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Supreme Court of Texas.  
LEXINGTON INSURANCE COMPANY, et al., Petitioners,  
v.  
Carole Keeton STRAYHORN, Comptroller of Public Accounts of the State of  
Texas,  
and Greg Abbott, Attorney General of the State of Texas, Respondents.  
No. 04-0429.

September 28, 2005

Appearances:  
Curtis L. Frisbie Jr., Gardere Wynne Sewell LLP, Dallas, TX, for  
Petitioners.  
William E. Storie, Office of Atty. Gen. of Texas-Taxation, Austin,  
TX, for Respondents.

Before:

Paul W. GREEN, Chief Justice Wallace B. JEFFERSON, Nathan L.  
HECHT, Harriet O'NEILL, Dale WAINWRIGHT, Scott A. BRISTER, David M.  
MEDINA, Phil JOHNSON, Don R. Willett.

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JUSTICE: Thank you. Please be seated. Court is ready to hear  
argument in 04-0429 Lexington Insurance Company against Strayhorn.

SPEAKER: May it please the Court. Mr. Curtis L. Frisbie Jr. will  
present argument for the petitioner. Petitioner reserves five minutes  
for rebuttal.

ORAL ARGUMENT OF CURTIS L. FRISBIE JR. ON BEHALF OF THE PETITIONER

MR. FRISBIE: May it please the Court. Good morning. This is an  
important case of statutory construction. It has to do with  
unauthorized insurer of statute in the surplus lines insurer of  
statutes. Texas is the second largest market in the United States of  
surplus lines insurance. Lexington, one of the petitioners here today,  
is the largest surplus lines insurer of the United States. American  
International is the second largest in the United States. The Landmark  
is the sister company also a surplus lines insurer of the United  
States. I make this point just to show that these are not at all fly-  
by-night companies. These are substantial companies operating in the  
state.

This case is important because it's being watched by all the

surplus lines insurers in the country. And it is also being watched by every claims lawyer. And the reason is the holding and the logic of the Court of Appeals. What the Court of Appeals has gone in this case is says an eligible surplus line insurer subject to and governed by Article 114-2. If it makes some misstep and it violates one of the sections of 114-2 then it becomes -- that transaction becomes an unauthorized transaction. The Court then leads to the conclusion if you have an unauthorized transaction, then the insurer changes its status and becomes an unauthorized insurer. And from that conclusion we go to the conclusion that the unauthorized insurer is subject to Article 114-1 with a different statute and is subject to the penalties there. In this particular case, the penalty that is being discussed is an unauthorized insurer who is responsible for paying the premium tax.

JUSTICE HECHT: Do you think -- I didn't say this anywhere in the briefs. As the restructuring and perhaps change of the law since these provisions made any difference in the case?

MR. FRISBIE: It makes the case even more important for this Court. In 2003 the Court changed the definition of who pays the taxes under the unauthorized insurance premium taxes. They changed it to say an insurer rather than saying an unauthorized insurer - they said an insurer shall pay the tax. And they define the insurer as an authorized insurer, and unauthorized insurer, and an eligible surplus lines insurer. In that same legislature, for whatever reason, they also made it change the law effective April of 2005 in this year. And they changed that definition in what was supposed to an onerous bill was have non substitute changes. They changed it to say back to the language we had before instead an unauthorized insurer shall pay. So, we are now in this situation as of April 2005. We will back in the same situation we were back in 1993 when these amendments came in effect. So, this case has implications beyond a statute that has already expired but no longer in effect.

But what's happening in this case now is an eligible - is the plaintiff's lawyers are now taking the position that if you follow the same logic of the Court of Appeals when you have an eligible surplus lines of insurer who is admittedly governed by one statute part of the 114-2. And he makes a misstep in that statute 114-2, then that transaction becomes known as an unauthorized transaction. And then they go to a conclusion that that transforms the insurers somehow into an unauthorized insurer now subject to the penalties in a different provision of the Code Article 114-1 dealing unauthorized insurers.

But here's when the plaintiff's lawyers once followed this logic and this is where they get all trapped here. They say the logic of that issue is subject to the penalty that unauthorized insurers' contracts with their policyholders are unenforceable in this state which means that two things happen. The plaintiff's lawyer takes the position if the contract is unenforceable by the unauthorized insurer then the policyholder -- I mean, the insurance company has lost all of its defenses, all of its contract defenses and its common law defenses. The surplus lines insurer is looking at this case because what they are wondering now is: Is every single surplus line policy that they had written in this state since the 1990s now in jeopardy of what I now refer to you is "gotcha litigation."

