Bonnie Rosen v. Florida Insurance Guaranty Ass'n

GOOD MORNING, AND WELCOME TO THE NOVEMBER WEEK OF ORAL ARGUMENT AT THE FLORIDA SUPREME COURT, AND THE FIRST CASE WE HAVE ON OUR CALENDAR, THIS MORNING, IS ROSEN VERSUS FLORIDA INSURANCE GUARANTY ASSOCIATION.

THANK YOU, YOUR HONORS. MAY IT PLEASE THE COURT. LORI ROSS, ON BEHALF OF THE PETITIONER, BONNY ROSEN. WHEN FIGO WAS CREATED, IN 1970, IT HAD A BROAD LEGISLATIVE MANDATE. IN FACT, ONE OF THE BROADEST LEGISLATIVE MANDATES THAT COULD EVER BE PASSED. IT WAS TO BE CONSTRUED REMEAD YAEL AND LIBERALLY, IN ORDER TO PROTECT BOTH POLICY HOLDERS AND CLAIMANTS, ALIKE. SINCE THAT DATE, EVERY POSITION THAT FIGA HAS TAKEN IN THIS LAWSUIT HAS BEEN GEARED TOWARDS DEFEATING CLAIMS, NOT TOWARDS PROTECTING CLAIMANTS.

COULD YOU REMIND US OF THE BASIS OF OUR JURISDICTION AND SORT OF SUMMARIZE THAT FOR US.

YES. THERE ARE TWO BASES FOR JURISDICTIONS. ONE IS THE MISAPPLICATION OF THIS COURT'S DECISION, IN NEW YORK LIFE FIDELITY OF COURSE COPE, TO ASSERT TO FIGA CLAIMS, AS OPPOSED TO THE BAD FAITH CLAIMS. NUMBER TWO IS CONFLICT BETWEEN THE FIRST DISTRICT COURT OF APPEALS DECISION, IN THE ROSEN VERSUS FIGA CASE, AND THE GIORDONO CASE, WHICH WAS HELD OUT OF THE THIRD DISTRICT COURT OF APPEALS, WHICH HELD THAT FIGA WAS RELEVANT TO CLAIMS.

HOW DO YOU DRAW A DISTINCTION BETWEEN COPE AND THE COVENANT NOT TO EXECUTE AND RELEASE? DO YOU SEE A DISTINCTION BETWEEN THE TWO?

YES. BUT THERE IS A BIGGER DISTINCTION, AND THE BIGGER DISTINCTION IS THAT, IN THE CONTEXT OF A FIGA CLAIM, COPE SIMPLY MAKES FOR SENSE, BECAUSE STATUTORILY, UNDER 631.193, THE MINUTE THAT A CLAIMANT INSTITUTES A CLAIM, THE INSURED IS RELEASED TO THE EXTENT OF POLICY LIMITS. THEREFORE, THERE COULD NEVER BE AN EXCESS JUDGMENT. THEREFORE COPE, IN TERMS OF ITS, SIMPLY, LOGIC, DOES NOT APPLY TO A FIGA CLAIM WHATSOEVER. NOW, WITH REGARD TO A COVENANT NOT TO EXECUTE, THAT IS EXACTLY WHAT THE GIORDONO CASE WAS ABOUT. THE COURT HELD THAT, SINCE IT WAS INSURED, THERE FOR IT WAS NOT ALLOWED TO CONTEST THE FORM THAT THE PARTIES WERE HELD TO. SUBSEQUENTLY, IN THE JENNINGS SITUATION AND THE FIGA SITUATION, AFTER THE INSURED TOOK A POSITION, FIGA AGREED TO THE FORM OF COVERAGE. IT ACTUALLY CONTRACTED COVERAGE.

WASN'T THERE A POSITION?

YES, THERE WAS.

THAT SEEMS TO BE, AT LEAST FOR COPE AND GIORDONO TO PARTICIPATE. BUT DO YOU AGREE IT WAS COVENANT NOT TO EXECUTE, RATHER THAN NOT A RELEASE?

YES. IN FACT, IT SAID THAT THE JUDGMENT WOULD NOT BE SATISFIED, UNTIL THE CLAIMANT'S RIGHTS AGAINST FIGA WERE EXHAUSTED.

DO YOU SEE COPE APPLIES THE RELEASES? IS THAT WHAT YOU ARE SAY SOMETHING.

NUMBER TWO, THERE ARE TWO ARGUMENTS, COPE DOESN'T APPLY, AND NUMBER TWO, COPE DOESN'T APPLY TO STATUTORY CLAIMS, BECAUSE EXPRESSLY, IN 691.693, STATES THAT, WHEN YOU FILE A CLAIM, THEN THE INSURED IS RELEASED.

YOU SAID COPE DOES NOT APPLY TO BAD FAITH CASES.

COPE DOES NOT APPLY TO FIGA CASES. IT DOES NOT AND CANNOT APPLY TO FIGA CASES, BECAUSE BY THE VERY TERMS OF THE RELEASE STATUTE, THE INSURANCE COMPANY AS A RELEASE OF THE INSURED, UNDER BOTH BASIS, THE ASSIGNMENT IS, REALLY, A RELEVANT ISSUE, WITH REGARD TO THE ENFORCEMENT OF THIS PARTICULAR AGREEMENT. THIS PARTICULAR AGREEMENT, IF YOU LOOK AT THE JENNINGS CASE, THERE WAS, IN THE JENNINGS CASE, AN ACTUAL RELEASE, AS PART OF A STIPULATION. THERE WAS AN ACTUAL RELEASE OF THE INSURED, IN RETURN FOR AN AGREEMENT TO ALLOW THEM TO GO FORWARD AGAINST THE INSURANCE COMPANY, AND, IN FACT, IT LOOKS LIKE, ALTHOUGH IT DOES NOT EXPRESSLY SAY IT IN JENNINGS, IT LOOKS LIKE THAT THERE WAS NO ASSIGNMENT. THERE WAS SIMPLY AN AGREEMENT THAT THE PLAINTIFF WOULD GO FORWARD AGAINST THE INSURANCE COMPANY, AND DESPITE THE ABSENCE OF RELEASE, THE COURT ENFORCED THAT AS A BINDING STIPULATION, SO BOTH CUNNINGHAM AND JENNINGS HAVE SAID THAT THE PURPOSE OF THESE PROCEEDINGS IS TO SAVE EXPENSE TO THE LITIGANTS, AND THEY WERE GOING TO ENFORCE THOSE TYPE OF AGREEMENTS. IN THE CONTEXT OF THE PRESENT CASE, AND A FIGA CASE, THE COPY DECISION SIMPLY MAKES FOR SENSE, FOR THREE SEPARATE REASONS. ONE, IN FIGA CASES, YOU HAVE A DIRECT CAUSE OF ACTION, NOT A DERIVATIVE CAUSE OF ACTION, AGAINST FIGA. NUMBER TWO, THERE CAN'T BE AN EXCESS JUDGMENT AGAINST THE INSURED. WHETHER OR NOT YOU FILE A CLAIM. IF YOU FILE A CLAIM, THEN AUTOMATICALLY, THE INSURED IS RELEASED, TO THE EXTENT OF POLICY LIMITS. HOWEVER, IF, LET'S SAY, YOU MISSED THE CLAIMS PERIOD AND YOU FILED NO CLAIM, THAT IS THE INSTANCE IN QUEEN.

