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

Sylvia Craig,	§	
Plaintiff	§	
	§	
v.	§	**Civil Action No. 4:25-cv-01235-P**
	§	
Liberty Mutual Personal	§	
Insurance Company,	§	
Defendant.	§	

Liberty's Brief in Support of its Motion for Summary Judgment

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Liberty files this Brief in Support of its Motion for Summary Judgment and would respectfully show the Court that it is entitled to judgment as a matter of law because Plaintiff's insurance claim does not stem from an accident; it stems from Kemal Shea's intentional act (throwing a Molotov cocktail) for which there is no insurance.

I. Summary

Sylvia Craig represents the estate of Kemal Shea Jr. She was also Shea's aunt, as well as the lienholder for the house that was destroyed by fire. The fire also took Mr. Shea's life. Liberty issued a homeowners policy to Shea; Ms. Craig reported the fire and submitted a claim. The Fire Marshal determined that the fire was caused by a Molotov cocktail thrown by Shea. Based on that finding, Liberty denied the Estate's claim for losses caused by the fire. Liberty, however, paid Ms. Craig's entire claim as mortgagee (including policy limits for the dwelling).

Ms. Craig, sole beneficiary and representative of the Estate, sues Liberty for denying the Estate's claim (including for the loss of the dwelling and other structures, previously paid to her). She asserts breach contract and, based on that alleged breach, extracontractual claims (bad faith, etc.). Because the claimed loss was caused by Shea's intentional act, his estate is not entitled to any insurance proceeds and Liberty is entitled to summary judgment on all of Plaintiff's claims.

Specifically, as discussed below, Shea's intentional act (tossing a Molotov cocktail near the structure) caused the fire that destroyed his home and contents. Plaintiff cannot controvert the fact that the fire was not accidental. Under the unambiguous terms of the Policy, the destruction of the subject property is excluded under the Policy's "Intentional Loss" exclusion. Therefore, the Policy does not provide coverage for the damage that Shea caused and Plaintiff (executor and sole beneficiary of Mr. Shea's estate) is not entitled to recover any insurance proceeds. Thus, Plaintiff's breach of contract claim fails as a matter of law. Because Plaintiff's remaining claims

(for bad faith, etc. in denying her coverage claim) rest on her breach of contract claim, those claims also fail as a matter of law.

II. Summary Judgment Evidence

In support of its Motion for Summary Judgment, Liberty refers this Court to the pleadings, the Court's records, records of the related cases (*see* Liberty's Notice of Related Cases (ECF No.3), documents/exhibits and summary judgment evidence in its Appendix, filed concurrently herewith (and incorporated by reference), all of which conclusively negates one or more of the elements of each of Plaintiff's claims.

III. Undisputed Material Facts

A. The Policy

1. Liberty issued Homeowners Policy number H3V29148319870 to Kemal Shea Jr. (App. 004-121.) The Policy lists Shea as the "named insured" and the insured location as 520 E Indian Creek Dr, Fort Worth TX 76179-6518 for the policy period as February 18, 2022 – February 18, 2023. (App.006.) The Policy lists Sylvia Craig as the mortgagee (App.007.)

B. The Fire

2. "On June 23, 2022, a fire occurred at the property located at 520 E. Indian Creek Dr., Fort Worth, Texas 76179." (Plaintiff's First Amended Complaint (ECF No. 7) at ¶ 3.01.)

3. On that date, the Tarrant County Sherriff's Office (TCSO) attempted to serve a felony arrest warrant on Shea. Rather than cooperate, Shea fired a gun on TCSO deputies. (App.128, Van Zandt Aff. at ¶ 3.) The Sherriff's Office dispatched a SWAT team to 520 East Indian Creek Drive in Tarrant County, including Sergeant Hunter Van Zandt. (*Id.* at ¶¶ 2-3.) Sergeant Van Zandt observed Shea firing shots from inside his home. (App.129, *Id.* at ¶ 6.)

4. Van Zandt later "saw Shea throw a Molotov cocktail, but did not see it land. Nothing immediately happened, but shortly after, a fire sprang up. It then quickly spread,

eventually engulfing the residence and several of the vehicles surrounding it." (*Id*. at ¶ 7.) Van Zandt did not see any fire before Shea thew the Molotov cocktail. (*Id*. at ¶ 8.)

