IN THE SUPREME COURT OF TEXAS

NO. 02-0730

EXCESS UNDERWRITERS AT LLOYD'S, LONDON AND CERTAIN COMPANIES SUBSCRIBING SEVERALLY BUT NOT JOINTLY TO POLICY NO. 548/TA4011FO1, PETITIONERS,

v.

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

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Argued September 24, 2003

JUSTICE OWEN delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE MEDINA and JUSTICE GREEN joined. JUSTICE O'NEILL joined in Part I and Part II, C and D, and JUSTICE WAINWRIGHT joined in Part II, C.

JUSTICE HECHT filed a concurring opinion.

JUSTICE O'NEILL filed a concurring opinion.

JUSTICE WAINWRIGHT filed a concurring opinion.

JUSTICE BRISTER and JUSTICE JOHNSON did not participate in the decision.

The issue in this case is whether excess insurance carriers that disputed coverage but that settled third-party claims against their insured are entitled to recoup the settlement payments from

their insured when it was subsequently determined that the claims against the insured were not covered. There was no express agreement allowing reimbursement. The trial court granted summary judgment for the insured, holding there was no right to reimbursement, and the court of appeals affirmed.[1] Both courts concluded that this Court's decision in *Texas Association of Counties County Government Risk Management Pool v. Matagorda County*[2] was controlling. Because the facts at issue in that case differ from those before us today, and because we are persuaded that a right of recoupment can arise even absent an insured's express agreement to reimburse settlement payments made by an insurer if there is no coverage, *Matagorda County* does not foreclose reimbursement in this case. We accordingly reverse the court of appeals' judgment and remand this case to the trial court to enter judgment in the excess underwriters' favor.

I

Frank's Casing Crew & Rental Tools, Inc. fabricated a drilling platform at its facility in Louisiana for ARCO/Vastar. The platform was installed in the Gulf of Mexico and collapsed several months later. ARCO sued Frank's Casing, among others.

Frank's Casing had a primary liability policy with limits of $1 million, and Frank's Casing had obtained excess coverage of up to $10 million from Certain Companies Subscribing Severally But Not Jointly To Policy No. 548/TA4011F01 and Excess Underwriters at Lloyd's, London (whom we will call the excess underwriters). The excess underwriters issued reservation of rights letters in which they asserted that certain of ARCO's claims against Frank's Casing were not covered.

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[1] 93 S.W.3d 178, 179.

[2] 52 S.W.3d 128 (Tex. 2000).

The primary carrier retained defense counsel for Frank's Casing. ARCO made a pre-trial settlement offer of $9.9 million, which Frank's Casing rejected. Two weeks before trial, the excess underwriters contacted ARCO directly, without Frank's Casing's knowledge, and attempted to settle only the claims the underwriters were willing to concede were covered. No agreement was reached. ARCO subsequently offered to settle all claims against all defendants for $8.8 million, which would have required Frank's Casing to contribute about $7.55 million. The excess underwriters proposed to Frank's Casing that the underwriters pay two-thirds of that amount, that Frank's Casing pay one-third, and that all coverage issues would be waived by the underwriters. In the alternative, the underwriters proposed that they pay $5 million and that all coverage issues be resolved in arbitration. Frank's Casing did not accept either proposal.

As trial approached, the excess underwriters retained counsel to associate with Frank's Casing and its primary carrier in the defense of ARCO's claims, as the underwriters were entitled to do under the excess liability policy.[3] ARCO's suit against Frank's Casing proceeded to trial, and it readily became apparent that Frank's Casing was the target defendant. By the close of the second day of trial, Frank's Casing's in-house counsel had contacted ARCO and requested that it make a settlement demand within the excess policy's limits, suggesting $7 million. ARCO promptly

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[3] The policy provides:

> The Underwriters shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the Assured but Underwriters shall have the right and shall be given the opportunity to associate with the Assured or the Assured's underlying insurers or both in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves, or appears reasonably likely to involve Underwriters, in which event the Assured and Underwriters shall co-operate in all things in the defense of such claim, suit or proceeding.

responded with a demand of $7.5 million, which Frank's Casing communicated to the excess underwriters accompanied by a demand that the underwriters accept this offer, thus "*Stower*izing" the excess underwriters.[4] The underwriters agreed that the case should be settled for this amount and stated that they would fund the settlement up to $7.5 million, less any contribution from the primary carrier, if Frank's Casing would expressly agree that all coverage issues would be resolved at a later date. Frank's Casing refused and sent a second letter demanding that the underwriters accept ARCO's settlement offer. The excess underwriters then advised Frank's Casing that they would pay $7.5 million, less any contribution from the primary carrier, and seek reimbursement from Frank's Casing. That same day, the underwriters contacted ARCO and orally accepted the settlement offer. The primary carrier simultaneously tendered its remaining policy limits, approximately $500,000, to settle the lawsuit.

