UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PIATT LAKE BIBLE CONFERENCE ASSOCIATION, a Michigan nonprofit corporation,

Plaintiff,

v.

CHURCH MUTUAL INSURANCE COMPANY, a Wisconsin corporation,

Defendant.

Case No. 2:23-cv-73

Honorable Robert J. Jonker

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PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Plaintiff PIATT LAKE BIBLE CONFERENCE ASSOCIATION, by and through its attorneys, VARNUM LLP, and for its response to Defendant's Motion for Summary Judgment in accordance with Fed. R. Civ. P. 56(a), states as follows:

I. INTRODUCTION

Plaintiff Piatt Lake Bible Conference Association ("PLBCA") is a nonprofit religious organization that suffered the catastrophic loss of its "Miracle Building" in March 2020. Since the

1970's, Defendant Church Mutual Insurance Company ("Church Mutual") has insured the PLBCA's buildings through policies held directly by PLBCA or its lessee, Hiawatha Youth Camp. For years prior to the loss, PLBCA had asked Church Mutual, to review and confirm the adequacy of the insurance coverage on PLBCA's buildings. Each time, Church Mutual advised PLBCA that the policy limits were sufficient and it was "fully covered." The close, long-term relationship between PLBCA and its lessee, Hiawatha Youth Camp, and Church Mutual, including the regular advice offered by Church Mutual over the many years of their close relationship, gave rise to what Michigan law recognizes as a "special relationship" between PLBCA and Church Mutual, akin to that of an insured and an insurance advisor, and further giving rise to duties of Church Mutual beyond merely providing the coverage identified in the insurance policy.

When the total loss of the Miracle Building occurred in 2020, PLBCA undertook to rebuild, only to find that Church Mutual approved only $2,256,305.63 to replace the building, falling far short of the total coverage limit on the building of $3,571,200 as well as the actual construction cost of $3,696,000. Church Mutual reasoned that any costs above its replacement cost figure must have been necessitated by changes in building codes or ordinances, for which the policy only provided coverage up to $100,000. Despite years of assurance that the coverage limits PLBCA had would allow PLBCA to fully rebuild, Church Mutual never advised that the mere $100,000 limit for code compliance costs on the 47-year-old building would operate to prevent PLBCA from replacing the lost building with one that would pass inspection and earn a certificate of occupancy. PLBCA brought this action to recover the damages it has suffered in reliance on Church Mutual's representations of adequate coverage, which caused PLBCA to renew its policy with Church Mutual and to forgo obtaining additional or different coverage, leaving it exposed to a massive coverage shortfall.

Church Mutual now seeks summary judgment by arguing that (1) it owed no duty beyond the written terms of the policy, (2) no "special relationship" existed between Church Mutual and PLBCA, and (3) PLBCA did not reasonably rely on Church Mutual's representations. Each of these arguments is fundamentally flawed, and the record is replete with genuine disputes of material fact that preclude summary judgment.

PLBCA presents substantial documentary evidence and deposition testimony that establish Church Mutual made affirmative misrepresentations regarding the adequacy of its coverage and created a reasonable expectation that PLBCA would be able to fully replace its buildings in the event of a loss. PLBCA relied on these misrepresentations and omissions to its detriment. At minimum, there are several factual disputes precluding summary judgment, including whether Church Mutual's conduct gave rise to a special relationship with PLBCA, thereby creating duties beyond the written terms of the policy; whether Church Mutual affirmatively represented that PLBCA's policy would "fully cover" PLBCA's ability to rebuild a useable, occupiable building; and whether PLBCA reasonably relied on Church Mutual's representations in renewing the policy and failing to obtain additional coverage. Given these disputes, summary judgment is improper, and PLBCA must be permitted to present its claims to a jury. PLBCA does not oppose summary judgment as to its Count VI for Negligent Misrepresentation, and will agree to dismissal of that count.

