

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RAFAEL TREVINO
Plaintiff,

vs.

NEXT INSURANCE US COMPANY
AND CHRISTOPHER ANTHONY
Defendants.

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CIVIL ACTION NO. 4:25-cv-01356

**DEFENDANT NEXT INSURANCE US COMPANY’S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

Next Insurance US Company (“Next”), Defendant in the above styled and numbered cause, files this Motion for Summary Judgment against Rafael Trevino (“Trevino”) pursuant to Rule 56 of the Federal Rules of Civil Procedure. In support thereof, Defendant would show the Court as follows:

SUMMARY OF THE ARGUMENT

Next did not breach its property insurance contract (hereinafter “Policy”) with Plaintiff, Trevino. Plaintiff’s entire lawsuit rests on alleged wind and tree damage to the subject building’s roof, sheathing, fascia, and structural members. The Policy that governs this dispute, however, provides no Building coverage whatsoever. The Declarations list a Building Limit of \$0.00 and expressly note that only Business Personal Property (BPP) is insured, subject to a separate \$32,670.00 limit. The Policy states that Next Insurance will pay for direct physical loss or damage only to covered property. Because the Policy does not insure the building, any damage to that structure falls outside the scope of coverage from the outset.

Plaintiff confirmed in claim communications and discovery responses that he kept no BPP at the premises when the storm occurred. Consequently, the single category of property the Policy does insure was not even present, and there is no evidence of loss to it. Next promptly evaluated the reported damage, compared it to the Declarations, and issued two separate written denials explaining that the claims involved uncovered building components. Every material document, the Policy, the claim file, and the denial letters, tells the same story: the Policy Plaintiff purchased simply did not include the protection he now seeks.

Without a covered loss, Plaintiff cannot establish a contractual right to payment, which is an essential element of every cause of action he pleads. The absence of coverage eliminates not only the breach-of-contract claim against Next but also the statutory and common-law bad-faith theories that depend on a wrongful refusal to pay benefits, as well as his DTPA claims.

In short, the parties bargained for a policy that excludes building damage, Plaintiff suffered only building damage, and no other policy provision can be stretched to create coverage where none was purchased. Summary judgment in favor of Next Insurance US Company is therefore required.

EVIDENCE RELIED UPON

Next submits the following exhibits as evidence in support of its Motion for Summary Judgment, relying upon and incorporating same by reference herein:

- Exhibit A: Next Insurance US Company Policy Number NXYT7W3T3X-02-CP (Trevino 2-85)
- Exhibit B: May 20, 2024 Denial Letter for Claim Number NXTC-TXCP-99PTVC (Trevino 86-88)
- Exhibit C: July 25, 2024 Denial Letter for Claim Number NXTC-TXCP-3KPYLE (Trevino 120-122)
- Exhibit D: Rafael Trevino's Responses and Objections to Next Insurance US Company's First Request for Admissions
- Exhibit E: Rafael Trevino's Responses and Objections to Next Insurance US Company's First Set of Interrogatories

Exhibit F: Rafael Trevino's Responses and Objections to Next Insurance US Company's First Request for Production
Exhibit G: K&R and Evergreen Tree Specialist Invoice (Trevino 89)
Exhibit H: Houston Roofing & Construction Estimate (Trevino 90-114)
Exhibit I: Journey Builders Estimate (Trevino 115-119)
Exhibit J: OCRG Consultant Group LLC Estimate 6/27/2024 (Trevino 123-189)
Exhibit K: Next Insurance Application (DEF 135-142)
Exhibit L: Property Loss Notice Dated 7/11/2024 (DEF 143-146)
Exhibit M: Next Insurance US Company Claim Notes (DEF 203-222)
Exhibit N: Affidavit of Christopher Anthony
Exhibit O: Affidavit of Eric Daughtry

STATEMENT OF FACTS

Plaintiff, Rafael Trevino, bought Commercial Property Policy No. NXTY7W3T3X-02-CP from Next Insurance US Company for a 12-month term beginning October 25, 2023. (Ex. A, Trevino 2). The insured property is located at 13939 Renault Street, Apt. 6, Houston, Texas 77015. (Ex. A, Trevino 2). When Plaintiff applied for this Policy in 2021, his application only indicated that he would have Business Personal Property coverage (Ex. K DEF 139).

