

>> PLEASE RISE.
THE SUPREME COURT OF FLORIDA IS
AGAIN IN SESSION.
PLEASE BE SEATED.
>> THE NEXT CASE FOR THE DAY IS
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY VERSUS CURRAN.
YOU MAY PROCEED.
>> MAY IT PLEASE THE COURT,
ELIZABETH RUSSO ON BEHALF OF THE
PETITIONER, STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY.
WE ARE HERE IN AN UNINSURED
MOTORIST CASE IN WHICH THE FIFTH
DISTRICT HAS RAISED SOME FAIRLY
BROAD ISSUES ABOUT POLICY
CONDITIONS THAT ARE SET FOR
INSUREDS AND WHAT THE
CONSEQUENCES ARE FOR A BREACH.
THERE ARE TWO FACTORS THAT WE
THINK ARE CRITICAL HERE THAT ARE
ALSO PRESENT IN ALL THE CASES WE
ARE WE ARE ASKING YOU TO FOLLOW
THAT REQUIRE, THAT WE SHOULD BE
CONCENTRATING ON.
ONE OF THEM IS THE CASE
INVOLVING A WILLFUL BREACH AND
THE OTHER ONE IS THAT THE TYPE
OF CONDITION THAT IS INVOLVED IS
ONE THAT IS DESIGNED TO GET
INFORMATION FOR THE INSURER THAT
CAN ONLY BE PROVIDED BY THE
INSURED.
>> LET'S LOOK AT IT.
YOU SAY WE HAVE TO LOOK AT
THOSE.
SHOULDN'T WE ALSO BE REQUIRED TO
LOOK AT UNINSURED MOTORISTS
COVERAGE, NOT FIRE COVERAGES,
NOT LIFE INSURANCE POLICIES BUT
UNINSURED MOTORIST COVERAGE?
>> AND THE CASES THAT I'M
TALKING ABOUT THAT BREACH THE
RESULT WE ARE ASKING THE COURT
-- TWO OF THEM ARE UNINSURED
MOTORIST CASES THAT INVOLVE
THOSE THAT I'M TALKING ABOUT.
>> NOT FROM THIS COURT THOUGH.
>> NOT FROM THIS COURT, RIGHT.
>> THIS IS THE BEGINNING POINT
ON THE DISCUSSION THAT UNINSURED
MOTORIST COVERAGE IS A CREATURE
OF STATUTE.
>> IT IS?
>> UNLIKE LIFE, UNLIKE ALL OTHER
TYPES OF COVERAGE.

>> YES, IT IS.
>> AND THE UM STATUTE DECIDED BY THIS COURT GOING BACK TO MULLIS, AND YOU HAVE BEEN DOING THIS WORK IN THESE CASES -- 10 CASES. YOU SAY THAT THE UNINSURED MOTORIST STATUTE IS A RECIPROCAL OF FINANCIAL RESPONSIBILITY LOSS.
>> YES, YOUR HONOR.
>> AND IT ALSO SAYS THAT YOU CAN'T HAVE EXCLUSIONS, EXCEPTIONS AND POLICY CONDITIONS THAT RESTRICT OR ARE MORE RESTRICTIVE THAN WHAT IS REQUIRED BY THE STATUTE.
>> WE CAN'T HAVE EXCLUSIONS THAT ARE GOING TO EXCLUDE THE COVERAGE AND INTENDED BY THE STATUTE BUT WE CAN CERTAINLY HAVE --
WE DON'T HAVE NO POLICY AT ALL. WE HAVE POLICY CONDITIONS.
>> UNDER THE COVERAGE, THE INSURANCE INDUSTRY HAS FULL MEDICAL EMANATION PROVISIONS IN EVERY INSTANCE THAT IS BUILT INTO THE STATUTE.
>> I'M SORRY?
DID YOU SAY PIP?
YOU HAVE THE RIGHT TO, YES.
>> IT WAS WRITTEN IN FROM DAY ONE.
THE UM STATUTE DOESN'T EVEN HAVE A PROVISION FOR INSURANCE COMPANY MEDICAL EXAMINATIONS. DOES IT?
>> IT DOES NOT.
>> AND THE UM STATUTE IS DESIGNED ACCORDING TO OUR CASE LAW TO OPERATE NOT HIS FIRST PARTY BENEFITS BUT ON THE SAME BASIS AS THIRD-PARTY.
IT STANDS IN THE SHOES OF THE TORTFEASOR.
>> IT IS STILL FIRST PARTY COVERAGE.
IT IS A CONTRACT.
>> IT MAY BE A CONTRACT BUT IT'S INTERPRETED AS IT WOULD BE IF IT WERE THIRD-PARTY.
>> IT IS A HYBRID.
IT IS TRUE THE INSURER STANDS IN THE SHOES OF THE TORTFEASOR WHETHER THERE IS LIABILITY AND DAMAGES BUT ALSO THE PLAINTIFF HAS PAID --

>> UNLIKE OTHER POLICIES, OTHER COVERAGES I SHOULD SAY IT'S IN THE NATURE OF THE THIRD PARTY RELATIONSHIP IN THAT POSTURE ACCORDING TO OUR CASE.

>> THEY ARE IN LITIGATION WITH EACH OTHER YES, THAT IS TRUE.

>> ONCE AN EVENT OCCURS, OR THE EVENT THAT CAUSES THE UNINSURED MOTORIST CLAIM TO BE REVISED, THEN AT THAT POINT YOU ARE -- YOU DON'T HAVE TO HAVE LITIGATION TO OUR ADVERSARIAL.

>> RESPECTFULLY, YOUR HONOR, I DON'T AGREE WITH THAT.

>> MAYBE YOU SHOULD READ SOME OF OUR CASE LAWS THAT SAY THAT.

>> I UNDERSTAND WHEN YOU ARE LOOKING AT TORTFEASOR VERSUS THE PLAINTIFF, BUT WHEN YOU ARE TALKING ABOUT JUST THE COVERAGE WE SOLD THEM UNINSURED MOTORIST COVERAGE AND THIS CASE IS A VERY GOOD EXAMPLE.

THE FIRST THING WE WANT TO DO IS SEE --

I CAN'T BE THAT WE GET A CALL FROM OUR UNINSURED MOTORIST INSURED SAYING I WAS JUST IN AN ACCIDENT AND I HAVE BAD, BAD INJURY SO PLEASE SEND ME A CHECK FOR \$100,000, AND OUR OBLIGATION IS TO SEND A CHECK FOR \$100,000 WHEN WE ARE NOT IN COMPLIANCE WITH THE STATUTE.

[INAUDIBLE]

>> THAT THERE IS NO PROVISION IN THE STATUTE TO COMPEL AN INSURED BY ANY COMPANY, NOT JUST STATE FARM, ANY COMPANY.

LETS SAY FOR EXAMPLE YOU LIVE IN LAKELAND OR IN TALLAHASSEE. HUGH HAVE TO GO TO MIAMI FOR AN EXAM.

>> YOU KNOW, BUT HERE, HERE WE HAVE -- LET'S JUST TAKE THE SITUATION, THIS PARTICULAR SITUATION WHICH IS THERE WAS AN ACCIDENT IN JUNE OF 2006.

AT THE TIME THE PLAINTIFF WAS PULLING OUT -- STOPPED AT A RED LIGHT AND WAS PULLING OUT AND THE CAR BEHIND HER BUMPS INTO HER.

