

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

FIRST BAPTIST CHURCH OF SOUR LAKE,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 1:23-CV-00391
	§	
CHURCH MUTUAL INSURANCE COMPANY,	§	
<i>Defendant.</i>	§	

**DEFENDANT CHURCH MUTUAL INSURANCE COMPANY'S BRIEF IN RESPONSE
TO PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant, **CHURCH MUTUAL INSURANCE COMPANY** and submits this Brief in Response to Plaintiff, **FIRST BAPTIST CHURCH OF SOUR LAKE'S** Brief in Support of its Motion for Entry of Judgment [Dkt. 104] (hereinafter, "Plaintiff's Brief").

TABLE OF CONTENTS

INDEX OF AUTHORITIES iii

Cases..... iii

Codes and Rules iv

SUMMARY OF ISSUES 1

ARGUMENT AND AUTHORITIES 1

A. Plaintiff’s untimely additional theories of recovery beyond equitable reformation must be stricken2

 (1) **Mere non-compliance with § 551.056 does not necessarily result in nonrenewal**.....2

 (2) **The terms of the 2019 Policy do not provide that it remains effective**4

 (3) **The jury was not presented a question of fact on breach of contract**6

 (4) **Plaintiff did not comply with Rule 8 regarding claim for breach of the 2019 Policy**8

B. Plaintiff is not entitled to equitable reformation of the 2022 Policy..... 11

 (1) **Plaintiff’s knowledge and behavior precludes equitable relief**.....12

 (2) **Plaintiff cannot establish its diligence through Defendant’s deficiency**14

C. 2022 Policy limits should not be reformed.....17

 (1) **Renewal Letter was timely as to reduction in policy limits**.....17

 (2) **Any recovery by Plaintiff should be calculated based on 2022 Policy limits**.....18

SUMMARY AND PRAYER 18

SIGNATURE 19

CERTIFICATE OF SERVICE20

INDEX OF AUTHORITIES

Cases

Ace Drug Marts, Inc. v. Sterling,
502 S.W.2d 935 (Tex.App.–Corpus Christi 1973, writ ref’d n.r.e.).....13

Ashcroft v. Iqbal,
556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).....9

Assistmed, Inc. v. Conceptual Health Sols., Inc.,
No. 3:05-cv-00880, 2006 WL 3691003 (N.D. Tex. Dec. 14, 2006)13

Bailey v. Bailey,
731 F.App’x 272 (5th Cir 2018)13

Brantner v. Robinson,
No. 10-17-00335-CV, 2019 Tex. App. LEXIS 7133 (Tex.App.–Waco Aug. 14, 2019, no pet.)11

Callahan v. Giles,
155 S.W.2d 793 (Tex. 1941)13

Continental Cas. Co. v. Bock,
340 S.W.2d 527 (Tex.Civ.App.–Houston [1st Dist.] 1960, writ ref’d n.r.e.)13

Crosby-Mississippi Resources v. Prosper Energy Corp.,
974 F.2d 612 (5th Cir. 1992).....13

Garrison Contractors Inc. v. Liberty Mut. Ins. Co.,
927 S.W.2d 296 (Tex.App.–El Paso 1996), *aff’d*, 966 S.W.2d 482 (Tex. 1998)12

Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd’s London,
327 S.W.3d 118 (Tex. 2010)5

Henderson v. Wells Fargo Bank, N.A.,
No. 2:23-CV-00166, 2024 U.S. Dist. LEXIS 233532 (S.D. Tex. Oct. 2, 2024)9

Heritage Manor of Blaylock Properties, Inc. v. Petersson,
677 S.W.2d 689 (Tex.App.–Dallas 1984, writ ref’d n.r.e.).....15

Howard v. Burlington Ins. Co.,
347 S.W.3d 783 (Tex.App.–Dallas 2011, no pet.)15

Insurance Network of Tex. v. Kloesel,
266 S.W.3d 456 (Tex.App.–El Paso 2008, pet. denied).....15, 16

Liu v. Yang,
69 S.W.3d 225 (Tex.App.–Corpus Christi 2001, no pet.)13

Manion v. Security Nat’l Ins. Co.,
No. 13-01-248-CV, 2002 Tex.App.LEXIS 6009 (Tex.App.–Corpus Christi Aug.
15, 2002, no pet.)15

Materials Evaluation & Tech. Corp. v. Mid-Continent Cas. Co.,
519 Fed.Appx. 228 (5th Cir. 2013)15, 16

National Union Fire Ins. Co. v. CBI Indus., Inc.,
907 S.W.2d 517 (Tex. 1995)5

National Union Fire Ins. Co. v. Crocker,
246 S.W.3d 603 (Tex. 2008)6, 7

Oldaker v. Travelers Ins. Co.,
497 S.W.2d 402 (Tex.App.–El Paso 1973, no writ)13, 14

Reynolds-Penland Co. v. Hexter & Lobello,
567 S.W.2d 237 (Tex.App.–Dallas 1978, writ dism’d)13

