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Supreme Court of Texas.
State Farm Life Insurance Company, Petitioner,
v.
Toni Wasson Martinez, Respondent.
No. 05-0812.

December 7, 2006

Appearances:
Eva C. Ramos, Skelton & Woody, Austin, TX, for petitioner.
J. Hampton Skelton, Skelton & Woody, Austin, Texas, for
petitioner.
Billy M. Payne, Payne, Watson, Miller, Malechek & Scherr, P.C.,
Bryan, TX, for respondent.

Before:

Chief Justice Wallace B. Jefferson, Don R. Willett, Harriet
O'Neill, David M. Medina, Paul W. Green, Nathan L. Hecht, Dale
Wainwright, Phil Johnson, Scott A. Brister

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JUSTICE: Be seated. The Court is ready to hear argument in 05-0812, State Farm Life Insurance Company versus Toni Wasson Martinez.

COURT MARSHALL: May it please the Court. Ms. Ramos will present argument for petitioners. Petitioners have reserved five minutes for rebuttal.

ORAL ARGUMENT OF EVA C. RAMOS ON BEHALF OF THE PETITIONER

MS. RAMOS: May it please the Court. State Farm is entitled to reversal of the Court of Appeals opinion for two reasons: First, the opinion causes confusion as to what the law requires of life insurers facing conflicting claims that they imposed; second, the opinion penalizes life insurers who are a due-- mutual stakeholders for not adjudicating the competing claims in fashioning relief in Courts can provide. Until the Court reveals opinion, Texas Law provided clear guidance as to how life insurers facing conflicting claims that present reasonable doubt should proceed when there is no, there's no clear forte as to which beneficiary should be given the proceeds and that is promptly admit liability to pay the proceeds to the proper recipient and the intended funds into the court's registry as part of an interplead action.

JUSTICE O'NEILL: When?

MS. RAMOS: State Farm followed the law by doing precisely that the question is when, when reasonable ...

JUSTICE O'NEILL: When did they do the interpleader, I mean, is that a strict 60-day deadline or wouldn't it been different that interplead the funds 3 months, 5 months, 6 months down the road?

MS. RAMOS: According to the case law on interplead of the task is no unreasonable delay and State Farm did ...

JUSTICE: But doesn't, doesn't the-- I mean that, that's the rule on all the the interpleaders, Insurance Companies or anybody, no one reasonably delay. Doesn't -

MS. RAMOS: That's correct.

JUSTICE: - doesn't when the legislature passes statute saying, 60-days that an attain ship.

MS. RAMOS: Well, the legislature passes statute, statute saying, "The Insurance Company must accept or reject the claim and pay the claim within 60 days." However, ...

JUSTICE: Interpleader is a form of payment of-- interpleaders is a form of payment.

MS. RAMOS: Interpleader is a form of payment. And I will submit to this Court that from the appellant lawyers perspective, it is certainly regrettable that State Farm did not file it's interpleader within the 60 days. However, the 12 days beyond this-- when the 60 days, when the 60 day bill ring falls within the main extreme of cases that had held no unreasonable delay. There are numerous cases that we have cited in our brief on pages 23 to 25 ...

JUSTICE: Well, let me, let me just separate those questions. If, if there's no 2155 or whatever the current article is, any interpleader against got to be within a reasonable time and assuming we were to find for 72 days under this circumstances is a reasonable time. And aren't you still liable for penalty interest for the delay of the 12 days.

MS. RAMOS: Oh, we submit, No. Because as this Court said in Great American Reserve versus Sanders in 1975 that where circumstances they get exist that allow interpleader to be the proper remedies such as this one when the conflicting claims present reasonable doubt and the Insurance Company does not pay the funds into the court's registry within the statutory time frame or fraud, for that matter before when one of the claimants files a lawsuit does not automatically make the Insurance Company liable for the statutory penalties and attorney's fee ...

JUSTICE: That's the question, I couldn't-- I mean that's one paragraph and while I'll have-- I suspected Justice Pope, he didn't really tell us one of that so ...

MS. RAMOS: Well, but further case is construing Sanders, have told this why and that is how much time must passed before an interpleader becomes unreasonable depends on those circumstances of the particular case.

JUSTICE: I agree, I agree with that as far as plaintiff-- it's okay to interplead but I mean this-- the legislature said, it is more than 60 days, 18 percent penalty into supplies period -

MS. RAMOS: What this Court ...

JUSTICE: - and aren't we cannot and did Sanders I mean, it was only 7 days later.

MS. RAMOS: Correct.

JUSTICE: But it's still, it's doing, it's saying you don't get what the legislature said, you do give.

MS. RAMOS: Again, we have cited numerous cases in our brief that

don't just apply to Article 3.62 which was in effect, during this Court error of Sanders but also apply to the produce-- or that the statute that was enacted after 20-- 3.602155 and even in those cases say that where the Insurance Company did not in plead-- interplead the funds within the statutory time frame, you look at the circumstances of the particular case and the key here is whether or not to carrier acted reasonably.

