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IN RE CERTAIN UNDERWRITERS

COALE: The brief shows a fairly complex set of parties that subscribes to some insurance sold a long time ago in another state, is now part of the broader problem that is broader than this case. It has a very far reaching issue in this state and others: asbestos liability.

But the specific issue that has brought that group of companies here is one of the lawsuits relating to that problem is pending in Dallas. It's been on file for sometime. It continues to be on file. And for the last several months, just over $8 million in security has taken different forms, has been in the registry of the Dallas court. And our contention today, the contention of the London defendants, London relators, is that as a matter of the constitution and as a matter of irrelevant statute, it was inappropriate for the TC to have required the posting of that security and it is a matter that should be reviewed and the mandamus procedural posture by this court should be reversed.

O'NEILL: If the TC finds no breach of the CIP, you get your money back?

COALE: If we win, we will get our money back.

O'NEILL: And if you lose you will have to pay a certain portion out of it.

COALE: Depending on what the outcome is.

O'NEILL: So why is there no adequate remedy of appeal and why have you been irreparably harmed for mandamus purposes?

COALE: Because the money from now until the time that happens, which could be along time, and we could be back before this court...

O'NEILL: You've been deprived of the use of your money for a period of time. But that's never been the standard for mandamus relief as I understand it.

COALE: The standard in this context of prejudgment security, I think that is the standard recognized by the CA's that have dealt with the issue because, otherwise, it could never be reviewed. If we proceeded to final judgment of the TC, and appeal back to this court, and we had a judgment and all that time it was wrong for us to have had the money in the registry of the court, we couldn't do something with our $8 million. At final judgment the issue just goes away.

O'NEILL: How is that different from a post-judgment supersedeas bond? I mean the same thing happens there doesn't it?

COALE: In that case the judgment is in place. The statute sets forth certain safeguards and precautions for that placement. You put the bond in place. The execution is stayed.

O'NEILL: But you don't know if it's going to be upheld on appeal. You could take 5-6 years to appeal it.

SMITH: But after a supersedeas you had a day in court. You haven't had a day in court.

COALE: That is absolutely correct. The issue of due process is that there must be at least some showing of how that's going to come out at the end of the day. There has not been. There certainly has been no day in court. And there have been challenges to the constitutionality of supersedeas bonds post-judgment. And they have been raised in a number of different postures. But the same basic issue is there. They come up in these tobacco cases, _____Texaco v. Pennzoil where there is a vast amount of money, the use is deprived and the company is going to go bankrupt in those cases unless there is some...

O'NEILL: But that's not the case here.

COALE: No it's not. We don't contend that we - the Dallas court is correct. The resolution of the merits of the case will not be affected by the pendency of this bond order being in place. They will be able to pay their lawyers. The company will stay in business. And there have been cases that dealt with much more severe deprivations than what we have here. But it's still our money. It's our money, and it's a lot of money, and the freedom to use that money should be ours unless there is some compelling reason to take that money from us. And we say that that standard has not been met here.

WAINWRIGHT: There is no dispute here is there that the relators are all unauthorized insurers under the statute, which doesn't prejudge the ___ of the ultimate issue. But that's the case isn't it?

COALE: If there had been a doing of insurance business in the state, then that's the label - the bucket they fall in - is under authorized insurers. If the threshold question of what the statute reaches doesn't - if we haven't been doing insurance, then we are not. But if you find that we've been doing insurance we fall in that bucket as opposed to the surplus lines or some other category.

WAINWRIGHT: I understand your position is that the CIP is not a contract of insurance. As a predicate do you agree with some of the legislative history that the codification of the relevant statutes from the articles to §101.051 of the insurance code that they affected no substantive change in the applicable provisions?

COALE: I believe that's correct.

WAINWRIGHT: That is what some of the legislative history says and I didn't notice that anybody took issue with that in their briefing. So under 101.051, it states the following constitute doing business, the business of insurance in this state. One of those items is directly or indirectly acting as an agent, assisting an insurer, and investigating or adjusting a claim or loss, and transacting a matter after the effectuation of a contract that arises out of the contract. The latter contract, I believe, being an insurance contract in the context. What's your best argument that the CIP doesn't at least do those two things: adjust a claim; or effectuate a contract that arises out of an insurance contract?