LET ME ASK YOU THIS. I AM NOT SURE I UNDERSTAND THE DIFFERENCE BETWEEN WHAT YOU SAY THIS IS, WHICH IS A COVENANT NOT TO EXECUTE, AND A RELEASE. IT SEEMS TO ME THAT, IN THIS SITUATION, WHETHER WE CALL IT A RELEASE OR NOT, WE HAVE THE FUNCTIONAL EQUIVALENT OF THAT, BECAUSE THE LAW FIRM IS OFF THE HOOK, EITHER WAY, WHETHER THEY GET THE MONEY FROM FIG A OR THEY DON'T. SO WHY IS IT DIFFERENT?

WELL, IT, REALLY, DOESN'T MAKE ANY DIFFERENCE REPRESENT, AND THE REASON BEING -- DIFFERENCE, AND THE REASON BEING AS LONG AS A JUDGMENT CLAIM WAS COVERED BY THE JUDGMENT, THEN THE STIPULATION WOULD BE ENFORCEABLE. IT DOES NOT MATTER. THAT PROTECTED THE INSURED, AND THE INSURED IS ENTITLED TO PROTECT HIMSELF, ONCE THE INSURANCE COMPANY HAS SAID, FLAT-OUT, WE ARE NOT GOING TO PAY THE CLAIM, WHICH IS WHAT THIS INSURANCE COMPANY SAID.

BUT DOESN'T IT MAKE A DIFFERENCE WHETHER THIS IS A RELEASE, WHETHER OR NOT THE PROVISIONS AND THE -- IS IT THE COPY CASE WOULD BE APPLICABLE?

NO. IT REALLY DOESN'T, AND IT ALL COMES BACK TO 631.193, BECAUSE THE STATUTE ON ITS NAYS, SAYS -- ON ITS FACE, SAYS IN ORDER FOR FIGA, IN AN ACTION TO OBTAIN COVERAGE, THEY HAVE TO INSTITUTE A CLAIM. THEY HAVE TO. OKAY. BUT THE STATUTE SAYS, BY ITS EXPRESS TERMS, THAT, WHEN THEY INSTITUTE THAT CLAIM, THE INSURED IS RELEASED, BUT FIGA STAYS ON THE HOOK, SO IT IS A CATCH-22 SITUATION THAT NOBODY KNOWS ABOUT BUT FIGA, IN TERMS OF HOW THEY ARE APPLYING THEIR OWN STATUTE.

SO YOU ARE SAYING, THEN, IT DOESN'T MATTER WHETHER OR NOT THIS DOCUMENT HAD BEEN SKEWED OR NOT -- HAD BEEN EXECUTED OR NOT?

EXACTLY.

THE LAW FIRM WOULD HAVE BEEN OFF THE HOOK, TO THE EXTENT OF THE COVERAGE THAT FIGA ALLOWS.

EXACTLY. AND THAT IS SQUARELY IN THE STATUTE, 631.193. IT SAYS, SQUARELY, THE FILING OF A CLAIM CONSTITUTES A RELEASE OF THE INSURED FROM LIABILITY TO THE CLAIMANT, TO THE EXTENT OF THE COVERAGE OF POLICY LIMITS. THERE WAS COVERAGE OF A MILLION DOLLARS. WHEN YOU FILE THE COMPLAINT, THE INSURED LAW FIRM WAS OFF THE HOOK, TO THE MILLION DOLLARS' COVERAGE THAT THEY HAD, BUT IT GOES ON TO SAY, SO, BY OPERATION OF LAW, THE INSURED IS RELEASED. IT GOES ON TO SAY THAT THIS RELEASE --

EVEN THOUGH THE FIGA LIMITS OF LIABILITY WAS 300,000 DOLLARS?

YES. TO THE EXTENT OF THE POLICY CLAIM, WHICH WAS A MILLION, THAT WOULD PROTECT THE LAW FIRM, FROM THE MOMENT WE INSTITUTED THE CLAIM, AND THEN IT GOES ON TO SAY THAT THIS RELEASE, WHICH IS A RELEASE BY OPERATION OF LAW, DOES NOT OPERATE TO DISCHARGE THE FLORIDA GUARANTY ASSOCIATION FROM ITS RESPONSIBILITIES AND DUTIES AS SET FORTH IN THIS CHAPTER, SO WHEN YOU FILE THE CLAIM AGAINST FIGA, AUTOMATICALLY THE INSURED IS OFF THE HOOK TO THE EXTENT OF THE $1 MILLION IN COVERAGE.

I COME BACK TO IT SEEMS TO ME IT IS HARD TO SAY THAT THERE IS A CONFLICT WITH COPE, FOR THAT VERY REASON. IT IS JUST COPE, REALLY, AND I UNDERSTAND THAT THE FIRST DISTRICT REFERRED TO COPE IN ITS OPINION, BUT, REALLY, THAT IS NOT A BASIS UPON WHICH THIS COURT WOULD HAVE JURISDICTION.

WELL, ACTUALLY THEY DIDN'T SIMPLY REFER TO COPE. THEY FOUND THAT COPE AND KELLY VERSUS WILLIAMS BARRED THE CLAIM FROM GOING FORWARD. THAT WAS A MISAPPLICATION OF COPE, TO THE FACTS OF THIS CASE, BECAUSE --

ARE YOU REFERRING TO WHERE THEY SAY KELLY WAS CITED IN SUPPORT OF THE HOLDING IN COPE, WHICH HELD THAT THE RELEASE TO THE INSURED ELIMINATES THE OBLIGATION, OBSCENITY ASSIGNMENT OF CLAIM?

THEN THEY GO ON TO SAY AND COPE AND KELLY BAR THE ACTION, FOR THE BASIS, THOSE TWO CASES WERE CONTROLLING, AND BARRED THE CLAIM HERE. THAT IS -- THAT WAS THE BASIS OF THE FIRST DISTRICT COURT OF APPEAL'S OPINION. NOW, INVEST, WHICH IS A RECENT CASE OUT OF THIS COURT, IT EXPRESSLY HELD THAT THE MISAPPLICATION OF THIS COURT'S PRECEDENT, WHICH I SUBMIT IT IS, TO A CLASS OF CASES WHICH ARE WELL BEYOND WHAT COPE WAS EVER INTENDED TO APPLY TO, CONSTITUTES A BASIS FOR THIS COURT'S JURISDICTION, AND THAT IS CONSISTENT WITH THE VEST CASE, SO, AGAIN, WITH REGARD TO JURISDICTION, WE HAVE JURISDICTION BY VIRTUE OF MISAPPLICATION OF THIS COURT'S OWN PRECEDENT, AND THE ASSIGNMENT ISSUE, REALLY, IS NOT CONTROLLING. TO GO ON TO THE -- UNLESS THE COURT HAS ANY OTHER QUESTIONS ON THE FIRST ISSUE, I WOULD LIKE TO GO ON TO THE TWO OTHER ISSUES, WHICH HAVE TO DO WITH THE LEGISLATIVE INTERPRETATION OF THE FIGA ACT, AND THE WAY THAT THE POLICY WAS DRAFTED, THE POLICY, AS YOU WERE ASKING, JUDGE QUINCE, WHEN WE PUT IN THE CLAIM, THE INSURED WAS PROTECTED TO A $1 MILLION. THE DEC PAGE HAD A MILLION DOLLARS IN IT. THE POLICY, ITSELF, SAID THAT THE AMOUNT SHOWN IN THE DECLARATIONS, BOLTY IS DECLINED FROM THERE BY DEFENSE COSTS. ON OKAY. ONCE FIGA TOOK OVER THE CLAIM --

IS THERE ANY LIMITATION TO THAT?

