

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
**THE SUPREME COURT**  
**OF THE**  
**UNITED STATES**

CAPTION: ATLANTIC MUTUAL INSURANCE COMPANY,  
Petitioner v. COMMISSIONER OF INTERNAL REVENUE  
CASE NO: 97-147  
PLACE: Washington, D.C.  
DATE: Monday, March 2, 1998  
PAGES: 1-47

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1                   IN THE SUPREME COURT OF THE UNITED STATES

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3 ATLANTIC MUTUAL INSURANCE                   :  
4   COMPANY,                                   :  
5                   Petitioner                   :  
6                   v.                               :   No. 97-147  
7 COMMISSIONER OF INTERNAL                   :  
8   REVENUE                                   :  
9   - - - - -X

10   Washington, D.C.

11   Monday, March 2, 1998

12                   The above-entitled matter came on for oral  
13 argument before the Supreme Court of the United States at  
14 10:44 a.m.

15 APPEARANCES:

16 GEORGE R. ABRAMOWITZ, ESQ., Washington, D.C.; on behalf of  
17                   the Petitioner.

18 KENT L. JONES, ESQ., Assistant to the Solicitor General,  
19                   Department of Justice, Washington, D.C.; on behalf of  
20                   the Respondent.

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1 P R O C E E D I N G S

2 (10:44 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in Number 97-147, Atlantic Mutual Insurance Company  
5 v. Commissioner of Internal Revenue.

6 Mr. Abramowitz, you may proceed whenever you're  
7 ready.

8 ORAL ARGUMENT OF GEORGE R. ABRAMOWITZ

9 ON BEHALF OF THE PETITIONER

10 MR. ABRAMOWITZ: Mr. Chief Justice, and may it  
11 please the Court:

12 The setting for this statutory interpretation  
13 case is, alas, subchapter L of the Internal Revenue Code,  
14 which contains, as this Court has recognized, highly  
15 specialized, carefully crafted rules for determining the  
16 taxable income of insurance companies.

17 The petitioner's position in this case is  
18 straightforward and very simply stated. In connection  
19 with a transition rule that Congress adopted in 1986 with  
20 respect to a change in the taxations methodology for  
21 unpaid losses of insurance companies, it provided fresh  
22 start relief, a very favorable provision, but excluded  
23 from that fresh start relief reserve strengthening.

24 Reserve strengthening was the term of art that  
25 Congress used in the statute. Reserve strengthening had,

1 in 1986, a decades-old meaning in insurance tax law.

2 QUESTION: But isn't that a disputed point? I  
3 mean, the Government tells us it didn't, and said we have  
4 witnesses to say it didn't have.

5 MR. ABRAMOWITZ: The -- I -- it's unclear,  
6 actually, Justice Ginsburg, the extent to which the  
7 Government disputes the history of the meaning of reserve  
8 strengthening in insurance tax law. In this case below  
9 and in the Western National case the Government conceded  
10 that the term, reserve strengthening had a clear meaning  
11 in the context of life insurance taxation. It disputed  
12 whether the meaning was clear in the context of property  
13 and casualty tax --

14 QUESTION: Which is what we're talking about  
15 here, and they had two witnesses to say in property and  
16 casualty, at least, the meaning is not a term of art.  
17 There are multiple meanings. So --

18 MR. ABRAMOWITZ: The Government --

19 QUESTION: -- I'm just bringing that up to say  
20 that it isn't -- can't be clear that it is a term of art  
21 in the kind of insurance we're talking about.

22 MR. ABRAMOWITZ: In the context of this case it  
23 is petitioner's position that the term, reserve  
24 strengthening, was a tax term of art, that Congress knew  
25 precisely what the term meant when it used it, that in

1 fact the distinction between life insurance and property-  
2 casualty insurance in this context is really not at all  
3 relevant.

4 The -- subchapter L of the Internal Revenue Code  
5 covers both types of companies. This provision applied to  
6 both -- it's been loosely called a provision that applies  
7 to property and casualty companies but, in fact, it  
8 applies to both life insurance companies and property and  
9 casualty companies and, indeed, the difference between  
10 life and -- what we're calling life insurance companies  
11 and property-casualty companies really, in subchapter L of  
12 the Internal Revenue Code, is only a question of the  
13 relationship between the amount of reserves they hold to  
14 qualify as life insurance reserves and the amount of  
15 reserves they hold that are --

16 QUESTION: Well, what are the differences in  
17 reserve accounting between the life insurance and the  
18 property and casualty insurance businesses?

19 MR. ABRAMOWITZ: Insofar as relevant to this  
20 case, Justice O'Connor, there are none. There are  
21 differences, because obviously a life insurance policy  
22 covers one sort of risk and a property-casualty insurance  
23 policy covers a different sort of risk.

24 QUESTION: Well, I thought there was a big  
25 difference.

1 I thought the difference with life insurance is,  
2 if I sell a policy today and I take the income in and I'm  
3 going to have to pay it out in 30 years, I use a bunch of  
4 statistical tables that tell me people's life expectancy.

5 If I'm in the casualty business, at the end of  
6 the year in which I've received the premium I have to make  
7 what I'd call an educated guess about how many  
8 tornadoes -- there were some tornadoes, but I mean, how  
9 many houses actually were flattened and how many people  
10 are out there with television sets that they haven't put  
11 their property claim in yet, and there aren't some tables  
12 I can go to. I thought people sit there and they make  
13 educated guesses about to what extent the policy that was  
14 sold in year one is going to result in a claim for that  
15 year that I'll have to pay out in year 10.

16 I thought that's quite a big difference, so that  
17 seemed to me difference one, and difference two is that  
18 you had a sentence in the bill that would -- they have a  
19 sentence in the bill that says, in the life insurance  
20 case, you know, strengthening is -- does not -- you know  
21 the sentence I'm referring to. It's right there.

22 It wins your case if you were in the life  
23 insurance, and it's gone in your case, and they put it in  
24 in the Senate in your bill, and the House took it out.

25 So there we are. We have a difference in

1 practice, we have a difference in language in the bill,  
2 and we have a difference in the legislative history where  
3 you won your battle in the Senate and you lost it in the  
4 House.

5 Now, given that, how do you win the case?

6 MR. ABRAMOWITZ: All right, I need to back up  
7 just a step, Justice Breyer.

8 The -- first with respect to the comparability  
9 of the businesses, they surely cover two different types  
10 of risk. I think Justice O'Connor's question had to do  
11 with the nature of the reserves, and the reserves in both  
12 cases are based upon assumptions and methodologies, and  
13 that is the relevant point, because that is a point that  
14 is embedded in the definition of the term, reserve  
15 strengthening, and let me go to the question, if I may, of  
16 the sentence, because backing all the way up --

17 QUESTION: I think that's very important, and I  
18 think we should stay with the format of Justice Breyer's  
19 question, but just taking the first part of his question  
20 to help us to understand these things, isn't it true that  
21 in the life area reserves are usually changed because of  
22 methodologies and in the casualty area because of  
23 empirical reports that there have been -- that there have  
24 been losses and so forth?