The excess insurance policy required Frank's Casing's approval of any settlement,[5] and it gave that approval. A written settlement agreement among ARCO, Frank's Casing and the excess underwriters preserved "any claims that exist presently" between Frank's Casing and the underwriters. Prior to that agreement's execution, the excess underwriters had filed this suit against Frank's Casing for reimbursement, and Frank's Casing had answered.

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[4] *See G.A. Stowers Furniture Co. v. Am. Indemn. Co.*, 15 S.W.2d 544, 547 (Tex. Comm'n App. 1929, holdings approved).

[5] The policy provided: "The Assured shall make a definite claim for any loss for which the Underwriters may be liable under this policy within twelve (12) months . . . after the Assured's liability shall have been fixed and rendered certain either by final judgment against the Assured after actual trial or by written agreement of the Assured, the claimant, and Underwriters."

In the coverage litigation, the excess underwriters and Frank's Casing filed cross motions for summary judgment. Among the issues presented to the trial court was whether Texas or Louisiana law governed, and the trial court applied Texas law. The trial court initially dismissed Frank's Casing's counterclaims and granted three separate motions for partial summary judgment for the excess underwriters, finding that none of ARCO's claims against Frank's Casing were covered, requiring Frank's Casing to reimburse the excess underwriters, and awarding the underwriters $7,013,612.00. Shortly thereafter, however, this Court issued *Texas Association of Counties County Government Risk Management Pool v. Matagorda County*.[6] The trial court then directed Frank's Casing to file a motion for new trial only on the issue of reimbursement, and Frank's Casing complied. After further briefing and another hearing, the trial court withdrew its order granting partial summary judgment on the reimbursement issue and signed a take-nothing judgment against the excess underwriters.

The court of appeals affirmed, although it noted: "We recognize this case carries *Matagorda County* to a logical conclusion that is somewhat disquieting – Frank's was able to resolve the parties' coverage dispute in its own favor simply by sending a *Stowers* demand to the Underwriters. . . . But this is a matter that the Underwriters must take up with the superior court."[7] The excess underwriters petitioned this Court for review, and we granted that petition.

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[6] 52 S.W.3d 128 (Tex. 2000).

[7] 93 S.W.3d at 180.

We conclude that the law of both Texas and Louisiana entitle an insurer to reimbursement under the facts of this case. Accordingly, we do not decide which state's law governs. We first consider Texas law.

II

In *Matagorda County*, the County was sued after inmates armed with razor blades physically and sexually assaulted other inmates in the County's jail.[8] The County's policy with the Texas Association of Counties' risk pool specifically excluded any claim arising out of the operation of the jail.[9] The risk pool nevertheless agreed to defend the inmates' suit against the County with a reservation of rights and concurrently sought a declaratory judgment that the inmates' claims were not covered.[10] Before the declaratory judgment action was resolved, the inmate plaintiffs offered to settle their suit against the County for $300,000, which was within policy limits.[11] The County advised the risk pool that this was a reasonable settlement offer,[12] but did not ask the risk pool to accept the offer and refused to fund the settlement itself, insisting that there was coverage.[13] The risk pool then sent the County a letter, reasserting its position that there was no coverage, but advising the County that the risk pool would fund the settlement and then seek reimbursement from the

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[8] 52 S.W.3d at 129.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 129.

[13] *Id.* at 130.

County in the declaratory judgment action.[14] The County did not respond, and the risk pool settled the inmates' claims.[15] The County subsequently stipulated in the declaratory judgment action that the settlement amount was reasonable.[16] This Court held that an implied-in-fact agreement that the risk pool could seek reimbursement could not be found from the County's silence in response to the risk pool's letter stating it would seek reimbursement after it funded the settlement.[17] The Court also concluded that the doctrine of equitable subrogation did not apply.[18] Finally, the Court concluded that the quasi-contractual theories of quantum meruit and unjust enrichment should not be applied.[19] In resolving these issues, the Court's opinion said that the risk pool was not entitled to reimbursement unless the insured "consent[ed] to the settlement and the insurer's right to seek reimbursement."[20]

A

In *Matagorda County*, the insurer had the unilateral right to settle claims against the insured without the insured's consent.[21] One of the chief concerns expressed by the Court in *Matagorda County* was that when an insurer has the unilateral right to settle, an insurer could accept a settlement

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 131-33.