On May 16, 2024, a severe windstorm caused a tree to fall onto the roof, allegedly damaging the Property (See Plaintiff's Original Petition, ¶ 16-18, Ex. G). Trevino submitted a claim with Next on or about May 20, 2024 (See Plaintiff's Original Petition ¶ 24). Next opened Claim No. NXTC-TXCP-99PTVC the same day (Ex. M, DEF 210; Ex. N ¶ 4). A pre-contact coverage investigation confirmed that Trevino's Policy insured Business Personal Property only (Ex. M DEF 210-215; Ex. N ¶ 4). Next employee, Eric Daughtry then telephoned Trevino, who primarily speaks Spanish, and verified that the reported loss involved only building elements and that Trevino stored no business property on-site (Ex. M; DEF 212-214, Ex. N ¶ 5; Ex. O ¶ 5).

After comparing the loss description with the Declarations, Claim Specialist Christopher Anthony issued a written denial dated May 20, 2024, explaining that "there is no Structure Coverage on your Commercial Policy with Next, therefore coverage will not be afforded for the

damages to the Building.” (Ex’s B and N). On June 14, 2024, Next received correspondence from Murr Law, PLLC, indicating that the firm now represented Mr. Trevino regarding policy coverage (Ex. M DEF 218). On or about June 25, 2024, Trevino retained public-adjuster OCRG Consultant Group, to provide an estimate for the damages to the Property (Ex. J, Trevino 123). The OCRG Estimate totals \$81,868.95, 98.36% of which relates to “Dwelling” damage and 1.64% relates to “Contents” (Id. Trevino 141). Even though the OCRG Estimate lists content damage, Plaintiff admitted he had no BPP located at the Property (Id. Trevino 141, Ex. M DEF 217).

On or about July 8, 2024, Hurricane Beryl hit the Houston area and allegedly caused additional damage to the subject property (See Plaintiff’s Original Petition, ¶ 20). Trevino then submitted another claim on July 11, 2024 (Claim No. NXTC-TXCP-3KPYLEF), which Next opened the next day (Ex. M, DEF 203). After Next confirmed, again, that the Policy did not cover building damage, Next delivered another denial letter to Trevino on July 25, 2024, reaffirming the same conclusion from the previous denial letter (Ex. C; Ex. N ¶ 7). Trevino then filed suit on February 26, 2025, asserting breach-of-contract and extra-contractual claims against Next and Christopher Anthony (See Plaintiff’s Original Petition, generally). Although there is no doubt Plaintiff sustained damage to the building, none of the estimates he produced show there was any Business Personal Property damaged (Ex’s G, H, I, J).

In sum, Trevino’s Policy insures only Business Personal Property, and Trevino had none located at the property. All claimed damage is to the building itself. Next promptly, and within the required deadlines, denied the claims on precisely that basis, and every document, from Plaintiff’s Application, to the claim notes and denial letters, confirms the absence of Building coverage. No evidence shows that Anthony or Next misrepresented coverage or delayed payment of any covered

benefit. These undisputed facts leave no genuine issue for trial and entitle Next Insurance US Company to summary judgment as a matter of law.

UNDISPUTED MATERIAL FACTS

1. The only Policy at issue is Policy No. NXTY7W3T3X-02-CP (Ex. D ¶ 1)
2. The Policy carries a \$32,670.00 limit for Business Personal Property (Ex. A; Ex. D ¶ 7)
3. The Policy carries a \$0.00 Building limit of insurance (Ex. A, Trevino 3)
4. Plaintiff's first claim (NXTC-TXCP-99PTVC) relates to damages that occurred on or about May 16, 2024. (Plaintiff's Original Petition ¶ 24)
5. Next denied Plaintiff's first claim (NXTC-TXCP-99PTVC) on May 20, 2024. (Ex. B)
6. Plaintiff's second claim (NXTC-TXCP-3KPYLE) relates to damages that occurred on or about July 8, 2024. (Plaintiff's Original Petition, ¶ 24, Ex. L)
7. Next denied Plaintiff's second claim (NXTC-TXCP-3KPYLE) on July, 25, 2024. (Ex. C)

RELEVANT POLICY PROVISIONS

The Policy at issue in this lawsuit contains the following provisions that are dispositive of Plaintiff's claims in this cause:

COMMERCIAL PROPERTY COVERAGE FORM DECLARATIONS:

1. Premise Information:
 - a. Premise Number: 001
 - b. Building Number: 001
 - c. Premise Address: 13939 Renault St., Apt. 6, Houston, Texas 77015
2. Property Coverage Limits of Insurance:
 - a. Premise Number: 001
 - b. Building Number: 001
 - c. Building Limit of Insurance: \$0.00
 - d. Business Personal Property Limit of Insurance: \$32,670.00
 - e. Actual Cash Value of Building Option (Yes or No): \$0.00
 - f. Seasonal Increase Percentage – Business Personal Property: 25%
 - g. Building Limit-Automatic Annual Increase (Percentage): 12%
 - h. Equipment Breakdown Limit of Insurance: \$32,670.00

SECTION I – PROPERTY

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph **a.** below, Business Personal Property as described in Paragraph **b.** below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph **2. Property Not Covered.**

a. Buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Your personal property in apartments, rooms or common areas furnished by you as landlord;
- (5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (6) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the buildings or structures;
 - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

b. Business Personal Property located in or on the buildings or structures at the described premises or in the open (or in a vehicle) within 100 feet of the buildings or structures or within 100 feet of the premises described in the Declarations, whichever distance is greater, including:

- (1) Property you own that is used in your business;

- (2) Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment Property Loss Condition Paragraph **E.5.d.(3)(b)**;
- (3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions;
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under Paragraph **1.b.(2)**; and
- (5) Exterior building glass, if you are a tenant and no Limit Of Insurance is shown in the Declarations for Building Property. The glass must be owned by you or in your care, custody or control.

(Ex. A)

SUMMARY JUDGMENT STANDARDS

I. Summary Judgment Standard.

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1996); *Curtis v. Anthony*, 710 F.3d 587, 594 (5th Cir. 2013).

For summary judgment, the initial burden falls on the movant to identify areas essential to the non-movant's claim in which there is an "absence of a genuine issue of material fact." *ACE Am. Ins. Co. v. Freeport Welding & Fabricating, Inc.*, 699 F.3d 832, 839 (5th Cir. 2012). The moving party, however, "need not negate the elements of the nonmovant's case." *Coastal Agric. Supply, Inc. v. JP Morgan Chase Bank, N.A.*, 759 F.3d 498, 505 (5th Cir. 2014) (quoting *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005)). The moving party may meet its burden by pointing out "the absence of evidence supporting the nonmoving party's case."

Malacara v. Garber, 353 F.3d 393, 404 (5th Cir. 2003) (citing *Celotex*, 477 U.S. at 323; *Stults v. Conoco, Inc.*, 76 F.3d 651, 656 (5th Cir. 1996)).

If the moving party meets its initial burden, the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue of material fact for trial. *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 141 (5th Cir. 2004); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (internal citation omitted). “An issue is material if its resolution could affect the outcome of the action.” *Spring Street Partners-IV, L.P. v. Lam*, 730 F.3d 427, 435 (5th Cir. 2013). “A dispute as to a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *DIRECTV Inc. v. Robson*, 420 F.3d 532, 536 (5th Cir. 2006) (internal citations omitted).

In deciding whether a genuine and material fact issue has been created, the court reviews the facts and inferences to be drawn from them in the light most favorable to the nonmoving party. *Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 412 (5th Cir. 2003). A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant. *Tamez v. Manthey*, 589 F.3d 764, 769 (5th Cir. 2009) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “Conclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial.” *Oliver v. Scott*, 276 F.3d 736, 744 (5th Cir. 2002); accord *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008). Instead, the nonmoving party must present specific facts showing that there is a genuine issue for trial. *SEC v. Recile*, 10 F.3d, 1093, 1097 (5th Cir. 1993). In the absence of any proof, the court will not assume that the non-movant could or would prove the

necessary facts. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)).

Finally, “[i]t is a long-recognized principle that federal courts sitting in diversity apply state substantive law and federal procedural law.” *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 417 (2010) (quoting *Hanna v. Plumer*, 380 U.S. 460, 465 (1965)); *see also Guzman v. Mem'l Hermann Hosp. Sys.*, No. H-07-3973, 2008 WL 5273713, at *14 (S.D. Tex. Dec. 17, 2008) (citing *Hall v. GE Plastic Pacific PTE Ltd.*, 327 F.3d 391, 395 (5th Cir. 2003)) (“As a general rule, under the Erie doctrine, when a plaintiff asserts a state-law claim in federal court, the federal court applies state substantive law to adjudicate the claims but applies federal procedural law.”).

