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

FORT STOCKTON INDEPENDENT SCHOOL DISTRICT, *Plaintiff,*	§	
v.	§	**P:24-CV-00043-DC**
LIBERTY MUTUAL FIRE INSURANCE COMPANY, *Defendant.*	§	

ORDER

BEFORE THE COURT is a subject matter jurisdiction issue raised in Defendant Liberty Mutual Fire Insurance Company's ("Liberty Mutual") Supplemental Motion for Summary Judgment nearly two years after the inception of this case.[1] Liberty Mutual argues that its status as a reinsurer of the underlying insurance policy precludes Plaintiff Fort Stockton Independent School District ("FSISD") from maintaining any cause of action against it. Specifically, the motion points to Texas Insurance Code § 493.055 which states that a party has no right of action against a reinsurer unless such a right was created in the reinsurance contract or through an express agreement between the reinsurer and the party bringing the suit.[2] Liberty Mutual contends that no right of action was created in this case and dismissal of Plaintiff's claims is warranted. The Court agrees.

"A motion for summary judgment is not the appropriate procedure for raising the defense of lack of subject matter jurisdiction."[3] But a federal court has an "affirmative duty

[1] Doc. 66.
[2] TEX. INS. CODE § 493.055.
[3] *Gibson v. United States*, 809 F.3d 807, 811 (5th Cir. 2016) (quotation removed).

to raise the issues regarding subject matter jurisdiction, *sua sponte*, whenever a problem with subject matter jurisdiction is perceived."[4] Accordingly, the Court addresses the subject matter jurisdiction issue independent of the motions for summary judgment filed in this case.[5]

The Court finds that it lacks subject matter jurisdiction to hear this case because FSISD has no right of action against Liberty Mutual under Texas law. Accordingly, the case is **DISMISSED WITHOUT PREJUDICE**.

FACTUAL BACKGROUND

On August 28, 2020, a combination of political subdivisions signed an agreement ("Interlocal Agreement") creating the Political Subdivision Alliance of Texas ("PSAT") for the purpose of, among other things, providing insurance coverage to participating political subdivisions and securing reinsurance for those policies. FSISD became one of those participating political subdivisions through an adoption agreement executed a year later.

On May 23, 2022, PSAT entered into a Quota Share Reinsurance Agreement ("Reinsurance Agreement") with Liberty Mutual. Under that agreement, Liberty Mutual agreed to accept reinsurance of 100% of PSAT's gross liability under PSAT insurance policies. The policy at issue, numbered YU2-Z5 1 294 183-062, is one of those policies. It provided property insurance against loss by wind and hail damage, among other perils, across eighteen of FSISD's properties. The effective timeframe for the coverage was September 1, 2022, to September 1, 2023.

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[4] *City of Sachse, Texas v. Kansas City S.*, 564 F. Supp. 2d 649, 653 (E.D. Tex. 2008).

[5] The Parties were able to fully brief the subject matter jurisdiction issue at the summary judgment stage. *See* Docs. 66, 69, 71.

Following a wind and hail storm in October 2022, FSISD filed an insurance claim for damage to ten of the covered properties. Liberty Mutual handled the claim by hiring an adjuster and making insurance payments on behalf of PSAT. However, the policy provides that the insured will not receive payment for any cosmetic loss caused by wind or hail to roof surfaces. Based on the adjuster's assessment and applying the cosmetic loss exclusion, Liberty Mutual declined to pay for some of the damage claimed.

Believing Liberty Mutual underpaid FSISD by more than $19,000,000, Plaintiff initiated the instant lawsuit. It alleges that Liberty Mutual breached the insurance contract and violated the Texas Insurance Code by failing to pay for all of the damage claimed and for failing to conduct a reasonable investigation. Liberty Mutual removed the case to federal court on September 16, 2024.

ANALYSIS

In its supplemental motion for summary judgment, Liberty Mutual argues that it cannot be sued by FSISD because it is a reinsurer, not the original insurer. It identifies that the insurance contract unambiguously states that the policy was issued by PSAT, not Liberty Mutual. Under § 493.055 of the Texas Insurance Code ("Insurance Code"), "[a] person does not have a right against a reinsurer" unless one is created in the "reinsurance contract" or by "a specific agreement between the reinsurer and the person."[6]

Plaintiff raises three arguments: (1) § 493.055 does not apply because PSAT is not a valid insurer, making the reinsurance contract void; (2) even if § 493.055 applies, FSISD

[6] TEX. INS. CODE § 493.055.

established a direct cause of action against Liberty Mutual; and (3) § 493.055 does not apply to FSISD's extra-contractual claims.

I. PSAT is a Valid Insurer Under Texas Law.

First, Plaintiff argues that PSAT is not a valid insurer. Insurance Code §§ 801.051–.052 require insurers to obtain a certificate of authority from the Texas Department of Insurance ("TDI") before they can conduct business as an insurer in Texas.[7] Here, FSISD argues that PSAT is not listed as an authorized insurer in the TDI database and therefore is unable to issue insurance. Moreover, it argues that being an authorized insurer is a prerequisite to entering into a reinsurance contract, making the reinsurance contract void in this case. Finally, FSISD argues that Liberty Mutual admits to issuing the insurance policy at issue in its pleadings.