5. Deputy Meza was with Sergeant Van Zandt; he, too, observed Shea "toss a yellow-colored container, with what appeared to be a rag on fire, stuffed into the container," out of the building. (App.141, Ebel Aff. at Ex. A (Report)) Meza was not "sure how much time passed, before he saw flames rising up from the area of the yellow container. Meza stated the fire grew pretty quick and eventually caught the 'C' side of the structure on fire." (App.141-42, *id.*)

6. Another member of the SWAT team, Chief Deputy Christopher Williams, saw Shea ignite the fire:

> … I saw Shea open the rear door of the residence. He was holding a plastic jug with some sort of liquid in it and a rag in its spout. He looked directly at Van Zandt and me, lit the rag on fire, and then threw the jug onto his back porch.
>
> Nothing immediately happened after Shea threw the jug, but eventually the back porch caught fire. Once the porch caught fire, it spread quickly to the main residence and the grounds immediately surrounding it. This was the only fire I saw at the scene.

(App.131-132, Williams Affidavit at ¶¶ 2-3; ¶¶ 6-7.)

7. Ms. Craig "did not personally witness the start of the fire on June 23, 2022, but was aware that her nephew, Kemal Shea Jr., was inside the residence at 520 E. Indian Creek Dr., Fort Worth, Texas, at the time the structure caught fire. She was not physically present at the residence when the fire began..." (App.152-153, Plaintiff's Answer to Liberty's Interrogatory.)

8. At the time of his report, Tarrant County's Deputy Fire Marshal, Keith Ebel, had worked in fire investigations for 38 years and was certified by the International Association of Arson Investigators. (App.133, Ebel Affidavit at ¶ 2.) He investigated this fire and "determined that the fire originated from the incendiary device that [Shea] threw out from the rear of the

structure." (App.135, *Id*. at ¶ 11.) Though Ebel did "not believe that [Shea] meant to set fire to the structure," he found no reason to doubt that "his actions caused the fire." (*Id*.)

C. Syliva Craig's claims (on her behalf and on behalf of the Estate)

9. Ms. Craig reported the fire to Liberty on July 7, 2022. (Complaint, ECF No. 7, at ¶ 3.05.)

10. Craig identified herself to Liberty as Shea's aunt and the lienholder on the insured property. She would eventually become the representative of her nephew's estate. (She is also the sole beneficiary; in his Last Will and Testament, Shea left everything he owned to Ms. Craig.) (App.156.)

11. On around August 25, 2023, the Tarrant County Fire Marshal's Office issued its Incident Report. (App.136.)[1] Deputy Fire Marshal Ebel's incident report detailed his investigation and concluded:

> Based on the information provide[d] during the investigation, the W/M occupant of the structure [Shea] unintentionally set the structure on fire. The fire originated from the yellow in color container (Molotov cocktail) being tossed out the "C" side of the structure. The liquid inside the container eventually ignited causing the larger fire. The fire then spread into the structure on the "C" side.

(App.143, Ebel Aff. at Ex. A (Report), p. 8.)

12. After receiving the Fire Marshal's Report in late August (sometime after its release on around August 25, 2023), Liberty completed its investigation of Ms. Craig's claim. On

[1] The Fire Marshal's report is attached to Keith Ebel's affidavit, which he provided in *Troy Jacobs III v. Tarrant County, TX, Liberty Mutual Insurance Co. and The Estate of Kemal Shea* (later transferred to probate court. In that case, Tarrant County filed a plea to the jurisdiction (attached here at App.122), arguing that it was immune from all claims in that case. In support of its plea, Tarrant County submitted three affidavits (attached here at App.128-145). The Probate Court granted Tarrant County's plea to the jurisdiction, dismissing with prejudice Troy Jacobs III's claims against it. (App.146, 11/20/24 Order.)

around September 28, 2023, Liberty denied Craig's claim as to Shea's Estate but advised Ms. Craig that she could proceed as lienholder on the property (App.158 and 163-163).