Gotcha litigation happens and is already happening and have evidence of support of this Court from the amicus briefs, is instead when there is a dispute between the insured and the insurer over a coverage position which happens everyday, instead of the coverage being the principal issue what happens is the discovery is directed to the

placement of that policy. They wanna know if every single provision and every rule and regulation that has been adapted by the insurance partner for the placement of that policy have they been followed.. Because if there's been a misstep the plaintiff's lawyer would say, then the transaction is unauthorized transaction. No longer governed by Article 114-2. And now a transaction is governed by Article 114-1. You lose your defenses. And essentially the case gets to be an impossible burden for the insurance company from that point forward.

This is not something that we are making up. This is not something that's fanciful. This is something that has already happened. You've seen one amicus brief filed by Garco case in this case. And you've seen the responses that we filed to show that in the Houston Courts, they tried this exact theory. You've also seen Snitty amicus briefs in what was filed yesterday. I understand the amicus briefs of the two other insurers where they have admittedly they were eligible surplus lines insurers and so certificated -- certificated by the Insurance Department. They had had used the licensed surplus lines agent. And they paid their taxes. But instead skillful inventive plaintiff's counsel in those cases found a number of errors in the placement of that policy and convinced the judge to say that they've lost all the defenses. I bring this up because I say it could not have been the legislative intent to reach this result.

JUSTICE HECHT: One thing that puzzles me here, is that 114-1 talks about an unauthorized insurer. And as I understand the argument of -- by the comptroller that an insurer may be unauthorized as to a particular policy. Is that your understanding of the argument that -- yes, you issued all these other policies and they were through the agents. But these policies were not issued. And so with respect to those policies you're unauthorized.

MR. FRISBIE: The comptroller's position is clearly that. That was the -- the opinion of the Court of Appeals is that you have to look this on a policy-by-policy, to transaction-by-transaction basis. And you determine on a transaction-by-transaction basis whether you are wearing a black hat of an unauthorized insurer who's not allowed to do business in this State or whether you are wearing a white hat of the eligible surplus lines insurers.

JUSTICE O'NEILL: But you're making "unauthorized" and "ineligible" synonymous. And it seems to me that you could be generally eligible but conduct an unauthorized transaction. Those terms don't seem mutually explicit.

MR. FRISBIE: But there is no doubt that an eligible surplus lines insurer could make a mistake. And whether you call it if an unauthorized transaction or you call it a mistake, or a deficiency, or unlawful, or illegal it makes no difference. The question that is before this Court is: What happens at that point? The Court of Appeals leaped from that conclusion. We said that any logic or any support to say that transforms the insurer into an unauthorized insurer then subject to a different statute --

JUSTICE O'NEILL: As solely as to that transaction.

MR. FRISBIE: As to that transaction.

JUSTICE O'NEILL: And let me asked you about an enforcement mechanism. I mean, if it didn't work that way how would the requirement that if they go through the authorized agent ever be enforced? I mean couldn't the insurer keep records of the placement issues and the collection of tax?

MR. FRISBIE: How does he get enforced is the first part of the question. It is our position in this case that if an eligible surplus



lines insurer who is governed by 114-2 makes a mistake, an error as an authorized transaction if you wanna call it that --

JUSTICE O'NEILL: But it's not their error. It's the agent's error.

MR. FRISBIE: It could be either one. It makes no difference. I think under the statute. But an error is made. And it's our position that they should be penalized. They should be punished. But since they are governed by dash-2 and since they violated dash-2 they should be subject to the penalties of dash-2. There are two sections in Article 114-2 that deal with the penalties, one particularly having to do with violations of Section 8 and 9 and the other with violations of any other provision of that statute. And they tell you what the penalties are. The penalties can be draconian. They can be death penalty sanctions to kick them out of the State, so that they can no longer practice here. They can also be subject to the fines, penalties, cease and desist orders, things of that nature. So, that is the position. We submit that any carrier who is eligible, who has gone through the process of approaching the State or the Department of Insurance and who's gone to the process of putting their capital and their reserves, put all that information before them. They received a certificate. They're recognized to such. They're operating lawfully in this state. If they make a mistake as a part of their surplus lines business, they certainly should be punished whatever state department this. The insurance department wants to do but they will do that under dash-2 not under dash-1.