[18] *Id.* at 134.

[19] *Id.*

[20] *Id.* at 135.

[21] *Id.* at 130.

that the insured considered out of the insured's financial reach, and the insured could be required to reimburse the insurer for that amount.[22] "[T]he insured is forced to choose between rejecting a settlement within policy limits or accepting a possible financial obligation to pay an amount that may be beyond its means, at a time when the insured is most vulnerable."[23] The facts of the case before us today lead us to conclude that this concern is ameliorated if not eliminated in at least two circumstances:

1) when an insured has demanded that its insurer accept a settlement offer that is within policy limits, or

2) when an insured expressly agrees that the settlement offer should be accepted.

In these situations, the insurer has a right to be reimbursed if it has timely asserted its reservation of rights, notified the insured it intends to seek reimbursement, and paid to settle claims that were not covered.

B

The insured in this case, Frank's Casing, specifically demanded that the excess underwriters accept and fund ARCO's settlement offer. Even when a claim is covered, an insurer has no duty to accept a settlement offer within policy limits unless "an ordinarily prudent person, in the exercise of ordinary care, as viewed from the standpoint of the assured, would have."[24] When Frank's Casing

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[22] *Id.* at 135.

[23] *Id.*

[24] *G.A. Stowers Furniture Co. v. Am. Indemn. Co.*, 15 S.W.2d 544, 547 (Tex. Comm'n App. 1929, holdings approved).

"*Stower*ized" the excess underwriters, it could not thereafter take the inconsistent position that the settlement offer was reasonable if the insurer bore the cost of settling but unreasonable if the insured ultimately bore the cost. Once an insured asserts that a settlement offer has triggered a *Stowers* duty, and the insurer then accepts that settlement offer or a lower one, the insured is estopped from asserting that the settlement is too financially burdensome for the insured to bear if it turns out the claims against the insured are not covered.

We have said that the duty imposed by *Stowers* is to "exercise 'that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business.'"[25] We have also said that the *Stowers* duty is viewed from the perspective of an insurer: "the terms of the demand are such that an ordinarily prudent insurer would accept it."[26] Both statements are correct. Whether a settlement offer within policy limits is a reasonable one is determined by an objective standard based on an assessment of the likelihood that the insured will be found liable and the range of potential damages for which the insured may be held liable, including "the likelihood and degree of the insured's potential exposure to an excess judgment."[27] The reasonableness of a settlement offer is not judged by whether the insured has no assets or substantial assets, or whether the limits of insurance coverage greatly exceed the potential damages for which the insured may be liable. It is an objective assessment of the insured's potential liability.

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[25] *Am. Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 848 (Tex. 1994) (quoting *Stowers*, 15 S.W.2d at 547).

[26] *Id.* at 849 ("The *Stowers* duty is not activated by a settlement demand unless three prerequisites are met: (1) the claim against the insured is within the scope of coverage, (2) the demand is within the policy limits, and (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment.").

[27] *Id.*

When there is a coverage dispute and an insured demands that its insurer accept a settlement offer within policy limits, the insured is deemed to have viewed the settlement offer as a reasonable one. If the offer is one that a reasonable insurer should accept, it is one that a reasonable insured should accept if there is no coverage. The insured knows that if the case is not settled, a judgment may be rendered against it for which there is no insurance coverage. Typically, a party considers a settlement reasonable when there is a substantial risk that if the case proceeds to trial, a judgment larger than the settlement offer will be entered against it. Requiring an insured to reimburse its insurer for settlement payments if it is later determined there was no coverage does not prejudice the insured. The insured's substantial exposure to a judgment against it greater than the settlement amount has been eliminated, at its insistence, and by its own admission the settlement amount was reasonable. The insured is in the same, or at least no worse, position than it would have been in if there had been no policy. Insurance coverage should not be created where none exists merely because an insured could not afford to pay a judgment if the case were tried or to fund a settlement demand from an injured third party. The insurer should be entitled to settle with the injured party for an amount the insured has agreed is reasonable and to seek recoupment from the insured if the claims against it were not covered. From the insured's point of view, it is in precisely the same position it would have been in absent any insurance policy, except that the insurer is now the insured's creditor rather than the injured third party.