II. Texas Law Regarding Contractual Interpretation.

The construction of an unambiguous contract is a question of law for the court. *Edwards v. Lone Star Gas Co., a Div. of Enserch Corp.*, 782 S.W.2d 840, 841 (Tex. 1990); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). The general rules of contract construction govern insurance policy interpretation. *Tex. Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999); *State Farm Life Ins. Co. v. Beaton*, 907 S.W.2d 430, 433 (Tex. 1995). The courts should assume the parties to a contract intended every clause to have some effect; the courts cannot strike down any portion of a contract absent irreconcilable conflict. *See Edlund v. Bounds*, 842 S.W.2d 719, 726 (Tex. App.—Dallas 1992, writ denied). If a contract is found to be ambiguous, its interpretation becomes a fact issue. *Coker v. Coker*, 650 S.W.2d at 394. For insurance policies in particular, however, when ambiguous policy terms permit more than one reasonable interpretation, the courts construe the policy against the insurer. *See State Farm Fire & Cas. Co. v. Vaughan*, 968 S.W.2d 931, 933 (Tex. 1998); *Nat'l Union Fire Ins. Co. v. Hudson*

Energy Co., 811 S.W.2d 552, 555 (Tex. 1991). This is so especially when the policy terms exclude or limit coverage. *See State Farm Fire & Cas. Co. v. Vaughan*, 968 S.W.2d at 933.

Whether a contract is ambiguous is a question of law for the court to decide by looking at the contract as a whole in light of the circumstances present when the contract was entered. *Columbia Gas Transmission Corp. v. New Ulm Gas., Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996). A contract is unambiguous if it can be given a definite or certain legal meaning. *Id.* An ambiguity does not arise simply because the parties advance conflicting interpretations of the policy. *Id.* "If only one party's construction is reasonable, the policy is unambiguous and we will adopt that party's construction." *Davis v. Nat'l Lloyds Ins. Co.*, 484 S.W.3d 459, 469 (Tex. App.—Houston [1st Dist.] 2015, pet. denied), citing *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 118, 2015 WL 2194201, at *3 (Tex. 2015).

A term not defined by the policy is given its plain, ordinary, and generally accepted meaning unless the policy indicates the term was used in a technical or different sense. *Dimotsis v. State Farm Lloyds*, 5 S.W.3d 808, 811 (Tex. App.—San Antonio 1999, no pet.). It is proper to determine the plain meaning of a term by referring to a dictionary. *Id.*

A policy limit is a term in an insurance policy that identifies the maximum amount the insurer is obligated to pay under the policy for the claim or claims to which the policy limit applies. *Restatement of the Law of Liability Insurance* 37.

To prevail in an action for breach of contract, a plaintiff must show "(1) existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant and (4) damages." *Tri Invs. v. United Fire & Cas. Co.*, 553 F. Supp. 3d 400, 405 (S.D. Tex. 2020), citing *Smith Intern., Inc. v. Egle Group, LLC*, 490 F.3d 380, 387 (5th Cir. 2007)

(citation omitted) (summarizing Texas law on breach of contract). Failure to prove any element of this cause of action defeats liability for breach. *Id.*

III. Texas Law Regarding Bad Faith and DTPA Claims.

As a general rule there can be no claim for bad faith when an insurer has promptly denied a claim that is in fact not covered. *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 341 (Tex. 1995). To prove bad faith denial of coverage, a plaintiff must show that "(1) there was an absence of reasonable basis for denying or delaying benefits under the [insurance] policy and (2) the carrier knew or should have known there was not a reasonable basis for denying the claim or delaying payment of the claim." *Tri Invs. v. United Fire & Cas. Co.*, 553 F. Supp. 3d 400, 406 (S.D. Tex. 2020), citing *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 340 (Tex. 1995). This standard is difficult to meet, generally requiring a showing that an insurer engaged in an act "so extreme that it would cause injury independent of the policy claim." *Id.*, citing *Tesoro Refining & Marketing Co., LLC v. Nat. Union Fire Ins. Co. of Pittsburgh, PA*, 96 F. Supp. 3d 638, 652 (W.D. Tex. 2015). Mere negligence in the performance of contractual duties is not enough to prove bad faith. *Higginbotham v. State Farm Mut. Auto Ins. Co.*, 103 F.3d 456, 460 (5th Cir. 1997). In addition, a bona fide coverage dispute does not rise to the level of bad faith. *Med. Care Am., Inc. v. Nat'l Union Fire Ins. Co.*, 341 F.3d 415, 425 (5th Cir. 2003).