JUSTICE O'NEILL: But the nature of the mistake, I mean the nature of the mistake here is not assuring that its agent is collecting this fee, right?

MR. FRISBIE: The nature of the problem here where there is a mistake here when they call it, is that many, many years after the fact when Lexington Insurance Company was audited by the State Board of Insurance, it could not prove that each one of the policies that --

JUSTICE O'NEILL: No. I understand that. But in terms of the overall statutory scheme the problem is attempting to address perhaps the agent that doesn't collect the fee and putting the responsibility of that on the eligible surplus lines carrier to insure that that happens. There is no one else who could insure if that happens.

MR. FRISBIE: Your Honor, there -- I think I understand your question. There are -- if you wanna call the holes in the statute right now. You cannot insure that in every single transaction, the State will get net premium taxes paid --

JUSTICE O'NEILL: -- but of course --

MR. FRISBIE: For instance, if the agent takes the money and disappears and goes to Bermuda tomorrow with the premium dollars and with the taxes and we don't get it back by law, the insurance company still must insure but the State's not gonna get its premium taxes. There is no fixed for that anywhere in the statute. There is no fixed for it in the statute if for instance if the agent for some other reason that doesn't pay the money. The agent is the only one who ever collects the taxes. And the agent is the only one whoever gives the department of insurance.

The surplus lines insurer never sees the taxes, doesn't know whether it's collected, and doesn't know whether it's paid, and has no records to show it, and has no way to know it. Remember they are out of State and they are largely passive in these transactions. When these transactions come up literally speaking what happens is an application for insurance comes in over a fax or through the mail in some fashion to them and it is looked at by the insurance company. They apply their

underwriting guidelines. They set it whether they would accept or reject it and it goes back to the surplus lines agent who is an agent for a regular recording agent or MGA agent who is the agent for the insured. And so the surplus lines insurer in a typical transaction has no contact with the insurer, never talks to them. Never sees them. Never talks to their regular agent. But generally corresponds only with the licensed surplus lines agent of the State. And these laws on the State are set up so that if the agent who is responsible for the compliance with most of the rules for compliance with the statutes in the state.

The dispute obviously arose when the audit occurred and the state said that Lexington owes millions of dollars in premium taxes. Lexington's response was very simple. You are suing me under Section 11 (a) of the unauthorized insurance statute. And Section 11 (a) says very simply every unauthorized insurer shall pay this tax annually. And Lexington says, I'm not unauthorized insurer. And it is undisputed in this case that during the entire time Lexington had a certificate of eligibility and was deemed eligible -- has an eligible surplus lines to carry.

So, the question is in our statutory construction we have here today is: What were the circumstances under which the statute was created? And the statute was amended in 1993. What was the object that was sought to be obtained and what are the consequences of this type of an interpretation here? We know the circumstances because we are privileged to have it with us. We have at least two House Bill Analyses. And we also now have the printed record of the discussions of the committees who passed these bills. And we know what the circumstances were. We know that there is ambiguity in the courts. There was ambiguity in state board of insurance over the differences between a surplus lines insurer and an eligible surplus lines insurer. The object was twofold. And it is stated in the legislative history we had: number one, to make it clear that eligible surplus lines insurers are not unauthorized insurers and they will not be subject to the penalties of Section 9.

JUSTICE HECHT: Thank you Counsel. Court is ready to hear argument from the respondent.

SPEAKER: May it please the Court. Mr. William Storie will present argument for the respondent.

ORAL ARGUMENT OF WILLIAM E. STORIE ON BEHALF OF THE RESPONDENT

MR. STORIE: May it please the Court, your Honors. This is a tax case. The legislature has required tax to be paid on every premium dollar written on Texas whether it's by an unauthorized or unlicensed insurer. And the comptroller's limited inquiry in this case is simply to determine which of the three categories the tax should be levied under. The statute reads that except as to premiums procured by a licensed agent from a surplus lines insurer unauthorized tax would be paid. And that's all what we're saying here --

JUSTICE HECHT: Does this -- would this theory be applied to other kinds of insurers who made similar types of errors of intentionally or operated in these ways so as to become in some sense unauthorized?

MR. STORIE: No.

JUSTICE HECHT: Why not?