JUSTICE O'NEILL: Why do you-- why did the legislature changed the period from 30-days to 60-days?

MS. RAMOS: Most likely because it had some strong lobbyist on the insurance side that, that requested it to change. It also changed the penalty -

JUSTICE O'NEILL: Because ...

MS. RAMOS: - from 12 percent to 18 percent.

JUSTICE O'NEILL: Because 30-days really wasn't enough time perhaps to make a determination and so by giving 60-days, doesn't that make it a harder and faster rule. You know, we give, we give more time to investigate now but, you know, harder to say, we're going beyond that to find reasonable.

MS. RAMOS: It doesn't allow for more time but as this Court recently said in the Dwenis just last month. When the legislature-- the legislature is to be regarded as intending statutes even when repeatedly re-enacted to be given that interpretation which is been settled by the Courts and the legislature in repeatedly re-enacting the prompt payment statute should be regarded as intending that statute to be given the interpretation as we settled by this Court and that is not penalized in Insurance Company.

JUSTICE: Any legislative history suggesting that so?

MS. RAMOS: The legislative history suggests precisely this that there has been no discussion, in fact our law firm went to great efforts recently to listen to the house tape, this was a house bill.

JUSTICE: Because this was 91 which fudge?

MS. RAMOS: Correct. The initial article 3.62 was enacted in 1951 and then it was repealed and re-enacted as Article 21.55 in 1991 and there were some substitute, substantive changes law made.

JUSTICE: Sub -

MS. RAMOS: Correct. However, none of the, the legislative discussions during the debates.

JUSTICE: Relates to this.

MS. RAMOS: Had any discussion whatsoever about interpleader and what that means is when you look at the Wenians and, and the law cited in the Wennians and that is that legislature must be presumed to intend the statutes to be given the interpretation that has been settled by Courts and that is to allow a common law interpleader exception.

JUSTICE: This argument so far has gone sort of like the proceedings below and that is a concentration on the time period and the delaying whether that reasonable or not and away from a trial court finding in conclusion of law that State Farm should not have any reasonable doubt that Martinez or Toni Wasson Martinez was the primary beneficiary and my question is to what extent did you challenge that finding and conclusion on appeal and living the jury's says.

MS. RAMOS: But-- thank you, Justice Jefferson. In various ways, we reserved error on the, the notion that State Farm had reasonable doubt. First of all, in filing a motion for new trial recited the Sanders to alert the attention to the Court that the standard is whether or not the Insurance Company conflict-- when face with a conflicting claims is presented with a reasonable doubt. Secondly, in our appellate brief

before the Court of Appeals, before the Tenth Court and are issue No. 4 and in our argument throughout our brief. We complained and challenged all findings of fact and conclusions of laws supporting statutory liability in terms to be its likewise, in this Court, in our issue No. 4 we challenged all claims of batted conclusions of law supporting statutory liability and attorney's fees. And under this Court's opinion in Anderson versus Gilbert it's a per curiam opinion of 1995; that case holds-- this Court hold that even under the prior point of error practice, a party does not waive an appellate point when its argument directs the attention of the Court to the error about which complaint is made even if that-- as stated by this Court in Sanders, even if the party does not challenge the specific finding of fact on that point and this is also reiterated in the new issues presented practices under track-- 52.3 and 55.2. In fact, Justice Jefferson, the appellate Court attempt Court dismissed the respondent's hypertechnical waiver argument and considered State Farms challenge that all of the findings of fact and conclusions of laws supporting statutory liability or in the-- in error.

JUSTICE: How do you addressed the argument that the legislative acquiescence argument is further hear because the argument is being made that put your-- asking for maybe depending on how you read it in direct function-- contravention of the statute 60-day bill as you called it.

MS. RAMOS: Quite frankly, we don't see it.

JUSTICE: So we didn't have that in doing this, any direct language that look like, it might it.

MS. RAMOS: I, I appreciate that. We don't see it as a direct contravention of the statute. First of all, we've look-- the statute applies to a party's who was a, who is a, a claimant under the statute and at the time, one respondent filed her claimed, she was not a beneficiary record.

JUSTICE O'NEILL: Why not?

MS. RAMOS: Because the change had not been effectuated and ...

JUSTICE O'NEILL: Well, but I mean that's one of the problems in the case.

MS. RAMOS: Right.

JUSTICE O'NEILL: And he submit that's a genius says she's not a claimant when there's an argument maybe you wrongfully rejected her as a claimant.

MS. RAMOS: Well, and we certainly don't concede that we wrongfully reject it -

JUSTICE O'NEILL: I, I understand but ...