25 In the life area, people don't say, oh, you

1 know, this policyholder has just been diagnosed with  
2 cancer, we're going to change the risk. They don't do  
3 that. But in the casualty area, I take it they do. Now,  
4 tell me if that's wrong, but --

5 MR. ABRAMOWITZ: Well, in fact -- that is  
6 correct, but in fact the comparable -- when they make that  
7 change in the property-casualty area that is the normal  
8 reserve increase.

9 When they make a change in the life area, the  
10 normal increase is the adjustment year-by-year that the  
11 actuaries have built in for additional interest  
12 assumptions and mortality adjustments and so on, but  
13 the --

14 QUESTION: So that, as a general matter, reserve  
15 changes -- other than for the addition of new policies  
16 reserve changes are made in the life area because of  
17 methodology changes and in the casualty area because of  
18 empirical assessments about actual losses.

19 MR. ABRAMOWITZ: No, Justice Kennedy, I think  
20 actually I'm disagreeing with that point, because in the  
21 life area there are regular, routine, normal reserve  
22 changes each and every year, increases in reserves,  
23 adjustments to reserves.

24 QUESTION: For what reasons?

25 MR. ABRAMOWITZ: The formula for determining

1 life insurance reserves has to do with determining the  
2 present value -- the relationship between the present  
3 value of future benefits and the present value of future  
4 net premiums, and those things really adjust every year.  
5 They simply have normal adjustments every year.

6 QUESTION: And those are different than  
7 methodology changes.

8 MR. ABRAMOWITZ: Exactly, and that's the very  
9 important point I'm trying to make, that there is a  
10 fundamental comparability and certainly Congress was aware  
11 of this, because I want to go back to Justice Breyer's  
12 question, that in the normal adjustments to reserves,  
13 things that happen without anything extraordinary,  
14 anything untoward or mischievous, potentially mischievous,  
15 and adjustments to reserves that result from changes in  
16 methods and assumptions.

17 It's the latter item that really is the  
18 adjustment item that can produce distortion, and I think  
19 both in the context of 1984 and in the context of 1986 the  
20 well-known reserve strengthening kind of standard was the  
21 protection that Congress built in to protect against  
22 distortion, to protect against anybody taking undue  
23 advantage of the fresh start rule.

24 QUESTION: Okay. The plausibility of what you  
25 say about the comparability of the way adjustments are

1 made depends, I guess, on understanding the kinds of  
2 nonmethodological adjustments that are made in the life  
3 insurance area and you gave that rather a quick treatment,  
4 as if we understood, and I don't.

5 Could you explain some of those  
6 nonmethodological adjustments in the reserves in the life  
7 insurance area that make it comparable to the kind of  
8 adjustments, nonmethodological adjustments that are made  
9 in the property and casualty?

10 MR. ABRAMOWITZ: Actually, it's easier to think  
11 about it from the other side, Justice Souter. The  
12 methodological assumptions happen in both cases, because  
13 actuaries determine reserves and actuaries determine  
14 formulas and actuaries change formulas and assumptions.

15 On the property-casualty side, and I'm using  
16 that term in a -- not an attack sense, just in the nature  
17 of that business -- there are adjustments to reserves that  
18 result every year in a normal fashion by virtue of the  
19 existing formulas and existing methods that are used to  
20 determine those reserves.

21 QUESTION: Because insurance adjusters call in  
22 and they say, you know, there was a big loss, the roof  
23 fell in, things like that. That's the --

24 MR. ABRAMOWITZ: That --

25 QUESTION: The empirically based adjustments, in

1 other words.

2 MR. ABRAMOWITZ: There is certainly that  
3 element, but that is just --

4 QUESTION: Okay. Is there any comparable  
5 element in life insurance?

6 MR. ABRAMOWITZ: No. On that element there is  
7 not.

8 QUESTION: Okay.

9 MR. ABRAMOWITZ: On that element there is not,  
10 but that is just one element of a determination of  
11 property and casualty reserves.

12 In this case the petitioner had a substantial  
13 portion of its reserves determined on the basis of the  
14 formulas and methods that actuaries had in place for  
15 determining the incurred-but-not-reported losses of the  
16 insurance company and for determining loss adjustment  
17 expenses of the insurance company, and those formulas are  
18 formulas that -- there are many possibilities for those  
19 formulas, but the actuaries in this company simply  
20 selected a formula and a method to apply, and it's that  
21 sort of formula that is -- that was susceptible of being  
22 changed, adjusted, in manipulating the fresh start rule.

23 QUESTION: The formula's not the problem.

24 QUESTION: That's right, yes.

25 QUESTION: I'm still waiting to hear what

1 nonformula factors exist in the life insurance area.

2 MR. ABRAMOWITZ: Each and every year, life  
3 insurance reserves increase as a result -- probably the  
4 simplest way to put this, of the insured becoming closer  
5 to death, or --

6 QUESTION: Right, but that's -- that's  
7 considered in the formula, isn't it? I mean, that's a  
8 function of the methodology that they use, and that  
9 kind -- if I understand what you're saying, that kind of  
10 adjustment does not reflect a change in methodology, it  
11 reflects an implementation of the methodology, and what I  
12 want to know is, what kind of reserve changes in the life  
13 area do not reflect implementations of previous  
14 methodology?

15 MR. ABRAMOWITZ: I would think those -- the  
16 kinds that do not reflect implementations of previous  
17 methodology are the kind that involve changes in methods  
18 and assumptions. I think --

19 QUESTION: I mean, isn't this the case, that  
20 suppose I have an insurance company and I insure people in  
21 Jacksonville, Florida, for life insurance, and through  
22 some kind of total fluke a terrible disease breaks out,  
23 unpredictable, in Florida, not elsewhere.

24 Then I guess I could discover that through that  
25 fluke of happenstance my reserves were understated, and I

1 guess that's an example where you might need to strengthen  
2 reserves in life insurance without changing methodology.  
3 Am I right? I'm testing out my understanding of it.