MR. STORIE: Because the structure of the unauthorized laws expressly separate the business of doing surplus lines insurance under the surplus lines laws or independently procure insurance where the tax is paid. And they don't even purport to address the fully authorized licensed market. So --

JUSTICE HECHT: But what -- I'm just -- why if some if an admitted carrier issued a policy other than as provided by law, would that carrier be unauthorized insurer as to that policy?

MR. STORIE: Certainly not from a tax standpoint which again is all that we're looking at.

JUSTICE HECHT: But what -- I don't understand why.

MR. STORIE: Because there are separate premium taxes that are paid by authorized insurers based on the premiums that they write. And that's the only tax that the comptrollers enforce, and as well as maintenance taxes. There are some others. But they would never come under the category of unauthorized because they are authorized. And, your Honors, perhaps the simplest way to think about this is unauthorized just means not offered.

JUSTICE HECHT: But the trouble I'm having is it says unauthorized insurer. And the insurer is doing something right.

MR. STORIE: That's correct.

JUSTICE HECHT: Even the comptroller concedes that they want a \$6 million and so it may.

MR. STORIE: Absolutely.

JUSTICE HECHT: But it's kind of hard to think of the carrier authorized as to some acts unauthorized as to other acts.

MR. STORIE: I suggest two answers on that. One is that in the surplus lines business in particular it's clear the legislature has required all surplus lines policies to be procured and placed through licensed agents. That's the sine qua non on the surplus lines transaction. I think we fundamentally I agree on that. That is the system for regulating surplus lines. So, if there is not a surplus lines agent that brings within the tax category from the comptroller's point of view, the default category is the unauthorized tax. That is the structure and wording of the unauthorized tax.

The second answer is much as the Court said in the American case that really surplus lines insurers are a special class of unauthorized insurers. They're not outlaws. Were not saying if they are or even if they've done specifically wrong here. But in every state and in Texas at the beginning of its audit period, the insurers are described as unauthorized insurers who are eligible to write surplus lines coverage under the provisions of the surplus lines of law. So, for the most part they perform a very fine function. We have no quarrel with that. And we simply say that in order to come under the tax heading of surplus lines laws, you need a surplus lines agent. And it really is that simple of bright-line test from the comptroller's point of view. And if I would say moreover in response to some of the earlier arguments we will not leave behind the transactions to see if there are other flaws in it because that is far beyond the comptroller's interest and in fact the comptroller's authority here. So, we're not making a regulatory judgment. We just look in to see how the tax ought to be paid.

JUSTICE HECHT: Is the tax a penalty?

MR. STORIE: No. And that's why I say isn't -- at the same rate for all nonauthorized insurance. So, we're not singling out anyone to say you have to pay some extra fine or simply looking or for which had the tax should get along to under according to the statutory structure.

JUSTICE GREEN: I'm hearing you say that as you told to Justice



Hecht's question that it's not a matter of whether the insurer is unauthorized. You're not -- you're not saying that argument. The surplus lines carrier here are not unauthorized surplus lines carriers in Texas.

MR. STORIE: They would retain their eligibility. So, nothing about the taxes [inaudible]

JUSTICE GREEN: So, it's -- what you're saying is that these individual transactions are not authorized?

MR. STORIE: Yes. Because that's again the way the tax is structured. It says except as to premium procured by the licensed surplus lines agent from an eligible insurer. So, it really is looking at the individual premiums. So, some policies are gonna be fine. They're gonna through surplus lines agents, presumed that the agent will collect and pay the tax which is the way the system is set up. On other premiums, if they are not procured by licensed agent or if we don't have any evidence that they were, then the default position is it's gonna be under the unauthorized tax.

JUSTICE: Okay. Now if it's a transaction and if I'm reading the briefing correctly, my understanding is that it's the agent certainly who collects and then remits the tax.

MR. STORIE: When it is a surplus lines transaction.

JUSTICE: Right, well which is what we're talking about.

MR. STORIE: Well, it is and it isn't. I mean that's the problem in the case is that you have a number of transactions where there's no agent identified. And for all intents and purposes there is no agent from whom to collect the tax.

JUSTICE: Well, there's not any mystery that these are surplus lines carriers, They are attaining to handle into surplus lines -- placing surplus lines insurance.

MR. STORIE: That's correct.

JUSTICE: So, that's what you're talking about, right? And so - and so if that's true that it is the agent who collects and then remits the tax. Why isn't the remedy to go to the agent?

