IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

FORT STOCKTON INDEPENDENT SCHOOL DISTRICT	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:24-cv-00043-DC-DF**
	§	
LIBERTY MUTUAL FIRE INSURANCE COMPANY,	§	
	§	
Defendant.	§	

LIBERTY MUTUAL FIRE INSURANCE COMPANY'S
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT

Defendant Liberty Mutual Fire Insurance Company ("Liberty Mutual") files this Supplemental Motion for Summary Judgment on all claims asserted by Plaintiff Fort Stockton Independent School District ("Plaintiff") and would respectfully show the Court as follows:

I. SUMMARY OF MOTION

Liberty Mutual hereby joins, adopts, and incorporates by reference all legal arguments, grounds, summary judgment evidence, and relief requested in its Motion for Summary Judgment filed on December 22, 2025.[1] Liberty Mutual moves to supplement its summary judgment on the following grounds:

> **(1)** Plaintiff's breach of contract claim fails as a matter of law against Liberty Mutual because: (A) Texas Insurance Code Section 493.055 prevents Plaintiff from asserting a breach of contract claim against Liberty Mutual (a reinsurer) absent an agreement otherwise; and (B) There is no direct contractual relationship or privity between Plaintiff and Liberty Mutual.
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> **(2)** Plaintiff's claims under Texas Insurance Code Chapter 541 also fail because Plaintiff has no "actual damages" against Liberty

[1] *See* Document 39, Liberty Mutual Fire Insurance Company's Motion for Summary Judgment.

> Mutual as a matter of law and has no evidence of an independent injury.
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> **(3)** Plaintiff's claims under Texas Insurance Code Chapter 542 fail as a matter of law because: (1) Chapter 542 of the Texas Insurance Code does not apply to reinsurers; and (2) Such a remedy may only be sought against an insurer, and (3) Liberty Mutual is not "liable for a claim" under Chapter 542.

In addition to arguments **(1)** and **(3)** above, Plaintiff's Original Petition failed to allege any factual bases as to how Liberty Mutual as the reinsurer breached any of the alleged causes of action including: (1) breach of contract; and (2) violations of Chapters 541 and 542 of the Texas Insurance Code.[2] Accordingly, summary judgment is proper as to all claims against Liberty Mutual.

II. ARGUMENTS AND AUTHORITIES

A. Under Texas law, Plaintiff cannot assert a claim against a reinsurer absent an agreement otherwise.

The contract at the center of the dispute, Contract No. YU2-Z51-294183-062-00/7 (the "Contract") was not issued by Liberty Mutual. Rather, the Contract unambiguously states it was issued by Political Subdivision Alliance of Texas ("PSAT"). PSAT is a combination of political subdivisions of the State of Texas contracting with one another under an interlocal agreement in compliance with Sections 791.003 and 2259.031 of the Texas Government Code. By entering into the interlocal agreement, school districts pool funds together to provide several insurance coverages to its participants.[3]

Here, Liberty Mutual's relationship to the Contract is defined by the Quota Share Reinsurance Agreement between PSAT and Liberty Mutual.[4] Under that agreement, PSAT

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2 *See* Document 1-5, Plaintiff's Original Petition.

3 *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Texas Pol. Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 322 (Tex. 2006)

4 *See* **Exhibit A**, Unsworn Declaration of Stephen Preskenis; Quota Share Reinsurance Agreement.

obligates itself to cede to Liberty Mutual, and Liberty Mutual obligates itself to accept, reinsurance of 100% of PSAT's gross liability under Alliance Insurance Policies.[5] The Reinsurance Agreement expressly provides that "[p]ayments made to or from the Reinsurer to or from any claimant or policyholder … shall be considered as having been made to or from the Alliance" and that "[c]ommunications or documents sent to or received from the Reinsurer … shall be considered having been made to or received from the Alliance."[6] The Reinsurance Agreement also provides that "Reinsurer, in performing its services under this Agreement, **is acting solely as an agent of the Alliance**."[7] Thus, Liberty Mutual has no direct contractual relationship with Plaintiff.