II. FACTUAL BACKGROUND

PLBCA is a nonprofit religious organization that owns and operates approximately 3,500 acres of land in Michigan's Upper Peninsula, including Piatt Lake. Affidavit of Joel Bair ¶ 3, **Exhibit A**. Among its facilities is a religious youth camp that includes the "Miracle Building," previously a 20,000-square-foot facility constructed in 1973. *Id.* ¶ 4. The Miracle Building served

as a multi-functional space with an auditorium, dining hall, kitchen, conference rooms, and offices. *Id*. ¶ 5.

PLBCA, either by itself or via its lessee, insured its camp buildings, including the Miracle Building, with Defendant, Church Mutual Insurance Company, under a Multi-Peril insurance policy since at least the late 1970's. *Id*. ¶ 6. Prior to 2005, PLBCA was an additional insured under a Church Mutual policy held by its lessee of the premises, Hiawatha Youth Camp, since at least 1973. *Id*. ¶¶ 7-8. During that time, a Hiawatha Youth Camp board member, Dale Spencer, served as the Church Mutual agent responsible for the policy, and later became an officer of Church Mutual. *Id*. ¶¶ 9-10.

PLBCA's policy provided coverage for casualty losses, including direct physical loss and associated costs, up to a blanket limit of $3,571,200 per occurrence for the 2017-2020 policy period. See Policy, Def's Br. Ex. C, ECF No. 53-4. It also included limited additional coverage for increased costs due to compliance with building codes, capped at $100,000. *Id*.

In an effort to secure PLBCA's continued renewal of coverage, Church Mutual prepared and provided marketing materials making representations about the services Church Mutual would provide to its customer. See Brochure, **Exhibit B**. One page of the marketing brochure contains a heading "A passion for providing the right coverages." *See id*. at 8. A paragraph at the top of the page states: "Our portfolio of coverages has been formed by the knowledge and experience we have gained from focusing on a specific marketplace. These coverages meet the unique needs of religious organizations and play a critical role in maintaining their financial viability." Another paragraph on the page states (with added emphasis):

> **On-Site Risk and Insurance Needs Analysis**
>
> One of the first steps of our relationship is a detailed, on-site risk and insurance needs analysis. Our specialists will measure your building(s) to establish

> replacement values based on current construction costs. And we'll ask about your programs and activities to identify exposures. The information we gather forms the basis of your customized proposal.

These statements were intended to induce PLBCA, and other customers like PLBCA, to enter into and continue renewing insurance policies with Church Mutual. PLBCA did, in fact, rely on these statements in choosing to continue entering into annual insurance policy renewals with Church Mutual.

In fact, for years PLBCA inquired directly whether its level of coverage was adequate to replace its buildings in the event of loss prior to entering into successive renewals. In response, Church Mutual repeatedly assured PLBCA that the coverage under its policy was sufficient to ensure full replacement of its buildings in the event of loss. These assurances included in-person discussions, written communications, and marketing materials emphasizing Church Mutual's on-site expertise in evaluating replacement costs.

For example, in 2014, the Church Mutual agent handling PLBCA's policy was Mr. Stephen Loos. On October 12, 2014, PLBCA's then treasurer Dennis Lintemuth sent an email to Mr. Loos noting that Church Mutual's underwriters had placed values on each building and asking, "With the underwriter determining the values, will that mean we are considered 100% covered and there will not be an 'undervalued' problem with any potential claim in the future?" Lintemuth Email, Def's Br. Ex. I, ECF No. 53-10, PageID 1754. On October 13, 2014, Mr. Loos responded unequivocally, stating: "The limits should protect you fully on each building." Loos Email, Def's Br. Ex. I, ECF No. 53-10, PageID 1755. No further explanation was provided. Mr. Lintemuth testified that he relied on this answer: "he answered … the limits should protect you fully for each building. … So, in my mind, I'm saying, good, that's what I wanted to hear, PLBCA is covered." Lintemuth Dep., 21:12-17, Def's Br. Ex. G, ECF No. 53-8.