IV. Texas Law Regarding Texas Insurance Code Violations

Not later than the 15th day after the date an insurer receives notice of a claim, the insurer shall: (1) acknowledge receipt of the claim; (2) commence any investigation of the claim; and (3) request from the claimant all items, statements, and forms that the insurer reasonably believes, at the time, will be required from the claimant. *Tex. Ins. Code* § 542.055(a). An insurer shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day

after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss. *Tex. Ins. Code* § 542.056(a). If the insurer rejects the claim, the notice required by Subsection (a) or (b) must state the reasons for the rejection. *Tex. Ins. Code* § 542.056(c). If an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060. *Tex. Ins. Code* § 542.058(a). However, subsection (a) does not apply in a case in which it is found as a result of arbitration or litigation that a claim received by an insurer is invalid and should not be paid by the insurer. *Tex. Ins. Code* § 542.058(b).

To prevail under a claim for TPPCA damages under section 542.060, the insured must establish: (1) the insurer's liability under the insurance policy, and (2) that the insurer has failed to comply with one or more sections of the TPPCA in processing or paying the claim. *Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 813 (Tex. 2019). "If the insured fails to establish either that the insurer is liable for the claim or that the insurer failed to comply with a provision of the TPPCA, the insured is not entitled to TPPCA damages." *Id.* If an insurer rejects a claim, it has concluded based on its investigation and evaluation that it owes no benefits under the policy and is not liable for the claim; unless and until the insurer later accepts the claim, thereby admitting liability, or there is a judgment that the insurer wrongfully rejected the claim, the insurer is not liable for a claim under an insurance policy under section 542.060. *Id.* at 819-820.

The general rule for purposes of claims that an insurer violated Section 541 of the Texas Insurance Code is that an insured cannot recover policy benefits for an insurer's statutory violation if the insured does not have a right to those benefits under the policy." *USAA Tex. Lloyds Co. v.*

Menchaca, 545 S.W.3d 479, 490 (Tex. 2018). When the issue of coverage is resolved in the insurer's favor, extra-contractual claims do not survive." *State Farm Lloyds v. Page*, 315 S.W.3d 525, 532 (Tex. 2010).

ARGUMENT AND AUTHORITIES

I. NEXT DID NOT BREACH ITS CONTRACT WITH PLAINTIFF

To prevail in his claims that Next breached the Policy, Plaintiff must show "(1) existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant and (4) damages." *Tri Invs. v. United Fire & Cas. Co.*, 553 F. Supp. 3d 400, 405 (S.D. Tex. 2020), citing *Smith Intern., Inc. v. Egle Group, LLC*, 490 F.3d 380, 387 (5th Cir. 2007) (citation omitted) (summarizing Texas law on breach of contract). Plaintiff must show a provision of the Policy obligating payment for his losses. Unfortunately for Plaintiff, he has failed to identify any provision of the Policy that covers the Building. He also cannot dispute that the Building Limit of Insurance is \$0.00. Where the Policy contains no promise to pay for structural damage, refusing payment is compliance, not breach.

The Building Limit of Insurance Under the Policy is \$0.00

The Policy provided to Plaintiff shows a limit of insurance only for Business Personal Property ("BPP") (See. Ex A). The Building Limit column in the Declarations, however, is blank, indicating there is no Building coverage. (*Id.*). The Policy also states "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (Ex. A, Trevino 8). "Covered Property includes Buildings as described under Paragraph a. below, Business Personal Property as described under Paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the

Declarations for that type of property.” (*Id.*). Since no Building limit is shown, there is no coverage for Plaintiff’s damages.

The only argument Plaintiff presents to dispute Next’s assertion that no coverage exists, is his Response to Next’s Request for Admissions ¶ 4, in which he claims “Plaintiff contends that coverage for the structure may exist under provisions other than those identified solely on the Declarations page.” (Ex. D, ¶ 4). Plaintiff, however, has not cited a single provision in the Policy that would suggest his damages are covered under the Policy. On the other hand, Next’s denial letters, sent contemporaneously with both reported loss dates, uniformly advised Plaintiff that “there is no Structure Coverage on your Commercial Policy with Next, therefore coverage will not be afforded for the damages to the Building” (Ex’s B and C). Plaintiff has never rebutted that explanation. Since “unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial,” Plaintiff’s breach of contract claims against Next must be dismissed as a matter of law. See *Oliver v. Scott*, 276 F.3d 736, 744 (5th Cir. 2002); accord *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008).