Under the plain terms of the Reinsurance Agreement, the Contract, and Texas law, Plaintiff has no right to assert a breach of contract claim against Liberty Mutual. Texas Insurance Code § 493.055, which is dispositive here, plainly and unambiguously states:

> **A person does not have a right against a reinsurer that is not specifically stated in:**
> **(1) the reinsurance contract; or**
> **(2) a specific agreement between the reinsurer and the person.**[8]

Courts recognize that "[w]hen faced with questions of statutory construction, 'we must first determine whether the statutory text is plain and unambiguous' and, '[i]f it is, we must apply the statute according to its terms.' . . . If the statutory text is unambiguous, our inquiry begins and ends with the text."[9] Thus, the Court's inquiry begins and ends with the statutory text and Plaintiff has

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5 *Id*. at pages 1-2.

6 *Id*. at page 3.

7 *Id*. at page 18. (emphasis supplied).

8 Tex. Ins. Code § 493.055. (emphasis supplied).

9 *Asadi v. G.E. Energy (USA), L.L.C.,* 720 F.3d 620, 622 (5th Cir. 2013) (citations omitted).

no right of action against Liberty Mutual. The Texas Supreme Court explained a critical difference between direct insurance and reinsurance as follows:

> … direct insurance is subject to state insurance regulation, while reinsurance is not. Reinsurance is not regulated because it typically involves the reallocation of risk between two insurance companies rather than a consumer-insurance transaction.[10]

Similarly, as discussed in *Houston Casualty Company v. Lexington Insurance Company*, "[r]einsurance contracts are not policies of insurance. Neither are they 'contracts of insurance' as that term is generally understood."[11] Because there is no direct contractual relationship, Texas courts have recognized that there is no right of action between the insured and the reinsurer. In *State & County Mutual Fire Insurance Co. v. Miller*, the Texas Supreme Court recognized that "[u]nder general reinsurance law, a policyholder may not bring any direct claims against a reinsuring company. Absent an agreement creating direct liability in the reinsurer, all claims under the policy must be asserted against the original insurance company."[12] The *Miller* court's analysis was based, in part, on TEX.INS.CODE art. 5.75–1(g), which has since been recodified as § 493.055 of the Texas Insurance Code. Notably, both the Texas Supreme Court and the Fifth Circuit have addressed Section 493.055 (or its predecessor statute Tex. Ins. Code art. 5-75.1(g)) and found

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10 *Tex. Dep't. of Ins. v. Am. Nat'l Ins. Co.*, 410 S.W.3d 843, 845 (Tex. 2012).

11 *Houston Cas. Co. v. Lexington Ins. Co.,* No. CV H-05-1804, 2007 WL 9751933, at *2 (S.D. Tex. June 25, 2007), *report and recommendation adopted*, No. CV H-05-1804, 2007 WL 9751912 (S.D. Tex. July 27, 2007) (citing *Cunningham v. Republic Ins. Co.*, 94 S.W.2d 140, 142 (Tex. 1936).

12 52 S.W.3d 693, 697 (Tex. 2001) (citing TEX.INS.CODE art. 5.75–1(g) ("A person does not have any rights against a reinsurer that are not specifically set forth in the contract of reinsurance or in a specific agreement between the reinsurer and the person."); *see also Malaysia British Assurance v. El Paso Reyco, Inc.,* 830 S.W.2d 919, 921 (Tex.1992) ("If, as in this case, the reinsurance contract allows only the reinsured company to bring a claim against the reinsurer, the original insureds have no basis for a claim against the reinsurer.").

there is no direct right of action against a reinsurer absent an agreement that creates that direct liability.[13]

Here, the reinsurance agreement in place between Liberty Mutual and PSAT does not give Plaintiff any independent and/or direct rights to bring a breach of contract claim against Liberty Mutual. Again, the reinsurance agreement states that Liberty Mutual acts "solely as an agent of the Alliance."[14] Second, there is no "specific agreement" between Liberty Mutual and Plaintiff that grants Plaintiff a direct right of action against Liberty Mutual for breach of contract. Accordingly, Plaintiff has no right to assert a breach of contract claim against Liberty Mutual, it can only pursue PSAT, and summary judgment should be granted in favor of Liberty Mutual.

