

CONCURRING OPINION

No. 04-11-00193-CV

THE LYND COMPANY,
Appellant

v.

RSUI INDEMNITY COMPANY,
Appellee

From the 407th Judicial District Court, Bexar County, Texas
Trial Court No. 2010-CI-20466
Honorable Karen H. Pozza, Judge Presiding

**CONCURRING OPINION TO DENIAL OF APPELLEE'S MOTION FOR EN BANC
RECONSIDERATION**

Sitting en banc: Catherine Stone, Chief Justice
Karen Angelini, Justice
Santee Bryan Marion, Justice
Phylis J. Speedlin, Justice
Rebecca Simmons, Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Concurring opinion by: Marialyn Barnard, Justice

Dissenting opinion by: Rebecca Simmons, Justice, joined by Phylis J. Speedlin, Justice and
Steven C. Hilbig, Justice

Delivered and Filed: December 28, 2012

I vote to deny appellee's motion for en banc reconsideration. However, I believe the dissent's analysis has substantial merit. Therefore, I respectfully invite the Texas Supreme Court to review this court's opinions and resolve this important question affecting Texas jurisprudence.

Marialyn Barnard, Justice