No. 02-0730

IN THE

SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EXCESS UNDERWRITERS AT LLOYD'S LONDON
AND CERTAIN COMPANIES SUBSCRIBING SEVERALLY
BUT NOT JOINTLY TO POLICY NO. 548/TA4011F01,

Petitioners,

v.

FRANK'S CASING CREW & RENTAL TOOLS, INC.,

Respondent.

PETITIONERS' RESPONSE TO MOTION FOR REHEARING

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ATTORNEYS FOR PETITIONERS
EXCESS UNDERWRITERS

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REPLY TO POINTS PRESENTED

1. Texas law has long recognized an insurer's right to litigate coverage and obtain reimbursement for non-covered claims paid under the policy. *Matagorda* restricted that right, and required the insured's "clear and unequivocal consent" to reimbursement. The *Frank's* opinion restores balance to well-established Texas law by widening the restriction on reimbursement to comport with common law principles. The opinion does not expressly or impliedly change the principles set forth in *Stowers* or *Gandy*.

2. *Matagorda's* concern was that insurers with a unilateral right to settle could accept settlements beyond the insured's resources, and require reimbursement for that settlement. *Frank's* finds that concern eliminated when the insured demands settlement within policy limits. The demand does not create the reimbursement right: it is implied in law. The demand estops the insured from disputing reasonableness of the settlement. Reasonableness is objectively determined, creating no conflict with defense counsel, and preventing undue "leverage" by the insurer over coverage.

3. *Frank's* also allows reimbursement when insureds agree to accept a settlement requiring their consent. Because the insured controls settlement, it can accept the benefits of extinguished liability for a reasonable cost subject to reimbursement in the event of a finding of no coverage; it can also reject settlement and continue litigating with control of the defense to attempt a lower settlement or a defense verdict. Insureds with limited means are protected in either event: their exposure to the insurer is no greater than their exposure to the claimant.

4. The Court's opinion expressly addresses *Matagorda's* viability, stating that *Frank's* clarifies additional circumstances which give rise to a right of reimbursement. Because reimbursement is a restitution-based remedy, it involves a balancing of policy considerations and the equities of the parties, based upon case-by-case fact adjudication. Further clarification of how *Matagorda* and *Frank's* may apply to different facts is best left to those individual cases as they naturally progress through the court system.

5. Frank's asserts legal error in the Court's conclusion that Louisiana allows reimbursement because no Louisiana case exists with these particular facts, and the requirement that enrichment be "without cause" was not analyzed by the Court. The opinion does, however, analyze "without cause" as including the benefit received by another's discharge of a debt owed, and analysis of

another state's law is not improper because an "on point" case is lacking.

SUMMARY OF THE ARGUMENT

In 1994, the Excess Underwriters agreed to extend $10 million in excess umbrella liability coverage to Frank's Casing Crew, a sophisticated, national oil and gas services company. The terms and conditions for the risks covered were presented and negotiated by an experienced London broker on Frank's behalf.[1] Frank's chose the risks for which it contractually desired coverage, and accepted certain uninsured risks for itself.

In 1998, the Excess Underwriters paid $7.5 million of the excess umbrella coverage, at Frank's insistence, to settle uninsured claims for which Frank's had paid no premium. The Fourteenth Court of Appeals concluded that even though the claims were not covered, the application of this Court's opinion in *Matagorda* led to the "somewhat disquieting" conclusion that reimbursement was not owed, and recommended appeal to this Court.[2] Each of the justices who heard the case in this Court agreed that the circumstances entitled Excess Underwriters to reimbursement for the noncovered claims.[3] There was no dissent.

The Court's opinion clarifies *Matagorda's* holding that a reimbursement right arises under certain fact-intensive circumstances, by identifying additional circumstances under which the reimbursement right will arise. Future applications of the reimbursement right are

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[1] Lowndes Lambert Oil & Energy Limited.

[2] *Excess Underwriters at Lloyd's v. Frank's Casing Crew & Rental Tools, Inc.*, 2002 WL 1404705 (Tex. App. – Houston [14th Dist.] 2002) (authored by J. Brister).

[3] Justices Brister and Johnson did not participate in the decision.

best left to the individual cases in which they arise, because as this Court noted, the inquiry is fact-intensive because of the equitable nature of restitution and the balancing of policy concerns, facts and equities that must take place.