4 MR. ABRAMOWITZ: I'm not sure -- in your  
5 example, you simply discovered there was some -- I'm  
6 sorry, I need to --

7 QUESTION: Suddenly you happen to be in a city  
8 where your insurance company is, and suddenly a lot more  
9 people died there than you'd think. They have -- they  
10 discover some genetic feature. They discover some kind of  
11 a disease that breaks -- forget it. It's not important.  
12 You don't have to answer. I just --

13 MR. ABRAMOWITZ: I mean, I would think that  
14 ultimately that may require a change in methods and  
15 assumptions, but many of the things, underlying facts do  
16 require that --

17 QUESTION: Okay. You're saying in life  
18 insurance it always requires changes in methods and  
19 assumptions, and in casualty it doesn't, and therefore --

20 MR. ABRAMOWITZ: There --

21 QUESTION: -- that's probably your problem.

22 MR. ABRAMOWITZ: There are corrections of  
23 errors. I think the respondent issued a ruling in 1994  
24 that really addressed a variety of things that  
25 distinguished changes in methods from corrections of

1 errors and other types of adjustments, but I think there  
2 is -- from that direction there is clearly some  
3 distinction between the normal adjustments in property and  
4 casualty and normal adjustments in life.

5 But that is really I think the wrong direction  
6 to be looking at this case on, because I think if you  
7 assume that this is -- this being the reserve  
8 strengthening exclusion from the fresh start benefit that  
9 Congress intended, and if you attribute to it an objective  
10 to prevent mischievous, artificial things, you know you've  
11 accomplished that, I think, when you have caught people  
12 who have adjusted their methods and assumptions. I think  
13 frankly that is what Congress had to have meant when it  
14 used the term that it was well aware of.

15 I think you always have to keep in mind here  
16 that the respondent's position and the regulation it wrote  
17 simply took the words, reserve strengthening, read them  
18 out of the Internal Revenue Code, read them out of the act  
19 and substituted the word, all increases. It's --

20 QUESTION: Mr. Abramowitz, if we could go back  
21 to the second part of Justice Breyer's question, that is,  
22 if one looked only at that Senate report one would say,  
23 you win, but the conference report seems to be much more  
24 inclusive than what you are now describing to us.

25 MR. ABRAMOWITZ: Justice Ginsburg, the

1 conference report has, for all intents and purposes, the  
2 identical carve-out from the fresh start rule. Reserve  
3 strengthening is carved out.

4 The sentence in the Senate report that  
5 respondent has pointed out that Justice Breyer referred to  
6 had nothing whatever to do with the definition of reserve  
7 strengthening in a general way.

8 The sentence that the respondents pointed out  
9 and that Justice Breyer referred to is a sentence that  
10 relates specifically to the treatment of -- in the life  
11 area, which is the comparable sentence, the treatment of  
12 reserves on newly issued contracts. It in no way was  
13 intended by Congress to infuse the term reserve  
14 strengthening with its general, historic, longstanding  
15 meaning.

16 And in fact in 1984, when this provision, the  
17 fresh start, the carve-out all appeared in DefRA, in the  
18 House bill there was no comparable sentence. You didn't  
19 need the sentence to define the term, reserve  
20 strengthening --

21 QUESTION: Well, am I correct -- I just want to  
22 be sure about my memory. Is it not correct that the 1984  
23 statute didn't use the term reserve strengthening?

24 MR. ABRAMOWITZ: No, Justice Stevens. That is  
25 exactly the term it used.

1 QUESTION: Pardon me again? Does it use the  
2 term, reserve strengthening --

3 MR. ABRAMOWITZ: Yes, Justice Stevens.

4 QUESTION: -- in the 1984 statute?

5 MR. ABRAMOWITZ: Yes, precisely.

6 QUESTION: And it defined it as a change in  
7 methodology?

8 MR. ABRAMOWITZ: No, it didn't define it. There  
9 was a sentence --

10 QUESTION: -- I've got the statutes -- the life  
11 insurance statute. That's the 1984 --

12 MR. ABRAMOWITZ: Yes. The life insurance -- I'm  
13 sorry. The life insurance statute had virtually the  
14 identical provision, an exception for reserve  
15 strengthening from the fresh start rule.

16 QUESTION: And did it define the term, reserve  
17 strengthening?

18 MR. ABRAMOWITZ: No, it did not. There was a  
19 sentence that followed it that addressed the treatment of  
20 reserves on contracts issued during 1984, because Congress  
21 was concerned that there was some reason in that case to  
22 deal with people who -- it had a mid-year effective date,  
23 the 1984 act, and there was some reason to have a special  
24 rule to identify --

25 QUESTION: What was that --

1 QUESTION: Which sentence made it clear that  
2 reserve strengthening meant what you say it means. That  
3 sentence made that clear. Your position is simply that  
4 the purpose of the sentence was not to make it clear. The  
5 purpose of the sentence was not to define it, but you  
6 don't deny that the sentence, whatever it was meant to do  
7 as a practical matter, makes it clear what reserve  
8 strengthening meant?

9 MR. ABRAMOWITZ: That sentence in 1984 was  
10 consistent with the notion that reserve practices were --  
11 were -- changes in reserve practices involved reserve  
12 strengthening.

13 QUESTION: Changes in methodology.

14 MR. ABRAMOWITZ: Yes.

15 QUESTION: Are those provisions of the 1984  
16 statute quoted in any of the papers before us?

17 MR. ABRAMOWITZ: Yes, Justice Stevens, on  
18 page --

19 QUESTION: Is it A-51?

20 MR. ABRAMOWITZ: A-51 in the petition for  
21 certiorari.

22 QUESTION: What was the reason for having a  
23 special rule with respect to the '83 contracts? You say  
24 that was what the sentence addressed, but I've never  
25 understood why it needed to address it.

1 MR. ABRAMOWITZ: First off, it's peculiar  
2 because it's stated as a negative rule. It is not stated  
3 as if one were expecting a definition of a reserve  
4 strengthening, reserve strengthening is, and it's not  
5 stated that way even in the context of the 1984 context.

6 It says, reserve strengthening shall not  
7 include --

8 QUESTION: Right.

9 MR. ABRAMOWITZ: -- reserves on, and then what  
10 it really related to was reserve strengthening at the end  
11 of 1984, that that was consistent with practices at the  
12 end of '83, and while I am -- I can point to evidence that  
13 the sentence, and we have pointed to evidence that the  
14 sentence was not intended to define reserve strengthening,  
15 there really is no actual evidence as to what particular  
16 case Congress had in mind under that rule, but --

17 QUESTION: All right, then why -- what is your  
18 answer, then, to this argument. I mean, the argument  
19 is -- would normally be raised, and the Government raises  
20 it, that the very fact that that sentence is in there  
21 saying, it shall not refer to this, implies that in the  
22 absence of that proviso it would refer to these kinds of  
23 practices.