Rivercenter Assocs. v. Rivera,
858 S.W.2d 366 (Tex. 1993)13

Ruiz v. Government Empl. Ins. Co.,
4 S.W.3d 838 (Tex.App.–1999, no writ)12

Sport Supply Grp., Inc. v. Columbia Cas. Co.,
335 F.3d 453 (5th Cir. 2003)8

Terre Haute Cooperage, Inc. v. Branscome,
35 So.2d 537 (Miss. 1948)13

USAA Tex. Lloyds Co. v. Menchaca,
545 S.W.3d 479 (Tex. 2018)7

Williams v. Wells Fargo Bank, N.A.,
560 F.App’x 233 (5th Cir. 2014)9

Codes and Rules

FED. R. CIV. P. 8.....8, 9

TEX. INS. CODE § 541.1517, 18

TEX. INS. CODE § 541.1528, 19

TEX. INS. CODE § 541.060.....7, 18

TEX. INS. CODE § 551.053.....2, 3, 18

TEX. INS. CODE § 551.054.....2, 3, 18

TEX. INS. CODE § 551.055.....2, 3, 18

TEX. INS. CODE § 551.056..... 2, 3, 11, 12, 18

SUMMARY OF ISSUES

Defendant's Brief in Response to Plaintiff's Brief (hereinafter, "Defendant's Response") addresses the following post-verdict issues as follows:

- A. Plaintiff's additional theories of recovery outside of equitable reformation are not timely, and must be stricken by this Court.
- B. Due to Plaintiff's behavior and knowledge during the interceding policy periods following the 2020 Policy Renewal, Plaintiff is not entitled to equitable reformation as a matter of law.
- C. 2022 Policy Limits should not be reformed.

In addressing these issues, Defendant's Response will rebut the issues presented by Plaintiff's Brief throughout, as follows:

- Defendant's purportedly ineffective written notice of policy reductions was not the producing cause of Plaintiff's damages;
- Plaintiff cannot establish that it was reasonably diligent in reviewing and familiarizing itself with its policies for nearly three years;
- Any recovery by Plaintiff should be limited to \$139,000, the policy limits for the Parsonage Building reflected in the 2022 policy, because Plaintiff received adequate notice of the reduction in limits prior to the December 24, 2022 loss;
- Any award of prejudgment interest or prompt payment penalty interest should be calculated on the 2022 policy limits of \$139,000.

ARGUMENT AND AUTHORITIES

1. In its Briefing Schedule [Dkt. 103], the Court articulated the three issues for which it sought briefing at this stage in the proceeding: (a) whether Plaintiff may bring additional theories of recovery outside of equitable reformation; (b) if equitable reformation is the only available route, whether Plaintiff is entitled to equitable reformation as a matter of law; and (c) the proper calculation for any Prompt Payment penalties. [Dkt. 103 at fn. 1]. Plaintiff's Brief addresses these issues but adds a fourth issue, (d) asserting that the Court should award statutory penalties.

A. Plaintiff’s untimely additional theories of recovery beyond equitable reformation must be stricken.

2. As the Court is well aware, Plaintiff’s foundational claim for relief throughout this litigation and trial was that it was entitled to equitable reformation of the 2022 Policy in the event that the jury found the March 16, 2020 Notice Letter (the “Renewal Letter”) to be non-compliant with the provisions of TEX. INS. CODE § 551.056(c). Now, following completion of the jury trial on this matter and entry of the jury’s verdict, Plaintiff asserts the new theory that the 2019 Policy never expired based on two distinct but similar newly-alleged legal theories: (a) that TEX. INS. CODE §§ 551.053 – 551.055 provide that, because the Renewal Letter violated § 551.056(c), the material changes on renewal of the 2019 Policy rendered it nonrenewed, and because notice of nonrenewal was never sent, the 2019 Policy never actually lapsed; and (b) that the provisions of the 2019 policy *itself* provide that its terms never lapsed, for much the same reasons. [*See* Dkt 104 at pp. 2 – 11]. Both of these theories are untimely, rely on a selective interpretation of the language of §§ 551.053 - .056 and a misinterpretation of the 2019 Policy, and are otherwise unsupported by Texas law.

(1) *Mere non-compliance with § 551.056 does not necessarily result in nonrenewal.*

3. Section 551.056(b) provides that “[a] change to a ... commercial insurance policy provision on renewal is not a nonrenewal or cancellation under this subchapter if the insurer provides the insured with written notice in accordance with this section of any material change in each form of the policy offered to the insured on renewal from the form of the policy held immediately before renewal.”¹ Plaintiff invites this Court to adopt the inverse of this language and inferentially conclude that if the insurer does *not* provide the insured with compliant written notice,

¹ TEX. INS. CODE § 551.056(b).

a material change to a policy on renewal *is* a nonrenewal or cancellation. However, such a leap is not supported by the rules of statutory construction.²

4. Of initial importance, the language of the act provides that a material change accompanied by compliant notice is “not a nonrenewal *or* cancellation,”³ yet Plaintiff arbitrarily interprets this to mean that a material change not accompanied by compliant notice is necessarily a nonrenewal. This oversight is critical, and exposes the flaw of Plaintiff’s position.

5. Rather than justifying its selection of nonrenewal over cancellation, Plaintiff resolves the question of whether ineffective notice should render the policy non-renewed or cancelled by simply ignoring it. Instead, reference to § 551.053(b) simply omits any mention of “or cancellation.”⁴

6. It is clear why Plaintiff conveniently omits the “nonrenewal or cancellation” question. While § 551.054(b) provides that in the event of nonrenewal without notice, coverage “remains in effect until the 61st day after the date on which an insurer delivers or mails written notice of nonrenewal,” § 551.053 provides no such contingency in the event of cancellation without notice, and provides no guidance regarding the consequence for an insurer’s failure to provide such notice. If the deficiency of the Renewal Letter means that the 2019 Policy was nonrenewed, Plaintiff can argue that failing to provide a notice of nonrenewal results in the 2019

2 For purposes of lending logical support to its argument, Defendant notes that Plaintiff’s position represents a logical fallacy based on an invalid contraposition. Essentially, Plaintiff argues as follows: “a material change is not a nonrenewal or cancellation if it is accompanied by a compliant notice. Therefore, if a material change *is* a nonrenewal or cancellation if it is *not* accompanied by a compliant notice.” This logical progression is flawed. For comparison’s sake, it would be comparable to saying “An animal is not a mammal if it lays eggs. Therefore, if an animal does *not* lay eggs, it *is* a mammal.” The second statement is clearly untrue, because numerous breeds of snakes, fish, and amphibians give birth to live young. Likewise, one could argue that “a shape is not a square or rectangle if it does not have four sides. Therefore, if it does have four sides, it is a square or rectangle.”

