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In *Houston Cas. Co. v. Lexington Ins. Co.*, Civil Action H-05-1804; in the United States District Court for the Southern District of Texas, United States Magistrate Judge Stephen Smith issued a Memorandum and Recommendation concerning the applicability of Texas Insurance Code article 21.55 to a reinsurance claim. Pursuant to a reinsurance policy, Houston Casualty Company paid Gulfstream Insurance's \$786,636 claim arising out of property damage at Universal Studio's theme park in Florida. Houston casualty then made a \$589,977 claim under its own reinsurance policy with Lexington, which Lexington refused to pay. The District Court granted Houston casualty's motion for summary judgment on its claim for coverage under the Lexington policy.

Article 21.55 of the Texas Insurance Code imposes a statutory penalty of 18% for failure to pay a first-party insurance claim within 60 days if the insurer is found liable under a policy, even if the insurer had a reasonable basis for denying coverage. The court noted a split among Texas state courts as to whether a demand for defense under a liability policy constitutes a first party claim under the statute but refused to extend the interpretation of "first-party claim" to include claims for reinsurance. The court reasoned that the perils insured by the policy - all risks of physical loss or damage including boiler explosion and machinery breakdown - did not belong to Houston Casualty but rather to the owner of the Universal Studios theme park. The court held that the policy simply ceded a portion of the original insured's risk to other insurance companies beyond the original insurer. Consequently, the court concluded, any reinsured's claim against another reinsurer is entirely derivative of the original insured's loss, and necessarily a third party claim.

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