24 Your answer to that was, well, there apparently  
25 was a need to have a particular rule with respect to

1 contracts for this particular year, but if we don't know  
2 what that reason was for a particular rule, then we're  
3 back to the negative implication, and the negative  
4 implication seems to support, clearly supports the  
5 Government.

6 So I don't understand in the -- if you don't  
7 have a particular explanation for why there was a need for  
8 that sentence for those -- for contracts of those years, I  
9 don't see how you get out of the negative implication.

10 MR. ABRAMOWITZ: Well, several things to point  
11 out. The House bill in 1984 did not have the sentence.

12 The sentence came in, I believe, in the Senate  
13 bill with a view to accommodating the mid-year effective  
14 date that existed for, or target date, announcement date  
15 for the change in 1984, and what the sentence I think had  
16 to do with was a need to provide some relief for some  
17 actions during 1984 that would have been captured under a  
18 normal definition of reserve strengthening.

19 But because they were taken and then adjusted  
20 by the end of 1984, Congress -- the Senate first, and then  
21 ultimately the whole congress was providing a measure of  
22 relief for that situation, as long as the reserves did not  
23 exceed what the method -- what reserves on the same method  
24 would have produced --

25 QUESTION: Well, maybe I don't understand, but

1 I -- it seems to me that the companies could be taking  
2 those kinds of actions with respect to contracts entered  
3 into in any year, and why did they -- why did they single  
4 out contracts entered into in one particular year?

5 MR. ABRAMOWITZ: Companies could take those  
6 actions with respect to contracts and enter into any year  
7 and, indeed, those are the very actions that are  
8 prescribed by the reserve strengthening rule. I think  
9 there must have been a unique set of circumstances that  
10 existed with respect to particular companies and  
11 particular taxpayers for new contracts in 1984.

12 QUESTION: But we don't know what it is.

13 MR. ABRAMOWITZ: Congress didn't tell you what  
14 it was, but they didn't tell you in the House bill and  
15 they really didn't -- in 1986, when they got rid of the  
16 mid-year effective date, in effect, the trigger, which  
17 started out in the Senate bill as a March -- reserve  
18 strengthening after March 1, and the final conference bill  
19 modified that treatment. It was going to be effective for  
20 reserve strengthening during calendar year 1986, and when  
21 they did that, they eliminated the sentence, because they  
22 eliminated the need to respond to certain actions during  
23 that year.

24 QUESTION: Mr. Abramowitz, if we apply the  
25 Treasury regulation at issue here, does it answer the

1 question of how we deal with this in the property and  
2 casualty context?

3 MR. ABRAMOWITZ: Well, it provides a rule. The  
4 problem is --

5 QUESTION: Yes.

6 MR. ABRAMOWITZ: Pardon?

7 QUESTION: Yes. It would answer the question --

8 MR. ABRAMOWITZ: But it would --

9 QUESTION: -- if we apply the regulation, I  
10 assume.

11 MR. ABRAMOWITZ: Yes. It would -- you would  
12 apply the respondent's interpretation and, I believe,  
13 frustrate the intent of Congress, because you would have  
14 cut back from effective date at the end of 1986 to  
15 effective date at the end of 1985 --

16 QUESTION: What deference do we owe in the  
17 income tax context to a Treasury regulation? Is it an  
18 ordinary Chevron deference?

19 MR. ABRAMOWITZ: I think --

20 QUESTION: You do not quarrel with that?

21 MR. ABRAMOWITZ: I do not quarrel with that. I  
22 think that is the same standard that the Third Circuit  
23 applied. I think the Third Circuit erred because it  
24 simply failed to give proper credit to the plain meaning  
25 of the term, reserve strengthening, and failed to --

1 QUESTION: May I -- have you finished your  
2 answer to Justice O'Connor?

3 I want to ask you this question, looking at the  
4 statute. I fumbled it a little bit before. What if one  
5 read the words reserve strengthening in the life insurance  
6 statute to have exactly the same meaning that the  
7 Government says they have in the property-casualty  
8 insurance and then reads the subparagraph saying, but  
9 we're taking out of that broader definition those that do  
10 not involve a change in methodology.

11 Isn't that the way -- then the two -- reserve  
12 strengthening would have the same meaning in both  
13 statutes.

14 MR. ABRAMOWITZ: You would, except you would  
15 have -- you would have eliminated from the fresh start  
16 relief in the life area the vast -- the overwhelming  
17 majority of reserve increases that were protected and  
18 intended to be the beneficiary of the fresh start relief,  
19 because you would have captured, as we were discussing  
20 earlier, all the increases, all the ordinary increases in  
21 life reserves.

22 QUESTION: No --

23 QUESTION: You say there aren't any. They're  
24 all methodological increases.

25 MR. ABRAMOWITZ: No, I --

1 QUESTION: In the life area you haven't given us  
2 any that would not come under the narrow meaning of  
3 reserve strengthening that you argue for.

4 MR. ABRAMOWITZ: All of the increases -- life  
5 reserves, as I suggested earlier, grow each and every  
6 year by virtue of the formulas that are in place.

7 QUESTION: Right.

8 MR. ABRAMOWITZ: In answering Justice Stevens'  
9 question, if I apply the respondent's rule to the life  
10 area, all those ordinary increases, all of them would have  
11 been denied and separated --

12 QUESTION: No.

13 MR. ABRAMOWITZ: -- from the fresh start.

14 QUESTION: No. No. They wouldn't, because of  
15 the proviso that follows right after. It says, it shall  
16 not apply if such computation employs the reserve practice  
17 used in the past.

18 MR. ABRAMOWITZ: That rule, Justice Stevens,  
19 only applies to newly issued contracts, the contracts  
20 issued during 1984.

21 QUESTION: It doesn't limit it to '84, does it?

22 MR. ABRAMOWITZ: The word issued appears in  
23 the -- in the statute as it is written.

24 QUESTION: Any contract issued. It doesn't say  
25 issued in 1984.

1 MR. ABRAMOWITZ: The Senate report, the Senate  
2 bill which first contained that sentence --

3 QUESTION: Well, stick with the text for a  
4 minute. Let me be a Justice Scalia for a minute and just  
5 work with the text and nothing else for a second.

6 (Laughter.)

7 QUESTION: If you have the text, why doesn't  
8 that completely protect all changes that result from  
9 changes in methodology, because it excludes those that  
10 employ the same reserve practice.

11 MR. ABRAMOWITZ: It would if you read the  
12 word -- if you read the word issued out of the statute.  
13 The word issued is -- Congress simply wouldn't  
14 have used the word issued. It doesn't add anything to the  
15 equation.