Similarly, Liberty Mutual and Plaintiff are not in contractual privity with one another.[15] Under well-established Texas law, a breach of contract claim requires privity between the parties. This well-established privity requirement is critical in the insurance context where it is axiomatic

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[13] *See e.g. State & Cnty. Mut. Fire Ins. Co. v. Miller*, 52 S.W.3d 693, 697 (Tex. 2001) ("Under general reinsurance law, a policyholder may not bring any direct claims against a reinsuring company. Absent an agreement creating direct liability in the reinsurer, all claims under the policy must be asserted against the original insurance company."); *Malaysia Brit. Assur. v. El Paso Reyco, Inc*., 830 S.W.2d 919, 921 (Tex. 1992) ("If, as in this case, the reinsurance contract allows only the reinsured company to bring a claim against the reinsurer, the original insureds have no basis for a claim against the reinsurer."); *Barhan v. Ry-Ron Inc*., 121 F.3d 198, 202–03 (5th Cir. 1997) (citations omitted) ("Under Texas law, absent a provision stating otherwise, "the reinsurance contract allows only the reinsured company to bring a claim against the reinsurer [and] the original insureds have no basis for a claim against the reinsurer." Barhan fails to demonstrate that Allianz's contract with the Plan contains an exception to this general rule allowing her to bring a claim; thus, summary judgment as to Allianz is proper."). *See also Health First Health Plans, Inc. v. Am. Nat'l Ins. Co.*, No. 3:20- cv-00226, 2021 WL 4169211 (S.D. Tex. Sept. 13, 2021) (finding that the plain language of the statute prevents an underlying insured from bringing a direct suit against the reinsurer); *Huntsman Corp. v. Int'l Risk Ins. Co.*, Civ. A. No. H-08-1542, 2008 WL 4453170 (S.D. Tex. Sept. 26, 2008).

[14] *See* **Exhibit A**, Unsworn Declaration of Stephen Preskenis; Quota Share Reinsurance Agreement.

[15] *Paso Del Norte Motors, LP v. Tri Star Partners, LLC,* No. EP-15-CV-33-PRM, 2015 WL 13778413, at *4 (W.D. Tex. Sept. 3, 2015) (citing *Jaffer v. Standard Chartered Bank*, 301 F.R.D. 256, 261 (N.D. Tex. 2014) (emphasis supplied); *Optimum Content Prot., LLC v. Microsoft Corp.*, No. 6:13-CV-741 KNM, 2014 WL 12452439, at *3 (E.D. Tex. Aug. 25, 2014), *report and recommendation adopted*, No. 6:13CV741-MHS-KNM, 2014 WL 12324277 (E.D. Tex. Oct. 7, 2014); *Dawavendewa v. Salt River Project*, 276 F.3d 1150, 1156-1157 (9th Cir. 2002) (contracting party necessary to litigation which "threatened the [party's] contractual interests, and thus, its fundamental economic relationship with [another contracting party]."); *Circuit Burger King v. American Nat'l Bank & Trust Co*., 119 F.R.D. 672, 675 (N.D. Ill. 1988) (joinder of all parties to contract preferred).

that an insurance policy is a "personal contract between the insurer and the insured and a stranger to the policy may not ordinarily maintain a suit on it."[16] In order "to establish standing to assert a claim for breach of contract, a party must prove its privity to the agreement or that it is a third party beneficiary."[17] "Privity of contract is established by proving that the defendant was a party to an enforceable contract with either the plaintiff or a party who assigned its cause of action to the plaintiff."[18] "In Texas, insurance policies are interpreted by the same principles as contract construction."[19] The Court's "primary concern is to give effect to the intentions of the parties as expressed by the policy language."[20] The "words of the policy 'are given their ordinary and generally-accepted meaning unless the policy shows the words were meant in a technical or different sense.' All parts of the policy are read together, and courts must give 'effect to each word, clause, and sentence, and avoid making any provision within the policy inoperative.'"[21] Because Plaintiff has no privity of contract with Liberty Mutual, Plaintiff's breach of contract claim fails.