In addition, PLBCA's representatives periodically met in person with an agent of Church Mutual to discuss PLBCA's coverage needs. During these conversations, PLBCA's representatives regularly and specifically asked Church Mutual to confirm that the coverage level provided by the policy was adequate for full replacement of the buildings.

In 2019, newly installed board president Vicki Welty and other PLBCA board members met with Beth Kroeger of Church Mutual to discuss PLBCA's insurance coverage. Ms. Welty testified that she asked Ms. Kroeger directly whether the buildings were "fully covered." Welty Dep. 56, Def's Br. Ex. J, ECF No. 53-11. Ms. Kroeger assured her that they were. Welty Dep. 56. Neither Ms. Welty nor anyone else from PLBCA attending the meeting recall any explanation from Ms. Kroeger what Ms. Kroeger understood "fully covered" to mean. Welty Dep. 57. To Ms. Welty it meant "If something happens to one of our buildings, we are fully covered to build it back." Welty Dep. 55:8-9. Ms. Welty and the PLBCA attendees also recall no explanation from Ms. Kroeger of how the code compliance coverage limits would affect PLBCA's ability to rebuild an occupiable building. Welty Dep. 57-58. Ms. Welty left the meeting with the understanding that in the event of a loss, PLBCA would be "well taken care of." Welty Dep. 56. Following this meeting, Church Mutual amended the current policy with updated declarations. See 8/7/19 Endorsement, **Exhibit C**.

In sum, despite broad but direct questioning as to whether the policy provided full or complete replacement coverage, and despite providing an answer in the affirmative, Ms. Kroeger left unsaid that PLBCA's ability to rebuild an occupiable building would be materially limited by the building codes and the low limit Church Mutual inserted for such expenses in the policy. In reliance on these representations, which followed years of PLBCA asking Church Mutual about the adequacy of coverage and Church Mutual responding affirmatively, PLBCA repeatedly

renewed its policy, including for the period covering the loss, and forwent procuring any additional or different coverage.

In March 2020, the Miracle Building collapsed under the weight of snow and ice, a covered peril under the policy. Church Mutual initially estimated the replacement cost of the building at $2.3 million. During the reconstruction planning process, PLBCA learned that building code compliance would require substantial upgrades, including a new concrete slab, septic system replacement, accessibility improvements, heating, and a fire suppression system. Making these necessary changes in order to allow the building to pass inspection and be suitable for occupancy increased the cost of construction to $3.7 million.

PLBCA's secretary Joel Bair was heavily involved in the design and construction process and testified that the bulk of these code compliance measures were not optional or aesthetic upgrades, but rather necessary improvements in order to make an occupiable building that would meet various code requirements. PLBCA made the building smaller than before to control costs, and to avoid having to meet code requirements with a fire suppressing sprinkler system. Bair Dep. 20-21, Def's Br. Ex. K, ECF No. 53-12. Nevertheless, fire code required constructing the walls differently than before in order to provide fire suppression. Bair Dep. 20-21.

PLBCA also added heat to the replacement building "because that was required in order to pass the inspection." Bair Dep. 22. In fact, PLBCA originally decided not to include heat in the replacement building since it had not been in the original building, but "the mechanical inspector came, he said he can't allow the building to be approved without heat because of the new code. So [PLBCA] had to put the heat back in and that was a code requirement." Bair Dep. 23; see also Bair Email February 21, 2023, **Exhibit D** ("In January the mechanical inspector advised us that he would not give us a [certificate of occupancy] without heating the worship and dining areas as

originally designed"). The energy code further required insulation in the walls and specialized windows, which were not present in the old building. Bair Dep. 23-24. Building codes also necessitated installing a new septic system. Bair Dep. 25. PLBCA even took steps to avoid certain code requirements, such as making the building a single level, rather than two levels as before, in order to avoid installing ramps or elevators to make the building ADA compliant. Bair Dep. 24.