13. On September 29, 2023, in her capacity as the listed Mortgagee on the Policy, Ms. Craig elected to pursue a claim pursuant to the Policy's Mortgage Clause. (App.158, Ex. 7, Email from Ms. Craig.) Under that provision, the denial of the Estate's claim based on Shea's intentional acts would not apply to a valid claim of the mortgagee listed on the Policy (Ms. Craig), provided the mortgagee complied with the specified requirements. (App.049, Policy.) After Ms. Craig (with assistance from Plaintiff's counsel) met those requirements, Liberty paid Craig's lienholder/mortgagee demand in full. (App.168-170.) Specifically, Ms. Craig claimed $180,279.24 as mortgagee. (App.165-166, Mortgagee demand.) The Policy limits were as follows: Dwelling (Coverage A) $169,400; Other Structures (Coverage B) $16,940; Personal Property (Coverage C) $101,640. (App.006). Each of these limits were adjusted in accordance with the Policy's Inflation Protection Endorsement (App.059).

14. On around February 1, 2024, Liberty paid Craig's full interest as mortgagee. She demanded $180,279.24 and that is what Liberty paid, less the applicable deductible. Specifically, Liberty paid Craig $177,870.00 (the inflation-adjusted policy limits under Coverage A, Dwelling) and $715.24 for the Appurtenant Structures (Coverage B) ($2,409.24 less the $1,694 deductible per the Policy), for a total of $178,585.24. (App.168-169.) Liberty's payment to Craig as mortgagee exhausted policy limits for the dwelling (Coverage A) and was in full satisfaction of the claim presented for the other structure(s) (Coverage B). (App.164-166, Demand.)

15. Liberty did not hear from Ms. Craig again until more than five months later (July 22, 2024) when "the Estate of Kemal Shea Jr." filed a cross-petition against Liberty in *Troy*

Jacobs III v. Tarrant County, TX, Liberty Mutual Insurance Co. and The Estate of Kemal Shea (later transferred to probate court; *see* Liberty's Notice of Related Cases (ECF No. 3), ¶ 2).[2]

16. Despite being paid in full on her claim as lienholder (including policy limits for the dwelling), Ms. Craig, as representative of Shea's Estate, claims the Estate is entitled to payment of those same coverages: $169,000 (for the Dwelling) and $16,940 (Other Structures). (Plaintiff's Rule 26(a)(1) Disclosures (ECF No. 12) at p. 3.) Plaintiff also claims $155,600 for "contents loss" (*id*.), which, of course, the mortgagee could not recover.

IV. Applicable Legal Standards

The standard for summary judgment is well known, as is the fact that the law of the forum state applies when jurisdiction is based on diversity.

Insurance policies (contracts) are subject to the same interpretive rules as other contracts in Texas. *See, e.g., E. Concrete Materials, Inc. v. ACE Am. Ins. Co.*, 948 F.3d 289, 300 (5th Cir. 2020). "The interpretation of an insurance contract is a question of law reviewed de novo." *Century Surety Co. v. Seidel*, 893 F.3d 328, 332 (5th Cir. 2018) (citation omitted). Thus, contract disputes are well suited for summary disposition. "[O]nly when there is a choice of reasonable interpretations of the contract is there a material fact issue concerning the parties' intent that would preclude summary judgment." *Gonzalez v. Denning*, 394 F.3d 388, 392 (5th Cir. 2004) (citations and internal quotation marks omitted). Without such choice, the contract should be interpreted as a matter of law.

"Terms in insurance policies that are subject to more than one reasonable construction are interpreted in favor of coverage." *Am. Home Assur. Co. v. Cat Tech L.L.C.*, 660 F.3d 216, 220 (5th Cir. 2011) (citation omitted; cleaned up). A policy provision is only ambiguous if it "is

[2] Mr. Jacobs (a customer of Mr. Shea's auto repair business) sued "The Estate," not a proper party; Ms. Craig would eventually replace the Estate as its representative.

susceptible to two or more reasonable interpretations. An ambiguity does not exist, however, simply because the parties interpret a policy differently. If a contract as written can be given a clear and definite legal meaning, then it is not ambiguous as a matter of law." *Id.* (citations omitted; cleaned up). *See also Gonzalez*, 394 F.3d at 392 ("A contract is not ambiguous merely because the parties to an agreement proffer conflicting interpretations of a term.") (citations and internal quotation marks omitted).

