS THE SO-CALLED "REGARDLESS" CLAUSES. THIS IS WHAT SUE SAYS. IN THE INSTANT CASE, THE INSURANCE POLICY MUST BE READ IN ITS ENTIRETY. AN INSURED TO WHOM COVERAGE IS PROVIDED IS INSURED SEPARATELY, EXCEPT WITH RESPECT TO THE LIMITS OF INSURANCE MUCH THE LIMIT OF INSURANCE CLEARLY STATES, QUOTE, THE MOST WE WILL PAY FOR ALL DAMAGES RESULTING IN ANY ONE ACCIDENT IS THE LIMIT OF INSURANCE FOR LIABILITY COVERAGE SHOWN IN THE DECLARATIONS. I THINK ALMOST IDENTICAL TO OUR LANGUAGE. END QUOTE. IT IS THERE FOR THE CLEAR INTENT OF THE POLICY TO PAY NO MORE THAN \$500,000 FOR ANY ONE OCCURRENCE, REGARDLESS OF THE NUMBER OF VEHICLES INVOLVED IN THE ACCIDENT. THE POLICY NOT AMBIGUOUS. WHAT I HAVE HEARD, HERE, IS KEPT TRYING TO SAY EACH VEHICLE, EACH OCCURRENCE. THE POLICY DOESN'T SAY THAT. IT SAYS IT IS AN OCCURRENCE-BASED POLICY. YOUR HONOR, I CAN RESPOND TO A QUESTION JUSTICE WELLS HAS, IF YOU WOULD INDULGE ME. THERE IS AN ENDORSEMENT IN THE POLICY THAT TALKS ABOUT NONSTACKED UIM COVERAGE, JUSTICE WELLS, AT PAGE 15.

THANKS. THANKS TO BOTH OF YOU. WE WILL BE IN RECESS FOR 15 MINUTES. BAILIFF: PLEASE RISE.