16 QUESTION: Do you have reserves on anything  
17 except issued contracts?

18 MR. ABRAMOWITZ: You do not, but you have  
19 reserves --

20 QUESTION: Well, all reserves are reserves on  
21 contracts that have been issued.

22 MR. ABRAMOWITZ: That is certainly correct,  
23 Justice Stevens. However, we know from the title to that  
24 sentence that when it was added in the Senate report, that  
25 it was intended to covered newly issued contracts, because

1 it said, reserves on newly issued contracts.

2 QUESTION: Does the Government agree with that?

3 QUESTION: Newly means what?

4 MR. ABRAMOWITZ: Issued during the calendar year  
5 1984. That is exactly what the --

6 QUESTION: Issued during -- I see.

7 MR. ABRAMOWITZ: I'm sorry, 1983. I'm sorry.

8 QUESTION: Does the Government agree with that  
9 interpretation?

10 MR. ABRAMOWITZ: I do not think they agree with  
11 that interpretation.

12 QUESTION: I'm -- as to the contracts to which  
13 it's applicable.

14 MR. ABRAMOWITZ: I'm sorry?

15 QUESTION: As to the insurance contracts to  
16 which it's applicable.

17 MR. ABRAMOWITZ: I -- in their brief they cited  
18 that without the word issued in there, so I think maybe  
19 they don't.

20 QUESTION: Okay.

21 QUESTION: Is -- just to go back to your general  
22 point, as a tax lawyer, I'm curious -- you are, I'm not,  
23 but the -- is it proper to give Chevron deference to the  
24 IRS? If that's right, what do we do -- do we give Chevron  
25 deference to the tax court? Does the tax court give

1 Chevron deference to the IRS? Why do we have a tax court,  
2 then?

3 I mean, I'm worried about this conceptual point.  
4 I'd like to get it right, and I'm not certain what the  
5 answer is, and it has much more implication than this  
6 case, and I just wondered what the tax court, which I  
7 guess was the Board of Tax Appeals, what their role is in  
8 all this if suddenly total Chevron authority is being  
9 given to the IRS.

10 MR. ABRAMOWITZ: I think when I answered Justice  
11 O'Connor's question I was really answering in the broad  
12 sense that at least in the past 5 or 6 years most courts  
13 interpreting -- many courts interpreting tax regulations  
14 have, indeed, applied the Chevron standard. If the intent  
15 in Congress is clear, they --

16 QUESTION: But I just think that has quite a lot  
17 of implication and I don't know what the right answer to  
18 that is.

19 MR. ABRAMOWITZ: I think even the tax court --

20 QUESTION: And the tax court just defers to the  
21 IRS?

22 MR. ABRAMOWITZ: The tax court --

23 QUESTION: Is that -- why do we have them, then?  
24 Anyone could do --

25 MR. ABRAMOWITZ: Well, they're a court. They're

1 not an agency or a, you know, agency-making -- rulemaking  
2 enterprise.

3 QUESTION: Let me just ask one more question.  
4 If you're -- if you are correct that reserve strengthening  
5 has well-settled meaning in the industry and in the  
6 statute, it would seem to me that the proviso is  
7 unnecessary, the clause-2-shall-not-apply language.

8 In other words, it says clause 2 shall not apply  
9 if the computation was the same. You wouldn't need that  
10 proviso if reserve strengthening had the clear settled  
11 meaning that you say it had.

12 MR. ABRAMOWITZ: Justice Stevens, you wouldn't  
13 need it in the ordinary course. You didn't have it in the  
14 ordinary course. You didn't have it in the House bill and  
15 I think the only explanation I can give is that it appears  
16 that it is responsive to a set of circumstances where  
17 there were changes made during 1983 by a particular  
18 taxpayers and Congress -- they still let them have their  
19 relief as long as their reserves at the end of 1983 were  
20 the same as they were at the end of 1982.

21 I would simply suggest that when you state a  
22 sentence -- it would be extraordinary for Congress to  
23 state a sentence in the negative if that was their  
24 intended positive rule.

25 If there are no further questions, with the

1 Court's permission I'd like to reserve the remainder --

2 QUESTION: Very well, Mr. Abramowitz.

3 Mr. Jones, we'll hear from you.

4 ORAL ARGUMENT OF KENT L. JONES

5 ON BEHALF OF THE RESPONDENT

6 MR. JONES: Thank you, Mr. Chief Justice, and  
7 may it please the Court:

8 The term reserve strengthening has no plain and  
9 obvious meaning. It is not defined in any dictionary or  
10 in any statute. It lacks a consistent industry usage.

11 The scope and meaning of the term depends upon  
12 its context, and in the context of the Tax Reform Act of  
13 1986 it is manifest that Congress consciously employed the  
14 term in its broadest sense to encompass any and all  
15 increases to existing reserves made during that year, the  
16 year that that act was pending before Congress.

17 QUESTION: Now, I take it there's a reason under  
18 your theory of the case that Congress used the term  
19 strengthen rather than increase.

20 MR. JONES: Yes.

21 QUESTION: And I -- tell me if this is right.  
22 It might not be right. If it had used the word increase,  
23 then that wouldn't have done the trick, because then any  
24 reduction for actual loss payments would have absorbed  
25 some real increases.

1 MR. JONES: That's absolutely right. Reserves  
2 can -- the dollar amount of reserves can change without us  
3 knowing, in the abstract, whether that strengthened or  
4 weakened the reserves.

5 The conference committee made that point. It's  
6 quoted at page 14 of our brief. It says, in describing  
7 the types of additions to the reserves that the reserve  
8 strengthening provision in the '86 act covers, the first  
9 example that it gives is an increase in an estimate of a  
10 reserve and then it says, paren, taking into account the  
11 amount of claims paid you have to take into account the  
12 amount of claims paid to know whether the reserve has been  
13 increased or strengthened. You might know whether it had  
14 been increased, but you wouldn't know whether it's been  
15 strengthened.

16 QUESTION: Mr. Jones, could you tell me, the one  
17 thing that puzzles me about this is what is the evil that  
18 the statute is directed at on your interpretation of it?  
19 I mean, I can see that it's an evil if you're -- you know,  
20 if you're playing games with the methodology and the  
21 Government wants to come down on that.

22 MR. JONES: The --

23 QUESTION: If you're just taking account of  
24 verifiable real life occurrences, what -- why would the  
25 Government not want that to be taken into account?

1 MR. JONES: I wouldn't want to use the word  
2 evil. The problem that the statute addresses is a problem  
3 that Congress created in the '86 act. In the '86 act,  
4 Congress did something very uncharacteristic. They gave  
5 property and casualty insurance companies a double  
6 deduction. That's extraordinary in the tax law. It's  
7 extremely generous.