COALE: First, read that statute in connection with the preamble language about what this whole set of statutes is supposed to address. And with what used to be the second part of the statute that's now been broken out, which carves out from that statute situations where you have a contract that arises from a policy sold in another state about a subject of insurance in another state. It is a fairly crisp summary in the statute of the constitutional limit on how far the statute you refer to can be read. So at those two reference points, then let's look at the statute and look at the CIP.

The page that was relevant is page 14 of the CIP, §8, says what this contract does not do. And it does not do anything about the underlying policies of insurance. It says that at some length in the first section. It sets up a framework for dealing with the question of allocation of payments and for defining when certain lower down insurance is exhausted. It sets those two things in exhausted detail in §5 of the CIP. But the process of adjustment and analysis and so on and so forth goes forward under the policies as if there was no CIP.

WAINWRIGHT: There is no reimbursement, however, to Dresser unless the indemnity payments arose out of covered claims. Doesn't the CIP tie back to the insurance contract for every reimbursement in that regard?

COALE: No. The definition "covered claims" is a slippery term. But covered claims as used in the CIP is referring to the coverage of the CIP. The CIP takes the world of insurance claims against Dresser and breaks them into CIP claims and non-CIP claims. If it's a CIP claim, and is a covered claim, it falls in to the detailed framework for coverage and allocation that I've talked about. The issue of whether a claim covered by the CIP subject to those calculations is then in fact covered by the subject policies is not answered by the CIP. And the process for doing the things under that policy that would fall within that statute are addressed by those policies and not by the CIP.

The final point, nothing in this record shows other than the text of the CIP itself, which says it's not an insurance contract, says that any of this _____ activity is going on in Texas. The insurers are in London. Their main counsel who all the correspondence is from dealing with this in the record is Mindies(?) and _____ in NY State. The people who have come here and asked to have this bond requirement imposed on us, Dressler, they haven't shown that those things are happening in the state other than to point to the CIP.

WAINWRIGHT: Address the assertions in the brief that the CIP was signed by Dresser's Houston agent that there was some 500 or more lawsuits in Dallas county that were settled and that Dresser filed a lawsuit over a similar or maybe part of the coverage dispute at issue here in Jefferson county.

COALE: Those are all statements from the recitals of the CIP. Those are all to my knowledge correct recitals as well.

WAINWRIGHT: But they are not sufficient contacts with Texas to hurdle that first threshold question you raised?

COALE: Those contacts show that Dresser has decades after the fact now inherited these policies and insurance and raised claims based upon them. Following directly within the language of the exception that I referred to. Which itself follows directly from the SC cases that define the power of Texas to regulate.

Certainly Dresser is in Texas and certainly the coverage litigation is in Texas. But the things that have been done to resolve these aspects of this litigation in Texas does not come within the meaning of that statute, and cannot come within it constitutionally.

One point that I wanted to be clear about on this issue of statutory construction that I may have mixed in with some of the more specific answers of J. Wainwright's question, is this exception that has different numbers attached to it, the one that refers to and carves out from this insurance code section, Old Policies, Out of State, Negotiated out of State, that language is no accident. If you review the cases we cite in our commerce clause section of our briefing, the words they are using in that statute, in that exception are the words you see in those cases about what the state cannot do. And the very first provision in this set of statutes after the one that defines the point of all of this as being protecting people who are vulnerable from the predations of unscrupulous out of state insurers are certainly not Dresser. The next provision 101.04 says you may not apply these in an unconstitutional manner. And that exception has to be read with that command with this case law as well.

To follow up on a matter that J. Brister alluded to about having your day in court, the statute as it is written here and as was applied by this TC simply requires that you show this is a dispute about insurance and here is this company. Post the bond. In our case a very substantial bond. Contrast to the attachment statute requiring a showing of just indebtedness or that the attached party is justly indebted. And there is case law about that that we cite that talks about that being more than just conclusery allegations or relying on your pleadings or things of that nature. And that's in the statute and the case law interpreting it has applied that. And there again it is no accident that that phrase is in the statute and the case laws come out that way. Because to take something away from somebody, even if there is some reason for it, you've got to show that there's a basis in fact in the law for doing that. And that follows directly from SC cases and a number of due process issues, and that application is something that ought to be folded into this statute as well

although on its face it does not express and call for it.

SMITH: What type of appellate remedies do you have for that type of attachment? Is there a specific right of appeal or has there been mandamus available if that's not done correctly?