The circumstances outlined in the *Frank's* opinion do not present a "sea change" in Texas law -- on the contrary, they properly expand the principles regarding the right to reimbursement that were set forth in *Matagorda* to comport with long-standing Texas common law, and they recognize modern course of dealing and practices utilized by the parties to resolve commercial insurance disputes between sophisticated parties. No rehearing is required in this case because all participating justices of this Court agreed that a reimbursement right was owed and properly applied it to the circumstances of this case. Future applications are dependent upon fact-intensive, case-by-case analyses. Rehearing should be denied and this Court's mandate reimbursing the Underwriters should issue.

ARGUMENT AND AUTHORITIES IN RESPONSE TO MOTION FOR REHEARING

The sole purpose of a motion for rehearing is to provide the reviewing court an opportunity to correct any errors of law which have allegedly been committed by the court.[4] It is not an opportunity to test alternative arguments after finding other arguments unsuccessful.[5] In support of rehearing, Frank's argues that the Court has adopted

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[4] *Texas Municipal Power Agency v. Public Utility Commission of Texas*, 150 S.W.3d 579 (Tex. App. – Austin 2004, pet. granted); *K & S Interest, Inc. v. Texas American Bank/Dallas*, 749 S.W.2d 887 (Tex. App. – Dallas 1988, writ denied).

[5] *Continental Dredging, Inc. v. De-Kaizered, Inc.*, 120 S.W.3d 380 (Tex. App. – Texarkana 2003, pet. denied).

California's reimbursement law which is incompatible with Texas law and practice, that the circumstances outlined by the Court in which a reimbursement right may arise are simply unfair to insureds, and that clarification is needed on how the right to reimbursement may apply to different facts in future cases. The only "legal error" Frank's raised is that the Court's analysis of reimbursement rights under Louisiana law is somehow flawed because there is no Louisiana case "on point" with these particular facts. That is not legal error under Texas law. Neither Frank, nor the amicus, argue that the result in this case is wrong; rehearing is requested only to clarify how the reimbursement right may apply in future cases. The courts hearing those future cases are the appropriate forum to make that determination, not a rehearing of this case.

I. Texas Law has Long Recognized an Insurer's Right to Litigate Coverage and Obtain Reimbursement for Non-Covered Claims. *Frank's* Does Not Apply California Law -- It Widens *Matagorda's* Reimbursement Window to Comport with the Common Law and Restores Balance to Texas Law.

Frank's argues rehearing is necessary because this Court's opinion "adopts" California law on reimbursement, but fails to consider that the Texas *Stowers* rule is different from California law on settlement of non-covered claims. The *Frank's* opinion does not, however, expressly or impliedly adopt California law on the issue of reimbursement. Nor does it change well-settled Texas law regarding the *Stowers* rule. This Court's previous pronouncements in both *Gandy* and *Griffin* regarding an insurer's conduct remain intact.

A. The Right to Reimbursement is not new to Texas law.

Insurers have long been allowed restitution under Texas law for policy payments

made that were not owed, unless the insurer has agreed to assume the risk of mistake, or there is some reason which makes it inequitable or inexpedient for restitution to be granted.[6] Frank's argues that because this Court references California law in its opinion, that it has somehow displaced long-standing Texas jurisprudence with incompatible California principles. California is not, however, the first, or only state, to recognize that an insurer has a right to reimbursement for payment of noncovered claims, and this Court's reference to the reasoning of the California courts does not expressly, or impliedly, purport to adopt California law in any respect.[7]

Frank's reasons that references to California law in the *Frank's* opinion are incompatible with Texas *Stowers* law, because California requires an insurer to pay a reasonable settlement demand regardless of coverage, while under Texas law, an insurer has no duty to pay a reasonable settlement demand if the claim is not covered. Frank's argues that a Texas insurer does not need an implied right to reimbursement (like a California insurer), because it can simply refuse to settle claims for which it disputes coverage.

Even if Frank's were correct about California law, which it is not,[8] it misses the point.