8 The only function of the reserve strengthening  
9 clause is never to deny a deduction. It is only to limit  
10 the scope of this uncharacteristic double deduction. What  
11 Congress did in 1986 was to say, well, you can have a  
12 double deduction for a portion of your insurance reserves,  
13 but we're not going to let you increase that double  
14 deduction by increasing your reserves in 1986, the year  
15 that this bill was pending.

16 As Judge Halperin pointed out in his dissent in  
17 the Western Mutual case, what is anomalous about this  
18 statute is not the broad mechanical rule that Congress  
19 plainly intended to apply to reserve strengthening. What  
20 was anomalous was that Congress allowed a double deduction  
21 in the first place, and that the breadth of the mechanical  
22 rule that Congress adopted for reserve strengthening is  
23 simply designed to reduce that anomaly that they created  
24 by permitting a double deduction in the first place.

25 QUESTION: What kind of deference do you think

1 we owe to a regulation of this kind?

2 MR. JONES: Well, we have taken a position in  
3 this case that this is an interpretive regulation. The  
4 standard that this Court has applied for interpretive  
5 Treasury regulations is set out in its opinions in the  
6 National Muffler Dealers case and United States v.  
7 Correll, and that is that interpretive regulation must be  
8 sustained if it is not plainly inconsistent with the  
9 statute and is not unreasonable in light of what Congress  
10 sought to do. We --

11 QUESTION: And that was a pre-Chevron case.

12 MR. JONES: Yes.

13 QUESTION: And it's been working okay in the tax  
14 area.

15 MR. JONES: Absolutely, and I'm -- I'm not  
16 familiar of a reason why you shouldn't cite Chevron on  
17 this case. I'm just pointing out that you have --

18 QUESTION: You like that other test better.

19 MR. JONES: You have long applied another test,  
20 and I think that other test has -- even if it has a  
21 different emphasis it has the same conclusion, but I think  
22 that there is a particular practical side to the National  
23 Muffler Dealers and Correll test.

24 And the practical side is that this agency  
25 really does make a careful study not only of the statute

1 and the history of this provision but of the complicated  
2 surrounding and related provisions, and what the Court has  
3 said is that the agency is the master of the rules and  
4 it's appropriate to give it special deference to recognize  
5 the function that it serves and to provide certainty.

6 QUESTION: Any other agencies we should treat  
7 specially?

8 MR. JONES: I'm not representing any other --

9 QUESTION: And have sort of a super-Chevron --

10 MR. JONES: I don't really think it's a super-  
11 Chevron. I think it's a practical approach to the  
12 deference question. I think the Court takes a practical  
13 approach to Treasury regulations and realizes that this  
14 agency is entitled to special deference because of its  
15 extraordinary intricacy of the details, and this case I  
16 think may well be a prime example of that.

17 QUESTION: It's a variation of Skidmore,  
18 possibly. You said we give them the deference that  
19 they're due in light of their power to persuade.

20 MR. JONES: Well -- okay. I think the deference  
21 that's due is in light of the subject matter, I frankly  
22 do, and I wouldn't want to call it a super-Chevron  
23 deference. I just think it's an application of the same  
24 principle in this specific context.

25 QUESTION: Academic writers have said it's

1 Chevron minus.

2 MR. JONES: Yes. I think you could argue either  
3 side of it, and I certainly don't think it's been applied  
4 as a Chevron minus. I don't think the words are stronger,  
5 but I think the application of it is at least as strong as  
6 Chevron.

7 QUESTION: Can we get the meaning of reserve  
8 strengthening from the statute alone?

9 MR. JONES: I --

10 QUESTION: Or do we have to look at that  
11 regulation to know what it means?

12 MR. JONES: I think you can get the meaning of  
13 the statute by the ordinary application of interpretive  
14 principles that the Court applies.

15 The text of the regulation makes clear the broad  
16 intent simply by the fact that the Court's already  
17 discussed, which is that the Senate version of the bill  
18 had enclosed -- included a limiting clause that would have  
19 made it applicable only to changes in reserves due to  
20 changes in methodologies.

21 That provision from the Senate bill was, of  
22 course, derived from the '84 reserve strengthening  
23 provision that had applied that same language in  
24 describing the transitional rule for life insurance  
25 provisions.

1 Congress rejected that, took that provision out,  
2 and explained why they did so in the conference committee  
3 report and also Senator Wallop acknowledged the same  
4 thing. Congress wanted a broad prophylactic cook-book,  
5 mechanical rule to prevent any increases in existing  
6 reserves to be added to the double deduction that was  
7 otherwise permitted.

8 QUESTION: Mr. Jones, if your position is the  
9 right one here, what differences are there at bottom  
10 between the life insurance reserve strengthening and the  
11 property and casualty reserve strengthening?

12 MR. JONES: Well, the '84 act governs the life  
13 insurance reserve strengthening provision, and it is  
14 limited to changes in reserves caused by changes in the  
15 reserve methodologies. The '86 act, as Congress could not  
16 have been more clear than stating in the conference  
17 report, and as the changes in the text also show, was  
18 designed to be much broader.

19 It was designed to cover three categories that  
20 the conference committee report discusses, changes in  
21 estimates of a particular reserve, changes in reserve  
22 methodology like in the '84 area, and then to make the  
23 breadth of its intent perfectly clear said, any other  
24 unspecified or unallocated additions to reserves.

25 So yes, there would be a different application

1 of the property and casualty reserve strengthening  
2 provision in the '86 act than the prior provision for  
3 life --

4 QUESTION: So for that period of time no  
5 increases of reserves qualify for the double deduction.

6 MR. JONES: For the eighty -- in -- no reserve  
7 strengthening in '86, no reserve increases for existing  
8 reserves get the double deduction under the '86 act.  
9 That's what this case is about.

10 QUESTION: Now, you changed your position on the  
11 equivalence of the statutes in your brief to this Court or  
12 the lower court, or is that a mischaracterization?

13 MR. JONES: I don't -- I don't follow the  
14 question. We haven't changed our characterization of the  
15 statutes. I think I know what you're referring to.  
16 Petitioner says in its reply brief that we've changed our  
17 pitch, if you will, about whether there had been a prior  
18 usage in the life insurance industry, about what in the  
19 life insurance industry reserve strengthening was used.

20 That's a misrepresentation of our position.  
21 What we have done in our brief is respond to a new  
22 argument that petitioner is making. In the courts below,  
23 petitioner relied on the proposition that industry usage  
24 showed the plain meaning of the term, but the record in  
25 this case and its own witnesses don't support that.

1           Its own witnesses acknowledge there are many  
2 different uses of the term and there is no well-defined  
3 application of reserve strengthening in the property and  
4 casualty industry, so petitioner has abandoned the  
5 position about what industry usage means.