SHE GOES TO THE EMERGENCY ROOM, NO PROBLEMS ARE FOUND, NO BROKEN BONES, NOTHING.

WE DON'T HEAR ANYTHING MORE IN
TERMS OF ANY CLAIM BEING MADE
AGAINST THE UNINSURED MOTORIST
SOMETHING FROM THE TORTFEASOR.
>> IT'S HIS OWN CARRIER.
>> BUT THIS TENDS TO BE \$10,000
AND UNDER.
THERE IS NO INDICATION THERE IS
ANY KIND OF SERIOUS INJURIES
INVOLVED HERE.
>> IT SOUNDS LIKE YOU ARE
DEFENDING A BAD CASE AND I
THOUGHT WE ARE ON ISSUE OF, BOTH
AS WHETHER OF A MATTER OF LAW,
WE ARE NOT COMING TO A
PARTICULAR DAY SET FOR A
COMPULSORY MEDICAL EXAMINATION.
SHE BOUGHT HER UNINSURED
MOTORIST COVERAGE.
ISN'T THAT WHAT THE CASE IS?
YOU MAY BE RIGHT THAT THE
ACTIONS OF THE PLAINTIFF
JUSTIFIES THE INSURANCE COMPANY
NOT IMMEDIATELY TENDERING THE
\$10,000.
>> I'M NOT FAULTING HER FOR
THOSE CIRCUMSTANCES.
>> IN OTHER WORDS THE ISSUE HERE
IS WHETHER, AT THIS POINT THE
INSURANCE COMPANY SAID COME TO A
MEDICAL EXAMINATION.
SHE FORFEITS FOR \$100,000 OF
UNINSURED MOTORIST COVERAGE.
IS THAT NOT THE ISSUE HERE?
>> YOU CAN PHRASE IT THAT WAY
BUT --
>> HER NOT COMPLYING WITH THE
INITIAL REQUEST.
>> IT WASN'T JUST AN INITIAL
REQUEST.
>> IT WAS NOT COMING AT A
PARTICULAR TIME.
EVENTUALLY THERE WAS A MEDICAL
EXAMINATION, CORRECT?
>> THERE WAS ALSO MEDICAL
EXAMINATIONS SET UP BY CONSENT
BEFORE THERE WAS A SUIT FILED BY
CONSENT WITH THE PLAINTIFF.
DID SHE EVENTUALLY HAVE A
MEDICAL EXAMINATION?
>> OVER A YEAR INTO THE
LITIGATION.
>> DID THEY USE THE MEDICAL
EXAMINATION IN THE LAWSUIT?
THE DOCTORS?
>> THIS IS THE PROBLEM.
THIS IS THE PROBLEM.

WE NEEDED TO FIND OUT AT THE TIME THE CLAIM WAS MADE, JUST LIKE IF YOU ARE GETTING A TELEPHONE CALL, HI I HAVE REALLY BAD INJURIES, WE NEED TO FIND OUT OKAY WHAT ARE THE INJURIES BECAUSE THERE IS THEIR BAD FAITH STATUTE SITTING OUT THERE AND THEIR ATTORNEYS FEES THE SECOND THAT ANYTHING GOES INTO LITIGATION.

>> NOT ON UNINSURED MOTORIST COVERAGE.

>> IF THERE IS ANY QUESTION OVER THE COVERAGE, YES.

>> BUT WHEN YOU FILED THE CASE -- THEY DO NOT APPLY IN THIS SECTION AGAINST UNINSURED MOTORIST UNLESS THERE'S A THERE IS A DISPUTE OVER COVERAGE. THAT IS NOT THE ACCIDENT.

>> IT IS WHAT SHE HAS RAISED SO THE FIRST THING WE NEED TO FIND OUT IS WHAT ARE YOUR INJURIES SO WE HAVE AT LEAST THE OPPORTUNITY TO DETERMINE -- WHETHER WE SHOULD PAY.

>> SHE OFFERED, THE PLAINTIFF IN THIS CASE OFFERED TO SUBMIT TO THE CME SEVEN DAYS AFTER THE SCHEDULE EXAMINATION SO WHAT CHANGED IN SEVEN DAYS THAT YOU COULD NOT HAVE FOUND OUT? YOU ARE TELLING US THAT WE NEED THE CME RIGHT NOW. SHE SAID NO IN SEVEN DAYS LATER SHE SAID OKAY LET'S DO IT AND YOU SAID NO.

>> THAT IS NOT QUITE ACCURATE. WHAT HAPPENED WAS WE WORKED OUT WITH HER AFTER MUCH BACK-AND-FORTH WITH THE CORRESPONDENCE, WE WORKED OUT WITH HER A DATE AND TIME WHICH WAS SEPTEMBER 12.

SHE AGREED ON THE TIME AND EVERYTHING WAS AGREED UPON AND THEN TWO DAYS BEFORE THAT SHE FILES A LAWSUIT AND SAYS, AND CANCEL THAT EXAMINATION SO TO SAY THAT SHE WAS QUITE WILLING TO GO THREE DAYS AFTER OR SEVEN DAYS AFTER, YES SHE WRITES A LETTER SHORTLY AFTER THAT AND SAYS OKAY NOW WHAT YOU'D LIKE TO SCHEDULE THE EXAMINATION BUT YOU STILL HAVE TO COMPLY WITH ALL OF

OUR STIPULATIONS OR WE ARE NOT COMING.

ONE OF THOSE WAS YOU ONLY GET ONE EXAMINATION.

YOU WOULD HAVE TO AGREE TO THAT WHEREAS WHEN IT WENT TO TRIAL THEY HAD MULTIPLE DOCTORS AND DIFFERENT DISCIPLINES AND WE HAVE NO OBLIGATION UNDER THE RULES OF CIVIL PROCEDURE OR UNDER A POLICY TO GET ONLY ONE EXAMINATION AND THAT IS WHAT SHE WAS INSISTING UPON.

>> YOU TALKED ABOUT A VERY LEGITIMATE DISSENT.

IN OTHER WORDS THOSE ACTIONS IN MY POINT A FEW, OF THE PLAINTIFF IF YOU WERE, QUOTE, SET UP FOR BAD FAITH, ARE ABSOLUTELY APPROPRIATE TO RAISE IN THE BAD FAITH ACTION BUT I'M STILL STRUGGLING WITH THE ISSUE OF HOW SHE FORFEITS HER COVERAGE, UNINSURED MOTORIST COVERAGE AND IS IT A QUESTION OF WHETHER YOU ARE PREJUDICED AND IF IT'S PREJUDICED, THEN THAT TENDS TO BE THE ISSUE OF WHOSE BURDEN IS IT TO PROVE PREJUDICE?

IS THAT YOUR BURDEN TO PROVE PREJUDICE OR THEIR BURDEN?

TO ME, I SEE IT MORE AS A FAILURE TO COOPERATE AND THEN DID A PREJUDICE THE INSURANCE COMPANY AND THEREFORE SHE FORFEITS THE COVERAGE BUT THE WAY I SEE ONE POSITION IS ONCE SHE DIDN'T COME WITHIN THE FIRST 30 DAYS OR WHATEVER, THERE IS A COMPLETE DEFENSE.

SHE HAS WAIVED HER UNINSURED MOTORIST COVERAGE.

>> WHEN SHE DIDN'T COME WITHIN THE FIRST 30 DAYS.

IT'S A QUESTION OF NOT COMING BEFORE FILING A LAWSUIT.

THAT IS THE CRITICAL THING FOR US IN OUR POLICY.