Reimbursement rights encourage insurers to settle cases even when coverage is in doubt.[28] This inures to the benefit of injured third parties. When an insurer settles a claim for which coverage is in doubt, the risk that the insured lacks the resources to fund a settlement is shifted to the insurer and is lifted from the injured plaintiff who sued the insured.[29] The coverage dispute between an insured and its insurer can be resolved after the injured plaintiff is compensated. Thus, an injured plaintiff's risk that the defendant has no coverage and may be financially unable to fully compensate the plaintiff is lessened.

Whether the insurer or the insured ultimately bears the cost of a reasonable settlement with a third party should depend on whether there is coverage. As pointed out by the California Supreme Court and our own court of appeals in the present case, denying a right of reimbursement once an insured has demanded that an insurer accept a reasonable settlement offer from an injured third party can significantly tilt the playing field.[30] The insurer would have only two options. It could refuse to settle and face a bad faith claim if it is later determined there was coverage. Or it could settle the third-party claim with no right of recourse against the insured if it is determined there was no coverage, which effectively creates coverage where there was none.[31] As the California Supreme

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[28] *See Blue Ridge Ins. Co. v. Jacobsen*, 22 P.3d 313, 321 (Cal. 2001).

[29] *Id.*

[30] *See id.* (observing that the insured's objection to a reservation of rights "would create coverage contrary to the parties' agreement in the insurance policy and violate basic notions of fairness"); *Excess Underwriters*, 93 S.W.3d at 180 (observing that denying reimbursement was "somewhat disquieting – Frank's was able to resolve the parties' coverage dispute in its own favor simply by sending a *Stowers* demand to the Underwriters").

[31] *Blue Ridge*, 22 P.3d at 321; *Excess Underwriters*, 93 S.W.3d at 180.

Court concluded, "[R]eimbursement should be available because the insurer had not bargained to bear these costs and the insured had not paid the insurer premiums for the risk."[32]

C

A second situation in which reimbursement will be permitted is when there is a coverage dispute, the insured has expressly agreed the third party's settlement offer should be accepted, and the insurer has notified the insured that it intends to seek reimbursement. In *Matagorda County*, the County agreed that the settlement amount was reasonable.[33] But the risk pool had the right to, and did, settle without the County's consent.[34] Here, the underwriters could not settle without Frank's Casing's consent. Frank's Casing had the option of continuing the litigation. Frank's Casing made an informed decision between continuing to defend ARCO's suit and consenting to settle that litigation, knowing that the excess underwriters intended to pursue coverage issues and to seek reimbursement of the amount paid in settlement. The insured had control over whether to settle for the sum offered by ARCO or continue the litigation. An insured who agrees to the settlement and benefits by having claims against it extinguished cannot complain that it must reimburse its insurer if the claims against the insured were not covered by its policy.

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[32] *Blue Ridge*, 22 P.3d at 320 (citing *Buss v. Superior Court*, 939 P.2d 766, 776 (Cal. 1997)).

[33] *Tex. Ass'n of Counties County Gov't Risk Mgmt. Pool v. Matagorda County*, 52 S.W.3d 128, 130 (Tex. 2000).

[34] *Id*.

D

In cases such as the one presently before us, an agreement to reimburse an insurer is implied in law.[35] It is quasi-contractual.[36] In *Matagorda County*, this Court held that a quasi-contract did not arise under the facts of that case.[37] In explaining why, the Court cited three cases and a law review article for the proposition that "the few courts that have considered the settlement-reimbursement question have generally opted to recognize a reimbursement right only if the insured has authorized the settlement and agreed to reimburse the insurer should the insurer prevail on its coverage defense."[38] The three cases cited were *Medical Malpractice Joint Underwriting Association of Massachusetts v. Goldberg*,[39] *Mt. Airy Insurance Co. v. Doe Law Firm*,[40] and *Val's Painting & Drywall, Inc. v. Allstate Insurance Co.*[41] However, only one of those decisions, *Mt. Airy,* held that reimbursement is limited to the circumstance in which there was an express agreement that the insurer would be entitled to reimbursement if there was no coverage.[42] *Val's Painting* held that even absent an express or implied-in-fact agreement, an insurer may obtain reimbursement if "it has

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[35] *Blue Ridge*, 22 P.3d at 320 ("'The insurer therefore has a right of reimbursement that is implied in law as quasi-contractual, whether or not it has one that is implied in fact in the policy as contractual.'" (quoting *Buss*, 939 P.2d at 776)).