MS. RAMOS: - and the issue there Justice O'Neill is that no one can dispute, none of the parties nor any of the lower courts can dispute that former wife, the ex-wife Linda had an equitable interest in the proceed. Both the Trial Court and the Court of Appeals fully recognized this right's of the ex-wife by imposing this subject to constructive trust remedy; the very fact that the trial court judgment recognized the ex-wife's rights, demonstrates that State Farm could not have blindly accepted had Martinez is changed for his request that wholly ignored the rights of the ex-wife. All agree-- all parties and, and all Courts agree that the rights of the X wife needed to be acknowledge and there is nothing in the policy nor the law, that require's an Insurance Company who is a neutral stockholder to impose this constructive trust subject to constructive trust remedy. Only the court is empowered to imposed a constructive trough-- to a subject to constructive trust remedy yet the Court of Appeals decision would have

had State Farm act as judge and jury fashioning relief that only a Court is empowered to do.

JUSTICE: Can a insured designate different primary-- more than one primary beneficiary that 30-- I won't 120 this policy if I die to go to with this primary benefit.

MS. RAMOS: I think an insured-- I think quite frankly, an insured can do that but the insured here did not, what the insured did, we presented the Court this morning with the timeline and looking at the the timeline, we, we presented the timeline in a way of an oral argument and exhibit. Looking at the timeline, what happened is insured Ed Martinez on August 1st, 2002, he submitted a change request asking that his current wife would place his ex-wife as beneficiary. Making no mention whatsoever of the ex-wife's rights. What's critical note-- to note here and this is the-- a part of the Court record at 656; insured Ed Martinez knew how to remove his ex-wife's irrevocable beneficiaries that is because he did just that with respect to a separate \$175,000 State Farm Policy. What he did there was he submitted the change request with the ex-wife's expressed consent who signed off as a irrevocable beneficiary quite the contrary. With respect to the change request on the \$500,000 policy, his change request note made no mention whatsoever of the ex-wife. It simply said, "Name my current wife Toni who was the respondent in this cause as beneficiary." So what State Farm did is returned his changed request saying, "We can't process this change because it appears -

JUSTICE: But I ...

MS. RAMOS: - to be concluded by a divorce decree."

JUSTICE: But your policies says that it comes effective when you signed, sent and you know, own an applicable form so on your form and their argument is where the Court of Appeals holding is whether he had the power to do this, whether he was violating his divorce decree by doing this is not an issue of form; that's an issue of substance and so let's assume sometime later an error in it's summary judgment hearing those problems go away. The divorce decree problems go away, under the policy isn't that named beneficiary change affected the day he signed it.

MS. RAMOS: What-- just ...

JUSTICE: Policy says, right.

MS. RAMOS: Justice Brister, your, your point about at sometime later in both the Heinesscite approach with-- which is not allow by the law.

JUSTICE: Well, but I mean, contracts all the time say, people signed them after requisite effective 3 months ago.

MS. RAMOS: Okay, and what we should look at, should we not? Is what the Insurance Company was based with at the time and that is conflicting beneficiary designations made by this very insured, Ed Martinez, on September 28th, 1994, had made his prior designation quote: "In accordance with the divorce decree pleading State Farm unnoticed that there's not just the divorce decree but a judgment out there."

JUSTICE: But if it kept living and all this problems have been worked out and so she waives her rights as she did here later at summary judgment hearing while he was still alive which you've treated her as a named beneficiary as upon the problem for claimant or as appointing signed it.

MS. RAMOS: As a point he signed it. Once the problems were cleared up, absolutely the request would have been valid as of-- as of one he submitted the request and that is exactly why State Farm returned his

change request saying, "Please give us either Court documentation or consent by the X wife to removed her as beneficiary of record." What happened next, he died unexpectedly while vacationing in the British Colombia and within days, after the insured passed away, State Farm was faced but not one, not two but three conflicting claims made to the same proceeds and it is important to note that the claim filed by the ex-wife Linda was not conditional. It was a complete claimed for the \$500,000 so State Farm was faced with three conflicting claims that presents a reasonable doubt.

JUSTICE: Why not interplead then instead of the-- as I understand it 3 week delayed.

MS. RAMOS: It's, it was actually a 12-day the day delayed. What State Farm did and this is part of the court's record is sent less. State Farm acknowledge all 3 of the claims as it should do under 21.55 under that-- the-- which was not the Statute applicable at the time. Note, there's been no dispute that State Farm didn't acknowledge all the claims properly and wrote to all the party's and said, all tribute apply conflicting claims. Linda, the ex-wife is the beneficiary at record but we also recognized that Lisa, the adult daughter has also filed a claim and that Toni, the surviving spouse has it's filed the claimed. What State Farm did and this is undisputed is encouraged settlement among the parties and said, "If you don't resolved your differences, we're going to file an interpleader," in fact, there are two, two at least two letters in which State Farm sent letters to the parties-- all three parties have said, "You don't file your differences, we will follow an interpleader, we're going to file an interpleader," and that's precisely what State Farm did -

JUSTICE: Are there -

MS. RAMOS: - again ...

JUSTICE: Are there other questions? Few time has expired. Thank you, Counsel, we'll hear from you on the rebuttal. The Court is now ready to hear argument from the respondent.

COURT MARSHALL: May it please the Court. Mr. Payne will present argument for the respondent.