>> ONCE SHE FILED THE LAWSUIT DID YOU IMMEDIATELY REQUEST THAT THE LAWSUIT BE UPDATED SO THAT YOU COULD GET YOUR MANDATORY COMPULSORY MEDICAL EXAMINATION?

>> THE PLAINTIFF DID NOT IMMEDIATELY DISMISS HER ACTION.

>> WELL I GUESS WHAT I'M LOOKING FOR IS THE FIFTH DISTRICT'S

OPINION.

IT SAID ALTHOUGH CURRENT OR
PREMATURELY FILED SUIT WOULD
ONLY RESULT IN STATE FARM NEVER
RAISE THIS ARGUMENT PRESUMABLY
BECAUSE IT WOULD ONLY RESULT IN
THE ABATEMENT OF THE CLAIM
INSTEAD OF COMPLETE DEFENSE.
HAD STATE FARM RAISE THIS
ARGUMENT THE COURT COULD HAVE
DEBATED NECESSITATING A
SUSTAINING CLAUSE BEFORE EITHER
PARTY WAS BURDENED WITH THE
EXPENSE OF FURTHER LITIGATION.
STATE FARM MAINTAINS THE BREACH
OF FURTHER PERFORMANCE OF THE
CONTRACT. IS THAT CORRECT?

>> WHAT THE HAPPENED IS SHE
FILES IN BREACH OF THE CONTRACT.
WHO DO WE LOOK TO AS DOING THE
WRONG THING?

IT'S THE PLAINTIFF.

WHY DOESN'T SHE DISMISS THE
ACTION?

WHY IS IT LOOKING TO STATE FARM?
LET'S SAY WE HAD MOVED TO EVADE
IT.

SHE WOULD HAVE TAKEN WOULD HAVE
TAKEN OPPOSITION TOUR SUMMARY
JUDGMENT MOTION WHICH IS THAT, I
DON'T THINK YOU SHOULD
ABATE IT.

I THINK I DID COMPLY WITH THE
CONTRACT.

ALL OF THE CONDITIONS I ASKED
FOR WERE REASONABLE.

AND WITH THE TRIAL JUDGE
THAT WE HAD YOU WOULD PRESUMABLY
HAVE DONE THE SAME THING WHICH
IS TO SAY NO I'M NOT GOING TO
ABATE.

I THINK SHE COMPLIED WELL ENOUGH
AND AGREED ON THE CONDITIONS.
THERE WE ARE IN LITIGATION.

>> ASSUME THERE IS A MATERIAL
BREACH.

WHY SHOULD THE REMEDY BE THAT
THERE IS --

[INAUDIBLE]

WHY SHOULD THE REMEDY BE THAT
THERE ARE NO BENEFITS TO THE
POLICY?

>> I AM SAYING THERE ARE
DIFFERENT TYPES OF CONDITIONS
AND POLICIES AND THE REASON I'M
SAYING THE CRITICAL THINGS HERE
AND IN EVERY ONE OF THE CASES

INCLUDING THE UNINSURED MOTORIST CASES ALBEIT NOT FROM THIS COURT YET, BUT SO FAR IF THE INSURED WILLFULLY REFUSES TO COMPLY WITH THE CONDITION AND THE CONDITION IS ONE OF THE ONES, AND THERE ARE ONLY THREE REALLY, WHERE THE ONLY PERSON WHO HAS THE INFORMATION IS THE INSURED AND THE ONLY ONE WHO CAN PROVIDE IT IS THE INSURED.

WE HAVE THESE CONDITIONS DESIGNED BEFORE IT IS FILED AND HENCE THE NO ACTION CLAUSE SO THAT LET'S US GET THE INFORMATION AND IF WE CAN SETTLE YOUR CASE AND SHOULD SETTLE YOUR CASE LIKE HERE WHERE IT TURNS OUT SHE HAS RSD AND SHE TELLS US THAT.

WE WANTED TO CONFIRM IT.

WE DIDN'T GET TO CONFIRM IT UNTIL A YEAR LATER BUT OUR POSITION AT TRIAL WAS NOT SHE DOES NOT HAVE RSD.

RSD IS A DIFFICULT DIAGNOSIS AND IS IT DIFFICULT CAUSAL RELATIONSHIP.

BUT THE DOCTOR THAT WE HAD IS AN RSD SPECIALIST AND IF WE HAD OUR CHANCE, THAT OUR POLICY IS DESIGNED TO GIVE US TO RESOLVE THIS BEFORE, THEN NONE OF US ARE HERE.

SHE GETS THE 100,000 THAT SHE PAID THE PREMIUM FOR AND WE ARE DONE WITH THE WHOLE THING.

>> STATE FARM IS DEFENDING UNDER A LIABILITY CLAIM, STATE FARM ASSERTS IT HAS THE RIGHT TO REQUIRE THE THIRD PARTY TO SUBMIT TO STATE FARM'S EXAM BEFORE THE SUIT IS FILED?

>> NO, NOT --

>> AND WHERE IS THE CONDITION OF THE STATUTE THAT SAYS THAT YOU CANNOT FILE AN UNINSURED MOTORIST CLAIM UNTIL YOU COMPLY WITH A MEDICAL EXAMINATION REQUESTED BY AN INSURANCE COMPANY?

>> THERE ISN'T ONE IN THE STATUTE.

I THINK THAT WE CAN FILL IN WITH REASONABLE POLICY CONDITIONS AND I'M TELLING YOU THIS IS A SENSIBLE PROVISION.

IT HAS A GOOD PURPOSE AND A GOOD INTENTION.

>> EXCUSE ME.

WHERE IN THE POLICY DOES IT PROVIDE FOR FORFEITURE AS A CONSEQUENCE OF NOT PROVIDING OR NOT SUPPLYING THE CME?

>> THE POLICY SAYS THAT NO ACTION SHALL BE BROUGHT UNLESS THERE HAS BEEN COMPLIANCE -- UNTIL THERE HAS BEEN COMPLIANCE WITH THE POLICY TERMS.

>> IT SAYS THAT THE BUT WHERE DOES IT SAY YOU ARE GOING TO FORFEIT ALL BENEFITS OF THE POLICY UNLESS YOU COMPLY?

>> THAT CLASS HAS ALWAYS BEEN INTERPRETED INCLUDING BY THIS COURT STARTING IN THE SOUTHERN INSURANCE VERSUS PUTNELL CASE, THAT VERY PHRASE IS EXACTLY HOW IT'S TREATED AND WHAT THE SUPREME -- WHAT THIS COURT SAID WAY BACK THEN AND HOW IT'S BEEN TREATED BY THE OTHER CASES IS, REQUIREMENT FOR AN EXAMINATION UNDER OATH.

IT IS NOT A UM CASE.

>> THERE IS A DIFFERENCE BETWEEN --

THERE'S A DIFFERENCE BETWEEN COVERAGES THAT ARE REQUIRED BY LAW AND THOSE THAT ARE NOT. AND THERE HAS NEVER BEEN A CASE, THE UM CASE SAYS THE INSURED FORFEITS ALL UNINSURED MOTORIST COVERAGE CONTRARY TO THE COVERAGE -- STATUTE.

IN THE SUPREME COURT CASE.

>> IN THE SUPREME COURT CASE.

>> WE DO HAVE ONE FROM THE THIRD DISTRICT.