3 TEX. INS. CODE § 551.056(b) (emphasis added).

4 *See, e.g.*, [Dkt. 104 at p. 3]. “Section 551.056(b) further provides that material change to the policy on renewal is not a nonrenewal *if* the insurer provides written notice that complies with the requisites of § 551.056(c).”

Policy remaining in effect *indefinitely*. On the other hand, if the deficiency results in the 2019 Policy being *cancelled*, it is unclear what (if any) effect that would have beyond damages to Plaintiff stemming from the failure of notice.

7. In short, while Plaintiff notes that the Texas Legislature enacted a statutory remedy for insufficient notice of nonrenewal,⁵ Plaintiff conspicuously omits the fact that the Legislature provided no such remedy for insufficient notice of cancellation; further, Plaintiff provides absolutely no argument or explanation – beyond conclusory insistence – for why “ineffective notice on renewal becomes a nonrenewal” instead of a cancellation.⁶ Without more guidance on which of these two eventualities – nonrenewal or cancellation – should necessarily result from the failure to provide compliant notice under even Plaintiff’s interpretation of § 551.056(b), the Court cannot adopt Plaintiff’s proposed theory of relief.

(2) *The terms of the 2019 Policy do not provide that it remains effective.*

8. Plaintiff, arguing alternatively, cites the language of paragraph B.2 of Endorsement A 938.2 (01-04) in the 2019 Policy, which contains language similar to the provisions of § 551.054. However, the express terms of the quoted policy language do not support Plaintiff’s argument that Defendant “bound itself to provide the same remedy for notice noncompliance.” Rather, the cited policy language contains conditional qualifiers that render the language inapplicable here, as follows: “*If we elect* not to renew this policy, we may do so by mailing or delivering the first Named Insured ... written notice of nonrenewal, stating the reason for nonrenewal, at least sixty (60) days before the expiration date. *If notice is mailed or delivered* less than sixty (60) days before the expiration date, the policy will remain in effect until the 61st day after the date on which the

5 [Dkt. 104 at p. 3].

6 [Dkt. 104 at p. 3, fn. 2].

notice *is mailed or delivered.*” [See Dkt. 104 at p. 4; also PX-17 at CMIC 000034] (emphasis added).

9. Two conditional provisions are cited in the quoted language. The first is “If we elect not to renew this policy...” Based on the plain language of the policy contained in the referenced endorsement and quoted in Plaintiff’s Brief, the provisions of paragraph B.2. become effective only after Defendant “elects” to not renew the policy. There is no evidence, proof, or even allegation that Defendant “elected” to not renew the 2019 Policy. On the contrary, it is evident that Defendant’s express intent was to renew the 2019 Policy, as evidenced by the issuance of the 2020 Policy which was, as Plaintiff has argued throughout this case, marked as a “Renewal of the 2019 Policy.” Secondly, the final sentence of paragraph B.2 provides that “[i]f *notice is mailed or delivered* less than sixty (60) days before the expiration date this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered.” Based on its clear language, the “evergreen” provision of the policy would go into effect only once notice of Defendant’s election not to renew the policy was actually “mailed or delivered.” Plaintiff urges the Court to interpret the aforementioned language as holding that the policy would remain in effect if Defendant failed to provide Plaintiff with notice of nonrenewal; however, that is not what the express policy language provides.

10. The Court must interpret an insurance policy under the well-established rules of contract construction.⁷ The Court must determine the intent of the parties based on the plain language of the policy contract,⁸ and must not insert language the parties did not use or omit

⁷ *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd’s London*, 327 S.W.3d 118, 126 (Tex. 2010).

⁸ *Gilbert*, 327 S.W.3d at 126; *National Union Fire Ins. Co. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) (“The primary concern of a court in construing a written contract is to ascertain the true intent of the parties as expressed in the instrument.”).

language contained in the agreement to otherwise rewrite the contract.⁹ Here, the policy language is clear, and Plaintiff’s interpretation that the policy language was intended to impose a “remedy for notice noncompliance” requires a selective interpretation and inferential modification of the very policy language Plaintiff cites. The provisions of Paragraph B.2. do not reference a failure to submit notice, a failure to comply with notice requirements, or a failure to provide a reason for nonrenewal. Instead, the language provides that Defendant will deliver a written notice of nonrenewal *if* it elects not to renew the policy, and that the policy will remain in effect beyond the expiration of the policy “*if notice is mailed or delivered less than sixty (60) days before the expiration.*”

11. Plaintiff’s argument that the provisions of the 2019 Policy provide that the policy remained in effect even beyond the April 23, 2020 expiration date – and certainly not until the December 24, 2022 loss – is specious, and requires the Court to ignore the express language of the cited provision. The Court must deny Plaintiff’s motion to enforce the 2019 Policy on the December 24, 2022 date of loss based on the Policy’s express terms.