COALE: I believe there have been mandamus cases. I believe there is one cited, SRS World in our briefing. And I think that's a fair summary of the principles. I believer there to be others. Again what else could you do. If you are deprived of something for years of litigation there would simply be no other remedy. I think the due process issue and the commerce clause issue are heightened here because of just the lack of this statute to what London thought it was getting in to back in the 60's when it sold these policies in London. No question about that. We have some cases in our footnote that describes this very unique process through an authorized agent in New York who followed the law in NY and was duly authorized in NY, would not be subject to a bond in NY. Decades later there is a sale and another sale, all kinds of litigation and based on that, even though it wouldn't have been okay back in NY decades ago, Dresser now wants to have this bond requirement imposed. And that passage of time between what was right back then, what Texas couldn't do, and what now it can do in Dresser's world, I think highlights the importance of those constitutional issues. And that's shows why the statute should be read that way.

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RESPONDENT

PATTERSON: First, I do want to address the question that J. Brister had. I think he first brought it up about whether the London insurers had their day in court. I believe they did. They were given notice. There was a hearing. The motion that was filed by the real party in interest stated that the relators had been billed pursuant to the agreement, and that under the agreement the monies are to be paid within 60 days of being billed. And the affidavit attached to the motion stated that those monies had been billed and more than 60 days had passed. And the affidavit specifically stated that approximately $11 million was due under the agreement.

BRISTER: But it doesn't say they are likely to prevail on the merits of that dispute or anything like that.

PATTERSON: The relators were given their day in court. They had every opportunity to come in and challenge whether in fact that money is due under the agreement, which was our allegation in the complaint that the agreement had been breached by their failure to pay according to the agreement. And the affidavit supported that allegation.

They do make a statement in their brief that there was no factual testimony. There was factual testimony. It was in the form of affidavits. They presented affidavits. We presented affidavits. There is no evidence that they were prevented from presenting any argument that they wanted to make to avoid the bonding requirement. They very well could have come in and presented witnesses. There is no evidence that the TC prevented them from presenting witnesses on

the merits of the dispute to challenge whether the money was due. They instead chose to attack it on other grounds and the grounds that they chose to attack it is that the statute simply didn't apply to them.

BRISTER: The statute doesn't turn on whether the unauthorized insurer is likely to lose on the merits.

PATTERSON: It doesn't have that language but there are other cases who have held. There is the Cural(?) case which we cite, and then there is also...

BRISTER: On the merits of the contract dispute? I'm looking at the statute and all it says...

PATTERSON: No. The statute doesn't. What I was referring to was whether the statute imports with due process and there are cases that state that it does, that it does require court supervision before the bond is issued.

BRISTER: Are they correct that you all have had this dispute before and never asked for a bond before?

PATTERSON: No. I don't...

BRISTER: They said in their brief that for 8 years they've been paying your claims. They've paid a lot of money so far in asbestos claims. They posted this in cash. You did not ask for a bond because you were afraid if you won you weren't going to be able collect it?

PATTERSON: We weren't concerned with the lengths we would have to go to to collect that money. And the reason is this. This CIP agreement actually settled initial coverage litigation in Beaumont, Texas. They wouldn't pay us the first go around and they had to be sued there. It resulted in this agreement. The agreement discusses what a covered claim is and talks about with regard to the Worthington policies that it's where Worthington or Dresser are named in a lawsuit and then alleges exposure to asbestos from a Worthington product. It defines what a covered claim is. It also states specifically that the agreement, the CIP agreement, permanently governs the application of the subject policies that cover claims. This agreement has to do with the insurance business. There is no doubt about that. It's a claim's handling, adjustment agreement. If you were going to go and look at just regular long arm statutes, it's a contract with a Texas resident involving matters in the State of Texas, including part performance. Because the agreement specifically...

BRISTER: And they don't dispute that.

PATTERSON: They don't dispute that. And to say then that that is not also doing the insurance business under the statute to me defies logic.

BRISTER: Suppose this was a bank. Suppose Lloyds London went bankrupt, and these claims and liabilities were sold to a bank, and this is a bank that just said, We'll pay the settlement amounts and you keep paying - we've taken some assets. It looks more like the business of insurance because it was an insurer that signed the CIP. If it had been somebody else, a bank or a government - let's say a government in receivership took these, then the CIP looks less like a business of insurance doesn't it?