In sum, PLBCA could not get a builder to rebuild its building, could not pass inspection, and could not obtain a certificate of occupancy if it did not make these changes required by the existing building codes. Without these changes, the building *could not be rebuilt.* Yet despite years of assurances that the level of coverage was adequate to allow PLBCA to fully rebuild its buildings, Church Mutual denied liability for code compliance costs exceeding the $100,000 cap, leaving PLBCA responsible for a significant shortfall in rebuilding expenses. PLBCA has since been forced to raise funds from its members and take on debt to complete the reconstruction project.

Sure enough, when PLBCA renewed its policy following the loss, Church Mutual recommended and implemented a code compliance limit of $2 million, twenty times the limit it had recommended for the 47-year-old Miracle Building prior to the loss. See 10/15/21 Church Mutual Policy Proposal (showing ordinance coverage options ranging from $1 million to $2 million), Def's Br. Ex. F, ECF No. 53-7, PageID 1661; see also Welty Dep. 59:6-13 ("all of a sudden our code coverage goes from $100,000 to $2 million and we didn't even ask for it ….").

III. LAW AND ARGUMENT

A. LEGAL STANDARD

Summary judgment is appropriate only when the moving party demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law." Fed. R. Civ. P. 56(a). A fact is "material" if it might affect the outcome of the case under governing law, and a dispute is "genuine" if a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor. *Id.* The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, after which the burden shifts to the non-moving party to present specific facts showing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Importantly, courts may not weigh the evidence or determine credibility at the summary judgment stage. *Anderson*, 477 U.S. at 255. If a reasonable jury could believe the non-moving party's evidence and return a verdict in its favor, summary judgment must be denied. *Id.* at 251-52.

B. THERE IS A SPECIAL RELATIONSHIP BETWEEN PLBCA AND CHURCH MUTUAL, GIVING RISE TO DUTIES BEYOND THE INSURANCE CONTRACT

Church Mutual argues that the policy unambiguously provided only $100,000 in code compliance coverage and that it had no duty to inform PLBCA of this limitation, and therefore all of PLBCA's claims must fail. But PLBCA does not assert a claim for breach of the insurance contract. Rather, PLBCA's claims are based on the existence of a special relationship between the parties, which gives rise to duties outside the contract. It is the breach of those duties which caused PLBCA's damages and give rise to Church Mutual's liability.

In general, an insurance agent's or insurer's obligations are limited to procuring the insurance coverage requested by the insured and acting in good faith within the bounds of the policy. However, under Michigan law an insured party may assert claims against an insurer or its agent for fraud, negligence, breach of fiduciary duty, or similar claims that extend beyond the terms of the insurance policy itself when there is evidence of a "special relationship" between the

insured and the insurer or its agent. For a special relationship to exist, "[t]here must be, in a long-standing relationship, some type of interaction on a question of coverage, with the insured relying on the expertise of the insurance agent to the insured's detriment." *Bruner v. League Gen. Ins. Co.*, 164 Mich. App. 28, 34, 416 N.W.2d 318, 321 (1987). Such a relationship imposes duties on the insurer or agent that go beyond the general duty to provide coverage as specified in the policy.

Michigan courts have recognized that a special relationship may arise between an insurer or agent and the insured when additional duties of care, trust or advice are voluntarily assumed by the insurer or agent:

> …when an event occurs that alters the nature of the relationship between the agent and the insured, a special relationship may result, creating a duty on the part of the agent to advise an insured in some respect regarding insurance issues. … The change in the agent-insured relationship becomes manifest when
>
> > (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured.

Zaremba Equip., Inc. v. Harco Nat'l Ins. Co., 280 Mich. App. 16, 27–28, 761 N.W.2d 151, 159 (2008) (citations omitted).

