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

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| FIRST BAPTIST CHURCH OF SOUR LAKE | § | |
| | § | |
| V. | § | CIVIL ACTION NO. 1:23-CV-00391 |
| | § | |
| CHURCH MUTUAL INSURANCE COMPANY | § | |

PLAINTIFF FIRST BAPTIST CHURCH OF SOUR LAKE'S
REPLY TO DEFENDANT'S RESPONSE BRIEF

First Baptist Church of Sour Lake files this Reply to Defendant's Response to Plaintiff's Brief in Support of its Motion for Judgment and shows the following:

## A. Texas law provides consequences for Defendant's ineffective notice.

The Renewal Letter failed to satisfy the advance notice required under TEX. INS. CODE § 551.056(c)(3) and (4). Yet, Defendant asks this Court to wink at their infraction and render the Legislature's consumer-protection law utterly toothless.

### 1. Equitable reformation provides an appropriate remedy.

This Court previously found "based on Texas law, and cases from other jurisdictions, equitable reformation is an appropriate remedy for an insurer's failure to provide adequate notice under § 551.056(c)." [Dkt 70 at 27]. Although Defendant hopes to eclipse that remedy based on Plaintiff's "knowledge and behavior," it cites no appellate opinions that barred equitable reformation on such grounds in the context of a statutory renewal notice violation. **Not one.**

Once again, Defendant chooses not to engage with the plethora of caselaw that guided the Court's pretrial rulings. Instead, it goes back to the same old well - cobbling general legal principles applied to much different claims and circumstances. No Texas court has barred unilateral mistake equitable reformation claims based on an absolute duty to read an original insurance policy or a renewal policy. And no Texas cases barred recovery based on a failure to read or understand a policy in the context of misrepresentations made by agents or insurers. Defendant ignores the legislative impact of § 541.061(5) in tandem with §551.056(c). These provisions define a failure to provide renewal notice as an unfair or deceptive act by misrepresenting an insurance policy. And none of Defendant's cases cited at footnotes 29, 30, 31, 33, 34, 35, or 36 involved a statutory renewal notice violation:

- *Ruiz v. Government Emples. Ins. Co.*, 4 S.W.3d 838, 841 (Tex. App.—El Paso 1999, no pet.) (summary judgment granted for fraud and negligence claims that insurer failed to disclose limitations as to coverage for incidents occurring in Mexico. The insured's duty to read was discussed in the context that agents owe no duty to explain policy terms to an insured.);
- *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) (allegations that agent misrepresented terms and benefits of policy created fact issues to defeat summary judgment on DTPA and Insurance Code claims.);
- *Continental Casualty Co. v. Bock*, 340 S.W.2d 527, 532 (Tex. Civ. App.—Houston 1960, writ ref'd n.r.e.) (beneficiary of customer who obtained policy inapplicable to the type of flight for which he sought coverage could not reform policy to recover against insurer, suggesting in dicta that it was agent's responsibility to examine policy and verify that proper coverage was provided.);
- *Crosby-Mississippi Resources v. Prosper Energy Corp.,* 974 F.2d 612, 618 (5th Cir. 1992) (suit to recover royalty payments due under a joint operating agreement applying Mississippi law);

- *Reynolds-Penland Co. v. Hexter & Lobello*, 567 S.W.2d 237, 246 (Tex. Civ. App.—Dallas 1978, writ dism'd) (lessee failed to read option provision in a lease);
- *Oldaker v. Travelers Ins. Co.*, 497 S.W.2d 402, 404-05 (Tex. Civ. App.—1973, no writ) (reformation based on unilateral mistake induced by fraud was denied where insured testified he was aware of his rejection of UIM coverage.)
- *Howard v. Burlington Ins.*, 347 S.W.3d 783, 792 (Tex. App.—Dallas 2011, no pet.) (summary judgment on claims for misrepresentation, fiduciary duty, fraud and negligence when insured produced no evidence that binder and quote were misleading. Insured was bound by the terms of the policy.);
- *Heritage Manor of Blaylock Properties, Inc. v. Petersson*, 677 S.W.2d 689, 691 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (insured bound by terms, but the case did not involve allegations of misrepresentations);[1] and
- *Manion v. Security Nat'l Ins. Co.*, No. 13-01-248-CV, 2002 Tex. App. LEXIS 6009, at *6 (Tex. App.—Corpus Christi Aug. 15, 2002, no pet.) (stating the general rule is that in the absence of an affirmative misrepresentation, a mistaken belief about the scope of coverage is not actionable under Deceptive Trade Practices Act or the Insurance Code. No misrepresentation made.).

Defendant posits a failure to read defense for a renewal policy, noting that the *Kloesel* court "did not find the issue of renewal to be determinative." But such a determination became unnecessary considering the no-contributory negligence found by the jury. The appellate court correctly rejected the purported defense on appeal. *Ins. Network of Tex. v. Kloesel,* 266 S.W.3d 456, 476-81 (Tex. App.—Corpus Christi 2008, pet. denied) (discussing and applying the renewal policy rule). Additionally, the *Kloesel* case preceded the enactment of S.B. 590.

[1] Federal courts recognize that this line of cases extends the argument that agents are not liable for failing to explain policy terms, but they may still be liable for affirmative and specific misrepresentations. *See, e.g., Cormier v. Allstate Ins. Co.*, No. 1:10-CV-423, 2011 U.S. Dist. LEXIS 166477, at *34 (E.D. Tex. March 11, 2011); *Brankin v. Time Ins. Co.*, No. 4:08-CV-666-Y, 2009 WL 614818, 2009 U.S. Dist. LEXIS 18004 at *11-*12 (N.D. Tex. March 10, 2009).