THERE WOULD BE LIMITATION -- IT IS OUR SUBMISSION THAT, SINCE IT IS A WASTING POLICY, THERE WOULD BE A LIMITATION OF $1 MILLION, THE ORIGINAL AMOUNT IN THE DECK PAGE, FOR DEFENSE COSTS, BUT IT WOULD NOT BE THE $300,000, AND THAT IS SHOWN ON THE PLANE FACE OF

THE STATUTE, ITSELF. IF YOU LOOK AT THE STATUTE, THEY SEPARATE OUT -- THEY SEPARATE OUT THE AMOUNT OF THE CLAIM, THE COVERED CLAIM IS LIMITED TO $300,000. THE AMOUNT OF DEFENSE COSTS IS INCLUDED IN AN ENTIRELY DIFFERENT SECTION OF THE STATUTE, WHICH PERTAINS STRICTLY TO CLAIMS EXPENSES, AND THAT IS UNDER 631.54, DEFENSE EXPENSES ARE TREATED DIFFERENTLY. THEY ARE INCLUDED AS EXPENSES IN HANDLING CLAIMS. NOW, THERE ARE THREE CASES, AND ONLY THREE CASES, WHICH HAVE ADDRESSED THE ISSUE SQUARELY BEFORE THIS COURT, AND EVERYONE OF THEM HAS RULED IN FAVOR OF THE CLAIMANT. THERE ARE TWO OUT OF THE STATE OF MISSOURI, APPLYING A SIMILAR STATUTE. THAT STATUTE HAS, SINCE, BEEN REPEALED AND REENACTED. THERE IS A THIRD CASE OUT OF ARIZONA, AND IF YOU LOOK AT THE MISSOURI CASE, ONE OF THEM WAS AN IN BANC CASE OUT OF THE MISSOURI SUPREME COURT, AND THEY EXPRESSLY ADDRESS THE ISSUE THAT WE ARE TALKING ABOUT HERE, AND THEY SAID THAT THE AMOUNT SPENT IN DEFENSE OF CLAIMS DOES NOT INCLUDE THE AMOUNT IN PAYING CLAIMS. MOUNTING A DEFENSE AGAINST THE CLAIMS DOES NOT EXCLUDE THE AMOUNT OF COVERED CLAIMS, AND THAT IS EXACTLY THE POSITION THAT FIGA HAS TAKEN HERE, THAT THEIR DEFENSE COSTS COME OUT OF THE $300,000 THAT IS AVAILABLE. AT BEST, ALL THAT CAN BE ARGUED IS AN AMBIGUITY IN THE POLICY. WHEN YOU GET BY A WASTING POLICY, THE DEFENSE CLAIMS COME OFF THE $1 MILLION IN COVERAGE. THEY COME DOWN FROM THERE, BUT UNTIL THE $1 MILLION HAD COME DOWN TO $700,000, THERE WAS ALWAYS $300,000 AVAILABLE FOR A COVERED CLAIM, BECAUSE THAT AMOUNT COULD NOT BE DECREASED. THAT IS THE DIFFERENCE BETWEEN A WASTING POLICY AND OTHER POLICIES. IN OTHER POLICIES, THE AMOUNT IS LIMITED AND THAT IS WHAT THE MISSOURI SUPREME COURT HELD. THAT IS FIGA'S EXPENSE. THAT IS NOT THE EXPENSE ATTRIBUTABLE TO THE CLAIMANT. WITH REGARD TO THE ATTORNEYS FEES ISSUES, THERE IS A DIFFERENCE BETWEEN A CLAIMANT, UNDER 631.70, AND AN INSURED, UNDER THE INITIAL INSURANCE COVERAGE ACT, 627.428. THE LEGISLATIVE LANGUAGE IS DEEMED TO MEAN SOMETHING. IN A FIGA CASE, A CLAIMANT HAS THE DUTY TO IMPOSE ITS CLAIM. OTHERWISES, THE ONLY ALTERNATIVE A CLAIMANT HAS IS TO GO BEAR. -- BARE. IF A CLAIMANT GOES BARE, THEN THERE IS NO INSURANCE COVERAGE. YOU JUST IGNORE THE STATUTE ALL TOGETHER. YOU GO INTENSE AGAINST THE TORTFEASOR, BUT EVEN IF YOU DO THAT, IF YOU LOOK IN THE QUEEN CASE, THEY STILL HAVE IMMUNITY, IF YOU DO NOT BRING A CLAIM. THE TORTFEASOR WOULD STILL BE PROTECTED, TO THE AMOUNT OF THE ORIGINAL INSURANCE OF $1 MILLION, SO FIGA WOULD, THEN, BE COMPLETELY OFF THE HOOK, AND THE ONLY WAY YOU COULD PURSUE THE INSURED IS FOR ANY AMOUNTS OVER AND ABOVE THE $1 MILLION. SO WHETHER OR NOT WE INSTITUTED A CLAIM OR NOT, FIGA WOULD AUTOMATICALLY, WE WOULD HAVE BEEN ABLE TO GO FORWARD AGAINST THE INSURED BUT NOT FOR THE ORIGINAL AMOUNT OF THE COVERAGE. IF I HAVEN'T MADE MYSELF CLEAR, THE INSURED, IN ANY EVENT, WOULD BE OFF THE HOOK, UP TO THE $1 MILLION. IT IS FOR EXACTLY THAT REASON WHY THAT RELEASE MAKES NO SENSE. THEY HAD A STATUTORY RELEASE. THE POSITION THAT IS TAKEN BY FIGA HERE IS CONTRARY TO BOTH LEGISLATIVE INTENT, THE PLAIN MEANING OF THE STATUTE, AND FIRM PUBLIC POLICY. NOW, FIGA -- LET ME SEE IF I UNDERSTAND WHAT YOU ARE SAYING HERE, IS THAT, UNDER THIS KIND OF POLICY, THAT THE PLAINTIFF'S ATTORNEYS FEES AND THE DEFENSE COSTS ARE NOT INCLUDED AS A PART OF THE $300,000 COVERAGE. I MEAN, THAT IS THE BOTTOM LINE OF WHAT --

CORRECT. IT SAYS, IF YOU GO BACK TO THE POLICY, IF IT IS A DECLINING BALANCE POLICY, IT DECLINES FROM THE AMOUNT AS STATED IN THE DECLARATION PAGE, WHICH IS A MILLION DOLLARS.

SO, TO THE EXTENT THAT THE AMOUNT FOR THE CLAIM, THE $300,000, AND THE ATTORNEYS FEES AND A DEFENSE COST DO NOT EXCEED $1 MILLION, THEN ALL SHOULD BE PAID BY FIGA.

EXACTLY, AND THAT IS EXACTLY WHAT OUR POSITION HAS BEEN, FROM DAY ONE IN THIS CASE, AND IT IS SUPPORTED BY, BOTH, LIBERAL CONSTRUCTION OF POLICIES IN FAVOR OF CLAIM APARTMENTS, AND INSURED'S, AND IT IS -- CLAIMANTS AND INSURED'S, AND IT IS ALSO MANDATED BY STATUTE, AND FIGA'S POSITION HAS, ALWAYS, BEEN THAT THE POLICY SAYS IT IS

A DECLINING BALANCE POLICY. WE DON'T DISAGREE WITH THAT. THE ISSUE IS WHERE THE POLICY DECLINES. BASED ON THIS POLICY, IT DECLINES FROM THE DECLARATION PAGE.

SO CONVERSELY, THEIR CLAIM IS THAT THE $300,000 ENCOMPASSES ALL OF IT, THE DEFENSE COSTS, THE COSTS OF THE CLAIM AND THE ATTORNEYS FEES.