(3) *The jury was not presented a question of fact on breach of contract.*

12. Plaintiff’s newly minted legal theories of relief, both of which support the proposition that the 2019 Policy was in full force and effect over two and a half years after its expiration, face another critical challenge: the jury was not presented with a breach of contract question in the jury charge. The reason for this omission was not error; as the Court is aware, the decision to not submit a breach of contract question to the jury was made intentionally because the Parties acknowledged that the question of the very *existence* of an applicable policy contract would not be answered until the Court determined whether Plaintiff was entitled to equitable reformation

⁹ *National Union Fire Ins. Co. v. Crocker*, 246 S.W.3d 603, 606 (Tex. 2008).

of the 2022 Policy. There was no argument or presentation, at the Charge Conference or otherwise, of any theory that the 2019 Policy would be regarded as in effect if the jury found the March 16, 2020 Notice Letter to be deficient, and there was no attempt to charge the jury with a question of whether the 2019 Policy was breached.

13. Plaintiff first attempts to paint over the deficiencies of the jury charge by arguing that Question No. 4 of the jury charge “supported the cause of action [for breach of the 2019 policy] under TEX. INS. CODE § 541.151 and § 541.060(5).”¹⁰ However, § 541.151 does not support or even relate to a cause of action for breach of contract; rather, it authorizes a private cause of action for damages resulting from an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.¹¹ Likewise, § 541.060(5) does not involve contractual breach, but provides that refusing, failing, or unreasonably delaying a settlement offer under an applicable first-party coverage on the basis that other coverage may be available.¹² Neither of these actions or provisions, especially as presented to the jury, support a cause of action for breach of the 2019 Policy or any other contract. On the contrary, as the *Menchaca* Court conclusively established, it is not necessary even to submit a breach-of-contract claim to recover pursuant to § 541.151, only that insured was entitled to benefits under a policy and that the insurer’s statutory violation caused the insured to lose those benefits.¹³

14. Plaintiff then argues that Question No. 3 supported a “policy benefit award under § 541.152 and breach of contract,” an equally inaccurate position. Section 541.152 provides that a plaintiff who prevails in an action under Subchapter D can recover attorney’s fees, injunctive relief,

10 [Dkt. 104 at p. 2, fn. 1].

11 TEX. INS. CODE § 541.151(1).

12 *Crocker*, 246 S.W.3d at 606.

13 *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 494 (Tex. 2018).

or other relief as deemed proper by the Court, and makes no reference to breach of contract. Question No. 3 asked the jury only to identify the amount of money that would compensate Plaintiff for the damage caused by the frozen pipes which burst on December 24, 2022,¹⁴ and made no reference to either the 2022 Policy or the 2019 Policy. As such, nothing about either finding constitutes resolution of a finding of fact that would establish a breach of the 2019 Policy.

(4) Plaintiff did not comply with Rule 8 regarding claim for breach of the 2019 Policy.

15. Plaintiff alleges that it is “unaware of any precedent that supports [the] argument” that Plaintiff’s Complaint did not specifically identify its theories of recovery.¹⁵ While Rule 8(a)(2) and (3) do not include the phrases “theories of recovery” or recitation of a “specific statute,” the Rules do require a party seeking recovery for breach of contract to identify the specific contract provisions it alleges was breached. Plaintiff alleged in its Second Amended Complaint that the policy in effect for the December 2022 storm (the 2022 Policy) “must be reformed to include the terms contained in [the 2019 Policy];” in fact, the express language of Plaintiff’s Second Amended Complaint setting out its Breach of Contract claim begins with the unequivocal statement **“Plaintiff seeks reformation of the contracts between the parties.”**¹⁶ Plaintiff at no point in its Second Amended Complaint alleged that the 2019 Policy *itself* remained in effect.

16. Ordinarily, to establish a claim for breach of contract, a plaintiff must establish that: (a) a valid contract exists; (b) the plaintiff performed or tendered performance as contractually required; (c) the defendant breached the contract by failing to perform or tender performance as contractually required; and (d) plaintiff sustained damages due to the breach.¹⁷ Threadbare recitals

14 [Dkt. 93 at p. 3]

15 [Dkt 104 at p. 6].

16 [Dkt. 20 at ¶ 33].

17 *Sport Supply Grp., Inc. v. Columbia Cas. Co.*, 335 F.3d 453, 465 (5th Cir. 2003).

of the elements of a cause of action for breach of contract do not suffice to satisfy the Rule 8 pleading standard.¹⁸ To properly plead a claim for breach of contract, Rule 8 requires that the plaintiff identify the specific contractual provisions that were purportedly breached; a complaint must specify which contract is the basis for a plaintiff's claim.¹⁹ Courts in the Fifth Circuit have consistently held that, to comply with these elements, a plaintiff must identify which actual contract defendant actually breached.²⁰

17. Plaintiff's newly-asserted theories do not argue that Defendant breached the 2022 Policy as reformed, but rather that Defendant actually breached the 2019 Policy *itself* because it was still in effect. Plaintiff was required in its Complaint to identify that the 2019 Policy was the agreement it alleges was breached, which Plaintiff did not do. Instead, Plaintiff identified the specific terms of the 2022 Policy which it claimed Defendant could not enforce – specifically, that “Defendant may not enforce the limitations contained in **A 125 (04-06) Causes of Loss – Basic Form** that attempted to materially change and reduce the coverage.” [Dkt. 20 at ¶ 34] (emphasis in original). These provisions were found in the 2022 Policy, not the 2019 Policy.