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[6] *Dolenz v. American General Fire and Cas. Co.*, 798 S.W.2d 862 (Tex. App.–Dallas 1990, writ denied) (fire insurer entitled to repayment of sums it had paid in excess to insured because payment exceeded appraisal amount); *Benson v. Travelers Ins. Co.*, 464 S.W.2d 709, 712 (Tex. App. – Dallas 1971, no writ) (stating that insurer is entitled to recover overpayment under collision insurance unless insurer assumed the risk of mistake).

[7] *See* ROBERT H. JERRY, II, THE INSURER'S RIGHT TO REIMBURSEMENT OF DEFENSE COSTS, 42 Ariz. L. Rev. 13 (Spring 2000) and cases collected therein.

[8] *See Scottsdale Insurance Company v. MV Transportation*, 31 Cal.Rptr.3d 147, fn. 5 (Cal. 2005) (where the California Supreme Court notes that an insurer risks bad faith liability if it declines a reasonable offer within policy limits on the grounds of no coverage). If there was no choice in the

Under the law of both states, insurers are subject to liability (*Stowers* in Texas and "bad faith" in California) if they refuse to settle and the claim is ultimately determined to be covered. It is that dilemma: refuse coverage and face potential liability for wrongful failure to settle, or accept coverage and face no recoupment for non-covered claims, that this Court's opinion in *Frank's* appropriately addresses.

As this Court recognized, if an insurer refuses to pay each time there is a potential coverage dispute, no one benefits. Payment to the injured third party is delayed, reduced or nonexistent. The insured does not benefit by litigating coverage at the same time it is defending the underlying dispute. The insurer does not benefit because if it is wrong on coverage, and has to pay the claim, it is subject to statutory and other penalties. Consumers do not benefit because if the insurer is forced to pay non-covered claims, those costs will be ultimately be passed back to other policyholders in the form of higher premiums, less available coverage, and increased litigation costs. The Court's opinion makes quite clear that "no one suggests that an insurer may unilaterally settle a claim for an unreasonable amount, or in circumstances that actually ... prejudice the insured." Nevertheless, the Court correctly preserves the right to litigate coverage, notes the tenets and application of the *Stowers* doctrine, and properly refers to the reasoning of other courts in allowing a reimbursement right. Rehearing is not required because it is not legal error to reference decisions of other jurisdictions.

B. Neither *Gandy* nor *Griffin* are overruled by this case.

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matter but to pay, as Frank's asserts, there would be no need for the bad faith remedy.

Frank's argues that the Court's opinion overrules the *Gandy*[9] requirement that insurers accept coverage, or make a good faith effort to resolve coverage before adjudication of the underlying claim. Frank's says that the opinion's reference to *Blue Ridge,*[10] and the inclusion of that court's observation that "coverage disputes can also be resolved after the injured third party is compensated," somehow changes Texas law. The fact that some coverage disputes must await adjudication of the underlying case, however, is hardly novel to Texas jurisprudence.

For many years, before this Court's decision in *Griffin*, insurers could not file declaratory actions to determine coverage disputes until the underlying case was adjudicated. In *Griffin*, this Court stated that some coverage disputes can be disposed of before the underlying case, and allowed insurers the right to litigate coverage, "if the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify."[11] Concomitantly, this Court recognized that resolution of some indemnity issues "must wait until the liability litigation is resolved," and stated that in some cases, coverage may actually turn on the facts "proven in the underlying lawsuit."[12] The *Blue Ridge* reference does not change Texas law, nor do away with the *Gandy* requirement to make a

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[9] *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 2005 WL 1252321 at *9 (Tex. 2005) (concurring opinion of Justice Hecht).

[10] *Blue Ridge Insurance Company v. Jacobsen*, 106 Cal.Rptr.2d 535, 22 P.3d 313 (Cal. 2001).

[11] *Farmers Texas County Mutual Insurance Company v. Griffin*, 955 S.W.2d 81, 84 (Tex. 1997).

[12] *Id.*

good faith effort to resolve coverage issues; it accurately reflects Texas law and practice reflected in this Court's opinions in *Gandy* and *Griffin*.

II. *Frank's* Allows a Reimbursement Right if the Insured Demands Settlement Within Policy Limits. The Demand Does Not Create the Right: It is Implied in Law. The Demand Estops Disputes Over Reasonableness of the Settlement. Reasonableness is Objectively Determined and Does Not Create Unfairness.