B. <u>Chapters 541 and 542 of the Texas Insurance Code do not apply to Liberty Mutual as a reinsurer.</u>

Courts in Texas have followed Section 493.055 of the Texas Insurance Code to determine that all claims brought by an insured should be dismissed against a reinsurer, including claims arising out of the Texas Insurance Code. In *Health First Health Plans, Inc. v. American National*

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16 *Sierra Equip., Inc. v. Lexington Ins. Co.,* 890 F.3d 555, 557 (5th Cir. 2018) (internal citation omitted); *Grigg v. State Farm Lloyds*, 181 F.3d 694, 700 (5th Cir. 1999).

17 *Swannie v. Bank of New York, Mellon*, No. 4:11-CV-338-Y, 2012 WL 2942242, at *3 (N.D. Tex. July 19, 2012) (citations omitted); *Conoco, Inc. v. Republic Ins. Co.*, 819 F.2d 120 (5th Cir. 1987).

18 *Schmidt v. Cimarex Energy Co*., No. MO:20-CV-00206-DC, 2022 WL 1811203, at *2 (W.D. Tex. Feb. 3, 2022).

19 *Terry Black's Barbecue, L.L.C. v. State Auto. Mut. Ins. Co*., 22 F.4th 450, 454 (5th Cir. 2022).

20 *Am. Nat'l Gen. Ins. Co. v. Ryan*, 274 F.3d 319, 323 (5th Cir. 2001).

21 *Terry Black's*, 22 F.4th at 455 (internal citations omitted).

Insurance Co., the United States District Court for the Southern District of Texas discussed whether claims under Chapters 541 and 542 of the Texas Insurance Code against a reinsurer should be dismissed under Section 493.055.[22] In rejecting Health First's argument that § 493.055 did not apply to its Chapter 541 and 542 claims, the court noted:

> Health First contends that section 493.055 is nothing more than a direct-action statute prohibiting an original insured from suing a reinsurer. Although section 493.055 ***unquestionably precludes an original insured from suing a reinsurer***, the statute's express language ***also precludes a reinsured like Health First from suing its reinsurer for extra-contractual claims***.[23]

Based on Section 493.055 and Texas precedent, Plaintiff has no right to assert Chapters 541 and 542 Texas Insurance Code violation claims against Liberty Mutual as a reinsurer. Thus, summary judgment should be granted on those claims.

C. Because Plaintiff has not sustained any "actual damages" caused by Liberty Mutual, Plaintiff's claims under Chapters 541 and 542 of the Texas Insurance Code fail as a matter of law.

Plaintiff's claims under Section Chapter 541 of the Texas Insurance Code fail because Plaintiff has no "actual damages" as a matter of law.[24] There are only "two paths an insured may take to establish damages" in a bad faith claim under TEX. INS. CODE § 541; Plaintiff must show either: (a) "a right to receive benefits under the policy;" or, (b) "an injury independent of a right to

[22] No. 3:20-cv-00226, 2021 WL 4169211 (S.D. Tex. Sep. 13, 2021), *report and recommendation adopted*, 2021 WL 4458754 (S.D. Tex. Sep. 29, 2021).

[23] *Id*. at *4 (emphasis supplied).