18. The Parties and the Court were working, from the beginning, under the presumption that the applicable policy at the time of the loss – the 2022 Policy – did not, by its express terms, provide coverage for the loss at issue, and that the dispute was over whether the 2022 Policy should be reformed. Moreover, the Parties reached the following relevant stipulations of fact as presented in the April 17, 2025 Joint Pre-Trial Order [Dkt. 57]:

18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

19 *Henderson v. Wells Fargo Bank, N.A.*, No. 2:23-CV-00166, 2024 U.S. Dist. LEXIS 233532, at *12 (S.D. Tex. Oct. 2, 2024) (“to state a plausible breach of contract claim, a plaintiff must allege which provision of an identified contract has been breached.”).

20 *Williams v. Wells Fargo Bank, N.A.*, 560 F.App'x 233, 238 (5th Cir. 2014).

- The insurance policy issued to Plaintiff [was] effective April 23, 2019 through April 23, 2020 [Dkt 57 at p. 3, ¶ 2].
- The date of loss was December 24, 2022. [Dkt. 57 at p. 4, ¶ 9].
- The 2022 Policy was in full force [and] effect on the date of loss. [Dkt. 57 at p. 4, ¶ 8].

The Parties also jointly framed the breach-of-contract question under the Contested Issues of Law in terms of the contingency that equitable reformation would potentially result in a change to the Policy that could support breach of contract, as follows:

CONTESTED ISSUES OF LAW

- *In the event of policy reformation*, whether Defendant breached the contract *as reformed*. [Dkt. 57 at p. 5, ¶ 5] (emphasis added).
- Whether Defendant’s failure to pay the claim would allow for an award of statutory interest under the Texas Insurance Code’s Prompt Payment provisions, *in the event of policy reformation*. [Dkt. 57 at p. 5, ¶ 6] (emphasis added).

19. Plaintiff’s arguments that it plead sufficient factual allegations to put Defendant on reasonable notice of its intent to proceed on this theory are belied by the express language of Plaintiff’s Second Amended Complaint. Notably, Plaintiff never alleged that the Parsonage was covered on the December 2022 date of loss at any point in its Complaint; instead, Plaintiff alleged that “Defendant failed to provide sufficient notice that any material policy changes had occurred.”²¹ The Complaint does not allege that the Parsonage was covered; rather, Plaintiff asserted that it *should* have been covered. Plaintiff asserted not that the 2019 Policy remained effective, but rather that Plaintiff was “not ... fully insured as had been previously represented and requested from the Defendant” as a result of “Defendant negligently cancel[ing] and procur[ing]

²¹ [Dkt. 20 at ¶ 13].

policies for Plaintiff based on inaccurate information.”²² No good-faith reading of the Plaintiff’s Second Amended Complaint could support an argument that Plaintiff claimed that the 2019 Policy remained in effect, and that it was the terms of the 2019 Policy in effect at the time of loss in December 2022 that were breached.

20. Plaintiff chose to bring this action seeking equitable reformation of the 2022 Policy, and made no allegation its Complaint that it maintained that the 2019 Policy remained a valid contract between the Parties. The Court must require Plaintiff to “dance with the one that brung it”²³ and limit Plaintiff’s claims for relief to the claim for equitable reformation that has underpinned the foundation of Plaintiff’s entire case since its filing.

B. Plaintiff is not entitled to equitable reformation of the 2022 Policy.

21. Defendant avers that, notwithstanding the jury’s findings²⁴ regarding deficiencies of the Renewal Letter, Plaintiff is not entitled to equitable relief, including reformation of the 2022 Policy to the terms of the 2019 Policy, for the reasons set out herein below.

22. The Court advised the Parties in its Pre-Trial Order on Pretrial Rulings²⁵ that while equitable reformation is an appropriate remedy for an insurer’s failure to provide notice complying with § 551.056(c), whether Plaintiff actually was entitled to equitable reformation of the 2022 Policy “hinges upon (1) whether the Renewal Letter satisfies § 551.056(c)(2)²⁶ – (4); and (2) the

22 [Dkt. 20 at ¶ 29].

23 *Brantner v. Robinson*, No. 10-17-00335-CV, 2019 Tex.App.LEXIS 7133, at *10-11 (Tex.App.–Waco Aug. 14, 2019, no pet.) (Gray, T., concurring) (Justice Gray mused about this and another saying – “you have to ride the horse that you picked” – that essentially mean that when a choice is made, you must live with the consequences of your decision.).

24 Defendant respectfully continues to maintain that the issue of determination of the “plain language” element of TEX. INS. CODE § 551.056(c)(3) as pertaining to the valuation (RCV to ACV) and basis of coverage (Special to Basic with Theft form) are issues of law that properly should have been resolved by this Court, and do not by any arguments herein intend to withdraw or waive the right to continue to assert that position.

25 [Dkt 64] as amended [Dkt 70].

26 Defendant notes that the Court drafted Footnote 34 at the time the original Order on Pre-Trial Findings was issued [Dkt 64]. In the Amended Order [Dkt. 70], the Court found that the Renewal Letter satisfied the “clearly indicate”

... assessment of First Baptist’s behavior and knowledge during the intervening policy periods.”²⁷ [Dkt. 70 at p. 27, fn. 34]. For purposes of this Brief, Defendant acknowledges that the jury found the Renewal Letter did not satisfy the provisions of § 551.056(c)(3) (as to valuation and coverage form) or (4) (timeliness), and therefore will focus its briefing on whether First Baptist’s behavior and knowledge during the intervening policy periods entitles First Baptist to equitable reformation of the 2022 Policy, the second prong of the two-prong test set out by the Court.

(1) Plaintiff’s knowledge and behavior precludes equitable relief.

23. Plaintiff argues its behavior does not bar recovery “as a matter of law,”²⁸ and arguing that the presumption of familiarity with a policy recognized by *Boyle* and *Taylor* should not apply because neither involved statutory notice violations or issuance of a renewal policy and Plaintiff did not seek recovery based on a negligence theory.