II. NEXT DID NOT ACT IN BAD FAITH DENYING PLAINTIFF’S CLAIM

Under Texas law, an insurer breaches its duty of good faith and fair dealing only if it denies a claim when its liability has become reasonably clear. *Chicago Title Ins. Co. v. Alford*, 3 S.W.3d 164, 170 (Tex. App. Eastland 1999, pet. denied), citing *State Farm Casualty Company v. Simmons*, 963 S.W.2d 42, 44 (Tex. 1998). However, “[e]vidence that shows only a bona fide coverage dispute does not rise to the level of bad faith.” *Med. Care Am., Inc. v. Nat’l Union Fire Ins. Co.*, 341 F.3d 415, 425 (5th Cir. 2003). Here, the Policy unambiguously provides no building coverage as the Building Limit of Insurance in the Declarations is unequivocally blank (Ex. A). As such,

Next had a reasonable basis for denying Plaintiff's claim. Even if Plaintiff disputes Next's interpretation of the Policy, such a dispute, at best, constitutes a bona fide coverage dispute, which does not rise to the level of bad faith. *State Farm Casualty Company v. Simmons*, 963 S.W.2d 42, 44 (Tex. 1998). Furthermore, Texas courts have held that there can be no claim for bad faith when an insurer promptly denies a claim that is not covered under the policy. *JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597, 602 (Tex. 2015).

In this case, Plaintiff's first claim ("99PTVC") arose from damages that occurred on or about May 16, 2024. (See Plaintiff's Original Petition, ¶ 24). After conducting a pre-contact investigation, analyzing the claimed damages and Plaintiff's Policy, and speaking with Plaintiff directly via telephone, Next promptly issued its written denial letter for Claim "99PTVC" on May 20, 2024, well within the 15-day window required by § 542 (Ex. B). Next explicitly indicated the claim was denied because "there is no Structure Coverage on your Commercial Policy with Next, therefore coverage will not be afforded for the damages to the Building" (Ex. B).

Plaintiff's second claim ("3KPYLE") arose from the aftermath of Hurricane Beryl on or about July 8, 2024 (See Plaintiff's Original Petition, ¶ 24). Next again investigated the facts regarding Plaintiff's loss and issued its written denial letter to Plaintiff on July 25, 2024 (Ex. C). The July 25, 2024 denial letter also reiterated there was no Building coverage in Plaintiff's Policy (*Id.*). The Policy unequivocally shows there is no Building Limit of Insurance (Ex.A). Accordingly, the Plaintiff's breach of good faith and fair dealing claims must be dismissed as a matter of law.

III. PLAINTIFF'S INSURANCE CODE CLAIMS FAIL AS A MATTER OF LAW

i. Next Timely Acknowledged, Investigated, and Denied Both Claims, Complying with Section 542 of the Texas Insurance Code

Plaintiff alleges Next violated Section 542 of the Texas Insurance Code by claiming Next failed to timely request relevant documents from Mr. Trevino and denied payment to him for more than 60 days after receiving those documents (Plaintiff's Original Petition, ¶ 39). Plaintiff's argument fails at the onset for the following reasons. First, regarding claim 99PTVC, Next acknowledged receipt of Plaintiff's claim on May 20, 2024 (Ex. N ¶ 4). Second, the same day Next received claim 99PTVC, it immediately began its investigation by analyzing the claim and Plaintiff's Policy (Ex. N). After determining that no Building coverage existed, Eric Daughtry communicated with Plaintiff and informed him that his loss was not covered (Id., ¶ 5, Ex. O ¶ 5). Third, Plaintiff was given the opportunity to provide Next with any documentation that would support his position that his loss was covered (Ex's B and C, Ex. N ¶ 9), however, Plaintiff produced no such documentation. Fourth, Next issued its denial letter on May 20, 2024, well within the 15-day requirement prescribed by *Tex. Ins. Code* § 542.056(a) (Ex. B). Next received Plaintiff's second claim, 3KPYLE, on July 11, 2024. It again acknowledged receipt of the new claim, analyzed the Policy and facts regarding the second claim, and issued its denial letter on July 25, 2024, again within the 15-day period required by *Tex. Ins. Code* § 542.056(a) (Ex. C, Ex. N ¶ 7).