In this case, the relationship between Church Mutual and PLBCA goes beyond a mere contract. The relationship between Church Mutual and PLBCA was "special" from the time it began in 1973, when a Hiawatha Youth Camp board member served as the Church Mutual agent responsible for the policy, and later became a corporate officer of Church Mutual.

PLBCA continued to rely on a close relationship with Church Mutual to determine its coverage needs, repeatedly asking Church Mutual to advise as to whether the amount of coverage it had was sufficient. Church Mutual repeatedly assured PLBCA that its coverage levels were adequate, and PLBCA relied on this advice. The dynamics of this special relationship are

documented going back at least ten years, when Mr. Lintemuth of PLBCA asked in 2014 "will that mean we are considered 100% covered and there will not be an 'undervalued' problem with any potential claim in the future?" to which Stephen Loos of Church Mutual responded, "The limits should protect you fully on each building."

This relationship continued into the presidency of Vicki Welty, who met personally with Church Mutual's Ms. Kroeger in 2019 and asked her directly whether the coverage afforded by the policy would allow PLBCA to rebuild its buildings. Ms. Kroeger responded affirmatively, and never qualified her advice with an explanation of how PLBCA's ability to rebuild an occupiable building or take advantage of its full coverage limit would be critically undermined by an inadequate code compliance limit of $100,000 for a 47-year-old building. After meeting in person to discuss policy terms, Welty and Kroeger toured the properties, and Ms. Kroeger never revised her prior statements to caution Ms. Welty that, given the age and characteristics of the buildings, PLBCA would not be able to rebuild occupiable replacement buildings without substantially increased code compliance limits.

Thus, all four factors supporting the existence of a special relationship are present in this case. Church Mutual misrepresented the extent of coverage, repeatedly assuring PLBCA that its coverage was adequate while failing to advise of the significance of the ordinance coverage limit, which eviscerated PLBCA's ability to rebuild a useable replacement structure. Church Mutual failed to clarify ambiguous requests when PLBCA asked broad but direct questions such as "Are we fully covered?"—a question that required further explanation about the interplay of various policy limitations, which was never provided. Church Mutual also offered inaccurate advice, specifically whether the coverage PLBCA had would allow it to rebuild its buildings as a practical matter. And Church Mutual also assumed of additional duties, including by conducting on-site

evaluations, providing assessments of coverage needs, and holding itself out as an expert in determining proper insurance levels. Given these facts, including the longstanding advisory relationship and PLBCA's request for and reliance on specific assurances of coverage adequacy, there is a least a question of material fact as to whether a special relationship existed between PLBCA and Church Mutual.

When a special relationship exists, an insured may assert claims for fraudulent or negligent misrepresentation where an insurer or its agents made material misstatements or omissions that induced the insured to enter into, renew, or continue an insurance policy. *Zaremba*, 280 Mich. App. at 38 (finding that an insured could pursue claims against an insurer for negligent misrepresentation when the insurer's agent gave incorrect advice regarding coverage adequacy and the insured relied on that advice to its detriment). While an insured has a duty to read the policy, the insured's failure to read the policy in light of representations made by the agent within a special relationship is a matter of comparative fault, and a finder of fact must determine whether the failure to read the policy was reasonable under the circumstances. *Zaremba*, 280 Mich. App. at 33.

C. PLBCA Reasonably Relied on Church Mutual's Representations of the Adequacy of Coverage and Were Harmed as a Result

Church Mutual asserts that, even assuming a special relationship existed, PLBCA did not rely on any representations when renewing its policy, and therefore cannot prevail on any of its claims. This argument is flatly contradicted by the record. As discussed in more detail below, PLBCA routinely sought assurances from Church Mutual before renewing its policy, both historically and immediately prior to the policy period in which the loss occurred. PLBCA's reliance is self-evident given the context and its direct questioning on the precise issue of adequacy of coverage and the ability to rebuild. Moreover, PLBCA's reliance was reasonable because Church Mutual actively positioned itself as an expert in coverage adequacy, conducting on-site

visits and issuing statements suggesting that its evaluations would not hamper PLBCA's efforts to rebuild. At minimum, the evidence creates a material factual dispute regarding PLBCA's reliance, warranting denial of summary judgment.