6           What they argue here is that reserve  
7 strengthening is what they call a tax term. It has a tax  
8 meaning that somehow exists wholly apart from industry  
9 usage and apart from legislative intent.

10          There isn't such a thing as a tax term of that  
11 ilk. There are some tax terms like capital gains and  
12 ordinary and necessary business expenses that have  
13 distinctive meanings.

14          Reserve strengthening is an industry term. It  
15 draws its meaning from industry usage. The industry usage  
16 is mixed and depends on context and in the context of the  
17 '86 act Congress meant to give it its broadest scope.

18          QUESTION: And you have always interpreted the  
19 term to mean the same in the '84 and the '86 act, subject,  
20 of course, to the fact that there's a qualification in the  
21 '84 act.

22          MR. JONES: Yes. We have interpreted the term  
23 the same way, but what I thought you were asking me about  
24 was, do we accept that in the life insurance industry  
25 usage, not this tax term of art idea, but that there was

1 an industry usage in life insurance to refer to reserve  
2 strengthening as meaning a change in reserve methodology.

3 We don't dispute that. What we have always  
4 disputed is that no such industry usage applies to  
5 property and casualty insurance, that the term has  
6 different meanings and different contexts, and that's what  
7 the witnesses in this case acknowledged, and that's  
8 certainly what the conference committee report of this  
9 legislation indicates. The --

10 QUESTION: Well, let me just do it one more  
11 time.

12 You have always taken the position that the  
13 term, reserve strengthening, means the same in each act.

14 MR. JONES: The only --

15 QUESTION: Subject, of course, to this special  
16 clause that's in the '84 act.

17 MR. JONES: Yes. It's only been used twice, so  
18 it's easy to answer that question.

19 It doesn't appear anywhere in the Internal  
20 Revenue Code. The only two times where this term has been  
21 used is in the '84 transitional rule and in the '86  
22 transitional rule, and in the '84 rule it was confined by  
23 this phrase about it doesn't apply unless you've changed  
24 your methodology, and in the '86 rule that phrase was  
25 deleted.

1           So the term has been used by Congress with the  
2 same meaning in both places. It's just that in the '84  
3 act they limit it with the additional language that they  
4 didn't use in '86.

5           QUESTION: I thought maybe -- help me out on  
6 this. I thought at one point you were saying to Justice  
7 Kennedy that the difference in agency usage in the life  
8 area was such that the proviso simply conformed the term  
9 exactly to the way the life people were using it. That's  
10 not what you mean.

11          MR. JONES: It may be that that's the effect of  
12 the proviso.

13          QUESTION: Yes.

14          MR. JONES: But I don't think that was the  
15 object of it. I mean, you can't look at the proviso and  
16 say -- if you look at the proviso in '84 and you think  
17 that reserve strengthening means what petitioner says,  
18 well, you don't need the proviso.

19          QUESTION: That's right, yes.

20          MR. JONES: And so it must have meant -- if you  
21 will, it must have meant something more, and what -- it  
22 certainly can mean more, and --

23          QUESTION: At least have been capable of meaning  
24 more.

25          MR. JONES: It's certainly capable of meaning

1 more, and in the '86 act, clearly Congress wanted it to  
2 mean more to prevent this double deduction from being  
3 expanded beyond what they were willing to tolerate.

4 QUESTION: I don't know if you can correct my  
5 problem with the double deduction. I couldn't quite  
6 understand it.

7 The reason I couldn't understand it when I  
8 looked at your example was, I understood the idea of a  
9 person having a reserve, and they then discounted it,  
10 wrote it down from \$10 to \$9, and normally that would mean  
11 you have to take a dollar into income, but Congress  
12 forgave that.

13 Then time passes, and 2 years go by, and at that  
14 point they pay the loss of \$10, in which case they deduct  
15 that, and then they -- they've increased their reserve by  
16 the 9, so you say, a-ha, it's 9, not 10. It doesn't  
17 offset. But it should have grown to 10, so I mean, the  
18 whole point of the discount was that -- was --

19 MR. JONES: It doesn't.

20 QUESTION: Why doesn't it grow to 10, and maybe  
21 it's not worth going into.

22 MR. JONES: You may be thinking of life reserves  
23 instead of property and casualty reserves.

24 QUESTION: In property and casualty reserves,  
25 you didn't -- didn't they discount it, because they wanted

1 to have an amount here in year one such that it would grow  
2 to the point where it equaled the amount that they'd have  
3 to pay out in year three? Wasn't that the whole purpose  
4 of discounting?

5 MR. JONES: The --

6 QUESTION: And if that was, why didn't it grow?

7 MR. JONES: The reserve strengthening rule  
8 doesn't cover 30 --

9 QUESTION: No, it has nothing to do with reserve  
10 strengthening.

11 MR. JONES: Okay.

12 QUESTION: I'm just trying to figure out this  
13 problem of what you call the double deduction in your  
14 example in the --

15 MR. JONES: All right.

16 QUESTION: Don't bother if it's too complicated.

17 MR. JONES: It is too complicated, but let me  
18 try.

19 (Laughter.)

20 MR. JONES: The double deduction will accrete  
21 this additional dollar of deduction over the period that  
22 the claim remains outstanding and unpaid, so if you've  
23 got -- if you've brought it back to present value over  
24 10 years you will accrete a portion of that over that 10-  
25 year -- each of that 10-year period, so you get the double

1 deduction as time goes by.

2 QUESTION: But then, by the time you got to pay  
3 it out the reserves should have equaled 10, not 9.

4 MR. JONES: Well, then you've fully gotten the  
5 double deduction over the --

6 QUESTION: Ah, because -- because you mean, you  
7 took it a little -- as it was growing each year.

8 MR. JONES: That's right.

9 QUESTION: Okay. I understand. Thank you.

10 MR. JONES: The only other point I think I need  
11 to address is the suggestion that the mechanical rule  
12 reaches absurd or anomalous results. That argument's  
13 wrong for three reasons.

14 The first is, what the regulation does is  
15 exactly what Congress wanted to be done. It can't be  
16 unreasonable for the agency to have adopted a rule that is  
17 precisely in conformance with what the conference  
18 committee explained reserve strengthening was supposed to  
19 mean.

20 QUESTION: You're saying this is all gravy, so  
21 taking away any of it can't possibly be unreasonable.

22 MR. JONES: I think that's -- well, I think  
23 that's exactly right. That is exactly right. It is not  
24 unreasonable -- it would not have been unreasonable for  
25 Congress to have allowed 1 penny of double deduction.