Frank's says that this Court's opinion creates a reimbursement right out of a simple demand from the insured to settle the case. That is not correct. In *Matagorda*, this Court recognized that the law provides a quasi-contractual right to seek reimbursement for an insurer paying claims that are not covered under the policy, but held that the facts in that case did not justify reimbursement. It is not the insured's demand to settle that gives rise to the reimbursement right -- that right already exists under the law. It is the fact that the insured's *Stowers* demand upon its insurer, to accept a reasonable settlement demand within policy limits, estops it from later claiming the settlement was unreasonable if there is no coverage.

The reason for the estoppel is that *Stowers* applies an objective standard to determine the insured's potential liability, and whether a settlement offer within policy limits is reasonable.[13] Once the insured agrees that a demand meets the objective criterion of the *Stowers* standard, the settlement is reasonable whether or not there is coverage, and whether or not the insured has sufficient assets to pay the reasonable settlement.

The concern in *Matagorda*, that an insurer controlling the defense could accept an unreasonable settlement without the insured's consent, and later require reimbursement of

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[13] *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 2005 WL 1252321 at *3 (Tex. 2005).

the unreasonable amount, is eliminated. This Court does not say that an insured's mere demand to settle is sufficient to invoke the estoppel or that the insurer is automatically entitled to reimbursement: the demand must be objectively reasonable and within policy limits, and the insurer must have timely reserved rights and notified the insured it intends to seek reimbursement for non-covered claims.

A. Express reimbursement provisions are an unnecessary duplication of the underlying obligations the insurance contract is founded upon.

Frank's says that insurers should not be allowed the right to reimbursement when they have not expressly included reimbursement rights in their policies, or charged extra premiums for that right. But this argument reduces contract rights and obligations to an exercise in drafting minutiae. The parties to the contract negotiate and allocate the risks that will, and will not, be covered by the policy. The agreement is that the underwriters accepting the specified risks will pay if those risks occur, and will not pay if risks not appearing in the contract occur. Contracts are not drawn up by specifying the rights and duties the parties have omitted. The parties do not include in the contract a list of all the possible perils to which the insurance does not apply, they do not list the types of coverages which are not provided, they do not specify all the risks for which the insured has not paid premium, and they do not provide that the insured is responsible for non-covered claims.

The proposition underlying every contract, that the parties intended to receive no more and no less than the benefits bargained for, is rarely expressed in the contract terms, but nevertheless presumed as their fundamental agreement. The right to litigate coverage and

seek reimbursement is not an extracontractual right unilaterally imposed by the insurer: it is a recognition and enforcement of the most basic of contract terms between the parties: that the parties should receive no more and no less than the benefits they bargained for.

B. *Stowers* evaluations that a settlement is reasonable do not create conflicts of interest.

Frank's says that the right of reimbursement creates a conflict and potential malpractice action against retained defense counsel. It claims that counsel's evaluation of a *Stowers* settlement demand as reasonable somehow commits the insured to reimburse the insurer in the event the settled claims are not covered. There is no conflict, however, because as this Court made clear in *Traver*, retained defense counsel owes all loyalties and duties to the insured client.[14] There is no malpractice because it is part of defense counsel's duty to evaluate for its insured client whether a settlement demand is reasonable, and in the insured's best interest. There is no commitment to reimbursement by the insured simply because defense counsel agrees that a settlement demand is reasonable.

This Court held that the right to reimbursement hinges upon the insurer's timely assertion of reservation of rights, notification to the insured that it intends to seek reimbursement, and payment of claims that are not covered.[15] If these conditions are met, it is the insured's demand to accept a settlement offer within policy limits, or the insured's

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[14] *State Farm Mutual Automobile Insurance Company v. Traver*, 980 S.W.2d 625, 627-28 (Tex. 1998).

[15] *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 2005 WL 1252321 at *3 (Tex. 2005).

express agreement to accept the settlement offer, that raises the right to seek reimbursement. The evaluation that the settlement is reasonable estops the insured from later claiming the settlement is unreasonable because it is too financially burdensome for it to bear.[16]

C. The *Frank's* opinion restores balance; it does not leverage the insurer's coverage position.

Frank's argues that the Court's opinion gives insurers the right to insulate themselves from *Stowers* liability and then sue the insured for reimbursement, and that insurers will increasingly file suit to seek reimbursement because it is in their financial interest to do so. Insurers have always had the right to litigate coverage under Texas law; it is *Matagorda* that created a "sea change" by effectively removing that right unless the insured's express consent was obtained.[17] Settling the underlying claim does not insulate the insurer from *Stowers* liability. If the claim is covered, the settlement must still meet the *Stowers* reasonableness standard in order for the insurer to avoid liability. If the claim is not covered, *Stowers* does not apply, and there is no liability from which the insurer has been insulated.