1. Plaintiff's Claims

Plaintiff asserts claims for fraudulent, negligent, and innocent misrepresentation, promissory estoppel, and silent fraud, all of which require some showing of reliance. To establish a claim for fraudulent or intentional misrepresentation under Michigan law, a plaintiff must prove the following elements:

1. The defendant made a material representation.
2. The representation was false.
3. The defendant knew the representation was false, or made it recklessly without knowledge of its truth.
4. The defendant intended the plaintiff to rely on the representation.
5. The plaintiff actually relied on the representation.
6. The plaintiff suffered damages as a result of that reliance.

Titan Ins. Co. v. Hyten, 817 N.W.2d 562, 567-68 (Mich. 2012); *Hord v. Envtl. Research Inst. of Mich.*, 617 N.W.2d 543, 546 (Mich. 2000). Here, Church Mutual made repeated material misrepresentations that PLBCA's insurance policy would allow PLBCA to fully rebuild its buildings, without having "an undervalued" problem, inducing PLBCA to renew its policy year after year. PLBCA relied on these assurances when deciding to maintain its current policy immediately prior to the loss, only to later discover that its code compliance costs were severely underinsured. Defendant's knowing or reckless disregard of the truth of this matter in advising PLBCA supports a claim for intentional misrepresentation.

"A claim for negligent misrepresentation requires plaintiff to prove that a party justifiably relied to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care." *Unibar Maint. Servs., Inc. v. Saigh*, 769 N.W.2d 911, 919 (Mich.

Ct. App. 2009). Unlike intentional or fraudulent misrepresentation, negligent misrepresentation does not require proof of intent to deceive—only that the defendant failed to exercise reasonable care in conveying false information. Here, Church Mutual negligently misrepresented the adequacy of PLBCA's insurance coverage, particularly regarding full replacement costs and code compliance costs. PLBCA reasonably relied on these misrepresentations when making coverage decisions, leading to damages.

"A claim of innocent misrepresentation is shown if a party detrimentally relies upon a false representation in such a manner that the injury suffered by that party inures to the benefit of the party who made the representation." *Unibar*, 769 N.W.2d at 919. Innocent misrepresentation does not require knowledge of falsity; instead, liability is imposed when a misrepresentation results in harm and benefits the defendant. Here, Church Mutual represented that PLBCA's policy provided full replacement coverage. Even if Church Mutual lacked intent to deceive, its misstatements led PLBCA to purchase and renew an inadequate policy and forgo obtaining better coverage, causing financial harm and unjustly benefiting Church Mutual through collected premiums.

To establish promissory estoppel under Michigan law, a plaintiff must prove "(1) there was a promise, (2) the promisor reasonably should have expected the promise to cause the promisee to act in a definite and substantial manner, (3) the promisee did in fact rely on the promise by acting in accordance with its terms, and (4) and the promise must be enforced to avoid injustice." *Crown Tech Park v. D&N Bank, FSB*, 619 N.W.2d 66, 71 (Mich. Ct. App. 2000); *State Bank of Standish v. Curry*, 500 N.W.2d 104, 107 (Mich. 1993). Here, Church Mutual repeatedly assured PLBCA that its policy limits would provide complete replacement coverage. PLBCA reasonably relied on these assurances when it renewed its policy and forwent obtaining additional coverage.

Michigan recognizes silent fraud as a distinct form of fraud. To establish silent fraud, a plaintiff must show:

1. The defendant had a legal duty to disclose a material fact.
2. The defendant failed to disclose the fact.
3. The failure to disclose was intended to induce reliance.
4. The plaintiff relied on the omission and suffered damages.