1 QUESTION: In your view, if there's an old  
2 policy and an old loss in the casualty area, and it's just  
3 discovered, can you increase the reserve for that without  
4 strengthening the reserve?

5 MR. JONES: No. If you had an existing  
6 policy -- let's say in 1986 you discovered a claim came up  
7 under a 1982 year.

8 QUESTION: Right.

9 MR. JONES: Would that cause reserve  
10 strengthening in '86, and the answer is, I don't know.  
11 The answer -- the reason I don't know is because you've  
12 got this account called reserve for claims incurred but  
13 not reported, and so you might simply transfer a portion  
14 of that reserve into a case reserve for this claim that  
15 you have now discovered that has now been reported, and if  
16 that's what happened, then there's been no reserve  
17 strengthening in '86.

18 It might be that you didn't do that. You just  
19 created a new case reserve. There was no corresponding  
20 reduction in the reserve for claims incurred but not  
21 reported, and yes, that would be reserve strengthening.

22 QUESTION: And in a way, if you didn't do that  
23 you are effectively changing your methodology anyhow,  
24 aren't you?

25 MR. JONES: Well --

1 QUESTION: If you have that reserve for that  
2 very purpose and you don't use it for that purpose.

3 MR. JONES: Well, that's -- you could look at it  
4 that way, but I think frankly that the whole concept of  
5 reserve methodologies doesn't fit comfortably with  
6 property and casualty insurance, because property and  
7 casualty insurance look backwards. They are an effort to  
8 estimate an indeterminate amount of damages for something  
9 that's already happened.

10 QUESTION: Well, if that's so and we go strictly  
11 on an empirical basis, then it seems to me there ought to  
12 be an answer to my question one way or the other.

13 MR. JONES: No, because it's -- a judgment is  
14 involved.

15 When the -- in the property and casualty area,  
16 when they set up the new account --

17 QUESTION: The judgment is, we found the old  
18 loss, we didn't know about it, it hasn't been included in  
19 our account, we're going to add it. Is that  
20 strengthening?

21 MR. JONES: I don't think I can answer it better  
22 than I tried to the first time. It depends on how you  
23 create the reserve.

24 If you create the reserve by saying, well, I've  
25 always had this account for claims incurred but not

1 reported, and you use -- take \$10 out of that and create a  
2 case reserve for \$10, it's a wash. It's not a reserve  
3 strengthening.

4 You -- insurance companies know today that  
5 they're going to get claims coming along over a good-  
6 sized period of years, even though the claims have already  
7 been incurred, they haven't been reported, and so they  
8 provide for that with a separate reserve for that kind of  
9 a claim, that situation.

10 And as we tried to describe in our brief, the  
11 problem with the factual hypotheticals that petitioner  
12 gives us is, they don't give any consideration to that  
13 aspect of reserves, and they're based upon what I think is  
14 fairly described as a frivolous suggestion that insurance  
15 companies have only two or three claims a year. We're  
16 supposed to look to the broad company-wide data to decide  
17 whether reserve strengthening happened under the -- under  
18 the regulation.

19 The regulation is designed to let the -- or the  
20 statute is designed to let these insurance companies have  
21 their cake and eat it too. It's a double deduction, but  
22 it's not as big a double deduction as they'd like. It's  
23 not as big a double deduction as Congress plainly  
24 wanted -- was willing to give them.

25 All the regulation does is enforce the

1 legislative intent, and under the principles of deference  
2 that this Court customarily applies, the agency's  
3 reasonable interpretation should be sustained.

4 If there are no further questions --

5 QUESTION: Thank you, Mr. Jones.

6 Mr. Abramowitz, you have 3 minutes remaining.

7 REBUTTAL ARGUMENT OF GEORGE R. ABRAMOWITZ

8 ON BEHALF OF THE PETITIONER

9 MR. ABRAMOWITZ: It would not have been  
10 unreasonable for Congress to have not provided the reserve  
11 strength -- the fresh start rule. But Congress did  
12 provide the fresh start rule.

13 It is unreasonable for this agency, the Internal  
14 Revenue Service, to have cut back that rule in a way that  
15 frustrated the intent of Congress. In effect, what this  
16 regulation does is make reserves at the end of 1985  
17 subject to the fresh start and not reserves at the end of  
18 1986.

19 The Congress had a very specific purpose in  
20 providing the reserve strengthening exception, whatever  
21 their purpose was for the broad relief they were  
22 providing, and that very specific purpose that it had had  
23 to do with artificial, manipulative advantage-taking of  
24 the fresh start rule that they were providing.

25 The historic definition of reserve

1 strengthening, the historic meaning of that term satisfied  
2 that congressional objective. Contrary to what respondent  
3 counsel just indicated, there was a 30-year history of the  
4 term reserve strengthening that began -- it first appears  
5 in the legislative history for the 1959 act for life  
6 insurance companies. It is in judicial decisions, it is  
7 in regulations, it is in revenue rulings for 30 years  
8 before Congress had -- had it -- actually had applied it  
9 in the 1984 act.

10 Now, it didn't really have much reason to be in  
11 the statute before then because generally adjustments go  
12 two directions when you change methods or assumptions.  
13 They can reserve increases or reserve decreases. One is  
14 strengthening, one is weakening, so generally when you saw  
15 this in the statute from the '59 act it was referred to as  
16 changes in basis, which went both directions.

17 But when they needed the rule that they adopted  
18 in 1984, they looked to a term of art that they  
19 understood, this term that they understood and that the  
20 Internal Revenue Service understood.

21 In Commissioner v. Keystone, Consolidated  
22 Industries, this Court, at respondent's suggestion,  
23 identified the term, sale or exchange, as a term of art in  
24 tax law.

25 It is true that reserve strengthening doesn't

1 quite go to the breadth of the term, sale or exchange. By  
2 the same token, for insurance tax lawyers and insurance  
3 taxation the term reserve strengthening has a very precise  
4 meaning. That is the meaning that Congress intended.

5 To the extent that Senator Wallop indicated he  
6 had some concern about changes in that meaning, those  
7 concerns were reflected in his comments sometime after the  
8 act, but the more important point is, he expressed some  
9 concern that he certainly didn't recollect any changes in  
10 definition that occurred or were discussed by the  
11 conferees.

12 CHIEF JUSTICE REHNQUIST: Thank you,  
13 Mr. Abramowitz.

14 The cas is submitted.

15 (Whereupon, at 11:33 a.m., the case in the  
16 above-entitled matter was submitted.)  
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## CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of:

ATLANTIC MUTUAL INSURANCE COMPANY, Petitioner v. COMMISSIONER OF INTERNAL REVENUE

CASE NO: 97-147

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Donna Marie Fedirko-----

(REPORTER)