[36] *Id*.

[37] 52 S.W.3d at 134.

[38] *Id.*

[39] 680 N.E.2d 1121 (Mass. 1997).

[40] 668 So. 2d 534 (Ala. 1995).

[41] 126 Cal. Rptr. 267 (Cal. Ct. App. 1975).

[42] 668 So. 2d at 538.

secured specific authority to make that settlement or has notified the insured of a reasonable offer by the claimant and given the insured an opportunity to assume the defense."[43] *Goldberg*, extensively relied on in *Matagorda County*,[44] expressly agreed with *Val's Painting* that reimbursement is required when the insured had been given the opportunity to assume its own defense after notification of a reasonable settlement offer.[45] *Goldberg* held "an insurer [who] defends under a reservation of rights to later disclaim coverage . . . may later seek reimbursement for an amount paid to settle the underlying tort action" if the "insurer [has] notif[ied] the insured of a reasonable settlement offer and give[n] the insured an opportunity to accept the offer or assume its own defense."[46] Similarly, the law review article cited in *Matagorda County* concluded that "[m]ost courts to consider this question have held that the insurer can obtain reimbursement of settlement funds if the insured has authorized the settlement and agreed to reimburse the insurer in the event the insurer prevails on the coverage issue, *or if the insurer has notified the insured of a*

[43] 126 Cal. Rptr. at 274.

[44] *Tex. Ass'n of Counties County Gov't Risk Mgmt. Pool v. Matagorda County,* 52 S.W.3d 128, 133, 134-35 (Tex. 2000).

[45] *Med. Malpractice Joint Underwriting Ass'n of Mass. v. Goldberg*, 680 N.E.2d 1121, 1129 n.30 (Mass. 1997) ("We recognize that *Val's Painting* is the holding from another jurisdiction. We nevertheless find its reasoning sound.").

[46] *Id*. at 1129.

reasonable offer and given the insured the opportunity to assume the defense."[47] After citing these three cases and the law review article, *Matagorda County* said, "We agree with this approach."[48]

Two statements in *Matagorda County* did not, however, fully set forth the "approach" taken by three of the four authorities relied upon. Those two statements in *Matagorda County* were that "the few courts that have considered the settlement-reimbursement question have generally opted

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[47] Jerry, *The Insurer's Right to Reimbursement of Defense Costs*, 42 ARIZ. L. REV. 13, 70 n.220 (2000) (emphasis added). This footnote said in its entirety:

> A similar question can be asked of the indemnity obligation: Is it possible, in circumstances where the defense is being provided under reservation to contest coverage, for the insurer to settle the underlying litigation and reserve a right to obtain reimbursement of the settlement amounts in the event it is determined that the plaintiff's claim(s) against the insured are outside the coverage? In this situation, like the reimbursement of defense costs situation, the insurer performs an obligation–indemnity–while reserving a right to claim that the indemnity duty was not owed on account of lack of coverage and to retrieve the funds that were advanced to resolve the underlying claim. Most courts to consider this question have held that the insurer can obtain reimbursement of settlement funds if the insured has authorized the settlement and agreed to reimburse the insurer in the event the insurer prevails on the coverage issue, or if the insurer has notified the insured of a reasonable offer and given the insured the opportunity to assume the defense. *See*, *e.g.*, Mt. Airy Ins. Co. v. Doe Law Firm, 668 So. 2d 534 (Ala. 1995); Johansen v. California State Auto. Ass'n Inter-Ins. Bur., 538 P.2d 744, 750 (Cal. 1975); Val's Painting and Drywall, Inc. v. Allstate Ins. Co., 126 Cal. Rptr. 267, 273-74 (Ct. App. 1975); Medical Malpractice Joint Underwriting Ass'n v. Goldberg, 680 N.E.2d 1121, 1127-29 (Mass. 1997); Matagorda County v. Texas Ass'n of Counties County Gov't Risk Mgmt. Pool, 975 S.W.2d 782 (Tex. Ct. App. 1998), *review granted* (June 29, 1999). This, however, is not inconsistent with the analysis, developed in the text, that the insured's express agreement to the insurer's claim of right to reimbursement of defense costs is not needed. As with reimbursement of defense costs, *see supra* note 45, a specific policy provision authorizing reimbursement of settlement funds in the event the insurer prevails on the coverage issue is enforceable. *See* National Cas. Co. v. Lane Express, Inc., 05-96-00444-CV, 1999 WL 219437 (Tex. Ct. App. Apr. 16, 1999).