MR. STORIE: Because there has to be an agent. In these cases we don't know that there is much less so it is. I mean that's a fundamental problem. And Lexington and the comptroller had some debate about the record that they keep or suppose to keep. We think they should be keeping track of these because they are issuing coverage that purports to be surplus lines. So, we need[inaudible] on that.

JUSTICE: So, when the statute is written the duty then it appears to me is not upon the carrier -- surplus lines carrier to collect or remit the tax. The duty appears statutorily to be placed on the agent. And yet you are asking that the now the carrier to take on a duty that it didn't have by statute.

MR. STORIE: Well, they have it in default of their being an agent because the statutes again, except the lawful business of surplus lines done according to the surplus lines laws that obviously requires an agent. The tax in particular requires that the premiums be procured by a licensed surplus lines agent or else the unauthorized tax would be paid. So, in every instance where we have identified an agent, we have not tried to charge Lexington for any tax. And we don't go back to see if the agent actually paid the tax. We don't have to look to see if the coverage was really -- we don't really do anything else except where there is an agent because if there isn't, then the state comes up short on taxes.

JUSTICE: Well, it seems to be a pretty -- I'll pick the right word inefficient manner of going about doing this audit in terms of, you

start of as well we're gonna say aren't there \$6 million in liability here? But okay now it looks like we go on at \$1 million pretty inexact kind of system process isn't it?

MR. STORIE: Your Honor, it's worked out that way in this instance because this was the first audit on surplus lines carriers for those tax so and -- as in the House of Lawyer case you know there has to come a first time for everything. They were subject to the tax on the statute but what we did was they tried to figure out which of the policies were actually placed as surplus lines policies because every one of those is suppose to be bond with the stamping office. So, we did a comparison there, we asked the Lexington for any information it had on. Did they actually have licensed surplus lines agents on these policies? They came up with a lot of that. And of course, we took those things out of the assessment. And we even all say this is the attorney general's initiative was to go back to the stamping office and say, please make another one and look at every policy there that's got one of these carriers on it and the insurers and see if they can tell us whether some of the others need to come out and they become [inaudible] --

JUSTICE: This is not an apples -- an apple's comparison.

MR. STORIE: It's not, your Honor. But again, what we will be asking for is something as simple as a transmittal letter that there are surplus lines insurers who do millions of dollars. They write premiums on millions of dollars in Texas risk. They know that that coverage has to comply with the surplus lines law. They tell their producers to make it so. They know that the heart and soul of surplus lines is the local surplus lines agent. And yet for some reason they don't have so much of a transmittal letter to say that a Texas coverage went through that agent. So --

JUSTICE MEDINA: Mr. Storie, would you please respond to the comment that if your side prevails, if you prevail that Lexington and other similar situated companies will or could lose their affirmative defenses on a trial court.

MR. STORIE: Your Honor, that's a serious concern and one that one is not presented in this case. In fact, say the only thing we are looking at is which of the three headings the tax to go under. We're not challenging their ability to enforce their contracts. In fact, our brief points out that there is some conflict in the laws on that because the surplus lines laws specifically says that surplus lines carriers can enforce their contracts unless there is an intention or a material violation. So, perhaps it sounds like at some point the Court may need to sort out some of those issues. That certainly is not addressed by this case. It's very, very limited case just addressing the tax.

Your Honors, I have few more points I'd like to cover. I guess one is on agency. I think the [inaudible] case which was cited to the Court which was a [inaudible] case pointed out that the surplus lines agents is an agent for both the insurer and the insured on different tasks. We aren't saying that Lexington went out and got this business by selling through its own agent. And that's not necessary to the case either. Again the only thing we're looking for is the surplus lines agent somewhere in the transaction. We think they should have a name to show that. The current state of law Justice Hecht, you asked about that, I think it's fundamentally to say. And that for example eligible surplus lines insurers are defined as insurers who are not authorized by Texas. But it doesn't say they're evil. It just says they're not authorized. And yet they are eligible to write the same risks that they are writing



now. And the tax would be paid by them unless it is paid as a surplus lines transaction, a true surplus lines transactions paid by the agent. So, the same basic assumption is there in the statute. And I don't recall if I said that the basic setup is the same all over the country. I cited the Court to some cases from other states with a very, very simple proposition that surplus lines insurers are simply a special class of unauthorized insurers. And I think that was the goal of the legislature in 1993, not to say that they were wholly different but that they were a special class of unauthorized insurers who have good permission of the state to write coverage under the guidelines that the legislature set up. If you have no further questions I ask the Court of Appeals be affirmed and -

JUSTICE: Thank you Counsel.