THE ONLY WAY THAT YOU CAN GET PAST THAT IS TO IGNORE THE LANGUAGE THAT SAYS CLAIMS ARE THE EXPENSES SHOWN IN THE AMOUNT SHOWN IN THE DECLARATIONS, BECAUSE THE AMOUNT SHOWN IN THE DECLARATIONS WAS $1 MILLION. SO TWHEF TO IGNORE THE POLICY -- SO THEY HAVE TO IGNORE THE POLICY LANGUAGE TO GET TO THE $300,000, BECAUSE WHEN YOU TURN TO THE STATUTE, THE STATUTE, ITSELF, SAYS THAT THE $300,000 WAS THE AMOUNT LIMIT ON CLAIMS. IT IS NOT DEFENSE COSTS. SO THAT IS THE DIFFERENCE BETWEEN OUR POSITION AND FIGA'S POSITION. WITH REGARD TO THE LAST ISSUE, WHICH IS THE ATTORNEYS FEES ISSUE, THE LEGISLATURE SURELY MEANT SOMETHING, WHEN IT SAID THAT A CLAIMANT IS ENTITLED TO FEES OR THE STATUTE APPLIES, WHERE FIGA DENIES, BY AFFIRMATIVE ACTION, A COVERED CLAIM. WE CONTEND, AND IT IS UNEQUIVOCAL, IN TERMS OF THIS RECORD, THAT FIGA DID BREACH ITS DUTIES, WHEN IT CONTRACTED COVERAGE. THERE IS ONE CASE IN THE COUNTRY ON IT. IT IS THE AIRS CASES VERSUS HELM, AND WHAT FIGA DID FROM IS IT SAID IT WOULD ONLY PAY ONE CLAIM. IT WAS LIMITED. THERE WERE MULTIPLE CLAIMANTS, AND THEY TOOK THE POSITION THAT THE CAP APPLIED TO SIMPLY ONE CLAIMANT, ONE PERSON. THAT, IN FACT, WAS HELD TO BE AN ANTSTORY -- AN ANTS PENNSYLVANIATORY BREACH -- AN ANTICIPATORY BREACH OF CONTRACT. HERE FIGA ANNOUNCED, ON NO LESS THAN THREE SEPARATE OCCASIONS, THAT FIGA WAS NOT GOING TO PAY, AND THAT THE INSURED WOULD HAVE TO DEFEND ITSELF, AFTER IT SPENT $300,000 TOTAL, INCLUSIVE OF ITS OWN FEES. FOR ALL OF THE REASONS SUBMITTED, I WOULD RESPECTFULLY REQUEST THAT THE DECISION BELOW BE QUASHED AND THE CASE REMANDED TO ENTER JUDGMENT. THANK YOU.

I REPRESENT THE FLORIDA GUARANTY ASSOCIATION, WHICH IS A STATUTORY ANIMAL, AND IT LIVES IN SORT OF A LIMBO, BETWEEN BEING A QUASI-GOVERNMENTAL ORGANIZATION, BEING AN INSURANCE COMPANY. THE STATUTE THAT GOVERNS FIGA SAYS THAT, WHEN A COMPANY IS TAKEN OVER BY THE DEPARTMENT OF INSURANCE, WHICH BECOMES THE RECEIVER, THAT FIGA INHERITS THE INSURANCE POLICY WITH LIMITATIONS. NOTHING ABOVE $30,000. THAT IS THE TOP LIMIT -- $300,000. THAT IS THE TOP LIMIT. WE GOT $100 DEDUCTIBLE. WE ACQUIRE ALL OF THE POLICY DUTIES BUT, ALSO, ALL OF THE POLICY DEFENSES, AND WE DO NOT HAVE TO PAY 627.428 FEES, WHICH IS FEES AGAINST AN INSURANCE COMPANY FOR SUIT, UNLESS WE, BY AFFIRMATIVE ACTION OTHER THAN DELAY, HAVE DENIED THE CLAIM, SO WE DON'T PICK UP THE CARRIER'S PRIOR OBLIGATIONS FOR NOT PAYING ITS PIP CLAIMS, WHICH, USUALLY, ARE A LOT OF IN THOSE DEFUNCT COMPANIES. WE, FIRST OF ALL, DON'T THINK THIS CASE IS PROPERLY HERE. THERE IS NO JURISDICTIONAL CONFLICT. THERE IS NO CONFLICT WITH COPE.

WOULD YOU WALK US THROUGH, A LITTLE BIT, THE PRACTICALITIES OF THIS CIRCUMSTANCE. YOU WOULD AGREE THAT THESE KINDS OF ARRANGEMENTS COME UP, WHEN THERE IS SOME TYPE OF DISPUTE WITH REGARD TO WHETHER COVERAGE WILL BE PAID, WHETHER THERE WOULD BE MONIES COMING FROM AN INSURANCE COMPANY OF SOME KIND.

RIGHT. THAT IS HOW THIS A RISES. AND IN EXCHANGE FOR THOSE, AS THESE THINGS ARE SET UP, SO THAT YOU DON'T HAVE TO LITIGATE FOREVER AND EVER, THERE IS SOME IN END LINE RESULT, BE IT A RELEASE, BE IT A COVENANT NOT TO ENFORCE, A COVENANT NOT TO EXECUTE. YOU WOULD AGREE WITH THAT?

THERE ARE WAYS THAT AN INSURED PARTY CAN ENTER INTO A AGREEMENT WITH THE PARTY WHO IS SUING HIM AND PRESERVE A CLAIM AGAINST THE INSURED.

ALL OF THOSE PROVIDE, DO THEY NOT, AT LEAST FOR THE PAST 30 YEARS, PROVIDE A

MECHANISM, SO THAT ALL OF THIS, ONCE OVER, THAT THE INSURED IS NOT GOING TO BE SUBJECT TO FURTHER EXECUTION OR FURTHER RESPONSIBILITY. ISN'T THAT A FAIR ASSESSMENT OF ALL OF THOSE OVER THE LAST 30 YEARS OF FLORIDA JURIES PRUDENCE?

THERE ARE -- JURISPRUDENCE?

THERE ARE MORE THAN ONE TYPE OF ARRANGEMENT. SOME OF THEM WORK AND SOME OF THEM DON'T, AND I THINK THERE IS A CRUCIAL DISTINCTION.

IN FLORIDA LAW, THE DISTINCTION IS THAT THERE IS A RELEASE, AND THE CASE LAW HAS COME ALONG THAT, IF YOU RELEASE THE INSURED ENTITY, PERSON OR CORPORATION, THEN YOU RELEASE THEM, AND THAT THERE IS A DIFFERENCE, UNDER FLORIDA LAW, IN A COVENANT NOT TO EXECUTE OR TO WITHHOLD EXECUTION, DO YOU AGREE WITH THAT?

AND THERE IS, ALSO, A DIFFERENCE.

AND AT THE END LINE, IN ALL OF THESE CASES, AT SOME POINT THE INSURED WALKS AWAY FROM THE ENTIRE DISPUTE. YOU WOULD AGREE WITH THAT?

NO. THERE ARE STILL DETRIMENTS. IF THERE IS A COVENANT NOT TO EXECUTE AND THERE IS A LIVE JUDGMENT OUT THERE, WHICH IS STILL RECORDED AND EXISTS, THERE IS A DETRIMENT TO THE INSURED.

BUT AT THE END OF THE LINE, AT THE END OF THE DAY, AFTER EVERYTHING IS OVER, THOSE INSURED'S ARE RELEASED, ARE THEY NOT? HAVE THEY NOT BEEN, UNDER THE STANDARD FORM THAT THESE ARRANGEMENTS HAVE ADOPTED, OVER THE LAST 30 YEARS?