M & D, Inc. v. McConkey, 585 N.W.2d 33, 39 (Mich. Ct. App. 1998). A duty to disclose arises when a party makes partial disclosures that create a misleading impression. *Titan Ins. Co. v. Hyten*, 817 N.W.2d 562, 568 (Mich. 2012). Church Mutual actively created the false impression that the policy would allow PLBCA to fully rebuild, creating a duty to explain the impact of the insufficient policy limits for code compliance costs, which Church Mutual failed to do. PLBCA relied on these omissions to its detriment.

2. <u>There is at Least a Question of Fact as to PLBCA's Reliance on Church Mutual's Representations Regarding Adequacy of Coverage</u>

Church Mutual argues that each claim must fail because there is no evidence that PLBCA relied upon Church Mutual's false or misleading representations as to the adequacy of coverage. The evidence shows, however, that Church Mutual repeatedly assured PLBCA that its coverage was adequate for full replacement, despite knowing that modern building codes would require substantial additional expenditures. PLBCA's reliance on these assurances is self-evident from the context of PLBCA repeatedly making these inquiries during periodic coverage reviews. That is, PLBCA sought these assurances precisely because PLBCA, having long relied on Church Mutual's advice, needed answers in order to determine whether additional or different coverage was needed.

PLBCA's long-standing reliance is well documented and exemplified in the 2014 email exchange between PLBCA's then Treasurer Dennis Lintemuth and Church Mutual Agent Stephen Loos. Lintemuth specifically asked, "With the underwriter determining the values, will that mean

we are considered 100% covered and there will not be an under-valued 'problem with any potential claim in the future?" Notably, this is a broad but direct question from a non-expert in insurance matters to an insurance agent, seeking assurances that Church Mutual has arranged for a determination of property values in such a way that PLBCA will be "100%" covered and will not have an "under-valued" problem for any potential future claim. This is plainly not a technical question as to whether the policy provides "replacement coverage" according to the meaning of those terms as defined in the policy.

Loos responded unequivocally: "The limits should protect you fully on each building." Loos never provided any further explanation or qualification to this answer. Nor did he ask Lintemuth to clarify what he meant by 100% covered, or by an "under-valued problem." Nor did he state that he was unable to give such advice as to the adequacy of coverage in light of building values or repair costs. Nor did he refer Lintemuth to the policy language, which is hardly surprising since it was obvious that Lintemuth was not seeking confirmation of how the policy operated, but rather assurances that the limit amounts Church Mutual had inserted in the policy were adequate to facilitate functional replacement of the buildings insured. Lintemuth's deposition testimony makes clear that he relied on Loos' answer: "he answered … the limits should protect you fully for each building. … So, in my mind, I'm saying, good, that's what I wanted to hear, PLBCA is covered." Lintemuth Dep., 21:12-17. This exchange shows PLBCA asking for advice for the obvious purpose of determining whether its current coverage limits were adequate and receiving an affirmative, unequivocal answer. PLBCA then continued with coverage as provided under the policy, relying on Church Mutual's representations of adequacy in response to direct questioning.

This pattern repeated again at the August 2019 meeting between PLBCA President Vicki Welty and Church Mutual agent Beth Kroeger, wherein Ms. Welty asked whether the policy would fully cover PLBCA and allow it to rebuild its buildings. According to Ms. Welty, Ms. Kroeger affirmed that it did. Neither Ms. Kroeger nor anyone else at Church Mutual explained that this assurance was effectively gutted by the policy's code compliance coverage cap of $100,000, despite Church Mutual knowing that PLBCA was insuring a 47-year-old building that would necessarily require compliance with updated building codes. Specifically, Welty testified that she asked Kroeger "all we want to know is that we are fully covered." Welty Dep. 55:4-5. To Welty this meant "If something happens to one of our buildings, we are fully covered to build it back." Welty Dep. 55:8-9. Once again, this is clearly not a question from an insurance expert seeking a technical answer as to whether the policy provided "replacement coverage" within the meaning of those terms as defined in the policy. Rather, it is a question from a lay person asking whether the various limits Church Mutual inserted in the policy would allow PLBCA to "build [the building] back."

