IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Sylvia Craig Executrix,	§	
for Estate of Kemal Shea Jr.,	§	
Plaintiff	§	
	§	**Civil Action No. 4:25-cv-01235-P**
v.	§	
	§	
Liberty Mutual Personal	§	
Insurance Company,	§	
Defendant.		

PLAINTIFF SYLVIA CRAIG'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE COURT:

Plaintiff Sylvia Craig, serving as Independent Executrix of Kemal Shea, Jr.'s Estate, responds in opposition to Liberty Mutual Personal Insurance Company's Motion for Summary Judgment. The motion ought to be rejected as Liberty has failed to demonstrate its intentional-loss exclusion legally. The policy solely omits losses resulting from actions undertaken "with the aim to inflict a loss. Liberty's fire investigator deemed the building fire as accidental and unintentional, claiming that Shea had no intention of igniting the structure. Those findings create a genuine dispute concerning the precise intent the exclusion requires.

RESPONSE

1. Liberty bears the burden to prove that the exclusion applies. Under Texas law, an insured bears the initial burden to establish coverage, but the insurer bears the burden to prove an

exclusion. (Tex. Ins. Code § 554.002; *Guar. Nat'l Ins. Co. v. Vic Mfg. Co.,* 143 F.3d 192, 193 (5th Cir. 1998)). At summary judgment, the Court must view whether there is a genuine dispute as to any material fact, reserving the resolution of such factual disputes and credibility assessments for the jury (Fed. R. Civ. P. 56(a); *Tolan v. Cotton*, 572 U.S. 650, 656-57 (2014)).

2. The exclusion requires intent to cause a loss, not merely an intentional act. Liberty's policy defines "Intentional Loss" as "any loss arising out of any act an 'insured' commits or conspires to commit with the intent to cause a loss." (Def.'s Br. 9; Def.'s App. 023-025, 042 (emphasis added)). Liberty repeatedly argues that Shea intentionally threw an object. But intent to perform an act is not the same as intent to cause the covered property loss. Liberty's construction deletes the words "with the intent to cause a loss" and converts the provision into a broader intentional-act exclusion that Liberty did not write.

3. Texas law preserves that distinction. The court held that the exclusion's language "speaks to the resulting damage or injury, not to the actions that led to it," meaning that coverage is voided only when the resulting injury itself was intentional, not merely when the insured's conduct was intentional (*Tanner v. Nationwide Mut. Fire Ins. Co.,* 289 S.W.3d 828, 831-32 (Tex. 2009)). Deliberate conduct may still produce accidental damage when the resulting injury was neither intended nor the natural and expected result of the insured's conduct. (*Lamar Homes, Inc. v. Mid-Continent Cas. Co*., 242 S.W.3d 1, 8-9 (Tex. 2007); *Mid-Century Ins. Co. of Tex. v. Lindsey*, 997 S.W.2d 153, 155-56 (Tex. 1999)). The Supreme Court of Texas established that courts must enforce the actual language of an insurance policy and construe it within its context, giving effect to every word, clause, and sentence. (*RSUI Indem. Co. v. The Lynd Co.,* 466 S.W.3d 113, 118 (Tex. 2015)).

4. Liberty's own evidence creates a genuine dispute. Deputy Fire Marshal Keith Ebel's official report classified the fire as accidental and stated that Shea "unintentionally set the structure on fire." (Def.'s App. 143). Ebel further swore: "I do not believe that [Shea] meant to set fire to the structure." (Def.'s App. 135 ¶ 11). Liberty acknowledges both statements. (Def.'s Br. 4, 7-8, 18). A reasonable jury could therefore conclude that, even if Shea intentionally threw an object during the police standoff, he did not do so with the intent to damage or destroy the insured dwelling, structures, or contents.

5. The eyewitness accounts do not eliminate that dispute. Sergeant Van Zandt did not see where the object landed, observed that nothing happened immediately, and saw a fire only "shortly after." (Def.'s App. 128 ¶¶ 7-8). Deputy Meza was "not sure how much time passed" before he saw flames. (Def.'s App. 141-142). Those gaps leave disputed questions concerning sequence, origin, causation, the object's target, and Shea's intent. Liberty asks the Court to resolve those inferences in its favor, which Rule 56 does not permit.

6. Calling the object a "Molotov cocktail" does not conclusively establish the policy's intent element. The criminal cases cited by Liberty define destructive devices under federal statutes. They do not interpret this policy or establish Shea's subjective intent. Unlike Liberty's out-of-state cases, there is no admission here that Shea poured fuel on insured property, intentionally ignited the house, or intended any property damage. Instead, Liberty's investigator expressly concluded that the structure fire was not intentional.

7. Liberty's occurrence cases do not rewrite the exclusion. Cases addressing whether a liability claim alleges an "occurrence" do not eliminate the separate requirement that Liberty prove an act committed "with the intent to cause a loss." Even Lamar Homes, on which Liberty

relies, recognizes that deliberate acts may produce accidental damage. (242 S.W.3d at 8-9). The question here is not simply whether Shea moved voluntarily; it is whether he intended a loss to insured property. Ebel's findings prevent that question from being decided as a matter of law.

8. The mortgagee payment did not resolve the Estate's Coverage C claim. Liberty paid Craig under the policy's separate mortgage clause because she held an independent mortgagee interest. (Def.'s Br. 5, 17; Def.'s App. 049, 157-170). Craig's election to protect that interest was not an admission that the exclusion applied, did not release the Estate's claims, and did not compensate the Estate for destroyed personal property.(Craig Decl. ¶¶ 8-13, Pl.'s App. 003-004). Liberty itself admits that "the only remaining coverage available is Coverage C, Contents." (Def.'s Br. 17). The Estate claims $155,600 for the contents loss. (*Id*. at 5).

9. Liberty has not established judgment on the extra-contractual claims. Liberty's argument against the Insurance Code, Prompt Payment Act, and common-law bad-faith claims depends on its disputed premise that no coverage exists. Because Liberty has not established the exclusion, that derivative argument fails. An insured who establishes a right to receive policy benefits can recover those benefits as actual damages under the Insurance Code, but with a critical statutory causation requirement: the insurer's statutory violation must have caused the loss of those benefits. (*USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 495-500 (Tex. 2018)). The Texas Supreme Court held that remedies under Chapter 542 of the Texas Insurance Code—specifically the Texas Prompt Payment of Claims Act (TPPCA)—remain available if the insurer is liable under the policy and failed to comply with the statutory deadlines. (*Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 819-20 (Tex. 2019)). An insurer violates its duty of good faith and fair dealing, and is liable in tort, if the insurer knew or should have known

that it was reasonably clear that the claim was covered. (See *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48, 56 (Tex. 1997)).

10. The record submitted with the motion presents an additional procedural problem. The copy of ECF No. 24 supplied to Plaintiff contains only a two-page exhibit index, although Liberty's brief cites "App.001" through "App.170." (Pl.'s App. 005-007). An exhibit index and counsel's descriptions are not summary-judgment evidence. This defect independently requires denial unless the cited materials were separately and properly filed.

PRAYER

For these reasons, Plaintiff Sylvia Craig respectfully requests that the Court deny Liberty Mutual's Motion for Summary Judgment in its entirety and grant Plaintiff all other relief to which she is entitled.

October 2, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance the Federal Rules of Civil Procedure, I certify that on October 2, 2026, this document was served via CM/ECF electronic service on counsel of record:

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