ORAL ARGUMENT OF BILLY M. PAYNE ON BEHALF OF THE RESPONDENT

MR. PAYNE: May it please the Court. I'm Billy Payne and this issue is critical due to have had the premises of this Court is quite known. I mean, this twilight of my career and the, and the twilight if any have, this Court probably point which my period and my attending that up to adjust these hearing dates and I hope I can hear you enough, this creach overt. Anyway, please, as a trial lawyer of sometime explained to you and I think we should look at the picture first and then I wanted to be specific with you. We've got a situation with, with that statute-- in that-- of the legislature that makes Insurance Company took and settled claims so as to eliminate discretion holding that on which a person who had left after death, they would otherwise be on this part of uncertainty that would be created by insurers who should not keep people on peak of uncertainty and creates stress in the lights of whims.

JUSTICE: I agree with that but the problem is in this case. They want a job to work it out. Let's, let's assume they were's a-- they had a right to interplead all along because they sees conflicting claims,

we'll understand that counter arguments on that but-- So we're down to day 59, if they put it into the Court, they will have to hire an attorney that have to pay an attorney's fees and along interpleader's clear. They get their attorney's fees out of the corpus. If they can get you all to agree without that, they don't have to hire that attorney so in effect by waiting 12 days, if we tell him, "sorry, you should done it earlier aren't we hoarding beneficiaries of the policy" because we're saying, "don't even try to work it out, throw it in the Court, takes some attorney's fees out of it" in every case.

MR. PAYNE: Justice, please let me delayed that used for bit and get back to the peak picture?

JUSTICE: Okay.

MR. PAYNE: Fundamentally, this case does not accept the law of the State of Texas about the plan, the penalties nor does it affect adversely the law given in the right in a proper case to interplead. They move fundamental thing about the right new figure is that the person that interpleads must be innocent. I tell you what, I'm afraid you think it takes a weighing of a lawyer to get appear and stand before people like this and say, "State Farm sanctions." They breached the very fundamental concepts of their Insurance policy. They've got a policy with Ed Martinez, they took his dollar and promised to pay whoever he said to pay \$500,000 and we will pay it to whomever you designate and it's effective immediately.

JUSTICE: Well, there is this-- there's no question in his designation that he sent him on August 1st, violated his divorce decree.

MR. PAYNE: Okay, let me, let me talk about the Insurance Policy and then ...

JUSTICE: No, no, no, I don't want, we got 20-- we got 16 minutes left and I want an answer to that question. There is no question when he said him on August 1st, "change my beneficiary," that was-- that violated his divorce decree.

MR. PAYNE: Absolutely not, if divorce decree ...

JUSTICE: Well, I'm looking at in here and it says, so long as they had maintains Linda as would have been beneficiary, an amount sufficient to pay, he can name his beneficiary for their main or whomever he choose so where was the policy naming Linda as a beneficiary on August, 2nd.

JUSTICE: Judge ap, listen. As I argued sometime I inject you. What is the definition of "irrevocable" that means you keep a change. If in fact, I have want to designate it, Linda, the lady who was to be protected by my contract persecuted interest. I've done that, do I have to do it again? If it is irrevocable, your Honor, I don't care what had do like her could I change it? If I won't said irrevocably designated her. Okay, give, give me a month. Judge, the agreement insulate to divorce only has this insurance policy involved because we, with regard to the contract that he had made with his ex-wife was attempted pursuant to his contractual ability, to give her contractual element. In order to give her the additional security that whatever happens to me and my future life.

JUSTICE: I know the facts.

MR. PAYNE: Okay, you're to have to secure it.

JUSTICE: I know. The policy says, though he has to maintain or his a beneficiary.

MR. PAYNE: Exactly, in an amount sufficient.

JUSTICE: So if he changed her on this policy, where is she still maintain, does a beneficiary an amount sufficient -

MR. PAYNE: Since been ...

JUSTICE: - to pay another 20,000 bucks.

MR. PAYNE: She was irrevocably designated way back-up the way. Issues been irrevocably designated, the designation that she have made change didn't change the irrevocable designation to give Linda the security.

JUSTICE: You mean when he signed her originally on this policy as an irrevocable beneficiary?

MR. PAYNE: Yes, Sir.

JUSTICE: Oh so you will just wasting his time sending on it changed of beneficiary on August 1st, have been doing anything.

MR. PAYNE: No, Sir-- his designating and who he won't to have the policy proceeds. The policy proceeds of \$500,000 and that's the mid of the coconut. Linda, the ex-wife never, never had the right to this policy proceeds. She only have the right to this proceeds to be held to give her the \$5,000 a month, if in fact she fulfill the conditions of not dying and not remarrying and so forth.

JUSTICE: Let me asked that question this way. If Linda was taken off a half a million dollar policy under the agreement as to divorce could either of the other two policies have suffice to provide payments to Linda in satisfaction of the AID?

MR. PAYNE: Okay, Justice let me get to that, this way. I think that's a ...

JUSTICE: Is that a yes or no question?