However, these arguments misunderstand PSAT's unique position. Its authority to engage in the business of insurance stems from the Texas Government Code ("Government Code"), not the Insurance Code. The Interlocal Cooperation Act, Chapter 791 of the Government Code, authorizes a local government "to contract or agree with another local government . . . to perform governmental functions and services in accordance with this chapter."[8] "Local government" means a "county, municipality, special district, or other political subdivision of this state or another state."[9] A "political subdivision" is "any corporate and political entity organized under state law."[10] Government Code § 2259.031 further authorizes a "governmental unit" to "establish a self-insurance fund to protect the

[7] TEX. INS. CODE §§ 801.051–.052.
[8] TEX. GOV'T CODE § 791.011(a)
[9] Tex. Gov't. Code § 791.003(4).
[10] Tex. Gov't. Code § 791.003(5).

governmental unit and its officers, employees, and agents from any insurable risk or hazard."[11] A "governmental unit" is defined as "a state agency or institution," a "local government," or an "entity acting on behalf of a state agency or institution or local government."[12] Moreover, "local government" means a "municipality or other political subdivision of this state or a combination of political subdivisions, including a combination created under Chapter 791."[13]

PSAT is a combination of political subdivisions, of which Plaintiff is one, formed under Chapters 2259 and 791 of the Government Code. Meeting the definition of "governmental unit" for Chapter 2259, PSAT is authorized to "establish a self-insurance fund to protect the government unity and its officers, employees, and agents from any insurable risk or hazard."[14] Whether PSAT is listed in TDI's database as an authorized insurer is irrelevant. The "Insurance Code and other laws of this state relating to the provision or regulation of insurance do not apply to . . . an agreement entered into under [Chapter 2259]."[15] Plaintiff fails to point to any section of the Government Code that requires PSAT, or other similarly formed entities, to obtain a certificate of authority from TDI in order to provide insurance to its political subdivisions. Therefore, the Court finds that PSAT is a valid insurer and the reinsurance contract is not void.

[11] TEX. GOV'T CODE § 2259.031(a).
[12] TEX. GOV'T CODE § 2259.001(1)
[13] TEX. GOV'T CODE § 2259.001(2).
[14] TEX. GOV'T CODE § 2259.031(a).
[15] TEX. GOV'T CODE § 2259.037(1).

Furthermore, the Court finds that while Liberty Mutual states that it issued the policy in its pleadings, the evidence speaks to the contrary. The insurance contract unambiguously states that PSAT is the issuer of the policy, not Liberty Mutual.[16]

II. Plaintiff has not Established a Cause of Action Against Liberty Mutual.

Although Insurance Code § 493.055 generally precludes suits against reinsurers, it carves out two specific instances when a person can maintain an action against such an entity. First, the reinsurance contract between the original insurer and the reinsurer can create a right of action against the reinsurer.[17] Second, the reinsurer and the person can also specifically agree to create that right of action.[18]

Here, FSISD asserts that the Interlocal Agreement created that right of action.[19] The terms of that agreement provide that "the reinsurer may voluntarily assume such original policy obligations of the Alliance as direct obligations of the reinsurer to the members of the Alliance or other payees under any policy reinsured and in substitution for the obligations of the Alliance to the members or other payees."[20] FSISD argues that by handling the entire claim adjustment process, Liberty Mutual voluntarily stepped into the shoes of PSAT and now is directly liable.

This argument misses the mark. Section 493.055 states that there is no right of action against a reinsurer unless it is created by the "*reinsurance contract*" or through a "specific

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[16] Doc. 67-6.
[17] TEX. INS. CODE § 493.055(1).
[18] TEX. INS. CODE § 493.055(2).
[19] Doc. 69.
[20] Doc. 67-5.

agreement between the *reinsurer and the person*."[21] The provision relied on by the Plaintiff only appears in the Interlocal Agreement. However, the Interlocal Agreement is not a reinsurance contract, nor is it an agreement between FSISD and the reinsurer. That agreement is simply a contract between political subdivisions to create PSAT. Nothing in the reinsurance contract incorporates that provision or creates any other form of liability for Liberty Mutual. Additionally, FSISD offers no evidence of a specific agreement between itself and the Defendant that could be interpreted as creating any right of action. Because those are the only two ways for a reinsurer to have liability, the Court finds that FSISD cannot bring its claims against Liberty Mutual as a matter of law.

III. Plaintiff's Extra-Contractual Claims are Foreclosed.

Finally, FSISD asserts that Liberty Mutual's status as a reinsurer is irrelevant for its extra-contractual claims under Chapters 541 and 542 of the Texas Insurance Code. It argues that these claims survive because they are based solely on Liberty Mutual's conduct and decisions that it made during the claim adjustment process. But this argument is undermined by the plain meaning of the text of § 493.055 of the Insurance Code.

The section states that a person "does not have a right against a reinsurer" unless an exception applies. The qualifying language needed for Plaintiff's argument to succeed is notably absent from the statute. Indeed, it states a person has "no right" against a reinsurer. That establishes absolute protection for reinsurers from *any* claim, including Plaintiff's extra-

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[21] TEX. GOV'T. CODE § 493.055(1)–(2) (emphasis added).

contractual claims under Chapters 541 and 542.[22] Because the Court found that no exception applies, FSISD's claims fail as a matter of law.

CONCLUSION

For the aforementioned reasons, the Court finds that it lacks subject matter jurisdiction to hear the above-captioned case. Therefore, the case is **DISMISSED WITHOUT PREJUDICE**. All pending motions are **DENIED AS MOOT**.

It is so **ORDERED**.

SIGNED this 8th day of July, 2026.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

[22] *Cf. Health First Health Plans, Inc. v. Am. Nat'l Ins. Co.*, No. 3:20-CV-00226, 2021 WL 4169211, at *5 (S.D. Tex. Sept. 13, 2021), *report and recommendation adopted*, No. 3:20-CV-00226, 2021 WL 4458754 (S.D. Tex. Sept. 29, 2021) ("section 493.055 prohibits extra-contractual claims brought against reinsurers unless specifically authorized by a reinsurance contract or a separate written agreement.").