In a coverage dispute, the "insured bears the initial burden of showing that there is coverage, while the insurer bears the burden of proving the applicability of any exclusions in the policy. Once the insurer has proven that an exclusion applies, the burden shifts back to the insured to show that the claim falls within an exception to the exclusion." *Guar. Nat'l Ins. Co. v. Vic Mfg. Co.*, 143 F.3d 192, 193 (5th Cir. 1998)(citations omitted).

V. Argument and Authorities

There is no question about the cause of the fire: Shea started it by throwing a Molotov cocktail. The "intentional loss" exclusion (quoted below) is unambiguous, and it bars coverage for damages Shea caused by throwing that firebomb. Liberty properly denied Plaintiff's claim (while also paying Ms. Craig's full interest as mortgagee). Plaintiff's breach of contract claim fails as a matter of law and with it, her extracontractual claims.

A. Contrary to Plaintiff's assertions, the incontrovertible evidence shows that the fire was started by Shea's tossing a Molotov cocktail.

Plaintiff alleges that Liberty wrongfully denied the Estate's claim for coverage based on the Intentional Loss exclusion. Mischaracterizing the Tarrant County Fire Marshal's Report, Plaintiff insists that the fire was an accident and that when Liberty denied the Estate's claim, it knew the fire was accidental:

> Prior to denying the claim, Defendant received the Tarrant County Fire Marshall's [*sic*] written report by Keith J. Ebel, Deputy Fire Marshall,

> dated August 25, 2023. The Fire Marshall's [*sic*] report expressly stated that the fire was "accidental" and "unintentional."

(Plaintiff's First Amended Complaint (ECF No. 7) at ¶¶ 3.08-3.09.) Further, Plaintiff insists, "[t]he Fire Marshall's [*sic*] report found no evidence of a Molotov Cocktail, other incendiary devices, or any other indications of any intentional acts to have caused the fire." (*Id*. at ¶ 3.10.)

Contrary to Plaintiff's allegations, as summarized above and as detailed in the attached affidavits of Sergeant Van Zandt, Chief Deputy Christopher Williams, and Deputy Fire Marshal Ebel, there is no dispute about the fact that the fire was caused by Shea's intentional act of throwing a Molotov Cocktail. The undisputable fact is that Shea intentionally threw the Molotov cocktail that started a fire on the premises. That fire spread to the dwelling and caused its complete destruction. The Fire Marshal's Report does refer to the fire as accidental. The report's header lists the "Incident Type" as "Fire/Accidental" and the report does state that Shea "unintentionally set the structure on fire." (App.136-144.) But Plaintiff's characterization of this Report is directly and repeatedly contradicted by the report's detailed discussion of the Molotov cocktail. Plaintiff's characterization of the report is directly contradicted by the Fire Marshal's direct and unqualified conclusion that the fire was caused by Shea's tossing a Molotov cocktail out of the structure:

Based on the information provide during the investigation, the W/M occupant of the structure unintentionally set the structure on fire. The fire originated from the yellow in color container (Molotov cocktail) being tossed out the "C" side of the structure. The liquid inside the container eventually ignited causing the larger fire. The fire then spread into the structure on the "C" side.

(App.143.) The Fire Marshal's report leaves no doubt about the cause of the fire. A reasonable jury could not conclude that the fire was started by anything other than Shea's intentional, tortious, and criminal action of throwing a Molotov cocktail.

B. The subject loss was not accidental (it was caused by the firebomb that Shea threw) and therefore subject to the Policy's "Intentional Loss" exclusion.

The Homeowners Policy that Liberty issued to Shea provided coverage for the dwelling, other structures, and personal property (App.013, Policy, Section I.) Specifically, Liberty agreed to "insure against risk of direct physical loss to property described in Coverages A [Dwelling] and B [Other Structures]." (App.020, Section I – Perils Insured Against.) Liberty also agreed to "insure for direct physical loss to the property described in Coverage C [Personal Property] caused by any of the [specified] perils unless the loss is excluded in Section I – Exclusions." (App.022.) The Policy's "Intentional Loss" exclusion expressly excludes losses caused (directly or indirectly) by certain intentional conduct:

> We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.
>
> …
>
> **A.8. Intentional Loss**
>
> **a.** Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.
>
> In the event of such loss, no "insured" is entitled to coverage even "insureds" who did not commit or conspire to commit the act causing the loss.

(App.023-025, Policy, Section I Exclusions; App.042, Endorsement; Special Provisions – Texas, Section I Exclusion, A.8.)