[24] *See* Document 39, Liberty Mutual's Motion for Summary Judgment, at pages 40-41. (citing *See, e.g., Progressive Cty. Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919, 922 (Tex. 2005); *See also Tchakarov v. Allstate Indemnity Company,* No. 3:20-CV-2769-D, 2021 WL 4942193, at *7 (N.D. Tex. Oct. 22, 2021) ("Under Texas law, when the issue of coverage is resolved in the insurer's favor, extra-contractual claims do not survive . . . . This principle applies to alleged violations of the Texas Insurance Code, the DTPA, and the common law duty of good faith and fair dealing") (internal quotation marks omitted).

benefits."[25] Thus, an insured generally "may not prevail on a bad faith claim without first showing that the insurer breached the contract."[26]

Under the "first path," an insured who "establishes a right to receive benefits under the insurance policy can recover those benefits as actual damages under the Insurance Code if the insurer's statutory violation causes the loss of the benefits."[27] Here, if there are no amounts owed by Liberty Mutual, as is the case here, then there are "no outstanding benefits to be recovered as damages for an alleged statutory violation" and thus Plaintiff has no damages to recover under Chapter 541 of the Texas Insurance Code.[28]

Under the "second path," without any policy benefits to recover as "actual damages" under the Texas Insurance Code, Plaintiff must—but cannot—show an injury independent of any claim of policy benefits. The Texas Supreme Court has recognized that a "successful independent-injury claim would be rare,"[29] and indeed has never actually encountered one. This is because an independent injury cannot be "predicated on the loss being covered under the insurance policy, or if the damages 'flow' or 'stem' from the denial of the claim for policy benefits."[30] Here, Plaintiff has not identified any independent injury beyond its alleged entitlement to policy benefits. Consequently, the general rule applies. For all of the reasons explained above, Plaintiff's breach-of-contract claim fails. Therefore, Plaintiff cannot establish that it has a right to receive any

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25 *In re State Farm Mut. Auto. Ins. Co.*, 629 S.W.3d 866, 873 (Tex. 2021).

26 *Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996).

27 *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018).

28 *See Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 134 (Tex. 2019); *see also Biasatti v. GuideOne Nat'l Ins. Co.*, 601 S.W.3d 792, 794 (Tex. 2020) (per curiam).

29 *Menchaca*, 545 S.W.3d at 500.

30 *Id*.

benefits under the Contract. Thus, as a matter of law, Plaintiff's claims for violations of Chapter 541 of the Texas Insurance Code fail as a matter of law.

Lastly, to recover penalty interest under Texas Insurance Code Chapter 542, the insurer must be "liable for a claim."[31] Chapter 542 defines "claim" as a first party claim that "must be paid by the insurer."[32] The Texas Supreme Court has held that the amount that "must be paid" is limited to "the amount ultimately determined to be owed" by the insurer.[33] Because Liberty Mutual is not liable for a "claim," and is a reinsurer, it is clear that the alleged Chapter 542 violations cannot be sustained against Liberty Mutual.[34] Moreover, Plaintiff's Petition fails to allege any facts as to how a reinsurer may be liable under Chapters 541 and 542 of the Texas Insurance Code. Accordingly, Plaintiff's claims for violations of the Texas Insurance Code fail as a matter of law.

III. PRAYER

For the reasons stated herein, Defendant Liberty Mutual Fire Insurance Company respectfully requests that this Court grant this Supplemental Motion for Summary Judgment in its entirety, denying all relief requested by Plaintiff Fort Stockton Independent School District. Liberty Mutual Fire Insurance Company further requests such other and further relief to which it may be justly entitled, whether at law or in equity.

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31 Tex. Ins. Code Ann. § 542.060(a).

32 Tex. Ins. Code Ann. § 542.051(2)(B); Tex. Ins. Code Ann. § 542.002.

33 *Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 657 (Tex. 2021).

34 *Barbara Techs. Corp. v. State Farm Lloyds,* 589 S.W.3d 806, 827–28 (Tex. 2019); *Progressive Cnty. Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919, 922 (Tex. 2005) (finding no liability under the PPCA where the insurance claim was not covered by the policy).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on__________, 2026, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE as follows:

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