THE FLORIDA CASE, GIORDONO, I THINK, DID INVOLVE A RELEASE. IT WAS A COVENANT NOT TO EXECUTE, BUT STEELE DID, COPE DID, KELLY DID. THERE IS A DIFFERENCE, BUT I THINK IT IS AN IMPORTANT DIFFERENCE, BECAUSE ONE OF THE REASONS WHY THE CLAIM IS PRESERVED, IF IT IS PRESERVED, THAT THE INSURANCE COMPANY HAS DONE SOMETHING TO THE DETRIMENT OF ITS INSURED, AND IF --

YOU STILL HAVEN'T ANSWERED THIS THAT QUESTION. I AM TRYING TO UNDERSTAND. IS IT A YES OR NO OR DO YOU AGREE OR DISAGREE, THAT, AT THE END OF THE DAY, IN ALL OF THESE ARRANGEMENTS, HOW THEY ARE STRUCTURED, IS THAT THE INSURED WALKS AWAY WITHOUT EXPOSURE OR FURTHER LIABILITY?

IT DEPENDS ON WHAT YOU MEAN BY EXPOSURE OR FURTHER LIABILITY. IF IT IS A COVENANT NOT TO EXECUTE, THERE IS A DETRIMENT TO THE INSURED.

AT THE END, AFTER YOU FINISH, IN ALL OF THE WAYS THAT THESE ARE STRUCTURED, THAT AFTER YOU FINISH THE LITIGATION AGAINST WHATEVER INSURANCE COMPANY IT IS, IT DOESN'T HAVE TO BE FIGA. BUT THE END OF THE DAY IS THAT THE INSURED WALKS AWAY WITHOUT THE EXECUTION AFTER JUDGMENT.

YES. WITHOUT A JUDGMENT. FIGA AGREED NOT TO EXECUTE --

AND THERE ARE PROVISION IN HIS THERE THAT THE JUDGMENT WILL BE REMOVED OF RECORD.

NOT ALL OF THEM. MANY OF THEM, INCLUDING THIS ONE HAS THAT IT CAN'T EVEN BE RECORDED, SO YOU DON'T HAVE TO REMOVE OF IT RECORD, BECAUSE IT DOESN'T EXIST, BUT MOST OF THOSE ARRANGEMENTS DO.

WHAT IS THE INCENTIVE FOR AN INSURED TO EVER ENGAGE IN THIS TYPE OF ARRANGEMENT TO

RESOLVE IT, BECAUSE IF THE INSURED IS STILL SUBJECT TO FULL EXECUTION AT THE END OF THE DAY, THERE IS NO REASON TO EVEN ENGAGE IN THIS, BECAUSE WE ARE DOING NOTHING OTHER THAN JUST DELAYING THE ULTIMATE, WHERE THE INSURED IS GOING TO SUFFER THE FINANCIAL BURDENEN?

NO. THE CRITICAL DISTINCTION IS THAT, IF YOU ARE GOING TO EXTINGUISH THE CLAIM AGAINST THE INSURED, HE HAS GOT TO ASSIGN IT TO THE THIRD PARTY, WHILE IT IS STILL ALIVE.

YOU DON'T NEED ASSIGNMENT TO PROCEED AGAINST THE INSURANCE COMPANY, DO YOU?

IF THERE IS A VALID JUDGMENT AGAINST THE INSURED --

YOU HAVE TO HAVE ASSIGNMENT.

YES.

YOU THINK YOU HAVE TO HAVE A VIMENT TO COME FORWARD.

NOT IF THERE IS A VALID JUDGMENT, BUT IF YOU ARE GOING TO EXTINGUISH THE LIABILITY OF THE INSURED PARTY, IN ORDER TO HAVE SOMETHING THAT EXISTS THAT YOU CAN BRING AGAINST THE INSURANCE COMPANY WHILE THAT CLAIM IS STILL ALIVE, IT HAS TO BE ASSIGNED TO THE THIRD PARTY. ,000, WE HAVE PASSED -- NOW, WE HAVE PASSED THE BALL TO SOMEBODY ELSE. NOW WE CAN EXTINGUISH THE LIABILITY. THAT IS WHAT COPE SAYS. IT SAYS OBSCENITY ASSIGNMENT, PRIOR TO AGREEING TO RELEASE THE PARTY, WHERE YOU HAVE ACTUALLY RELEASED THEM THAT SECOND OR YOU PROMISEED TO RELEASE THEM AT THE END, IT MAKES NO DIFFERENCE.

WHAT IS WRONG WITH A JUDGMENT AS SUBSTITUTE FOR ASSIGNMENT? IN OTHER WORDS, WHAT IS THE FLAW IN THE JUDGMENT THAT WAS AGREED TO, HERE, AS SUBSTITUTE FOR ASSIGNMENT?

THERE IS A PROVISION THAT IT CAN NEVER BE RECORDED -- CAN'T BE RECORDED. IT CAN'T BE EXECUTED ON, AND MRS. ROSEN IS REQUIRED TO EITHER SATISFY --

WHERE IS THERE ANY CASE THAT SAYS THAT THAT IS A FLAW, IN TERMS OF IF WE ARE GOING TO TALK, NOW, ABOUT YOU EITHER HAVE TO HAVE A JUDGMENT OR YOU HAVE TO --

KELLY.

-- OR YOU HAVE TO HAVE ASSIGNMENT.

KELLY HAD EXACTLY THAT SITUATION, WHERE IT WAS AN AGREEMENT THAT, AFTER WE FINISHED THE LITIGATION WITH THE INSURANCE COMPANY, THEN WE WILL RELEASE YOU. IT WAS EXACTLY THE SAME, AND CLIMATE, ALSO, WHICH WAS A CIRCUIT CASE CITING COPE.

I AM ASKING YOU WHAT IS THE FLAW IN THE JUDGMENT? WHAT IS THE MATTER --

HERE?

WHAT IS THE MATTER, YES, WITH THIS JUDGMENT, HERE? ORDINARILY INSURANCE COMPANIES, FIGA INCLUDED, IF THERE IS A JUDGMENTS AGAINST THE INSURED'S, THEY HAVE TO RESPOND TO THAT JUDGMENT. HERE, AS A MATTER OF FACT, FIGA DID RESPOND, IN THE AMOUNT OF $39,000. IS THAT CORRECT?

WE PAID --

THEY VOLUNTARILY PAID THAT, IN RECOGNITION OF THIS CLAIM AGAINST THE INSURED. AND

THEY LEFT THIS DISPUTE, INSOFAR AS THIS ISSUE ABOUT POLICY INTERPRETATION OR WHATEVER, IN EFFECT, DID THEY NOT?

NO. FIGA WAS NOT A PARTY TO THIS AGREEMENT, AND THAT IS ONE OF THE FALL CYST THAT THE APPELLANT HAS PUT OVER. FIGA WAS NOT A PART OF THE AGREEMENT. IT DEPEND KNOW THE AGREEMENT WAS BEING MADE. IT DID AGREE TO PAY THE BALANCE OF THE POLICY, BECAUSE WE WERE GOING TO PAY THAT, ANYWAY. WE HAVE OFFERED THAT, IN SETTLEMENT, ALL ALONG, BUT FIGA WAS NOT A PARTY TO THIS AGREEMENT.

WELL, FIGA, IF IT WAS GOING TO OFFER THAT ALL ALONG, FIGA DID NOT SECURE THE RELEASE -- IN OTHER WORDS THEY PAID THE $39,000, WITHOUT SAYING THAT IS IT. YOU, NOW, HAVE TO RELEASE US.