Each denial letter encouraged Plaintiff to submit additional information for reconsideration, but Plaintiff could not produce anything of the sort (Ex's B and C). Since Next determined Plaintiff's losses were not covered under the Policy, Next issued its denial letters

within the required timeframe, and since Plaintiff has no supporting evidence that his claims should be covered, Next rightfully denied Plaintiff's claims. As such, Plaintiff's counts alleging violation of Section 542 of the Texas Insurance Code must fail as a matter of law.

ii. Plaintiff's Unfair Settlement Practices and DTPA Claims Fail as a Matter of Law

Plaintiff further alleges Next engaged in unfair settlement practices, thereby violating Section 541.060 of the Texas Insurance Code and Texas Deceptive Trade Practices-Consumer Protection Act by: (1) failing to attempt to effectuate a prompt, fair and equitable settlement of Plaintiff's claim; (2) failing to promptly provide Plaintiff with a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the denial of Plaintiff's claims; (3) failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies; (4) failing within a reasonable time to submit a reservation of rights or a denial, of the claim to the Plaintiff; (5) refusing or unreasonably delaying any settlement offer under applicable first-party coverage on the basis that third parties were responsible for the damages suffered; and (6) refusing to pay Plaintiff's claim without conducting a reasonable investigation with respect to the claim. (See Plaintiff's Original Petition, ¶'s 31-36). Again, Plaintiff's claims fail as a matter of law for the following reasons.

First, Next Claims Specialist, Christopher Anthony performed a pre-contact coverage investigation as soon as each claim was reported (Ex. N ¶ 7). Claims Adjuster, Eric Daughtry also spoke with Plaintiff immediately after receiving the first claim to explain the lack of coverage, and invited Plaintiff to submit any additional information for Next to consider (Ex. O). In its May 20, 2024 denial letter, Next specifically stated "we confirmed that there is no Structure Coverage on

your Commercial Policy with Next, therefore coverage will not be afforded for the damages to the Building.” (Ex. B). The May 20, 2024 denial letter also states “If you believe this decision was made in error or without consideration of additional information we weren’t aware of, please provide details and documentation for further review” (Id.). Next’s July 25, 2024 denial letter also contains the same exact language denying coverage and allowing Plaintiff the opportunity to provide additional information for consideration (Ex. C). As a result of its actions and investigations, Next did not offer a settlement because it determined Plaintiff’s losses were not covered. Next specifically justified its denial because the Policy provides no Structure coverage. Further, Christopher Anthony’s investigation, pre-contact review, and communications with Plaintiff, with the Spanish speaking assistance of Eric Daughtry, demonstrate Next’s standards of, not just reasonably, but also promptly investigating claims under its policies. Plaintiff cannot claim that Next failed to submit its denial in a reasonable time either because he received both denial letters from Next within the 15-day timeframe required under Section 542. Consequently, Plaintiff’s claims related to Unfair Settlement Practices and DTPA violations also fail as a matter of law and must be dismissed.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, Next Insurance US Company, prays that the Court GRANT its Motion for Summary Judgment as to all of Plaintiff Rafael Trevino’s claims and causes of action against Next. Next further requests that this Court enter a final judgment that Plaintiff Rafael Trevino take nothing against Next, and for such other and further relief to which Next may show itself justly entitled.

Respectfully submitted,

GAUNTT KOEN BINNEY & KIDD, LLP

By: /s/ William G. Albee

J. Chad Gauntt

State Bar No. 07765990

William G. Albee

State Bar No. 24136088

25700 I-45 North, Suite 130

Spring, Texas 77386

Telephone: 281-367-6555

Facsimile: 281-367-3705

Email: chad.gauntt@gkbklaw.com

William.albee@gkbklaw.com

Counsel for Defendant, Next Insurance US Company

CERTIFICATE OF SERVICE

This pleading was served in compliance with Rule 5 Federal Rules of Civil Procedure on September 2, 2025, via facsimile, first class regular mail, certified mail, return receipt requested and/or electronically.

/s/ William G. Albee

William G. Albee