NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HARTFORD FIRE INSURANCE CO. ET AL. *v.* CALIFORNIA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91–1111. Argued February 23, 1993—Decided June 28, 1993[1]

Nineteen States and many private plaintiffs filed complaints alleging that the defendants—four domestic primary insurers, domestic companies who sell reinsurance to insurers, two domestic trade associations, a domestic reinsurance broker, and reinsurers based in London—violated the Sherman Act by engaging in various conspiracies aimed at forcing certain other primary insurers to change the terms of their standard domestic commercial general liability insurance policies to conform with the policies the defendant insurers wanted to sell. After the actions were consolidated for litigation, the District Court granted the defendants' motions to dismiss. The Court of Appeals reversed, rejecting the District Court's conclusion that the defendants were entitled to antitrust immunity under §2(b) of the McCarran-Ferguson Act, which exempts from federal regulation ``the business of insurance,'' except ``to the extent that such business is not regulated by State law.'' Although it held the conduct involved to be ``the business of insurance,'' the Court of Appeals ruled that the foreign reinsurers did not fall within §2(b)'s protection because their activities could not be ``regulated by State law,'' and that the domestic insurers had forfeited their §2(b) exemption when they conspired with the nonexempt foreign reinsurers. Furthermore, held the court, most of the conduct in question fell within §3(b), which provides that nothing in the McCarran-Ferguson Act ``shall render

[1]Together with No. 91–1128, *Merrett Underwriting Agency Management Ltd. et al.* v. *California et al.,* also on certiorari to the same court.

the . . . Sherman Act inapplicable to any . . . act of boycott . . . .'' Finally, the court rejected the District Court's conclusion that the principle of international comity barred it from exercising Sherman Act jurisdiction over the three claims brought solely against the London reinsurers.

HARTFORD FIRE INSURANCE CO. *v.* CALIFORNIA

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Held: The judgment is affirmed in part and reversed in part, and the case is remanded.

938 F. 2d 919, affirmed in part, reversed in part, and remanded.

JUSTICE SOUTER delivered the opinion of the Court with respect to Parts I, II–A, III, and IV, concluding that:

1. The domestic defendants did not lose their §2(b) immunity by conspiring with the foreign defendants. The Court of Appeals's conclusion to the contrary was based in part on the statement, in *Group Life & Health Ins. Co.* v. *Royal Drug Co.,* 440 U. S. 205, 231, that, ``[i]n analogous contexts, the Court has held that an exempt entity forfeits antitrust exemption by acting in concert with nonexempt parties.'' Even assuming that foreign reinsurers were ``not regulated by State law,'' the Court of Appeals's reasoning fails because the analogy drawn by the *Royal Drug* Court was a loose one. Following that language, the *Royal Drug* Court cited two cases dealing with the Capper-Volstead Act, which immunizes certain ``persons'' from Sherman Act liability. *Ibid.* Because, in contrast, the McCarran-Ferguson Act immunizes activities rather than entities, an entity-based analysis of §2(b) immunity is inappropriate. See *id.,* at 232–233. Moreover, the agreements at issue in *Royal Drug Co.* were made with ``parties wholly outside the insurance industry,'' *id.,* at 231, whereas the alleged agreements here are with foreign reinsurers and admittedly concern ``the business of insurance.'' Pp. 13–17.

2. Even assuming that a court may decline to exercise Sherman Act jurisdiction over foreign conduct in an appriopriate case, international comity would not counsel against exercising jurisdiction in the circumstances alleged here. The only substantial question in this case is whether ``there is in fact a true conflict between domestic and foreign law.'' *Société Nationale Industrielle Aérospatiale* v. *United States District Court,* 482 U. S. 522, 555 (BLACKMUN, J., concurring in part and dissenting in part). That question must be answered in the negative, since the London reinsurers do not argue that British law requires them to act in some fashion prohibited by United States law or claim that their compliance with the laws of both countries is otherwise impossible. Pp. 27–32.

JUSTICE SCALIA delivered the opinion of the Court with respect to Part I, concluding that a ``boycott'' for purposes of §3(b) of the Act occurs where, in order to coerce a target into certain terms on one transaction, parties refuse to engage in other, unrelated transactions with the target. It is not a ``boycott'' but rather a concerted agreement to terms (a ``cartelization'') where parties refuse to engage in a particular transaction until the terms of that transaction are agreeable. Under the

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foregoing test, the allegations of a ``boycott'' in this case, construed most favorably to the respondents, are sufficient to sustain most of the relevant counts of complaint against a motion to dismiss. Pp. 2–12.

SOUTER, J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Parts I and II–A, the opinion of the Court with respect to Parts III and IV, in which REHNQUIST, C. J., and WHITE, BLACKMUN, and STEVENS, JJ., joined, and an opinion with respect to Part II–B, in which WHITE, BLACKMUN, and STEVENS, JJ., joined. SCALIA, J., delivered the opinion of the Court with respect to Part I, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and a dissenting opinion with respect to Part II, in which O'CONNOR, KENNEDY, and THOMAS, JJ., joined.