>> IT IS AN OUTLIER AND ONE THAT DOES NOT MENTION THE UNINSURED MOTORIST COVERAGE AND IT USES FIRE CASES AND LIFE INSURANCE CASES THAN I AM WELL AWARE OF THOSE CASES.

UM IS A VERY RESPECTED INSURANCE ADVOCATE AND LAWYER.

DON'T YOU AGREE THERE'S A DIFFERENCE BETWEEN FIRE POLICIES AND LIFE POLICIES AND UNINSURED MOTORIST COVERAGE?

>> I DO, I DO BUT I ALSO THINK THERE ARE REASONS FOR POLICY CONDITIONS AND REMEMBER ANY OF

THESE CONDITIONS WE HAVE ARE IN
A TERMS OF OUR POLICY HAS TO BE
APPROVED BY THE INSURANCE
SERVICES OFFICE I STATUTE.

WE ARE NOT ALLOWED TO HAVE ANY
PROVISIONS IN OUR POLICIES --
>> THE ISSUE ISN'T WHETHER IT'S
A LAWFUL PROVISION.

THE ISSUE THAT JUSTICE LABARGA
ASKED -- AND I'M SURE YOU
ANSWERED -- IS WHERE IN THE
POLICY DOES IT SAY THAT THE
RESULT OF NOT COMPLYING IS A
FORFEITURE OF ALL BENEFITS?
THAT IS WHAT MR. LAWSON WAS
TALKING ABOUT WHETHER IT WAS
STATE FARM WAS THE MASTER OF ITS
OWN CONTRACT SO IT'S NOT A
QUESTION OF WHETHER IT'S A
LAWFUL PROVISION.

NOBODY IS CONTESTING THAT.

THE QUESTION IS WHETHER EVEN A
MATERIAL BREACH OF IT MANDATES
AS A MATTER OF LAW FORFEITURE OF
ALL UNINSURED MOTORIST BENEFITS.
>> QUITE SEPARATE AND APART FROM
WHAT TYPE OF POLICY IT IS THE
LANGUAGE THAT NO ACTION MAY BE
BROUGHT HAS BEEN HELD AT THIS
COURT IN THE SOUTHERN INSURANCE
VERSUS PUTNELL CASE, NO ACTION
CLAUSE MEANS THAT IF YOU BREACH
THE POLICY CONDITION IN
QUESTION, THEN THE NO ACTION
CLAUSE PROVED -- IF YOU BREACH
IT IN FILE SUIT ANYWAY UNDER THE
NO ACTION CLAUSE AND YOU HAVE
FORFEITED YOUR BENEFIT FOR THAT
PARTICULAR LOSS.

BUT IF I MAY, THERE IS NOTHING
SINISTER OR ILL INTENTIONED
ABOUT THIS POLICY CONDITIONS.

>> LET ME ASK YOU ABOUT THE
LANGUAGE AND I UNDERSTAND WHAT
YOU SAY ABOUT PUTNELL
I TRIED TO READ THAT AND I DID
READ IT.

THE LANGUAGE ITSELF IS A POLICY
THAT SUGGESTS FORFEITURE DOESN'T
IT?

BECAUSE IT IS A TEMPORAL
REFERENCE.

IT SAYS UNTIL --

>> THAT MIGHT SUGGEST THAT THE
LOSS IS DISMISSED AND WHATEVER
HAPPENS AS IS A CONSEQUENCE OF
THAT HAPPENS AND WHEN THEY

COMPLY THEY CAN FILE AGAIN.
BUT WHY ISN'T THAT LANGUAGE --
WHY SHOULDN'T WE CONSIDER
THAT --
[INAUDIBLE]
>> IF YOU WANT TO RECEIVE OR
CHANGE PUTNELL I'M JUST TELLING
YOU THAT IS WHAT PUTNELL SAID SO
THAT IS EVERYONE HAS BEEN
GOVERNED EVER SINCE AND THAT IS
HOW IT IS INTERPRETED AND IT HAS
BEEN.
OTHERWISE YOU ARE JUST SAYING IT
MEANS NOTHING.
JUST GO AHEAD AND PRETEND FILE
SUIT AND IT'S NOT GOING TO MEAN
ANYTHING.
YOU DON'T HAVE A CAUSE OF ACTION
AGAINST US.
UNLESS YOU GIVE US A CHANCE TO
DO OUR JOB.
>> THE LAWSUIT -- I UNDERSTAND
YOUR VIEW THAT YOU SUFFER
PREJUDICE ONCE THE LAWSUIT IS
FILED BECAUSE YOU HAVE BEEN
DRAGGED INTO COURT WITHOUT THE
COMPLIANCE OF THAT CONDITION.
WHICH IS A PREREQUISITE.
>> CORRECT, AND SO THERE HAS TO
BE SOME CONSEQUENCE FOR THEM
FILING SUIT ANYWAY.
IF IT'S NOT GOING TO --
I MEAN WHAT IT IS, YOU DO IT AT
YOUR PERIL.
THAT IS EXACTLY WHAT THIS COURT
SAID IN PUTNELL.
IF YOU WANT TO STAND AND WE
THINK YOUR RIGHTS ARE IN FILE
THE SUIT ANYWAY THAN YOU DO IT
AT YOUR PERIL, BUT HERE THE
POINT IS YOU THE INSURED IS THE
ONLY ONE THAT HAS THE
INFORMATION.
IT'S LIKE EXAMINATIONS UNDER
OATH WITHOUT REASON.
YOU ARE THE ONLY ONE WHO KNOWS
ABOUT THE TRUTH.
YOU ARE THE ONLY ONE WHO CAN
GIVE US THAT.
WE ASK YOU FOR IT IN YOUR POLICY
SAYS HE WILL GIVE IT TO US AND
YOU DON'T.
SO IF YOU WILLFULLY BREACH, WHY
ARE WE WORRIED ABOUT FORFEITURE?
IF YOU DON'T WANT TO FORFEIT,
DON'T CREATE A FORFEITURE.
JUST DO IT.

THERE IS NOT A PROBLEM, IT'S NOT AN UNREASONABLE AND NO ONE HAS PRETENDED ITS UNREASONABLE.

WE NEED TO KNOW WHAT IS WRONG WITH YOU SO WE CAN KNOW WHETHER OR NOT WE SHOULD GIVE YOU THE MONEY.

>> YOU ARE OUT OF TIME AND YOU HAVE ONE MINUTE FOR REBUTTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.

MY NAME IS GARY FARMER AND I'M SPEAKING FOR THE RESPONDENT IN THIS CASE AT THE COUNSEL TABLE. I WANT TO RESPOND TO THE CHARACTERIZATION OF THE HOLDING IN THE PUTNELL BECAUSE I UNDERSTAND COUNSEL'S ARGUMENT SHE SEEMS TO BE SAYING THAT CASE ALONE IS THE AUTHORITY TO IMPOSE A FORFEITURE SIMPLY BECAUSE OF A VIOLATION OF THE POLICY CONDITION.

THE TRUTH OF THE MATTER IS THAT NOT ONLY IS THE FIRE INSURANCE POLICY AND STRUCTURAL INSURANCE, BUT THE COURT WAS SET PAINS AT SEVERAL POINTS IN THAT LONG-WINDED OPINION THAT GOES THROUGH DECLARATIONS AND REJOINDERS AND ALL OF THAT OTHER STUFF THAT I HAVE LONG SINCE FORGOTTEN WHAT IT MEANS.