THERE WAS NO RELEASE OF FYING A THAT'S CORRECT.

WHY WOULD FIGA PAY THE $39,000, WITHOUT GETTING A RELEASE?

BECAUSE OUR INSURED ASKED US TO AND IT WAS IN HIS BEST INTEREST. WE ARE TRYING TO NOT HARM OUR INSURED.

FYING, A OBVIOUSLY, IF -- FIGA, OBVIOUSLY, IF THE SITUATION IS THAT, WHEN WE PAY THE $39,000, THAT IS IT. ORDINARILY YOU DON'T VOLUNTARILY PAY SOMETHING OUT, LIKE THAT, IF IT'S YOUR POSITION, WITHOUT GETTING A RELEASE, DO YOU?

IF WE COULD HAVE GOTTEN A RELEASE, OBVIOUSLY IT WOULD HAVE BEEN DONE, BUT THAT WAS NOT -- THIS AGREEMENT WAS REACHED BETWEEN THE INSURED AND THE THIRD PARTY CLAIMANT.

LET ME COME BACK TO YOU ABOUT WHAT IS WRONG WITH THE JUDGMENT, ENTERED HERE, INSOFAR AS USING IT AS A VEHICLE, TO GO AGAINST FIGA FOR THE REMAINDER OF THIS CLAIM, AND TO LITIGATE THIS ISSUE THAT REMAINS OUTSTANDING HERE?

WHAT WAS WRONG IS IT WAS VERY SIMPLE ISSUE THAT THEY DIDN'T READ COPE, AND THEY REALIZED IT ABOUT A WEEK --

WHERE IS THERE A CASE THAT SAYS THAT A JUDGMENT ENTERED INTO THIS WAY IS NOT SUFFICIENT TO PROCEED WITH A CLAIM AGAINST FIGA? IS THERE A CASE THAT SAYS THAT?

THERE IS A CASE THAT SAYS THAT AGAINST REGULAR INSURANCE COMPANY. THAT IS KELLY. THAT IS COPE, AND THAT IS CLEMENT.

THAT SAYS, IF YOU HAVE A JUDGMENT THERE, THAT THAT IS NOT ENOUGH.

OH, YES.

THOSE CASES SAID THAT.

IF YOU ARE RELEASING, WITHIN YOUR SETTLEMENT --

I AM NOT TALKING ABOUT -- I AM ASKING YOU ABOUT THE DEFECT IN THE JUDGMENT NOT ABOUT THE RELEASE ISSUE.

THOSE ARE CONSENT JUDGMENTS. THOSE CASES INVOLVE CONSENT JUDGMENTS OF THIS TYPE.

THEY TURN ON THE EXECUTE OF THESE RELEASES, THOUGH, DO THEY NOT?

I BELIEVE SO, THAT IF THERE -- OPERATIVE RELEASES THAT OPERATE AT THAT TIME.

NO. KELLY IS AN AGREEMENT TO GIVE A RELEASE, AT THE END OF THE LITIGATION, AT THE END OF THE BAD FAITH LITIGATION. IT IS EXACTLY OUR AGREEMENT. IT IS ALMOST WORD FOR WORD, OUR AGREEMENT.

BUT COPE, SO WE UNDERSTAND -- LET'S GET BACK TO THE JURISDICTIONAL ISSUE. THE FIRST DISTRICT RELIED, BOTH, O'KELLEY AND COPE. COPE, YOU AGREE, INVOLVED A COMPLETE RELEASE, BEFORE THERE WAS ASSIGNMENT OF THE CLAIM. CORRECT?

I BELIEVE IT WAS SIMULTANEOUS. IT IS ALL PART OF THE SAME DEAL.

A RELEASE.

YES, BUT IT CITES KELLY.

WHAT DO WE -- WHAT IS THE AGREEMENT IN THIS CASE? IS IT A COVENANT NOT TO EXECUTE?

NO. IT IS AN AGREEMENT THAT, AT THE END OF THE LITIGATION AGAINST FYING, A WIN, LOSE OR DRAW, THERE WILL BE, IF IT IS A JUDGMENT, THERE WILL BE A SATISFACTION. IF THEY GET ANYTHING FROM FYING, A THEY WILL SATISFY. IF THEY DON'T, THEY WON'T RELEASE.

DO YOU -- SO WHAT WOULD YOU CALL THAT?

THAT IS A RELEASE. THAT IS THE FUNCTIONAL EQUIVALENT OF A RELEASE. THAT IS THE AGREEMENT IN KELLY AND THAT IS THE AGREEMENT IN CLEMENT.

LET ME ASK YOU WHETHER -- DOES FIGA HAVE ANY SUBJUGATION RIGHTS AGAINST ITS INSURED? IN OTHER WORDS, IF THE CLAIMANT GETS, NOW, LIKE THE $39,000. FIGA PAID $39,000. OKAY. NOW, DOES FIGA HAVE THE RIGHT TO COLLECT THAT $39,000 FROM THE INSURED?

IN A NORMAL CASE, NO.

SO HOW CAN FIGA BE HARMED, IF THEY DON'T HAVE ANY RIGHT TO RECLAIM AGAINST THEIR INSURED, ANY OF THESE AMOUNTS, ANYWAY?

BECAUSE THE PROBLEM IS THAT THIS IS AN INSURANCE POLICY THAT SAYS THE INSUROR ONLY HAS TO PAY WHAT THE INSURED IS LEGALLY LIABLE TO PAY. IF YOU RELEASE THE INSURED, HE IS NOT LEGALLY LIABLE TO PAY ANYTHING. THEREFORE NO INSURANCE COMPANY AND NO SUCCESSOR TO THE INSURANCE COMPANY HAS TO PAY ANYTHING. THAT IS COPE, PURE AND SIMPLE. AND EVERYBODY KNOWS, IN FLORIDA, THAT YOU NEED TO -- IF YOU ARE GOING TO GIVE A RELEASE, YOU NEED TO TAKE ASSIGNMENT FIRST. THESE PEOPLE DIDN'T READ COPE.

SO THAT IS AN ADMISSION OF LIABILITY?

NO. I DON'T THINK --

YOU HAVE SAID THAT IT DOESN'T DAMAGE FIGA FINANCIALLY, BECAUSE FIGA HAS NO RIGHT TO GO AGAINST THE INSURED, AND SO I AM TRYING TO FIND OUT WHAT IS THE HARM TO THE INSURANCE COMPANY THAT IT IS CLAIMING HAPPENS, AS A RESULT OF THE ENTRY INTO THIS AGREED JUDGMENT? AND LATER TO RELEASE? WHAT IS THE HARM --

BECAUSE THEY AGREED TO A JUDGMENT THAT WE THINK IS FAR IN EXCESS OF THE VALUE YOUTHFUL THE CLAIM.

SO IT IS AN ADMISSION. IS THAT IT?

YES.

OKAY. NOW, IF IT IS THE ADMISSION, THEN I THOUGHT THIS ISSUE WAS GOING TO BE LITIGATED. NOBODY CLAIMS THAT THAT ADMISSION BINDS FYING, A DOES IT? I THOUGHT THAT IS WHAT IS BEING LITIGATED.

THEY CLAIM IT. WE DON'T. WE THINK THAT -- THEY ALLEGE THAT WE ABANDONED OUR INSURED AND THEREFORE WE ARE BOUND BY -- THAT IS A DIFFERENT QUESTION H THAT IS A COOPERATION CLAUSE. WE NEVER GOT TO THAT.