Prior to *Matagorda*, many insurers chose to compromise coverage disputes with their insureds if the underlying case could be reasonably settled, both because it is time-consuming

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[16] *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 2005 WL 1252321 at *3 (Tex. 2005).

[17] *See, e.g., Centennial Mutual Life Association v. Parham*, 80 Tex. 518, 16 S.W. 316 (Tex. 1891), one of the earliest reported cases in which an insurer sought reimbursement of sums paid for non-covered claims. *See also Mannheim Insurance Co. v. Charles Clarke & Co.*, 157 S.W. 291 (Tex. App. – Galveston 1913, writ granted) (finding the insurer entitled to reimbursement for non-covered salvage expenditures), *rev'd by Charles Clarke & Co. v. Mannheim Insurance Co.*, 210 S.W. 528 (Tex. Comm. App. 1919) (finding coverage).

and expensive to litigate coverage issues, and because insurers often have an ongoing business relationship with their insureds which they choose to preserve. *Matagorda* increased the likelihood of coverage lawsuits because to ensure the right to litigate coverage, the insurer had to deny coverage and refuse to fund even a reasonable settlement. This decision restores the status quo: insurers may settle the underlying claim, benefitting the injured third-party, and retain their right to litigate coverage for non-covered claims, should there be a cost-benefit to pursuing reimbursement. The Court's decision in this case encourages settlement: insurers are more likely to settle claims if they can preserve a right to later determine coverage.

III. *Frank's* Also Allows Reimbursement When Insureds Agree to Accept a Settlement Requiring Their Consent. The Insured Controls Whether to Accept Settlement Subject to Reimbursement, or to Reject Settlement and Control the Litigation. Exposure Either Way is Ultimately Limited by the Insured's Means.

In *Frank's*, this Court noted that one of the chief concerns of *Matagorda* was that an insurer with a unilateral right to settle could accept a settlement that was out of the insured's financial reach, but still require the insured to litigate coverage which might require reimbursement of the settlement amount. It held that this concern was ameliorated if the insured expressly agrees that the settlement offer should be accepted. An insurer has a right to seek reimbursement if it has timely asserted its reservation of rights, notified the insured it intends to seek reimbursement and has paid to settle non-covered claims.[18]

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[18] Frank's claim that the excess policy does not require consent to settlement because the requirement appears in the "loss payable" clause is not supportable. Under Texas law the label given the clause does not change the meaning of the wording therein. Even if it did, the record in this case showed Frank's expressly consented to the settlement in open court.

A. Consenting to a reasonable settlement of non-covered claims is not "unfair" because the insured waives *Stowers* rights.

Frank's argues that the insured's express agreement to accept the settlement offer should not lead to a right to seek reimbursement because an insured cannot withhold consent from an objectively reasonable settlement. Insureds will never refuse to consent, according to Frank's, because to do so will waive any rights against the insurer for *Stowers* liability. Frank's argues this result is unfair, because even though it benefits from the reasonable settlement, it may have to reimburse its insurer if there is no coverage, whether or not it has the funds to do so.

The assumption that most insureds will accept a reasonable settlement is presumably a correct one. This Court's opinion recognizes that a reasonable settlement is in the insured's best interest and has protected the insured from a potential judgment larger than the settlement. The assertion that it is unfair for the insured to pay for a settlement that the insurer had no duty to pay is the classic "have your cake and eat it, too" argument, which this Court addressed and disposed of in the opinion. Coverage for the claim is not created *ex nihilo* by the fact that it is "unfair" for the insured to have to accept a reasonable settlement and waive *Stowers* liability, or that it is "unfair" that the insured lacks the funds to pay non-covered claims.[19] The fact of the matter is that the insurer has no duty to settle the non-covered claims.