NEVERTHELESS IF YOU WAIT FOR IT YOU WILL SEE TWO POINTS IN THE OPINION THAT POINT TO SPECIFIC LANGUAGE OF THE PUTNELL POLICY WHICH SAID AT THE VERY BEGINNING, NO BENEFITS ARE PAYABLE UNDER THIS POLICY UNLESS THE INSURED HAS DONE THIS. THAT IS TO SAY GIVEN AN EXAMINATION UNDER OATH. NOTHING ABOUT A COMPULSORY MEDICAL EXAM.

THE COURT CITED A UNITED STATES SUPREME COURT OPINION WHICH TALKED ABOUT THE IMPORTANCE OF THAT PARTICULAR PROVISION IN FIRE INSURANCE POLICIES BECAUSE THE ARSON IN ALL OF THE OTHER THINGS THAT GO ON.

SO IF YOU REALLY WANT TO READ PUTNELL ACCORDING TO ITS HOLDING, ITS HOLDING IS THAT WHERE THE CARRIER HAS TAKEN THE TIME AND EFFORT TO PUT INTO THE

POLICY SPECIFIC CONSEQUENCE FOR
NONCOMPLIANCE POLICY CONDITION
YOU WILL ENFORCE IT.
EVEN THOUGH IT MEANS NO BENEFITS
ARE PAID FOR.
>> SO YOUR POSITION IS IF THEY
DID IT THEY COULD DO IT LAWFULLY
AND NOT BE IN CONFLICT?
>> THAT IS ANOTHER STORY BUT WE
HAVE NOT GOTTEN TO THAT POINT.
WHAT I'M SAYING IS A COULD HAVE
PROVIDED A LESSER FORM OF REMEDY
FOR A VIOLATION OF THAT THAN THE
ONE THAT, THE ONE THAT SEEMS TO
APPLY IN THE POLICY.
>> WHY ISN'T IT LESSER TO SAY
THAT NO ACTION --
[INAUDIBLE]
>> WHAT IS THE CONSEQUENCE OF
FILING THE ACTION ANYWAY?
THEY COULD'VE HAD SOME
CONSEQUENCE IS SPECIFIED IN THE
POLICY.
>> THE ACTION WILL BE ABATED OR
DISMISSED --
>> WHAT HAPPENED IN THIS CASE?
>> IN THIS CASE?
THEY DECIDED RIGHT OFF THE
BAT THE MINUTE THAT SHE DID NOT
APPEAR FOR THE SEPTEMBER 12 CME
AND WAS NOT GOING TO APPEAR FOR
THE CME, THEIR IMMEDIATE
POSITION AT THAT POINT WAS
RESERVATION OF RIGHTS.
>> IN FAIRNESS STATE FARM, THIS
WASN'T ABOUT --
WHAT WAS THE VERDICT IN THIS
CASE?
>> A LITTLE OVER 4 MILLION.
>> THIS WAS ABOUT IN MY VIEW
BOTH PARTIES POSTURING FOR THE
CASE.
>> I AM GLAD YOU SAID THAT
BECAUSE LET ME AGREE WITH YOU.
IT IS ABOUT BOTH PARTIES
POSTURING WHERE'S THE COMMENTS
OF THE JUDGES IN THE DISTRICT
WERE FOCUSING ON ONE SIDE
POSTURING.
WHAT YOU HAVE IS THE RESULT OF
SEVERAL CHANGES IN UM LAW AND
PROCEDURES AND POLICIES.
WHAT YOU HAVE HERE NOW IS, IT'S
AN AQUATIC BALLET BETWEEN THE
SNIPING OF -- THAT COULD
ELECTROCUTE YOU SO TO SPEAK.
YOU HAVE ON THE ONE SIDE AND

INSURANCE COMPANY THAT GOT A NOTICE REQUIREMENT, REQUIRING THAT PLAINTIFFS IF THEY ARE GOING TO CLAIM THEY HAVE TO GIVE A NOTICE THAT SOME SPECIAL PERIOD OF TIME WITHIN 60 DAYS TO COMPLY.

>> WAIT, THERE IS NOTHING WRONG WITH THAT.

>> LET ME FINISH THOUGH.

>> YOU SOUND LIKE THAT'S A SINISTER THING.

>> WHAT I'M GETTING AT IS THE WAY IT IS BEING USED AND DEPLOYED EARLY THEY THEN START DROPPING INTO THEIR POLICIES TO SEE THE CME REQUIREMENT.

THEY WERE DOING CME'S AND UM CASES AND LIABILITY INSURANCE CASES FOR A LONG TIME TO SAY WITHOUT ANY PROVISION IN THE POLICY HE COULD AS RULE 1.360 HAVE BEEN INTERPRETED TO GIVE THEM AN ABSOLUTE RIGHT TO THAT. WHY ARE THEY PUTTING THEM INTO THE POLICY?

>> BEFORE THE LAWSUIT WAS FILED IF THEY DIDN'T HAVE IT IN THEIR WAS IT THEY ARE RIGHT FOR THEM TO HAVE AN INSURANCE COMPANY?

>> BUT WHAT IS WRONG WITH THE PROVISION THAT ALLOWS THE ENSURE TO FULLY EVALUATE THE CLAIM AND HAVE A MEDICAL EXAMINATION?

>> I'M NOT FIGHTING YOU ON THAT BASIS.

>> IS IT YOUR POSITION THAT CONDITION OF THE POLICY IS INVALID BECAUSE IT'S INCONSISTENT WITH THE UNINSURED MOTORIST?

>> ABSOLUTELY CONSISTENT WITH IT.

BUT LET'S TALK ABOUT THIS CASE. THEY SAID, YOU HEARD HER DESCRIBE A FEW MINUTES AGO THAT THE PROBLEM IN THIS CASE WAS A PARTICULAR MENTAL CONDITION, RSD, DIFFICULT TO DIAGNOSE, DOUBTFUL ONSET, DELAYED ONSET IN ALL KINDS OF PROBLEMS.

OKAY, HOW DID THEY WANT TO DO THIS CME THAT IS SO IMPORTANT TO THEM TO FIND OUT IF THIS IS REALLY AN RSD CASE OR NOT?