BUT NOBODY IS CLAIMING THAT, BY REASON OF THE AGREED JUDGMENT THAT, THAT BOUND FIGA ON THIS INTERPRETATION OF THE POLICY ISSUE. WELL, THEY ARE CLAIMING THAT. WE AREN'T. BUT THAT WASN'T WHAT THE FIRST DCA DECIDED.

WELL, ASSUMING THAT FIGA IS NOT BOUND, YOU KNOW, IN TERMS OF THE POLICY INTERPRETATION, AS FAR AS THAT ISSUE THAT IS CONTESTED, HOW HAS FIGA BEEN HARMED?

WELL, WE WILL BE HARMED, BECAUSE WE HAVE TO GO THROUGH ANOTHER SET OF LITIGATION AFTER THE POLICY OBLIGATION HAS BEEN EXTINGUISHED. THERE IS A LOT OF MISCONCEPTIONS THAT ARE STATED BY THE APPELLANT HERE, AND THE MOST OBVIOUS ONE IS THAT THERE WAS SOME KIND OF RELEASE OF THE INSURED, MERELY BY FILING A CLAIM AGAINST FIGA. THAT IS ABSOLUTELY NOT THE CASE. LET ME --

I WANT TO GET BACK TO THE POSTURE OF THIS CASE, SO WE UNDERSTAND SOMETHING. DID FIGA TAKE A POSITION, ALL ALONG HAD, THAT THE DEFENSE COSTS WERE GOING TO -- ALLEGE, THAT THE DEFENSE -- ALL A LONG, IT THAT FIGA HAD TO TAKE A POSITION IN REGARD TO THE $300,000?

NO. WE DO NOT THINK THAT, IF THE DEFENSE OBLIGATION IS SEPARATE THAT, IT COMES OUT OF THE 300.

SO FIGA WENT AHEAD AND ALLOWED ITS ATTORNEYS TO SPEND $1260,000 IN DEFENSE OF A CLAIM THAT THEY KNEW -- TO SPEND $260,000, IN DEFENSE OF A CLAIM THAT -- AND THEY WERE WILLING TO PAY ALL OF THE DEFENSE COSTS?

THAT IS WHAT THE INSURED WANTED. THIS CASE WAS LITIGATED UP AND DOWN.

SO AT SOME POINT, THE PARTIES GOT TOGETHER, AND YOU SAY THERE IS SOME DISPUTE AS TO WHETHER FIGA WAS PART OF THIS OR NOT, BUT THE PARTIES GOT TOGETHER, INCLUDING THE ATTORNEY THAT WAS HIRED BY FYING, A AND SAID, YOU KNOW, THIS IS GETTING CRAZY. WE, NOW, ONLY HAVE $39,000 LEFT. WE, THE INSURED, THINK THAT THERE IS $300,000 TOTAL FOR INDEMNITY OR LIABILITY PAYMENTS. WE NEED TO GET THAT DECIDED. THAT IS -- SO AT THAT POINT, SO LET'S END THIS ONE LITIGATION, AND ALL WE WANT TO DETERMINE IS, IS THERE ANOTHER $260,000, OR IS FROM ONLY $39,000. CORRECT -- OR IS THERE ONLY $39,000. CORRECT?

NO. THEY ADMITTED LIABILITY FOR SOMETHING WE DON'T THINK THEY HAD LIABILITY FOR, SO THAT IS PART OF THE PROBLEM. IF SOMEBODY HAD DONE A DEC ACTION BEFORE THIS WAS STARTED, THEY WOULD HAVE -- THAT WOULD HAVE BEEN THE IDEAL SITUATION.

BUT THAT IS, IN THE SENSE, THE POSTURE OF THIS CASE, WHICH IS THAT, IF WE ALLOW THIS TO GO FORWARD, A DETERMINATION AS TO WHETHER THERE IS $300,000 OR WHETHER THERE IS ONLY THE $39,000?

THE TRIAL COURT ALREADY MADE A DETERMINATION. THE TRIAL COURT SAID IF YOU READ THE POLICY, IT IS NOT AMBIGUOUS. NOBODY EVER ARGUED IT WAS A.M. DPIING BIGUOUS, ALTHOUGH

THEY SAID SO TODAY, AND IT WAS A WASTE POLICY, SO THAT HAS COME OUT OF THE LIMIT.

SO IT IS A MATTER OF LAW, YOU ARE SAYING, ONE WAY OR THE OTHER.

THE INTERPRETATION IS A MATTER OF LAW, AND IT WAS DECIDED BY THE TRIAL COURT. THE FIRST DCA DID NOT GET TO IT, BECAUSE THEY SAID, WELL, WE HAVE ALREADY DONE OUR DECISION, BASED ON THE FACT THAT THEY FAILED TO PRESERVE THE CLAIM.

DO YOU STILL -- ARE YOU STILL ABLE TO CLAIM, THOUGH, THAT THE AMOUNT OF THE JUDGMENT WAS A COLLUSIVE OR IMPROPER AMOUNT? ISN'T THAT ALLOWED, UNDER ALL OF THESE AGREEMENTS?

UNDER THE STEELE CASE, YES, WE WOULD BE ALLOWED TO CLAIM --

THAT IS NOT AN ISSUE ON THIS.

ALL WE DID WAS A PROCEDURE OF DID THEY FOLLOW WHAT COPE HAD LAID OUT, WHERE YOU GET ASSIGNMENT BEFORE YOU RELEASE THE CLAIM. THEY DIDN'T. THEREFORE THEY ARE PRECLUDED. THEN THE TRIAL COURT WENT ON TO SAY THAT, EVEN IF THEY COULD PROCEED WITH THIS CLAIM, THIS WAS A WASTING POLICY. THE PROVISIONS OF THE FIGA ACT ARE INCORPORATED INTO EVERY POLICY OF INSURANCE IN FLORIDA. WHEN THIS COMPANY WENT BUST, THE MILLION DROPPED TO 300,000. REMEMBER THEY ALREADY SPENT $200,000 BEFORE THIS COMPANY WENT BROKE, AND FIGA DID NOT TAKE THE POSITION THAT WE COULD DUCT THAT FROM THE 300,000. WE TOOK THE FAIR POSITION AND SAID, WELL, WE START OFF WITH THE 300, BUT THESE PEOPLE BOUGHT A CHEAP, DECLINING BALANCE PROPERTY, AND THEY DON'T GET THE SAME DEFENSE THAT OTHER PEOPLE WOULD GET, IF THE COMPANY GOES BROKE, BECAUSE THESE PEOPLE ARE ONLY A STATUTORY DEBT, AND THEY PICK UP WHERE IT WAS LEFT. AND I DON'T WANT TO SAY THAT FILING A CLAIM WITH THE RECEIVER HAS ANYTHING TO DO WITH FIGA, BECAUSE IT DOESN'T. IF THEY HAD NEVER FILED A CLAIM WITH THE SEVER AND THEY HAD MERELY PROCEEDED WITH THEIR CASE AGAINST OUR INSURED, WHATEVER HAPPENED WITH THAT CASE, WE WOULD HAVE COVERED UP TO OUR LIMIT. AND THERE WOULD HAVE BEEN NO RELEASE OF THE INSURED. THEY COULD HAVE GONE AFTER HIM PERSONALLY FOR ANY EXCESS JUDGMENT. THEY VOLUNTARILY --

EXCUSE ME. I THOUGHT FIGA HAD A LIMITATION PERIOD THAT, IF YOU DON'T FILE AGAINST FYING, A YOU LOSE YOUR CLAIM, WHETHER YOU HAD A JUDGMENT AGAINST THE INSURED OR NOT.