MR. PAYNE: Okay, I've got ...

JUSTICE: When she have-- he had a \$175,000 policy in addition to the half million dollar policy and a \$125,000. As I understand it, there's a \$120,000 left on obligation on the contractual -

MR. PAYNE: Correct.

JUSTICE: - element so either of those other two policies still with to satisfied that the obligation to pay Linda, correct.? So you could have taken her off the half million dollar policy and it's still would not violated the agreement as-- to divorce. If that's the question.

MR. PAYNE: Okay, Sir. I don't believe the Court have think there going-- they changes on a \$165,000 policy ...

JUSTICE: Well, there was still a \$125,000 policy given what you just said, that's true there was still the \$125,000 policy would it not have satisfy the AID?

MR. PAYNE: This policy, the \$500,000 with regard of fulfilling indeed security for her to 120. Toni make her claim by later September 15th, 8 days later. Okay, State Farm has got to-- in order interplead they got to have a reasonable doubt, where, where on the horn of the dilemma, we've got a claim here. The claim of Linda was only for 120. On September 18th the letter to State Farm by me said, "Here let me step it out for you." Here's what the AID gives Linda, it only give Linda \$5,000 a month if she don't die or remarried. The maximum amount is 120 that can be held for security. There is lattedly no claim whatsoever, that Linda has to create ...

JUSTICE: As not what Linda was saying though -

MR. PAYNE: Right. Sure?

JUSTICE: As not what Linda was saying.

MR. PAYNE: Okay, let's go there, let's go there. Okay, I claim I want to go and get breached.

JUSTICE: Well, you know that's not a reasonable claim though. The claim that ...

MR. PAYNE: That's what I'm saying.

JUSTICE: Well, the claim that was presented here -

MR. PAYNE: - this ...

JUSTICE: - excuse me, claimed that presented here seems to be reasonable. I think for me it goes back to the simple question that Justice Brister ask-- asked in the, in the beginning. Isn't it better to allow this type of proceeding than to have this attorney fees paid out of the corpus so that there's more money paid to the beneficiary as to both to attorneys.

MR. PAYNE: Judge, in a proper case where there is a reasonable claim the procedure of interpleader, I don't, I don't challenge. Here, Judge we've got a situation for Linda's claim or what she had under the agreement ensue that to divorce period. And it does not take a rocket scientist to read that deal and know, later you don't have a claim for \$500,000 because when I designated Linda, it designated Linda. Mr. Insurance Company, Linda has the right under the agreement ensue that to divorce. She does not have the right to \$500,000, she has the right to \$5,000 a month and -

JUSTICE: Well, let me, let me suggest of it. It doesn't appear from the record to me that State Farm had-- was trying to be in advocate on behalf of, of one beneficiary or, or proposed beneficiary or another. It had competing claims and, and it-- that wasn't going to act as the Judge and decide all the legal issues and there was no question that, that money was going to be paid, I mean there was no dispute about that and so what State Farm did is what most people face of that situation would do interplead the fund and it did-- doesn't seem-- doesn't seem to me like they did that in opposition to your client or in favor of any other beneficiary but at some point just said, "Okay, here's the money and you three litigate to whom it's entitled."

MR. PAYNE: Judge, I, I, I so totally, entirely disagree.

JUSTICE: Well, then ...

MR. PAYNE: If you would come out in my mockers and she put as occurred you would indeed know different thing with regard of what I want to tell you, with regard to State Farm's actions. State Farm's actions in this particular case has been litigated. They've lofted all the balloons where, where, where'll got a claim, Linda's claim in the whole 5,000 and I just don't know what to do with regard to meet claim in the golden gate that's what I would like to Linda's claimed the 5,000 because Linda's only claim is the eight. We do not need rocket scientist at peak to talk to their lawyers, to tell them what Linda's right was. And then they need not be perplexed by Linda's claim. Linda didn't claim the whole thing, she just said, "I make my claim."

JUSTICE: How much did Lisa claimed?

MR. PAYNE: She didn't say, she just filled out a claim. The right term to the policy and, and, the, the designation said, "Linda is, is a beneficiary pursuant to my divorce decree." You've needed the divorce decree to see what Linda's claim in here.

JUSTICE: Counsel if you said, you've been around the block several times. Do you agree with Chief Justice Holmes' statement in Sanders that an Insurance Company should not be compelled to act as judge and jury?

MR. PAYNE: Without a doubt, I don't have in equal over that.

JUSTICE: But you don't see any claims here that would lead a reasonable insurer to submit the funds to a court pending resolutions of the disputes.