THEY TAKEN OR THE POD 70 MILES AWAY WHO WAS A SHILL FOR UM

CARRIERS.
>> IT SEEMS THAT BOTH SIDES ARE
POSTURING --
>> AND I AGREE WITH THAT BUT
THEY ARE NOT POSTURING.
THEY ARE TRYING TO PROTECT
THEMSELVES AND THE EVENT THAT
COMES DOWN.
>> IT SEEMS TO ME EVERYTHING YOU
SAY WHICH IS TO TRY TO GET THIS
RESOLVED THROUGH A MEDICAL
EXAMINATION WHICH IS PERFECTLY
APPROPRIATE.
>> I AGREE WITH THAT.
>> THEN YOU ARE SAYING IF THEY
REALLY CARED ABOUT IT THEY
WOULDN'T HAVE SAID ABOUT
70 MILES AWAY?
HERE WE ARE --
DOES THIS PROVISION IN THE
CONTRACT, A MATERIAL PROVISION?
IN OTHER WORDS IF SHE DID NOT
COMPLY IS THAT A MATERIAL
BREACH?
>> WHAT DO YOU MEAN BY MATERIAL?
IT IS A BREACH, YES.
DOES IT VITIATE THE ENTIRE
POLICY?
NO.
>> UNDER WHAT CIRCUMSTANCE WOULD
IT VITIATE?
>> IF THEY WOULD HAVE SAID IN A
POLICY THAT THIS IS A POLICY OF
YOU UNCOVERS THAT YOU COMPLY AND
WHETHER THEY COMPLIED WITH YOU
ON STATUTE I AGREE WITH YOU IS
ANOTHER PROBLEM ENTIRELY.
WHAT WE ARE TALKING ABOUT IS THE
FACT THAT IF THEY WANT TO MAKE
IT THAT IMPORTANT -- LET ME GO
BACK TO BASIC CONTRACT LAW.
WHAT THEY'RE ASKING YOU TO DO IS
TAKE IN ALL CONTRACT VISIBLE
WHERE YOU HAVE MUTUALLY DEFENDED
PROMISES FOR PERFORMANCE.
THE BREACH THE ONE RELEASES
DISCHARGES THE OTHER.
>> ON THE ISSUE OF POSTURING AND
SETTING UP IN THE CASE, AND THE
PERSONAL INJURY WORLD, THE
CLAUSE OF THE CONTRACT PROVIDES
THAT STATE FARM CAN HAVE AS MANY
CME'S AS THEY WANT.
IT IS A COMMON PRACTICE IN THIS
VERSE ON SURE NEW WORLD FOR NO
LAWYERS TO NEGOTIATE AND SAY MY
CLIENT WILL GIVE UP ONE IF YOU

GET THE OTHER ONE?
IS THAT COMMONLY NEGOTIATED?
>> NOT ONLY IS IT COMMONLY
NEGOTIATED YOUR OPINION
DISCUSSED AT LENGTH IN MY BRIEF
SAYS SPECIFICALLY THAT AND IT
TALKS ABOUT THE PROBLEMS WITH
WITH CME'S CREATING PROBLEMS FOR
BOTH SIDES.
IT'S NOT JUST A ONE-SIDED
PROBLEM.
IT'S NOT JUST THE INSURANCE
COMPANIES PROBLEM.
IT DOES CREATE PROBLEMS FOR
PATIENTS.
YOU HAVE BEEN VIVID LIVING COLOR
IN THIS CASE.
IF THEIR UM BENEFITS POLICIES
DEPENDENT ON FINDING OUT WHETHER
THIS WOMAN REALLY HAS RSD WHY
AREN'T THEY ASKING HER TO SEE A
NEUROLOGIST AND SOMEONE CLOSE TO
WHERE SHE LIVES IN BREVARD
COUNTY, NOT WAY UP IN THE
NORTHERN PART OF ORLANDO?
I CAN UNDERSTAND THE RUSH TO DO
IT.
>> IS THIS REALLY A MATTER OF
WHETHER OR NOT BY NOT SUBMITTING
IN A TIMELY FASHION THE CME THAT
YOU ARE LOSING YOUR BENEFITS OR
IS THIS A CASE WHERE YOU LOOK AT
THIS AS TO WHETHER OR NOT THERE
ARE SOME REASONABLENESS IN HER
FAILURE TO DO SO?
>> I THINK IT'S THE LATTER.
I REALLY DO PAY.
IF THEY WANTED TO SET THAT UP AS
A REASON, THEY WOULD HAVE
DEPLETED AS AN AFFIRMATIVE
DEFENSE WHICH IS AN ORDINARY
CONTRACT RULE OF LAW THAT YOU
SAY IF WE HAVE THIS CONDITION
ARE POLICY AND YOU DIDN'T COMPLY
WITH IT A IT WE PLEAD THAT AS AN
AFFIRMATIVE DEFENSE AND AT THAT
POINT THEY HAVE TO SHOW SOME
PREJUDICE FROM IT.
WE THEN HAVE THE OPPORTUNITY TO
SHOW THERE IS ANOTHER SIDE TO
THAT.
>> IN THIS CASE AND CORRECT ME
IF I'M WRONG, YOUR CLIENT ON
SEVERAL OCCASIONS REFUSED TO
SUBMIT TO THE CME.
>> I WANT TO BE CAREFUL ABOUT
THIS.

NO SHE DID NOT REFUSE TO SUBMIT
THAT WHAT SHE TRIED TO GET WAS
NEGOTIATE CONDITIONS OF
AGREEMENT.

ONE YOU HAVE ALREADY TALKED
ABOUT ONE TIME ONLY, I AGREE
THAT IT'S PROBABLY UNREASONABLE
IN THE CONTEXT EVEN THOUGH THIS
KIND OF THE DISEASE AND THE
70-MILE TRAVEL IS VERY HARD FOR
HER.

I'M NOT GOING TO SAY ON ITS FACE
THAT IS COMPLETELY REASONABLE
BUT THE REST OF WHAT SHE WAS
ASKING FOR IS THE KIND OF THING
THAT THIS COURT HAS APPROVED
DOING IN 1.360 EXAMINATION'S FOR
MANY YEARS.

IT'S ENTIRELY REASONABLE FOR THE
PATIENTS TO HAVE REASONABLE
ACCOMMODATIONS GIVING INTO THE
IN TO THE IDEA OF THE CME.

>> ALL OF THE CORRESPONDENTS
HERE SAID WE WERE GOING TO DO
THE CME AND WE ARE TALKING ABOUT
HOW, WHERE AND WHEN?

>> ARE YOU ASKING US TO SEND THE
CASE BACK TO THE TRIAL COURT
LEVEL TO SEE WHETHER PREJUDICE
OCCURRED WITH STATE FARM?

>> NO, THEY FORSWORE THAT AND
THEY HAD EVERY OPPORTUNITY TO
ASK FOR THAT AND THEY SAID THEY
WANTED REACH ONLY FROM THE
BEGINNING.

I THINK WHAT YOU SHOULD DO IS
ANSWER --

THE FIFTH DISTRICT IS SOMETHING
I THOUGHT WAS INTERESTING ABOUT
GETTING THIS CASE TO YOU.
THEY CERTIFIED IT AS A QUESTION
OF GREAT PUBLIC IMPORTANCE IN AN
OPINION IN WHICH THEY OPENLY
SAID WE ARE DISAGREEING WITH THE
THIRD DISTRICT DECISION,
CREATING DIRECT DECISIONAL
CONFLICT ON THE D'FERRARI -- YOU
REMEMBER IS A UM CASE ABOUT A
CME VIOLATION ON POINT WITH THIS
CASE SO YOU HAVE DIRECT CONFLICT
JURISDICTION BUT THEY SEND IT TO
YOU AS A CERTIFIED QUESTION.

I THINK YOU SHOULD ANSWER THE
QUESTION THAT IN THIS KIND OF
THE SITUATION, WE ARE TALKING
ABOUT A CONDITION FOR
PERFORMANCE THAT NOT ONLY ARISES

AFTER THE CONTRACT WAS MADE, WAS NOT MADE A CONDITION OF ANY PERFORMANCE AT ALL ON ONE SIDE OR THE OTHER.

IT'S JUST A CONDITION AND IT ARISES NOT ONLY AFTER THE CONTRACT BUT AFTER AN ACCIDENT AND AFTER A CLAIM HAS BEEN MADE. AT THAT POINT AS YOU SAY IT'S A COOPERATION KIND OF THING. WHY SHOULDN'T THIS BE SOLVED BY THE ORDINARY PRECEDENCE?

>> THEN YOU WOULD SAY IS THAT THEY NOTICE REQUIREMENT?

>> WELL NO I DON'T THINK IT'S A SERIOUS REQUIREMENT.