Last, Defendant harkens back to its previous invocation of *METCO* made in its response to Plaintiff's Motion and Brief in Support of Pretrial Rulings Requested.[2] Without restating Plaintiff's full analysis of *METCO* [Dkt 63, at p. 10-12], four distinguishing grounds should be emphasized. First, *METCO* preceded the statutory mandate enacted in S.B. 590. Second, the 2020 renewal policy and subsequent policies in the case at hand do not contain bold conspicuous language advising of a policy change or a reduction in coverage for the parsonage. Third, the insured in *METCO* did not have a fifteen-year history of full coverage. Fourth, Plaintiff relies on the specific consumer protections afforded by S.B. 590 itself.

**2. The Insurance Code also provides that coverage remains in effect.**

In addition to the remedy afforded by equitable reformation, the 2019 coverage should remain in effect due to the operation of TEX. INS. CODE § 551.054(b). Under what circumstances would § 551.054(b) cause *coverage to remain in effect*? Defendant provides no answer or analysis. The language and operation of Chapter 551 causes the 2019 coverage to remain in effect. This result is not an unfounded or illogical leap made by Plaintiff. Instead, Plaintiff follows the thorough explanation and line of reasoning expressed by this Court in footnote 26 of the Amended Order [Dkt 70 at p. 23]. If § 551.056(c) is not satisfied, this Court explained that "we are, in fact, dealing with a 'cancellation' or a 'nonrenewal.'" The Court also stated, the Renewal Letter would be considered a nonrenewal or cancellation "*unless* it fully complies with § 551.056(c)." (emphasis added).

[2] *Materials Evaluation & Tech. Corp. v. Mid-Continent Cas. Co.*, 519 Fed. App'x. 228 (5th Cir. 2013).

Defendant made no written notice with a statement of reasons for either cancellation or nonrenewal required by § 551.055. Defendant argues about lack of discussion in Plaintiff's Brief regarding cancellation, but Defendant never suggests that it cancelled the policy. The language of § 551.052 expressly disallows cancellation of a renewal policy and restricts the circumstances under which an insured may cancel a policy. Consideration of cancellation is irrelevant in this matter. Nevertheless, Defendant made no written notice of nonrenewal under § 551.054. By operation of law, deficient notice under §551.056 places the remedy for ineffective notice squarely within the remedial provision of § 551.054(b). [3]

Statutes in other jurisdictions provide similar remedies. But once again, Defendant refuses to engage with the statutory remedial relief enforced by courts in California, Georgia, Idaho, Oklahoma, and Pennsylvania - as cited in Plaintiff's Brief.

**B. Defendant makes a bald complaint challenging disclosure of statutory remedies.**

Chapter 551 provides additional support for the relief sought by Plaintiff. Although Defendant refers to the operation of § 551.054(b) as a "newly-alleged legal theory," it chose not to engage with Section C of Plaintiff's Brief regarding fair notice pleadings for this remedial provision. Defendant cites no authority, and its bald disclosure complaint about the remedy afforded by § 551.054(b) should be disregarded.

[3] After considering Defendant's Response, Plaintiff withdraws the argument for remedial support based on Endorsement A 938.2 (01-04) in the 2019 policy. It is not necessary for the Court's judgment, and the contract merely reflects similar statutory language. This withdrawal should assist streamlining the issues for the Court's judgment decision.

The Second Amended Petition clearly alleged that Plaintiff sought enforcement of the 2019 coverage terms. In fact, paragraph 34 stated the precise coverage terms contained in the 2019 policy: "replacement cost value with limits of $209,000 and A 127 (04-06) Causes of Loss – Special Form for the loss in question." And paragraph 20 specifically invoked the relevant chapter under which Plaintiff seeks remedy: "Chapter 551 sets forth the legal duties and practices that must be followed relating to declination, cancellation, and nonrenewal." Plaintiff satisfied all requirements imposed by Rule 8(a) and the fair notice pleading standard articulated by the Fifth Circuit and this Court.

Defendant was abundantly aware of the interplay of remedies contained within Chapter 551. It made no effort to rebut or respond to that awareness as discussed in Plaintiff's Brief [Dkt 104 at 9-10]. Nor did Defendant rebut or respond to this Court's guidance in the Amended Order regarding Chapter 551 as discussed in Plaintiff's Brief [Dkt 104 at 10-11].

Accordingly, this Court may rely on § 551.054(b) as grounds for extending the effective date and providing Plaintiff with all the relief sought. In addition to equitable reformation, this statutory provision provides a legal basis for this Court to enforce the terms of the 2019 policy.

**C. The 2019 policy allowed Plaintiff to recover $209,000 for repair damages.**

Plaintiff asks for enforcement of the 2019 policy terms, under which Defendant owed coverage up to the $209,000 RCV policy limit. Defendant argues that a $139,000 limit under the 2022 policy should be applied. Quite candidly, Plaintiff is unaware of any court opinions

(in Texas or otherwise) that have addressed or granted a similar request to parse reformed or extended coverage. Plaintiff hopes that this Court will not be the first.

The language of § 551.054(b) provides some guidance: "*the coverage remains in effect*…." The remedial statute does not parse the policy coverage into severable components. Plaintiff asks the Court to enforce the terms – all the terms – in effect before the Defendant provided ineffective notice. Obviously, this Court's decision on this point will affect the calculation of treble damages, penalty interest, and prejudgment interest.

## D. Conclusion

Texas law provides this Court with ample factual and legal authority to award the relief sought by First Baptist Church of Sour Lake.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2025, a copy of the foregoing has been served on all parties via the Court's CM/ECF electronic filing system.

David J. Fisher