MR. PAYNE: With regard to these cases that speak about whether or not the, the person that wish to interplead is faced with doubt. Judge

dictations all say that, that's got to be reasonable. You've got to look at the circumstances to determine whether or not the person that wishes to interplead, if in fact you've got the craziest claims in the world and, and when the interplead, unprotected by in your pleading because I have different claims. The fact that you-- that the case you say just because you've got a claim, didn't give you a right to escape interpleader. You've got to analyze this things and in this particular case. The rights of Linda was so clear. As do not to entitled her of the policy proceeds and what is important, eight days after we make our, our claim to the policy, we wrote to them. We told them, we acknowledge Linda's rights, we think that there is no claim whatsoever. Did anybody has the 390? The expression about Ed Martinez to designate his wife was the last impression before his death that he made as to do informed the policy. -

JUSTICE: Counsel, you talks about -

MR. PAYNE: Therefore, there was no claim whatsoever after \$38,000.

JUSTICE: Counsel, let, let me asked you a question that if, you believe I understand that the-- who the funds should be paid to is crystal clear.

MR. PAYNE: I do.

JUSTICE: Why wouldn't an insurer interplead the funds if it was crystal clear that-- and, and they could just write to check. Why would they not just do that if it was so perfectly clear from their perspective.

MR. PAYNE:: Well, that's the ...

JUSTICE: I mean, what's the motivation for not doing it?

MR. PAYNE:: Well, nothing-- you, you could get in to get me into, big dollars that I don't quite understand but big dollars in State Farm, if you insist such a date ...

JUSTICE: Well, your-- confession based on the question.

MR. PAYNE: If they keep 500 here and if they keep 500 there and in the State of Texas with regard to claims of letters that both their money and the hooks they farm to pay. If they can delayed 59, I don't know how much interest you earned on millions and millions, and millions but there would be a lot of financial exhibit for you not to get your claims but if-- when there is no doubt about who the moneys goes to.

JUSTICE: So I am not, not favoring one party or another, you think it's, it could be a matter of interest earned.

MR. PAYNE: Without a doubt.

JUSTICE: Well, that's a-- that's a compelling argument in the statute I think was maybe perhaps designed to protect that. This still bring us back to the very first question Justice Brister asked and maybe mentioned here. I just don't get it yet but the purpose of the interpleaders, it, it seems to me it's better for the parties to settle the matter as I understand State Farm tried to get the parties to do.

MR. PAYNE: Well, let me suppose to you Judge that this-- our, our friendly settlement motivagor. They suggest to me into this little for you just give of Linda a \$120,000 that be a good settlement with you, when I'm not-- I'm representing her and I'll read the law and I'll say this man, that was his policy and he could designate and gets the money and his widow is supposed to get the money and I know good well, I can read English and I can read the A and I can see Linda is entitled with \$1 if use of late pen continuous to make the 5,000 payment.

JUSTICE: But at the summary judgment hearing, you and Linda's lawyer agreed. You got 380 thousand and she got a lien on a 120,000.

MR. PAYNE: Or could let me just rest -

JUSTICE: A mess in their right.

MR. PAYNE: He recognized and agreed that, that was the case.

JUSTICE: Now, you could have worked to that out in the first 60 days too. I mean you-- in other words, State Farm when the only one delaying. You all could have reached that same agreement back there in the 60 days at the settlement and never would have been enter, entered any interpleader. There never would have been deduction for State Farms, lawyers fees on the interpleader, we never wouldn't have a fee.

MR. PAYNE: Okay, Judge let me enter in this respect. I believe so strongly in, in-- I don't mean to offend work. When I believe in something. I'm not particularly correct. This one is belong to this main through it and I didn't need Linda to agree or not to agree as to what she had. I knew what she had because I can read.

JUSTICE: And she didn't have all 500,000.

MR. PAYNE: Exactly.

JUSTICE: She did not have all 500 ...

MR. PAYNE: Absolutely not.

JUSTICE: Right, she had 380?

MR. PAYNE: She had been ...

JUSTICE: I'm sorry, the other way around. Your client have a, yes, your client had the 380 and Linda had a right to tie up 120.

MR. PAYNE: To tie up, to tie up. She only have the right to tie it up in as payments were made from the use thing.

JUSTICE: Well, see I don't understand your argument in my clients in tied low 500, if she's got a right to tied up 120. I mean those are inconsistent, I think.

MR. PAYNE: Well, Judge under the AID, Linda is entitled to \$5 thousand dollars a month. And she's not really entitled to a 120,000. She's entitled to 5,000 a month because if she remarry, she's turn. She didn't have get anything more, so all we've got here-- we have got total moneys to proceeds of the policy. Did she go to the person that Ed Martinez said, "I won't to have the money" but there is an astrick by some of this, it's going to be intervoke over here to protect Linda but if Linda gets what she is contractually suppose to get from the State, every month of 5,000 is freed and go. So with regard of saying Linda has the right to this, I suppose it's submitted judge but in Lowman, there is no doubt that it's the wittle in its subject only to being held, pending the claimant.

JUSTICE: May I ask you a half set of questions, not your case but in another case, same agreement incident to divorce except the State's bankrupt and the state's not going to be able to pay 5,000 in interest, \$5,000 a month for the remaining time period and a remaining two years. Same thing that bankrupt insured short divorce death says, "Give it all to my new wife and the Insurance Company knows about the agreement instant to divorce." If the Insurance Company going to change the beneficiary and then found death since all the money to the named beneficiary, does the former wife have a claim against the insurer for paying out fines that she had a beneficial interest in.