PATTERSON: I would agree with you that...basically these London insurers have gone bankrupt once. In fact the money that they claim was available at least as far as the underwriters are concerned, the underwriters portion of the relators, is actually held by Eqatoss(?), not actually by the London insurers. And if you look at the record in this case as we stated there was an initial mandamus to compel arbitration. That was denied. The mandamus was filed on that here with this court. It was denied on the issue of arbitration. The case was removed to federal court. It was remanded. Then the bonding requirement and the summary judgment finally came up. After those delays which lasted several years, then we get to this issue and we're still dealing with mandamus issues and not really getting into the merits of the case. Because we've been so distracted. And that's one of the things that mandamus is not supposed to be used to do is to so disrupt the proceedings in the TC.

Does a bonding or a security requirement equal an attachment? I don't believe it does. But if so, then the issue is whether it constitutes a loss of rights that requires a review by mandamus? And is there an adequate remedy by appeal? I think there's a distinction here between a bond - whether a bond equals an attachment and that it's such a deprivation of property rights that it requires due process. That's one issue.

BRISTER: But Peralta said a creditor can't come take your refrigerator and tell you, Well if you win at trial you will get it back on appeal. But apparently a creditor in a dispute can come take $11 million and it's okay to tell you well you will get it back on appeal. Now tell me why we're more concerned about the refrigerator than the $11 million?

PATTERSON: Because this is - there's no constitutional right to do the business of insurance in a particular state. And the states have the right to regulate insurance...

BRISTER: I'm not sure there's a constitutional right to own a refrigerator either. When you have property and a judge says before the merits this is not your day in your court. We just want the assets. You give the asset to them and then someday on appeal maybe your will get it back. How is the $11 million any less than the refrigerator?

PATTERSON: And that's the due process requirement. And we're not disputing that there should be a due process requirement. What I was trying to make is that there's a distinction between an attachment, which requires - making this bond equal an attachment which requires due process verses this bond equaling an attachment which equates to such a loss of rights that it requires mandamus review.

HECHT: Don't we have to look carefully anytime we say before you can come into court and defend yourself against a suit that had been brought against you, you have to put up a bond. That just seems to me to be a difficult proposition.

PATTERSON: Yes. And I think the cases have generally ruled that this regulatory scheme is constitutional. There is one other case that I didn't cite that I found. It's the Triheadran(?) case out of California, 218 Cal Ap 3D 934, which finds this scheme constitutional. The Curall(?) case out of NY found it constitutional. And then the British _____ case which disagrees with Curall on whether there is an attachment, whether a constitutional attachment finds that this scheme is constitutional.

O'NEILL: Isn't that because the way to get out of the scheme is to qualify to do the insurance business in Texas and pay the cost that goes along with that.

PATTERSON: Exactly. The two cases that the court recently decided on Friday, I think both of the decisions look at - Cite Walker v. Packer. I don't reject the proposition that there has to be a permanent loss of substantial rights. Both decisions talk about whether the rights are lost forever, whether the rights are utterly destroyed by the lack of the adequate remedy...

OWEN: Both of the cases decided - where the woman was suing her insurance carrier for bad faith and the TC required the insurance carrier to pay her attorney's fees every month as those fees were incurred. And that opinion pointed out that the insurance company certainly was not going to go bankrupt and they certainly had the where with all to do that. But the fact that they were having to fund the opposition skewed the process. They recognized it didn't have to be a permanent loss.

PATTERSON: I don't disagree with that. But I think there has to be such a loss of rights that an appeal - as I believe J. O'Neill noted at the beginning of the argument, if they win they will get their money back.

OWEN: In our cases that we decided mandamus, the insurance company could have gotten the attorney's fees back.

PATTERSON: The other distinction here is they chose to file a cash bond. They could have filed a bond, which then only results - really all they are out there and all they talk about in their brief is a loss of the use of the money. The money is invested by order of the court, so there is some money being earned on it. Now they made no showing, such as in the Notebone(?) case that they cite where the bonding requirement or the security requirement was so devastating to the relator that he was going to lose his business. There's been no showing in this court that the bonding requirement in this case was going to destroy the business of the relators. In fact their argument was we have so much money available that you shouldn't even impose this bonding requirement on us. We've got $8 billion. Now as I said, I believe the court did not clearly abuse its discretion because based upon the history of the case up until that point with all the other mandamuses and the removal of federal court, and the fact that the money, at least some of it, was held by Equatass(?), not actually

by the relators and not knowing what the procedures would be to obtain that money, there was no proof of how easy it was to get that money. I believe under those circumstances the TC did not abuse his discretion in issuing a bonding requirement.