>> YOU MAY NOT THINK IT IS BUT IN ONE CASE STATE FARM MAY KNOW THE ACCIDENT OCCURS BY ANY MEANS BUT ONLY YOUR CLIENT HAS THE MEANS TO MAKE SURE THAT STATE FARM KNOWS THE EXTENT OF HER INJURIES.

>> WHICH AS I SAID INVOLVES A DISEASE THAT ONLY MANIFESTS ITSELF LATER ON AND IS DIFFICULT TO DIAGNOSE OF THE DELAY BETWEEN THE ACCIDENT AND THEN GETTING NOTICE THAT THE EXTENT OF HER INJURY IS PERFECTLY UNDERSTANDABLE.

>> THEREFORE PREJUDICE -- THE BURDEN IS ON STATE FARM TO PROVE THAT THE BREACH WAS A BREACH AND THEY HAD TO SHOW PREJUDICE?

>> YES --
I'M SORRY?

>> PREJUDICE IS PART OF THE ANALYSIS.

>> WE WOULD HAVE THE OPPORTUNITY TO REBUT THAT.

>> WHAT THE FIFTH DISTRICT SAID IS THAT THE WAY STATE FARM FAILED TO MEET ITS BURDEN AND THE WAY IT WAS PRESENTED DETERMINED A FORFEITURE OF COVERAGE HAD OCCURRED AND STATE FARM MADE NO ASSERTION OF PREJUDICE AND EXPLAINING THE ARGUMENT AND THEN THEY SAID EVEN IF THEY HAD ARGUED PREJUDICE, THE RECORD WOULD -- AND THEN YOU GO ON.

DO YOU AGREE AND HER HEADNOTE MIND OF THE FIFTH DISTRICT'S OPINION DO YOU AGREE WITH EVERYTHING THEY SAID ABOUT WHY

THERE IS NO PREJUDICE?

>> YES I DO.

I DO AND ADDITION TO THE FACT THAT THEY HAVE WAY THE WHOLE IDEA ABOUT IT WHETHER THEY HAD ANY.

>> THAT DETERMINATION OF THE TRIAL ITSELF WAS YOUR CLIENT WASN'T ENTITLED TO --

[INAUDIBLE]

>> IT WOULD SEEM THAT THE PREJUDICE OF STATE FARM I GUESS HAD THEY CHOSEN TO ASSERT IT WOULD HAVE BEEN THE COST OF THE LITIGATION ITSELF.

UP TO THE POINT WHERE THEY GOT THEIR CME.

WHICH WAS NOT THAT LONG AND ALL I'M GOING TO TELL YOU REALLY IS THEY HAVE NEVER SUGGESTED --

>> IT SEEMS LIKE IF THEY ARE IN A TRIAL, THEY ARE IN A TRIAL THAT THEY HAD TO SEE THROUGH THE END OF THE TRIAL IN SOME WAY. ONCE THEY ARE IN THEY ARE IN.

>> YOU WOULD DISAGREE THAT THEY WOULD BE ENTITLED TO ATTORNEY'S FEES AND COSTS AND THAT IS THE PREJUDICE PIECE?

>> NO I'M SUGGESTING THAT THE DAMAGES COULD HAVE BEEN REDUCED IN THE OBLIGATION THAT THEY OWE THE CLIENT.

>> WHEN DID THE, UNDER -- WHEN DID THE EXAMINATION OCCUR?

>> I THINK MS. RUSSO WAS CORRECT.

IT MIGHT'VE BEEN A YEAR AFTER THE SUE WAS ACTUALLY FILED BUT IN THE MEANTIME NOBODY WAS PUSHING TO HAVE IT DONE.

>> I JUST WANT TO MAKE SURE, AFTER THE LAWSUIT WAS FILED --

>> AUGUST OF 07 I THINK.

>> STATE FARM DID NOT ASK --

>> ONCE THEY SAID THE POLICY WAS REVOKED, THAT WAS THEIR POSITION, YES.

>> DID THEY EVER OFFER 100,000?

>> THAT I DON'T KNOW ABOUT.

>> I AM NOT SURE WHY I DON'T KNOW IT BUT I DON'T.

LET ME JUST SAY THIS.

AFTER THE CASE BROKE DOWN IN SEPTEMBER OF 07, AND THEY DECLARED THAT THE POLICY WAS NO LONGER VALUED BY BENEFITS IT WAS

FORFEITED.

THE NEXT THING THAT HAD TO BE DETERMINED WAS THE WHOLE QUESTION WHETHER THERE WAS FORFEITURE OF THE POLICY BENEFITS.

THEY WEREN'T DETERMINED UNTIL THE FOLLOWING SPRING, MARCH OR APRIL AND IF I'M CORRECT I THINK THE CME WAS DONE IN AUGUST OR JULY OR SOMETHING LIKE THAT. HIS REPORT DID FIND THERE WAS RSD.

IT WAS USED AT TRIAL IN MY POINT IS IT'S INCONCEIVABLE TO ME THAT IF THE WHOLE PURPOSE OF THE CME PROVISION ABOUT HAVING IT DONE BEFORE A LAWSUIT WAS FILED SO THEY COULD FIX AND DETERMINE FOR SURE THAT THIS WAS THAT KIND OF THE CASE, THEY WEREN'T PREJUDICED IN THE LEASE BUY IT, NOT IN THAT SENSE.

AS JUSTICE CANADY POINTS OUT I DON'T HAVE AN ARGUMENT.

I THOUGHT ABOUT IT A GREAT DEAL AND I DON'T HAVE AN ARGUMENT FOR IT OTHER THAN TO SAY IF YOU DEEM THAT PREJUDICE OF THE LIABILITY INSURANCE CARRIER HAD A PROBLEM EXTENDING A LIABILITY CASE AT THAT SOMETIME IF YOU THINK THAT IS A REAL PROBLEM, THE ONLY THING IT IS AS THE COST OF DEFENDING.

>> THE POINT IS THAT THEY HAVE A CONTRACTUAL --

FOR THE INSURED TO TAKE UP A PARTICULAR ACCIDENT AND THE INSURED DOESN'T DO IT AND THAT CAUSES THEM TO BE SUBJECTED TO A LAWSUIT THAT THEY MAY HAVE OTHERWISE AVOIDED THERE SHOULD BE SOME REMEDY FOR THEM FOR THAT.

[INAUDIBLE]

>> YES, THERE CAN BE A REMEDY.

>> IS THAT A JOKE?

>> THAT IS A TRADITIONAL CONTRACT REMEDY FOR A DE MINIMIS BREACH OF A CONDITION.

I AM SAYING THIS IS DE MINIMUS.

>> THEY ARE SUED WHEN THEY HAD A RIGHT NOT TO BE SUED.

THAT IS WORTH 1 DOLLAR.

THAT IS YOUR POSITION?