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[19] *Excess Underwriters at Lloyd's, London*, 2005 WL 1252321 at *7 (Tex. 2005) (concurring opinion of Justice Hecht).

B. Consenting to a reasonable settlement of non-covered claims is not unfair simply because the insured owes reimbursement.

The insured is not prejudiced by reimbursement because it contractually agreed to retain the risk of claims not covered under the policy. It is not prejudiced by the insurer's settlement of the noncovered claim, because it is, in fact, a reasonable disposition of the claim against it. The insured's potential exposure to a judgment greater than the settlement amount has been eliminated, liability has been extinguished, and it has its insurer as a potential creditor in the event there is no coverage.

If there is no coverage, the insured is in the same position it would have been with no insurance policy, except that it, and not its insurer, would be out-of-pocket the funds necessary to settle the case. The insured's ability to pay may be limited, but it will pay no more to its insurer in reimbursement than it would have to the claimant, and certainly no more than the limit of its funds allow. It is the insurer which has assumed, even if temporarily, an "unfair" obligation to pay claims for which there is no coverage.

Frank's also argues that this Court has provided no compelling policy reasons for "shifting" the risk at the time of settlement of whether coverage will exist for the claims from the insurer, which is in the business of analyzing and allocating risk, to the insured who is paying for the insurer's coverage expertise with its premiums. With all due respect, however, very few cases fit this paradigm, and certainly not this one. Large corporate insureds like Frank's, with their own risk managers, legal departments, and insurance brokers, make their own very capable contractual risk analyses every day.

Frank's bargained for its insurer to assume the cost of covered settlements or judgments. To shift these costs to the insured does not upset the contractual arrangement between the parties. To shift them to the insurer who received no premium for them, and did not bargain for, or expect to pay non-covered claims, makes a mockery of the contractual obligations agreed upon by the parties.

IV. *Frank's* Clarifies the Circumstances Allowing Reimbursement Outlined in *Matagorda*. Rehearing is Unnecessary as Future Application will Depend Upon the Facts and Equity of Individual Cases.

This Court's opinion clarifies the reimbursement right recognized in *Matagorda* but which was not applied based upon *Matagorda's* facts. It widens the "window of reimbursement" to embrace two other circumstances which, if other conditions are met and the equities require, will allow reimbursement. Because the right is equitably based, it is necessarily fact-intensive and dependent upon a balancing of policy and the parties' interests. Rehearing in this case, when there is not disagreement that a right to seek reimbursement exists under these circumstances, and that reimbursement is justified in this case, does not advance any interest. Future cases will determine the scope and limits of the right to reimbursement.

V. This Court's Analysis That Louisiana Law Would Allow Reimbursement is Not in Error Simply Because There is No Case on Point Applying These Facts.

Frank's argues that the Court erred when it decided Louisiana law provides a right of reimbursement. It claims the Court omitted an analysis of enrichment "without cause" required under Louisiana law, and that because no case "on point" exists applying these facts

that Louisiana law cannot be determined. The opinion does, however, address the "without cause" requirement in its discussion of the *Edmonston* case, and its holding that the requirement is met if an obligation is discharged when no duty is owed. The Louisiana case law recognizing and applying a reimbursement right was briefed and argued.[20] The lack of an "on point" case has never been grounds, under Texas law, for holding that a Texas court's analysis of another state's law is legal error.

CONCLUSION

This Court properly applied a right of reimbursement to preserve the rights, obligations and duties, negotiated by the parties and assumed in the insurance contract. There was no dissent that a right of reimbursement was owed, that the law allowed reimbursement, or that equitable concerns justified reimbursement. There has been no legal error requiring rehearing, and no legitimate function is served by rehearing this case.

PRAYER

The Excess Underwriters respectfully request that the motion for rehearing be denied and that this Court issue its mandate requiring reimbursement.

Respectfully submitted,

WESTMORELAND HALL, P.C.

By: _____

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[20] CR Vol. XV 3210-11; 3213-14; CR Vol. III 533-50; CR Vol. XVII 3670-72; RR 15:14–17:14; 29:17–30:5.

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CERTIFICATE OF SERVICE

I certify that a copy of Petitioners' Response to Motion for Rehearing was served on all counsel of record by certified first-class U.S. mail, return receipt requested, on the 29th day of November, 2005, addressed as follows:

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