SMITH: So you're saying there is no evidence about what a cost bond would have cost at this amount of money?

PATTERSON: There is no evidence of how much a cost bond would be. They've made no showing.

SMITH: When all we have generally is that whatever the vague difference would be between what the money earned and as invested by the clerk, which we don't really know exactly what that would be, verses the potential investment return which would be whatever they could invest the money in if they were free to do whatever they wanted to. So there's nothing more definitive than that.

PATTERSON: There is absolutely nothing in the record to show how much money they supposedly are losing as a result of having to file this cash bond. It's merely an allegation that they are losing money. As I've stated, it is invested.

WAINWRIGHT: How did the judge determine that $8 million was the right number?

PATTERSON: Actually the defendants themselves came in and asserted that they didn't owe the $11 million because there is a limitation in the agreement that only $4 million total can be paid out per year. We asserted in our affidavit that they were billed $11 million, and they owed $11 million. They actually disputed that and argued that no, they didn't owe $11 million. They only owed $8 million because of the contract limitation on the total amount that can be paid per year. And as result, the TC actually did not grant the $11 million bond. It granted the $8 million bond. So actually that's a good point. I think that shows that they did have their day in court, and they did have due process.

WAINWRIGHT: In the Insurance Code, §101.051, which I mentioned earlier, the last item in that laundry list of acts constituting the doing of business in insurance is no. 10. It says any other transaction of business in this state by an insurer. Surely that's not to be read as broadly as it says is it? If an insurance company buys an acre plot of land in West Texas, that's a transaction in this state. Does that constitute the doing of business of insurance?

PATTERSON: I would probably agree with you. That is not the insurance business as I understand the insurance business. But adjusting losses and entering into claims handling agreements is traditionally the insurance business.

WAINWRIGHT: So this last item 10, you believe should be read in context just not as broad as its language seems to suggest?

PATTERSON: If the court doesn't address it here, you may be addressing in the Straighorn v. Lexington Insurance Co. case in which a petition was filed on June 24. I haven't seen whether - obviously it's probably too early to determine whether the petition has been granted in that case. But in that case the Austin CA stated that the definition of insurance business therefore is global encompassing every conceivable form of business conducted by an insured. So at least one court, the Austin CA, this is a Feb. 20, 2004 decision, 128 S.W. 772. It tends to agree that it's a very broad, all encompassing definition. But I would agree with you. If they bought a piece of real estate, that may not traditionally in my mind be the business of insureds. But to me this coverage in place agreement is definitely part of the insurance business, because that's part of what insurers do is pay claims and adjust claims and enter into claims handling agreements.

WAINWRIGHT: What's your view of the connection between the underlying insurance policies and the CIP?

PATTERSON: As I stated at page 6, IIA, this agreement governs the application of those policies to the covered claims. I think there's a direct relationship here. You don't get paid under the policy unless you deal with this agreement. Now I believe the term "it's not a contract of insurance" where it was used in this document was used to avoid the application of the doctrine of _____. That's my belief as to why it was used. I agree with you this is not an insurance policy. But it does govern the application of those policies and how monies are going to be paid under them. And my opinion it is doing the insurance business.

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REBUTTAL

COALE: J. O'Neill, you may have used this phrasing. I think a couple of questions hinted at this: Well the way to get out of the statute is just to get in a different bucket. Let's think about the bucket here that the parties put themselves in beforehand. I've talked about §8 of the CIP where parties define of what they are or are not going to do. Where they say this is not a contract of insurance, where it does not affect obligations under the policies. The first line strangely enough of §8 says this agreement is the result of a compromise of a disputed claim. It is the product of arms length negotiations. And then it goes on to describe the various things that this agreement will and will not be after 13 pages of very detailed analysis. Some of the business issues between the parties. These people knew what they were doing. They said it and they were careful to say it before they went into the discussion of whether this was insurance or not, and whether it would affect the policies or not. And that's because they didn't think they were doing insurance business and they didn't think they were subject to bonding requirements. That's not to be found anywhere in here.