[48] 52 S.W.3d at 135.

to recognize a reimbursement right only if the insured has authorized the settlement and agreed to reimburse the insurer should the insurer prevail on its coverage defense,"[49] and

> when coverage is disputed and the insurer is presented with a reasonable settlement demand within policy limits, the insurer may fund the settlement and seek reimbursement only if it obtains the insured's clear and unequivocal consent to the settlement and the insurer's right to seek reimbursement. *See Goldberg*, 680 N.E.2d at 1129.[50]

To the extent *Matagorda County* indicated that the *only* circumstance under which an insurer may obtain reimbursement from an insured for settlement payments when there is no coverage is when there is an express agreement that there is a right to seek reimbursement, we clarify that there are additional circumstances that will give rise to a right of reimbursement. Those include the circumstances in the case presently before us.

III

The Louisiana courts have not considered whether an insurer is entitled to reimbursement from its insured when it pays to settle claims against its insured that are not covered. However, it appears that under Louisiana law there would be a right to reimbursement in this case.

The Louisiana Civil Code provides a remedy when a person "has been enriched without cause at the expense of another person."[51] The Code says,

> A person who has been enriched without cause at the expense of another person is bound to compensate that person. The term "without cause" is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law.

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[49] *Id.* at 134.

[50] *Id*. at 135.

[51] LA. CIV. CODE art. 2298.

> The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule.
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> The amount of compensation due is measured by the extent to which one has been enriched or the other has been impoverished, whichever is less.
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> The extent of the enrichment or impoverishment is measured as of the time the suit is brought or, according to the circumstances, as of the time the judgment is rendered.[52]

This section was enacted in 1995. The commentary to this section notes that "[i]t expresses the principle of enrichment without cause that was inherent but not fully expressed in the Louisiana Civil Code of 1870. The formulation of the principle accords with civilian doctrine and jurisprudence."[53]

A decision of the Supreme Court of Louisiana that preceded the promulgation of this provision illuminates the principles of Louisiana law it embodies. In *Edmonston v. A-Second Mortgage Co. of Slidell, Inc.*, Edmonston and her husband obtained a loan from Standard Life Insurance Company.[54] To secure the loan, Edmonston mortgaged her separate property. Standard also required the couple to insure their lives and assign the policies to Standard. The assignment provided that any proceeds of the policy would be used to discharge the mortgage or would be paid to the beneficiary, at the survivor's option. The couple later obtained a loan from A-Second Mortgage Company, and Edmonston gave that company a second mortgage on her property. Thereafter, the couple deeded the property to A-Second in satisfaction of its mortgage as well as the

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[52] *Id*.

[53] *Id*. revision cmts. (1995).

[54] 289 So. 2d 116, 118 (La. 1974).

outstanding debt to Standard. Instead of immediately paying off the debt to Standard, A-Second agreed to make all payments on the Standard loan as they became due. Edmonston's husband subsequently died. Although A-Second had assumed the couple's obligation to repay the Standard loan, Standard had never released Edmonston or her husband from liability. She and Standard agreed that the proceeds of her husband's life insurance policy, $16,000, should be applied to pay off the Standard loan, which had a balance of about $14,500, with the remainder to be paid to Edmonston. Edmonston then sued A-Second to recover the $14,500, apparently realizing she had discharged a debt that she had already paid A-Second to discharge on her behalf. The Louisiana Supreme Court recognized that Edmonston had no obligation to A-Second to pay Standard's note and that "A-Second received a benefit they had never bargained for, the discharge of its obligation to Standard."[55] The court held that Edmonston was entitled to restitution, reasoning, "[s]he has, in effect, paid the debt of another and the actual benefit to A-Second cannot be questioned."[56]

Under the rationale of *Edmonston* and the provisions of article 2298, it appears that Louisiana law would permit the excess underwriters to obtain reimbursement from Frank's Casing. Accordingly, the result under Louisiana and Texas law would be the same, and we need not engage in a conflict of laws analysis to determine which state's law applies.

[55] *Id*. at 121.

[56] *Id.* at 122.

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For the reasons set forth, we reverse the court of appeals' judgment and remand this case to the trial court to render judgment in favor of the excess underwriters consistent with this opinion.

Priscilla R. Owen
Justice

OPINION DELIVERED: May 27, 2005