24. In cases involving a suit brought by an insured against an insurer, Texas courts have held that the insured is under a positive duty to read his policy and is presumed to have done so, thus providing the basis for rejecting insureds’ attempts to reform the policy.²⁹

material changes requirement of § 551.056(c)(2), leaving lingering fact issues only as to § 551.056(c)(3) (plain language as to valuation and coverage forms) and 551.056(c)(4) (timeliness of notice).

27 Plaintiff acknowledges that the Court imposed this second prong, but attempts to dull its effect by minimalizing “assessment of the Plaintiff’s knowledge and behavior [during the intervening policy periods]” to mean “putting *the policy* away without examination.” [Dkt. 104 at p. 13] (emphasis added). Defendant notes that Plaintiff “put away without examination” not one, but *three* successive policies, as well as the March 2020 Renewal Letter and several other correspondences between March of 2020 and December of 2022, despite the occurrence and adjustment of an intervening insurance claim in 2021.

28 [Dkt 104 at p. 14].

29 *See, Ruiz v. Government Emples. Ins. Co.*, 4 S.W.3d 838, 841 (Tex.App.–1999, no writ) (citing *Garrison Contractors Inc. v. Liberty Mut. Ins. Co.*, 927 S.W.2d 296, 300 (Tex. App. – El Paso 1996), *aff’d*, 966 S.W.2d 482 (Tex. 1998)) (an insured has a duty to read the policy and, failing to do so, is charged with knowledge of the policy terms and conditions); *Bock*, 340 S.W.2d at 533.

25. A party seeking equitable relief must demonstrate that it used due diligence to ascertain the truth of the matters upon which it relies to its detriment.³⁰ Texas courts have expressed reluctances to grant equitable relief, particularly involving the reformations of agreements, where the party seeking such relief failed to demonstrate that its harm resulted from neglect or want of diligence.³¹

26. Here, Plaintiff asserts a claim for equitable reformation. As the Court previously held, under Texas law, “[i]n order to be entitled to reformation of an agreement, a party must plead either mutual mistake or unilateral mistake accompanied by fraud or other inequitable conduct by the other party.”³² For purposes of clarity, it is necessary to note that “accompanied by fraud or other inequitable conduct” must be interpreted as requiring a causal nexus between the inequitable conduct and the unilateral mistake.³³ In other words, Plaintiff’s mistake regarding the scope of coverage under the terms of the 2022 Policy must have been induced by the deficiencies of the Renewal Letter dated March 16, 2020.³⁴

27. For purposes of this Brief, Defendant acknowledges that the jury found the Renewal Letter deficient as to valuation and causes of loss form, meaning the Renewal Letter did not comply

30 See *Crosby-Mississippi Resources v. Prosper Energy Corp.*, 974 F.2d 612 (5th Cir. 1992) (“equity would never give any relief from a mistake if the party could by reasonable diligence have ascertained the real facts; nor where the means of information are open to both parties and no confidence is reposed.”) (quoting *Terre Haute Cooperaage, Inc. v. Branscome*, 35 So.2d 537, 540 (Miss. 1948); *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (“equity aids the diligent and not those who slumber on their rights.”) (quoting *Callahan v. Giles*, 155 S.W.2d 793, 795 (Tex. 1941)).

31 See *Reynolds-Penland Co. v. Hexter & Lobello*, 567 S.W.2d 237, 239 (Tex.App.–Dallas 1978, writ dismissed) (neglect by lessee to timely provide notice of intent to renew barred interposition of equity to reform lease).

32 [Dkt. 70 at p. 24] citing *Liu v. Yang*, 69 S.W.3d 225, 229 (Tex. App. – Corpus Christi 2001, no pet.); *Assistmed, Inc. v. Conceptual Health Sols., Inc.*, No. 3:05-cv-00880, 2006 WL 3691003, at *15 (N.D. Tex. Dec. 14, 2006) (quoting *Ace Drug Mart, Inc. v. Sterling*, 502 S.W.2d 935, 939 (Tex.App.–Corpus Christi 1973, writ refused n.r.e.); also *Bailey v. Bailey*, 731 F.App’x 272, 280, n.3 (5th Cir 2018) (Costa, J.).

33 See *Oldaker v. Travelers Ins. Co.*, 497 S.W.2d 402, 404 (Tex.App.–El Paso 1973, no writ) (reformation of a contract may be justified by a “unilateral mistake induced by fraud”.) (emphasis added).

34 *Continental Cas. Co. v. Bock*, 340 S.W.2d 527, 536 (Tex. Civ. App. – Houston [1st Dist.] 1960, writ refused n.r.e.) (unilateral mistakes do not support relief absent

with § 551.056(c)(3). However, Plaintiff has presented no argument or evidence that the statutory violation caused Plaintiff's unilateral mistake. Instead, it is clear that Plaintiff's representatives simply assumed that "full coverage"³⁵ continued as to the Parsonage and failed to review the Renewal Letter or any of the three subsequent policies that followed it.