REBUTTAL ARGUMENT OF CURTIS L. FRISBIE JR. ON BEHALF OF THE PETITIONER

MR. FRISBIE: I think it's important to say that the legislature again in 1993 when it amended the statute. And it said that there was confusion in the State Board of Insurance and there is a confusion in the courts with regard the differences between an unauthorized insurer and an eligible surplus lines insurer. What did they do? What did our statute say? You're given your handout that has been in front of you and you've been prepare? Prior the 1993 the confusion stemmed from the fact that the definition of an eligible surplus lines insurer included the words "unauthorized insurer." So, the legislature took care of that problem. When they redefined what eligible surplus lines insurer was. They effected the object if they were going to accomplish and they took out the words "unauthorized insurers." In fact, in the entire purpose of Section 114-2, they took out the words of "unauthorized insurer" and they put in "ineligible surplus lines carrier." This demonstrated the intent all day long to show that an eligible surplus lines insurer is not an unauthorized insurer.

JUSTICE O'NEILL: Well, but what - couldn't you just say an eligible surplus lines carrier is eligible to write authorized insurance? And if they write a policy not through a surplus lines agent, it's not an authorized transaction and they become an unauthorized insurer as to that transaction.

MR. FRISBIE: Right. They are not authorized to write authorized policies, your Honor. That policies that they're authorized to write are surplus lines insurance. It is insurance that is not written by our eligible admitted carriers. It is insurance that they won't write for whatever reason either in the limits that are needed or in areas that they just don't cover. For instance, our energy industry is the largest consumers of surplus lines insurance.

JUSTICE O'NEILL: But what does one do if the threshold determination of what's authorized or unauthorized is whether there was an agent? And you can't tell whether there was one or not, what's the default decision?

MR. FRISBIE: I don't believe the threshold determination of whether it's lawful surplus lines insurance has to do with whether or not an agent is used. There is no doubt the statute requires that an agent be used in each one of these transactions.

JUSTICE O'NEILL: And what if you can't tell which one was used?

MR. FRISBIE: That is exactly what's happened to us. Remember that

these policies are claim-made policies, which generally means that they expire at the end of one year. These are not occurrence policies that people keep. When you get an audit on an out-of-state company like Lexington who has no statutory obligation to keep any records whatsoever and said I want you to tell me who your agent was and this particular transaction in 1992. You should not be surprised at all that we would not have any records to identify that because it is the agent who has the responsibility to maintain these records, to collect the tax, to give it to the state and begin [inaudible] --

JUSTICE O'NEILL: And -- they appear to agree with that that if all Lexington can do is show we had an agent, they're not intending to come against Lexington if agent didn't collect the taxes. But they have no way to know whether an agent was actually retained or not.

MR. FRISBIE: That is correct, your Honor. They put the entire burden on us to go search for this and try to improve this fact. They put the burden on the only party who doesn't have the records or anyway to do this. And as you can tell they initially assess us with over \$6 million in taxes and after we spent all of our time going out trying to find brokers and we reduce the tax down to something over a million dollars. We couldn't find many of the brokers. They're out of business. They were going. [inaudible] record.

JUSTICE O'NEILL: No, I understand it. But the rule that you would say is that the surplus lines carriers have not that you could come forward to prove that they made.

MR. FRISBIE: There is no statutory duty. This is -- we are required to come forward and prove that we have an agent. I think probably, your Honor, you can understand this fast if you understand I think under Article 114-1 in Section 2 (b) you need to understand that the legislature intended to the exempt eligible surplus lines insurers from the application of dash-1. That is what it says. It said the lawful transaction of surplus lines insurance pursuant to Article 114-2 is exempt from the provisions of 114-1. And that we say is the conduct of surplus lines business by an eligible surplus lines carrier who has been deemed eligible by the State. And if it makes a mistake, then it is subject to penalty. But the penalties are under dash-2.

JUSTICE HECHT: Thank you Counsel. Cases argued this morning are submitted. And the briefs of argument are submitted [inaudible] the Court.

SPEAKER: All rise. Oye, Oye, Oye, The Honorable Court Supreme Court of Texas now stands adjourned.

2005 WL 6161832 (Tex.)