According to Ms. Welty, Ms. Kroeger assured Ms. Welty that the policy would meet these needs. She did not refuse to answer or state that she was incapable of giving such advice. She did not qualify her answer with reference to the code coverage limit. She did not explain that she was unfamiliar with the buildings themselves or the applicable building codes, and therefore was unable to advise. She did not explain that reconstruction could nevertheless be rendered impossible because no contractor would build, and no inspector would approve, the same exact structure as originally built 47 years prior because it did not meet modern code requirements. She did not call attention to an ambiguity in Ms. Welty's question and try to clarify. Based on this

response, Ms. Welty understood no additional coverage was necessary to allow PLBCA to "build [the building] back."

Now Church Mutual takes the untenable position that because Church Mutual described the policy as a "replacement" policy at various times, this meant Church Mutual could not have possibly misled PLBCA regarding its practical ability to rebuild its building. Church Mutual points to select bits of deposition testimony to suggest that everyone at PLBCA always understood that "replacement" meant PLBCA would get only enough money to rebuild the exact same structure that was built in 1973.

But as argued above, it is clear that neither Mr. Lintemuth nor Ms. Welty were asking technical questions as to whether the policy was considered a "replacement" policy versus some other kind of policy. Rather, it was clear from context that Lintemuth and Welty were always concerned with whether the *values* Church Mutual inserted for the various limit amounts - both for replacement costs and ordinance compliance costs – in conjunction with the mechanics of the policy were enough to allow PLBCA to rebuild as a practical matter.

It is also clear that neither Mr. Lintemuth nor Ms. Welty were interested in rebuilding a replica building for sentimental purposes. Rather, they wanted assurance that PLBCA would be able to actually construct an occupiable, usable building. Indeed, PLBCA was content to rebuild *less* of a building than it had before in order to reduce the cost and ease the burdens of code requirements, including by making the building a single story and by decreasing its square footage. Thus, Church Mutual's present insistence that it did not misrepresent PLBCA's ability to rebuild an identical structure to the original ignores the context of these conversations, in which it was clear that PLBCA was interested in whether the policy would allow them to actually hire a contractor to rebuild a structure that would pass inspection and that PLBCA could use for its

purposes. By responding to PLBCA's broad questions – Are we fully covered? Will we have an "under-valued" problem? Will we be able to rebuild? – with an unqualified "yes" in the context of their long-established special relationship, Church Mutual misled PLBCA, and PLBCA was harmed as a result of its reasonable reliance.

While in a vacuum Church Mutual may have had no duty to advise on the adequacy of the limit amounts or explain coverage limitations to PLBCA, it undertook that duty when it provided coverage advice in response to direct questioning from PLBCA, particularly in light of the longstanding special relationship between the parties. It is well-established that an insurer cannot actively create a false impression about the adequacy of coverage and then claim the insured should have discovered the truth on their own. See *Zaremba*, 280 Mich. App. at 38. While an insured has a duty to read the policy, the insured's failure to read the policy in light of representations made by the agent within a special relationship is a matter of comparative fault, and a finder of fact must determine whether the failure to read the policy was reasonable under the circumstances. *Zaremba*, 280 Mich. App. at 33. At a minimum, there is a clear factual dispute as to whether Church Mutual knowingly, negligently, or even innocently misrepresented the adequacy of coverage to PLBCA, and that question must be determined by the jury.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment must be denied as to Counts I – V. Plaintiff will stipulate to dismissal of Count VI.

VARNUM LLP
Attorney for Plaintiff

Dated: March 6, 2025

By: */s/ Jeffrey D. Koelzer*

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