(2) ***Plaintiff cannot demonstrate its diligence through Defendant's deficiency.***

28. Plaintiff argues that the "duty-to-read" defense does not bar the requested relief, and argues that Defendant "hopes that Plaintiff's failure to read and comprehend reductions in the renewal policies vitiates all consequences for its notice violations" and complains that Defendant seeks to have the Court deny Plaintiff recovery based on Plaintiff's lack of detection of the reduced coverage. In truth, Plaintiff seemingly hopes that the jury's determination that Defendant failed to fully comply with the plain language requirement of § 551.056(c)(3) in March of 2020 will absolve Plaintiff from its failure to read, during the two-and-a-half years between the modification of coverage and the date of the loss in this case, any of the *three* subsequent insurance policies, all of which clearly reflected the reduced coverage for the Parsonage building. Plaintiff cites a bevy of cases from around the country which grant greater weight to statutory violations than to duty-to-read arguments. However, Plaintiff's argument overlooks a fundamental, critical reality: this Court already has held that a finding of deficient notice was one element, separate and distinct from the reasonableness of Plaintiff's knowledge and behavior in the intervening nearly three-year period.

29. The Court advised that equitable reformation would be decided based on (a) whether Defendant failed to comply with the notice provisions of § 551.056(c) *and* (b) Plaintiff's

35 The *Oldaker* Court noted that the term "full coverage" carries no discernably reliable meaning in the insurance context, noting that, in light of the evidence that there were over two hundred different endorsements that could be affixed to the policy at issue in that case, "it would be a presumptive undertaking by the Court to attempt to define coverage intended by parties to an insurance agreement by the expression, 'full coverage.'" *Oldaker*, 497 S.W.2d at 404.

behavior and knowledge during the intervening policy periods. It would be contradictory to hold that the reasonableness of Plaintiff's conduct is informed by whether or not Defendant violated the provisions of § 551.056(c). Nevertheless, rather than demonstrating that the second prong has been met, Plaintiff seeks to simply apply the first prong twice.

30. Plaintiff's argument that courts "uniformly reject" arguments that a party seeking equitable relief must demonstrate that its mistake did not result from neglect is, in a word, wrong. Perhaps the laws of some other states do not impose on an insured the duty to inspect a renewal policy, but Texas law does.³⁶ While at least one Texas court has held that the "extent to which an insured has a duty to read his policy is *influenced* by whether or not the policy is a new one or a renewal,"³⁷ even the *Kloesel* Court did not find the issue of renewal to be determinative. Moreover, the Fifth Circuit in *METCO*³⁸ rejected the contention that Texas had adopted the "majority rule" that "does not require the insured to examine the delivered policy and permits him to rely upon the assumption that a renewal policy is on the same terms as the original."³⁹ The *METCO* Court noted that the *Harbor Insurance* case, on which the foregoing argument relied, involved reformation of an insurance policy where the insurer and the insured committed a mutual mistake.⁴⁰ However, the *METCO* Court later held, which is particularly informative in this case, as follows:

Contrary to what *METCO* argues, *Harbor Insurance* does not stand for the blanket proposition that a policyholder has a right to assume that "a renewal policy is [issued] on the same terms as the original." *Harbor Insurance* specifically dealt

36 See *Howard v. Burlington Ins. Co.*, 347 S.W.3d 783, 792 (Tex.App.–Dallas 2011, no pet.) ("Texas law is clear that the policy's language controls and the insured has a duty to read and be familiar with the terms of his own insurance policy.") (citing *Heritage Manor of Blaylock Properties, Inc. v. Petersson*, 677 S.W.2d 689, 691 (Tex. App.–Dallas 1984, writ ref'd n.r.e.); *Manion v. Security Nat'l Ins. Co.*, No. 13-01-248-CV, 2002 Tex. App. LEXIS 6009, 2002 WL 34230861, at *3 (Tex.App.–Corpus Christi Aug. 15, 2002, no pet.))

37 *Insurance Network of Tex. v. Kloesel*, 266 S.W.3d 456, 487 (Tex.App.–El Paso 2008, pet. denied) (emphasis added).

38 *Materials Evaluation & Tech. Corp. v. Mid-Continent Cas. Co.*, 519 Fed. Appx. 228 (5th Cir. 2013).

39 *METCO*, 519 Fed. Appx. at 232-33.

40 *Id.* at 233.

with the issue of reformation under the majority rule where the parties committed a mutual mistake based on a prior agreement.

METCO, 519 Fed. Appx. at 233 (internal citations omitted).

The *METCO* Court also rejected the argument that characterizing a policy as a “renewal” when the terms differ is a misrepresentation, holding that even a renewal policy cannot be characterized as a renewal on the same terms as the prior policy, and noting that the policy declaration page and endorsement pages explicitly provided language notifying the insured that the terms of the renewal policy changed the terms of the prior policy.⁴¹

31. Plaintiff lastly argues that a *Boyle* presumption should not apply to renewal notice violations, seemingly arguing that it is not required to show that its own knowledge and behavior did not contribute to its unilateral mistake because the Renewal Letter did not comply with statutory notice provisions. That is inconsistent with the holding of this Court. The *METCO* Court distinguished *Boyle* on the grounds that it involved the insured not examining the policy due to reliance on prior communications with an agent regarding the scope of coverage.⁴² While Plaintiff may be correct that “no Texas appellate opinion has applied the *Boyle* presumption as a means for an insurer to escape the consequences of a renewal notice violation,” it likewise fails to cite any Texas court which held that a mere technical notice violation abrogates the *Boyle* presumption entirely.

32. Here, the Court must not merely determine whether it was reasonable for Plaintiff to put away a renewal policy without reading it, it must decide if it was reasonable for Plaintiff and all of its representatives and committee members to fail to examine *every* policy and *every*

41 *METCO*, 519 Fed.Appx. at 235.

42 *METCO*, 519 Fed.Appx. at 233, n. 3 (distinguishing *Colonial Savs. Ass’n v. Taylor*, 544 S.W.2d 116 (Tex. 1976) and *Kloesel* on the same grounds).

letter identifying changes to policies over a three-year period. The answer to the question of whether the Business and Finance Committee of the Church should have reviewed at least one, if not all of those materials can be found in the testimony of Plaintiff's corporate representative, Pastor Tony Thornton, who testified unequivocally that they should have.