O'NEILL: How relevant is their intent to whether they were actually doing insurance business? And that's a matter of law isn't it rather than...

COALE: It certainly is a question of law as to how you interpret this and how you apply it to the statute. But I think it goes to the question of J. Wainwright about the property out in West

Texas. That's pretty easy. If you look at the deed it's property. It doesn't sound like insurance. This is more complex.

O'NEILL: Parties couldn't get together and just say this is not going to be considered an insurance contractor doing the business of insurance in Texas. And then come in here and do this. We're not bound by what they characterize it.

COALE: Certainly true. And that would be - to take your example one step further. The introduction to this whole set of statutes says, watch out. We're worried about people in Texas getting swindled by unauthorized insurance companies not properly regulated. And you of course couldn't stick a little clause in an unfair policy and opt out of the insurance rules with that. But this isn't that situation. This is not protecting the vulnerable. These are two businesses getting together and doing a business deal to resolve threshold questions between them before you get to anything about these policies, or anything covered by the statute.

WAINWRIGHT: Did the underlying policies provide insurance coverage for any Texas residents?

COALE: There is no evidence in this record that they did. The evidence shows that the insured was an out of state corporation, principal place of business was out of state, and there are some 10K's and that sort of thing, and the Gagliano(?) affidavit that go on to give more detail of all that. That is the beginning and the end of the record evidence about where the original insureds were.

WAINWRIGHT: Let me followup on the question I asked earlier about the connection between insurance policies and the CIP and what the CIP really does. I understand there's an argument that it provides for adjustment of claims, that it is in essence part and parcel of resolving insurance coverage issues. You state in your brief that the CIP was intended "to resolve complex coverage disputes relating to allocation of claims to the underlying policies of insurance, and to provide administrative rules relating to the processes of claims asserted by Dresser thereafter to be attributable to the underlying policies of the insurance." A lot of words there. What does that mean?

COALE: Think of it as a stream. You have a stream of claims coming in. The CIP takes a part of those claims and channels them off over here. The ones not addressed by the CIP are dealt with in other ways. We are not involved. The CIP ones come over here. And if you look at the attachments to the CIP, there are 20 policies or so. It's a mess. Which policy do you look at? How does it count? And when do you trigger it? Because these are all excess policies. Very hard questions to answer. The CIP answers those questions. It says, Here's how we are going to allocate, and here's how we are going to figure out when we've exhausted, and here's how we are going to keep score. Now they've got the score set up, and apply whatever is to be done under the policies. And there's a paragraph that expressly reserves all defenses under the policies.

WAINWRIGHT: And you believe that what you've just described is not contracting to provide in this state indemnification or expense reimbursement for medical expense by direct payment or

otherwise?

COALE: No. The policies would give the rise to that liability. And those policies are issued long ago. They are the subject of my statutory arguments in my earlier examination.

WAINWRIGHT: And the CIP you just described, you believe does not provide for a transaction of a matter after the effectuation of a contract that arises out of the insurance contract?

COALE: If read consistently of course with the exception in the next paragraph. But yes. Even on its own terms these people entered a business solution to the business problem and left the issue of policy defenses for another day.

O'NEILL: So if all of these contracts were before the TC, and the TC had to go through and made a decision on excess coverage and determined that these claims were covered, does the statute reach them?

COALE: A suit for coverage on the policy.

O'NEILL: Yes. If y'all hadn't entered into the CIP, and it went to court, the court had to sort through all of these policies and determine whether you were covered as an excess or not. And the court says Yes, you are. Is that covered?

COALE: Absent the CIP, the statute has nothing to do with London. Because of the issue about regulating past sales, out-of-state insurance subject to out of state, that these commerce clause cases talk about that the exception picks up. That set of facts could not be covered by the statute, and Dresser's only ____ to the statute is to cite something about the CIP in my analysis of those facts.

WAINWRIGHT: Would your opinion change and would you agree with your opposing counsel that this CIP does provide for the business of insurance if there was evidence in the record that the underlying insurance policies covered residents of Texas? You keep pointing to the exception 101.053(b)(a). So if there was evidence in the record that they are residents of Texas covered by the insurance policies, would your position change?

COALE: It would have to be at the relevant time.

WAINWRIGHT: Between 1954 and 1973?

COALE: At the time of sale, at the time the policies initially attaching. But if that evidence is there, there is certainly a stronger arguments for the statute applying.