MR. PAYNE: Excuse me, I've got him a low.

JUSTICE: Basically, your case but if, if there hadn't been anyway to hand-- pay \$5, 000 a month for the next two years, if he had been bankrupt 20 times and they have done which you asked, which is pay it all to current wife. Would Linda have had a claim against the insurer for paying out money that I hadn't been a beneficial interest and shouldn't tied up for me and now I am out a \$120,000 and I want State Farm to pay it.

MR. PAYNE: Okay. You're spreading me a little thin there because

I'll think you've start get me into third party beneficiary rights with regard to contracts. We've got two contracts; this contract ...

JUSTICE: No, it's really the same as the interpleader, I'm a stakeholder and if I'm on notice of somebody's claim: beneficial, equitable, whatever it is and I'll pay it out. I might have to paid twice bind a not.

MR. PAYNE: Okay, Judge-- I'm sorry, I'm a little bit nervous, I'm having trouble but I want to tell you all of that is negative but the fact there was up to the 18 we've wrote a letter to State Farm, you don't have any exposure, you don't have any problem because we've know she's got the right and we agreed that we're going to-- this grow as hundred twenty so they would any doubt in their mind. They weren't exposed to a claim that expose them to liability.

JUSTICE: But Linda didn't agree with you -

MR. PAYNE: No.

JUSTICE: - and tell this did, did this accepted? Did Linda agree with that statement you just made at anytime before the summary judgment hearing?

MR. PAYNE: I do not believe so but may I ask please. There's a guide that's going to be a logically right. Didn't told her but you call this this a credicknest. But, but, you know, asking question and I'll never knew the answer to the question that for I don't learned anything by constitute for law but my question to you is what difference is Linda's agreement might-- I might tell Linda's agreement. Linda's got what she's got and I am happy to have an agreement with Linda. The person that have the dollars from State Farm and I had the agreement with State Farm fully recognize what she's got a right to and you don't have any exposure ' cause I agreed, so I don't have to have Linda's agreement.

JUSTICE: And I had Professor Wright to and when he said "Prizes over," he was already trying to say-

MR. PAYNE: Now, that, that's what [inaudible]. It's, it's been a pleasure, it's been a pleasure and I hope I have not finish.

COURT MARSHALL: May it please the Court. Mr. Skelton will present the law officer decision.

REBUTTAL ARGUMENT OF J. HAMPTON SKELTON ON BEHALF OF PETITIONER

MR. SKELTON: Thank you. May it please the Court. As the Chief Justice Officer had Professor Wright, that he could found with me is a widow. If I could try to get to the very heart of the question of should State Farm have immediately implemented that the change request. I think we have to complete that change request in context of what acquiescence the Farms start. If it merely had on its file, a designation of Linda and then it got a designation of new wife, Toni.

JUSTICE: Well, you know, you don't agree it was a -

MR. SKELTON: It would make a change.

JUSTICE: - you don't agree with a mistake, not to just-- I mean according to the policy make change.

MR. SKELTON: Couldn't have done so and the reason it couldn't have done so. Is that in the context of what was already in the file which was a designation, not just of Linda but of Linda is irrevocable pursuant to a court order. Then, the new designation changed to change to time was an incomplete document. It conflicted with a prior

designation and this-- the Insurance Company could not have taken on the risk of trying to do, what Sanders says, it does not have to do which is go back and investigate, determine what is true and what is not.

JUSTICE: We made a difference if the other side will just send you a letter of indemnification and essentially saying cut the entire check to his client will indemnify you for any action that this other third party may pursue against you.

MR. SKELTON: That would be to come to a Business Associate on State Farms part. Just the day is to whether it wanted to be complicit in violating the court order, knowing that-- Well, at least an indemnify and then it would have to look behind the, the credit ordinance of the indemnitor, what would make difference, is this the second changed. Now, there is a prior changed in a \$175 thousand dollar policy in which add to the correct things Ms. Ramos's told us in which she said and here is X wife's agreement. Well, then State Farm felt fine. Now, you have answered my questions but what would have, wouldn't have been that is it the \$500 thousand box have changed had also been accompanied by consent of Linda and conspicuously that consent was not there. What State Farm do immediately, it did what any prudent of insurers should do and what our law should encourage it to do, it immediately wrote back on August 16 and said essentially this is an incomplete change for request and the policy doesn't call it a demand, it's a request. To request must be in a form that we accept and this request is incomplete because of it's divorce decree. You previously send as add and you send us the divorce decree telling us we had to reserve the policy for the element of claimant to the ex-wife and now you send us an incomplete request some changes ...

JUSTICE O'NEILL: What do we do with the 60 day deadline? How do we decide when, when is too much beyond that when it's not too much beyond that and have you addressed Counsel's concerns about there's a certain ability to play the market here a little bit by saying or facilitating settlement, we can hold the funds a little bit longer.