>> I AM SAYING IT'S FOR NOMINAL

DAMAGES.
THOSE NOMINAL DAMAGES --
>> YOU SAID 1 DOLLAR.
>> I AM USING IT AS SYMBOLIC.
NOT THE AMOUNT.
OF COURSE, THE POLICY COULD'VE
STATED THAT IF YOU DON'T COMPLY,
YOU DEFAULT OR FORFEIT.
IF IT HAD BEEN FILED WE WOULDN'T
BE HERE TODAY.
>> AS JUSTICE LEWIS HAS POINTED
OUT I BELIEVE IN THE UM STATUTE
THAT MAY NOT BE A CONDITION.
WHAT WE ARE ALL TRYING TO SAY IT
SEEMS TO ME IN THIS CONVERSATION
IS THERE ARE WAYS FOR THEM TO
HAVE DRAFTED A POLICY TO PROVIDE
SOME REMEDY FOR THIS VERY
EVENTUALITY KNOWING THIS IS NOW
A DANCE OF THE SCORPIONS AND ALL
THESE UM CASES WHERE THERE DOES
APPEAR THERE MIGHT BE
SIGNIFICANT INJURIES.
THAT IS EXACTLY WHAT'S GOING ON.
THE PLAINTIFFS ARE WORRIED ABOUT
GETTING KNOCKED OUT OF COURT
BECAUSE THEY DIDN'T COMPLY WITH
ALL OF THE THINGS THEY ARE
SUPPOSED TO.
THEY ARE WORRIED, WE NEED CME'S
DONE RIGHT AWAY AND NOW WE HAVE
A DANCE FOR EACH SITE IS TRYING
TO USE THEIR THING TO CLOBBER
THE OTHER SIDE IN RELATION TO
SOMETHING THAT MAY EVENTUATE
AFTER THIS CASE IS OVER.
>> THAT IS THE PROBLEM IN
DISCUSSING IT IN THAT CONTEXT.
YOU GUYS ARE FIGHTING ABOUT SOME
KIND OF BAD FAITH AND THEY MAY
HAVE BEEN ABSOLUTE DEFENSE FOR
THAT YET WE ARE GOING TO
ESTABLISH LAW FOR A FAMILY THAT
MAY SUSTAIN \$15,000.
NOT SOME ENORMOUS INJURY AND A
WORKING FAMILY AND PROBLEMS WITH
GETTING TO THE YARD WORKER,
CAN'T AFFORD TO MISS WORK.
THERE ARE ALL KINDS OF
SITUATIONS.
WHEN WE START OVERLAYING THIS
BAD FAITH STUFF WE MISS YOU --
MISS THE POINT OF THE ISSUE.
THERE IS A CONFLICT TO TRAIN
D'FERRARI AND CURRAN AND IT IS
THIS.
OVER THIS KIND OF CONDITION

WHICH HAS NOTHING TO DO WITH CONTRACTING OR THE PAYMENT OF MONEY DAMAGES BUT WHICH HAS TO DO WITH THE PROCESSING OF THE CLAIM AFTERWARDS, WHAT OUGHT TO BE THE REMEDY ANALYSIS? THAT IS ALL IT IS. THEY SAY THE REMEDY ANALYSIS IS THERMONUCLEAR WAR. THE WORLD AND UNDER THIS POLICY AND WE SAY THAT IS NOT WHAT YOUR CASE IS. THAT IS NOT WHAT CUSTER SAYS AND NOT WHAT SHIMENO APPLIES IN THE WHOLE CME ANALYSIS ABOUT WELL I WILL GO TO THIS DOCTOR IF WE CAN ADJUST THIS OVER HERE AND AGREE ON THIS. YOU SAID THAT IS PERFECTLY PERMISSIBLE AND UNDERSTANDABLE. THAT IS ALL THEY WERE TRYING TO DO IN THIS CASE. IT WAS NEVER THE CME. IT WAS WHERE, WHEN AND HOW. >> JUSTICE LABARGA DO YOU HAVE A QUESTION? >> A COUPLE OF VERY QUICK POINTS. ONE OF THEM IS YOU ARE NOT ASKING FOR AN THERMONUCLEAR WAR. WE ARE JUST ASKING TO COMPLY WITH THE INSURANCE CONDITIONS. >> LET ME ASK A QUESTION BECAUSE IT SEEMS TO ME THE ARGUMENT HAS BROKEN DOWN TO WHETHER OR NOT YOU WANT A REMEDY THAT YOU COULD HAVE NOT VALIDLY HAD IF YOU HAD ACTUALLY PUT IT IN YOUR POLICY. DO YOU AGREE WITH THEIR POSITION THAT YOU COULD NOT HAVE HAD A POLICY PROVISION THAT ACTUALLY SAID THAT YOU WOULD FORFEIT YOUR BENEFITS AND THAT WOULD HAVE BEEN A VIOLATION UNDER THE UM STATUTE? >> NO I DON'T AGREE IS THAT BECAUSE I THINK INSURERS ARE ENTITLED TO REASONABLE PROVISIONS AND YOU'RE ASKING FOR BODILY INJURY MONEY. WE HAVE A RIGHT TO FIGHT OVER WHAT IS BODILY INJURY. ON THE PREJUDICE WE DIDN'T WAIVE ANY QUESTION ABOUT PREJUDICE. AT THE TIME WE WERE BROUGHT IN TO SUIT THE GOVERNING LAW WAS YOU DON'T COMPLY AND ALL WE HAVE

IS THE DISTRICT COURT DECISION FROM THE THIRD DISTRICT IN THE FIFTH WHICH IS GOVERNING AND THAT IS THE CASE THAT FOLLOWED D'FERRARI THAT SAID IF YOU DON'T COMPLY WITH YOUR CME THEN YOU HAVE FORFEITED THE POLICY BECAUSE YOU HAVE A CHANCE TO DO IT IN FILED SUIT ANYWAY SO THERE WASN'T A WAS THE QUESTION OF RAISING PREJUDICE.

I WOULD JUST LIKE TO SAY IN FOOTNOTE 6 OF OUR REPLY BRIEF YOU DOCUMENTED THE MANY TIMES THAT WE TRIED TO GET THIS EXAM AFTER THE SUIT WAS FILED THAT WAS BLOCKED BY THEM INCLUDING AS SOON AS WITHIN A MONTH OF THEM FILING THE SUIT YOU TRIED, WE HAD TO DO IT UNDER 1.360 AND THERE WAS AN OBJECTION FILED BY THE PLAINTIFFS.

IT WAS THE SAME ONE THEY AGREED TO AGREE TO AND THE FINAL POINT, JUST BECAUSE I WOULD LIKE THE CASE TO BE DECIDED ON THE FACTS, VOLUME THREE PAGE 493 THE PLAINTIFF TESTIFIED HER OWNS POSITION SUGGESTED SHE GO SEE HIM BECAUSE HE IS AN RSD SPECIALIST.

GIVE US A CHANCE TO COMPLY WITH THE CONDITIONS AND LET US FIND OUT WHAT YOUR BODILY CONDITION IS SO WE CAN AVOID INVOLVING EVERY COURT IN THE STATE IN WHAT SHOULD'VE JUST BEEN DECIDED.

ONLY THREE OF THESE CASES SINCE 1993 FOR THE COURT DECIDED TO GET INVOLVED, THE PLAINTIFF REFUSES TO COMPLY.

THEY ARE UNDERSTANDABLE -- WHY THEY ARE NEEDED BY THE INSURER. WE WOULD ASK THAT WE GO BACK TO WHAT THE FIFTH DISTRICT HELD IN THE ORIGINAL PANEL DECISION WHICH IS TO COMPLY WITH THE POLICY CONDITIONS.

IF YOU ARE GOING TO PLEAD IN A PREJUDICE REQUIREMENT IT SHOULD DEFINITELY BE ON THE INSURER TO PROVE UNDER MASSIUS BECAUSE THE INSURED IS THE ONE WHO PREACHED.

>> THANK YOU FOR YOUR ARGUMENTS. THE NEXT CASE IS RAYMOND JAMES FINANCIAL VERSUS PHILLIPS.