C. 2022 Policy Limits should not be reformed.

33. Defendant continues to maintain that Plaintiff is not entitled to equitable reformation of the 2022 Policy. Notwithstanding this position, Defendant avers that should the Court determine that the 2022 Policy should be reformed, it should not modify the policy limits on the Parsonage building, as the Renewal Letter provided compliant notice of that change in coverage.

(1) *Renewal Letter was timely as to reduction in policy limits.*

34. This Court found as a matter of law that the Renewal Letter complied with § 551.056(c)(1) (conspicuousness)⁴³ and 551.056(c)(2) (clear indication of material changes).⁴⁴ Likewise, with regard to the reduction in policy limits, the Court found that the Renewal Letter complied with § 551.056(c)(3) because the reduction in the policy limit for the parsonage was written in "plain language."⁴⁵ However, Defendant avers that the Renewal Letter also was provided to the insured at least not later than the 30th day before the renewal date of the applicable policy, at least as it pertains to the reduction in policy limit. Specifically, it is clear that the Renewal Letter was provided to Plaintiff at least thirty days before the 2022 Policy went into effect, and because it met the other three requirements of § 551.056(c) as to the reduction in Policy

43 [Dkt. 70 at pp. 11-12]

44 [Dkt. 70 at pp. 16-17]

45 [Dkt. 70 at p. 17]

Limits, any reformation of the 2022 Policy should exclude reformation of the \$139,000.00 policy limit of the 2022 Policy.

(2) Any recovery by Plaintiff should be calculated based on 2022 Policy limits.

35. Because the 2022 Policy should retain its \$139,000 limit of insurance on the Parsonage, any judgment awarding Plaintiff damages should be reduced to the following amounts:

(a) \$139,000 as the policy limit for damage caused by frozen pipes; (b) pre-judgment interest in the amount of \$20,421.58;⁴⁶ (c) Prompt Payment Penalties of \$43,175.68;⁴⁷ and (d) knowing statutory damages pursuant to TEX. INS. CODE § 541.151 should be limited to \$278,000.⁴⁸

SUMMARY AND PRAYER

In light of the arguments and authority cited herein, Defendant requests the following findings be entered in response to Plaintiff's Motion for Judgment and Brief in Support:

- A. That Plaintiff did not timely assert claims based on the alleged continuation of the 2019 Policy.
- B. That §§ 551.053 – 551.056, read in their totality, do not provide that the 2019 Policy continued to be effective indefinitely, as there is no basis to determine whether a failure to provide compliant notice of material changes renders a material coverage change a nonrenewal, a cancellation, or something else.
- C. The provisions of the 2019 Policy do not support the argument that its terms remain effective if Defendant failed to provide compliant notice.
- D. That Plaintiff has not demonstrated that it is entitled to equitable reformation of the 2022 Policy.

Alternatively, and in the event the Court finds that Plaintiff is entitled to equitable reformation:

46 Calculated as \$139,000 in economic damages times 7.5% per year for 715 days (July 25, 2023 through July 10, 2025 or 1.958 years).

47 Calculated as \$139,000 in unpaid benefits times 12.5% per year for 907 days (January 14, 2023 through July 10, 2025 or 2.485 years).

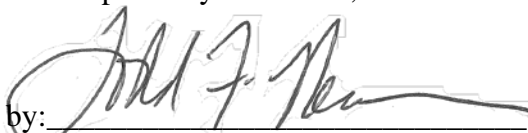
48 Pursuant to the treble limitation imposed by law, as stated in Plaintiff's Brief at pp. 16-17..

- E. That the amount of contract damages be limited to \$139,000.
- F. That pre-judgment interest be limited to \$20,421.58.
- G. That Prompt Payment Penalties be limited to \$43,175.68.
- H. That statutory penalties awarded pursuant to TEX. INS. CODE § 541.152 be limited to \$278,000.

WHEREFORE, PREMISES CONSIDERED, Defendant **CHURCH MUTUAL INSURANCE COMPANY** prays that the Court **DENY** Plaintiff, **FIRST BAPTIST CHURCH OF SOUR LAKE'S** Motion for Judgment, **STRIKE** Plaintiff's claims predicated on the continuing effectiveness of the 2019 Policy, **DENY** Plaintiff's claim for equitable reformation, and, in the event the Court finds the 2022 Policy should be reformed to any extent, limit all damages to calculations based on the 2022 Policy's \$139,000 policy limits, and for such other and further relief to which Defendant may show itself to be justly entitled.

Signed: July 1, 2025

Respectfully submitted,

by: 

Todd F. Newman
Texas State Bar No. 24032906
tnewman@hou-law.com
Steven D. Grossman
Texas State Bar No. 08547800
sgrossman@hou-law.com
Marc A. Sheiness
Texas State Bar No. 18187500
msheiness@hou-law.com
SHEINESS, GLOVER, & GROSSMAN, L.L.P.
4544 Post Oak Place, Suite 270
Houston, Texas 77027
(713) 374-7005 Telephone
(713) 374-7049 Facsimile

Attorneys for Defendant,
CHURCH MUTUAL INSURANCE COMPANY

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and correct copy of the foregoing instrument has been served upon all parties via counsel of record by filing of same with the Court's CM/ECF electronic filing system on this 1st day of July 2025.

A handwritten signature in black ink, appearing to read "Todd F. Newman", written over a horizontal line.

Todd F. Newman