MR. SKELTON: For one thing we didn't, we didn't do that.

JUSTICE O'NEILL: I, I, I've ...

MR. SKELTON: We, we, we tended to lying with interest. And, and that's on the record but here's how you addressed that. We, we have a statute and we have a statute that is been interpreted and been interpreted by the courts. In the common law has created an exemption to 2155 that's what Sanders says. It creates exemption in Sanders we shouldn't been binding of the Tenth Court very clearly says, what the standard was, is the period of delay before interpleading quote: "so unreasonable as to justify imposition of the statutory penalty." So we've got the standard and the standard acknowledges, I think-- well, somebody has been lost here today is has been imposed on the State Farm is penal in nature, it's a penalty and

JUSTICE: Well, his alleges was ...

MR. SKELTON: - the standard was it so unreasonable? So what you do to answer Justice O'Neill's question, you, you look at the record and you say, who's trying to get the party's to agree, trying to get not a deduction from the corpus, an unreasonable thing almost the 12 days as a reasonable of the 45 days or 30 days that the-- more than those days and other cases, I apologize, Judge.

JUSTICE: The legislature is the one who imposed the penalty though.

MR. SKELTON: Absolutely.

JUSTICE: Okay, so when we're arguing about penalty, you need to go

there and argue about that so where are you about here, your position is that we look at the reasonableness of the delay.

MR. SKELTON: We look at reasons of the delay under standard because that is the prevailing standard and what the legislature did was ...

JUSTICE: So looking at this timeline, let me show a sort of looking at the timeline that we have here, September the 11th, we have all the claims in 10 and then October 1st, 20 days later you write a letter and say we may have to do an interplead. And then we have a short space but actually you have a-- another from to October the 1st until November the 10th and there's nothing in here and then on the 19th you pile all the 27 to file an interpleader. So what do we have to judge this the reasonableness by when it doesn't show any action before the 11th. I mean, between October the 1st when you say we may have to find inter-- file an interpleader and November the 10th comes and goes and then all the 19th you, you did that. What-- Is there something in the record to explained that it, what-- how do we know -

MR. SKELTON: There is.

JUSTICE: - was the legislature doesn't mean what it says.

MR. SKELTON: Well, the legislature means what it says because it repeatedly reenacted the statute and it reenacted the statute and when he says, the legislature must be regarded as intending the statute, when repeatedly reenacted to be given the interpretation it has been given by the courts and the courts is doing the same -

JUSTICE: The point is I don't know the course of this case.

MR. SKELTON: It's not on all course but it is a guide to the fact that we have a repeatedly reenacted statute and we have an exception, a common law exception to the Statute and ...

JUSTICE O'NEILL: Yeah. And what about, I mean-

MR. SKELTON: - and the legislature need-- and so to answer the Justice's question. During that time period that the record is clear, that letters are written and efforts are made, it's undisputed, their are trying to resolve the case by self and the Insurance Company hired the lawyer, giving interpleader on file, doesn't happened in 3 days ...

JUSTICE: But you have, but you have 40 days it looks to me like between on October 1st, when you say may have to do an interpleader and knowing with the 1020, isn't that 40 days?

MR. SKELTON: Well, it's undisputed that, that was the clear to time, looks like in being a settlement confronts and tried to get the party's to settle and equipped ...

JUSTICE: You know, you have a problem all at time so how do we, how do we cite it's none on unreasonable to go 19 days but how do we know, the 40 days is reasonable and the extra 10 or 15 or 7 or whatever is not -

MR. SKELTON: Just a ...

JUSTICE: - I mean all the facts in front of you looks to me like.

MR. SKELTON: The only thing you can do is look at the case law. And the case law has a 41 days to 45 days and longer periods of time in a 12 year to be reasonable and look at the standard in Sanders which is the only thing we have to go on to this Court if he sets the thing and the standards in Sanders is what did so unreasonable is to justify from me ...

JUSTICE: How long ...

MR. SKELTON: And in this case is not.

JUSTICE: How long does it take for him to search a company and hire a lawyer, following up later.

MR. SKELTON: It takes this Insurance Company while the-- our

lawyer ...

JUSTICE: For the one kind, more than 3 days?

MR. SKELTON: It's certainly does.

JUSTICE: How long does it take for any, any part to go follow an indictments to prevent-

MR. SKELTON: Well, ...

JUSTICE: - whether minutes, right?

MR. SKELTON: Well, Judge Kober excellent. The State Farm couldn't done this quicker but didn't act unreasonably. And the answer is no. And providing their penal case law. And I cut off Justice anoer, I apologize. The sanction, another question, is there something I can answer?

JUSTICE: Are there any further questions?

MR. SKELTON: Thank you.

JUSTICE: The case just argued is submitted that concludes the arguments for this morning and the Marshall will read the Court.

COURT MARSHALL: All rise. Oyez, oyez, oyez. The Honorable, the Supreme Court of Texas is now stand adjourn.

2006 WL 5918085 (Tex.)