NO. IF YOU ARE SUING ON THE CLAIM. IF YOU ARE SUING ON THE INSURED, THAT IS ENOUGH. YOU ARE SUING THE INSURED. YOU HAVE TO FILE A LAWSUIT ON YOUR CLAIM, BUT WE ARE INVOLVED. WHEN YOU SUE OUR INSURED, WE ARE INVOLVED. WHAT SHE IS TALKING ABOUT IS PUTTING A CLAIM FORM IN WITH THE DEPARTMENT OF INSURANCE, IN THE RECEIVER SHIP, AND THAT IS SOMETHING THAT YOU HAVE THE OPTION TO DO. IF YOU DO IT, THAT MEANS THAT, WHATEVER FIGA DOESN'T PAY, OVER AND ABOVE OUR LIMIT, YOU CAN GET FROM THE RECEIVER SHIP, ASSUMING THEY HAVE MONEY. IF YOU DON'T PUT THAT CLAIM, THEN WHATEVER FIGA DOESN'T PAY, OVER AND ABOVE OUR LIMIT, THEN YOU CAN GET IT AGAINST THE INSURED. THAT IS THE CLAIM THEY ARE TALKING ABOUT, AND THAT IS IN THE RECORD, AND IT IS ON THE DEPARTMENT OF INSURANCE CLAIM FORM. IT HAS GOT NOTHING DO WITH US. ,000, IF WE HAD LOST -- NOW, IF WE HAD LOST THIS LITIGATION AND WE DIDN'T PAY, THEN THERE WOULD BE A LIMITATIONS PERIOD TO FILE AGAINST US, BUT THIS CLAIM WAS IN SUIT WHEN THEY WENT BUST, SO THEY DIDN'T HAVE TO FILE ANYTHING AGAINST US AT THE TIME. WE WERE THERE. IN FACT, WE FILED AN APPEARANCE IN THE CASE. WE FIRED THE LAWYERS WHO WERE DEFENDING IT AND BROUGHT IN FIGA'S OWN LAWYERS, THE LANTAFF FIRM, SO WE WERE THERE. WE KNEW ABOUT THE CLAIM. WE WERE DEFENDING IT. THEY DIDN'T HAVE TO FILE WITH THE DEPARTMENT OF INSURANCE. THAT IS A COMPLETE READ HERING, AND NOT ONLY THAT, IT WASN'T ARGUED IN THE FIRST DCA.

IF YOU READ THE BRIEFS IN THE FIRST DCA, THEY HAD ABANDONED THE ARGUMENT WHICH THEY HAD MADE IN THE TRIAL COURT THAT THIS STATUTORY RELEASE FROM THE DEPARTMENT OF INSURANCE HAD ANYTHING TO DO WITH THIS CASE.

ONE FINAL QUESTION, IF THE ENTIRE $300,000 COULD HAVE, IN FACT, BEEN CONSUMED IN DEFENSE COSTS AND THERE WOULD HAVE BEEN NOTHING LEFT TO PAY THE CLAIMANT. CORRECT?

THAT IS POSSIBLE, AND THE INSURED KNEW THAT, AND HE WAS CONSULTED ON IT, AND THAT IS WHAT HE WENT WANTED.

AND THE CLAIMANT, THERE IS NOTHING, IN THE POLICY, THAT PUTS A LIMIT ON THOSE KINDS OF SUMS.

AS FAR AS WHAT PERCENTAGE CAN BE USED IN DEFENSE?

RIGHT.

NO. REMEMBER, THESE ARE MOSTLY PROFESSIONAL MALPRACTICE POLICIES THAT HAD THIS DECLINING VALUE. THERE ARE VERY FEW OF THEM AROUND, STILL, TODAY, BUT WHEN A PROFESSIONAL GETS SUED, THERE ARE VERY GOOD REASONS WHY HE MAY WANT A VIGOROUS DEFENSE, WHICH DOESN'T MAKE ECONOMIC SENSE, BUT THAT HE DOESN'T WANT REPORTING REQUIREMENTS AND THINGS LIKE THAT OR REPUTATION INJURIES, SO THESE KINDS OF POLICIES DO USE A LOT OF MONEY IN DEFENSE, AND THE INSURED DIDN'T COMPLAIN ABOUT THAT. THAT IS WHAT HE WANTED. HE WAS INFORMED, AT EVERY STEP OF THE WAY. I AM OVER TIME. I AM SORRY. BASICALLY, THE APPELLANT IS ASKING TO YOU OVERTURN COPE OR DISTINGUISH COPE IN SUCH AWAY THAT IT DOESN'T APPLY TO WHAT IS CLEARLY AN INSURANCE COMPANY ENTITY, WHICH WAS CREATED BY THE INSURANCE COMMISSIONERS AND FOLLOWS INSURANCE RULES.

I THINK YOUR TIME IS UP. THANK YOU.

THAT IS CLEARLY NOT JUSTIFIED BY THE CASE, EVEN IF THERE WERE JURISDICTION, WHICH I DON'T THINK THERE IS.

MISS ROSS.

THANK YOU, YOUR HONORS. SHE IS IGNORING THE PLAIN TERMS OF THE STATUTE. GOING BACK TO YOUR QUESTION, YES, JUSTICE LEWIS, FOR 30 YEARS WE HAVE DOING, THIS AND FOR 30 YEARS THERE IS NO IMPEDIMENT. THE INSURED WALKS AWAY FROM THE AGREEMENT WE HAVE BEEN TALKING B 30 YEARS, AND THEY ARE ASKING THE COURT TO DISREGARD THAT LINE OF CASES. JUSTICE ANSTEAD, THERE WOULD BE NO INCENTIVE FOR ANYBODY TO EVER ENTER INTO THESE AGREEMENTS, WITHOUT SUCH A TERM IN THERE, BUT WITH REGARD TO THE STATUTES AND WHY THE RELEASE PROVISION APPLIES AND WHY YOU PUT IN A CLAIM TO THE ESTATE, SHE IS DISCLAIMING THE ENTIRE STATUTORY RELATIONSHIP BETWEEN THE DEPARTMENT OF INSURANCE AND FIGA. IF YOU LOOK AT 631.58, NOTICE OF CLAIMS TO THE RECEIVER SHALL BE DEEMED NOTICE TO THE ASSOCIATION OR ITS AGENT. THAT IS SUBSECTION 3-D. THEN, IF YOU LOOK AT 631.153, THE CLAIMS PROCEDURE SET FORTH IN THESE STATUTES CONSTITUTES THE EXCLUSIVE MEANS FOR OBTAIN OBTAINING PAYMENT OF CLAIMS OF RECEIVERSHIP ESTATE. IF YOU DON'T PUT IN A CLAIM, YOU DON'T GET ANY INSURANCE COVERAGE, SO THAT IS THE READ HERING IN THIS CASE. YOU HAVE TO PUT IN A CLAIM TO GET COVERAGE, BUT IF YOU DON'T DO IT WITHIN A CERTAIN STATUTORY TIME PERIOD, YOUR CLAIM AGAINST FIGA -- AGAINST THE INSURED IS RELEASED, ANYHOW. NUMBER THREE, WITH REGARD TO THE STATUTE --

MISS ROSS, I THINK YOUR TIME IS UP.

I AM SORRY, YOUR HONOR. FOR ALL THE REASONS THAT WE HAVE SUBMITTED, THIS CASE WAS

ERRONEOUSLY DECIDED AND WE ASK FOR REVERSAL. THANK YOU.

THANK YOU VERY MUCH.