1. <u>The Intentional Loss exclusion is unambiguous</u>.

As discussed below, numerous courts (federal and state) have found similar or identical exclusions to be unambiguous and have applied such exclusions to preclude coverage for losses caused by the insured's intentional conduct. (Still many others treat such provisions as

unambiguous when applying the second sentence involving claims by an insured when another insured's intentional act caused the loss.) The undersigned is unaware of any case applying an "intentional loss" exclusion in a way that would support Plaintiff's claim.

2. Accident/occurrence and intentional loss exclusions involve the same analysis.

While few Texas cases have construed the subject "Intentional Loss" exclusion, determining whether there has been an "accident" or "occurrence" (such that there would be coverage for accidental losses) and the application of intentional acts or loss exclusions logically involve the same analysis. Insurance is for accidents, not intentional acts and accidental is the opposite of intentional. "The concept of insurance is that the parties, in effect, wager against the occurrence or non-occurrence of a specified event; the carrier insures against a risk, not a certainty." *Two Pesos, Inc. v. Gulf Ins. Co.*, 901 S.W.2d 495, 501 (Tex. App.—Houston [14th Dist.] 1995, no writ) (quoting *Bartholomew v. Appalachian Ins. Co.,* 655 F.2d 27, 29 (1st Cir.1981). It is not surprising, then, that courts look to accident/occurrence cases when construing intentional loss exclusions and vice versa. Courts analyze both in the same way. *See, e.g., Am. States Ins. Co. v. Natchez Steam Laundry*, 131 F.3d 551, 553-54 (5th Cir. 1998)(analysis of coverage for sexual harassment is similar, whether not an "occurrence" or per exclusion for intentional acts); *Lucterhand v. Granite Microsystems, Inc.*, 564 F.3d 809, 816, n. 5 (7th Cir. 2009)("intentional-acts exclusions in liability policies function in much the same way as the 'accident' limitation contained in the coverage-granting language"); *Mid-Continent Cas. Co. v. Circle S Feed Store, LLC*, 754 F.3d 1175, 1183 (10th Cir. 2014) ("the legal framework for determining whether an 'occurrence' is present also controls whether a CGL policy's 'intentional injury' exclusion applies") (looking to New Mexico Supreme Court's analysis of an "intentional injury" exclusion to determine whether there was an accident or occurrence).

3. Throwing a firebomb is an intentional act; starting a fire with one is not an accident.

"Under Texas law, a person's acts are not accidental when he commits an intentional act that results in injuries that ordinarily follow from or could be reasonably anticipated from the intentional act." *HVAW v. Am. Motorists Ins. Co.*, 149 F.3d 1175 (5th Cir. 1998) (citations omitted) (also referring to *Argonaut Southwest Ins. Co. v. Maupin,* 500 S.W.2d 633, 635 (Tex.1973) ("stating that when 'acts are voluntary and intentional and the injury is the natural result of the act, the result was not caused by accident ....'")). "An accident is generally understood to be a fortuitous, unexpected, and unintended event." *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 8 (Tex. 2007) (citations omitted). "Thus, a claim does not involve an accident or occurrence when either direct allegations purport that the insured intended the injury (which is presumed in cases of intentional tort) or circumstances confirm that the resulting damage was the natural and expected result of the insured's actions, that is, was highly probable whether the insured was negligent or not." *Id.* at 9 (citation omitted). "[W]hen harm to property is caused by the intentional act of one party, it cannot be characterized as 'accidental' or an 'event' causing an 'occurrence' under an insurance policy. …This basic principle recognizes the reality that the risk of accidental loss or damage to property is fundamentally different from the risk of loss from intentional acts of the insured." *GATX Leasing Corp. v. Nat'l Union Fire Ins. Co*., 64 F.3d 1112, 1117 (7th Cir. 1995) (applying Texas law)(citations omitted). "Where acts are voluntary and intentional and the injury is the natural result of the act, the result was not caused by accident even though that result may have been unexpected, unforeseen and unintended." *Id.* at 1117–18.

Plaintiff denies that Shea threw a Molotov cocktail. Perhaps Plaintiff will argue, in the alternative, that in throwing the Molotov cocktail, Shea did not intend to burn down his house. That argument will not turn Shea's tortious, intentional conduct into an accidental loss. "Under

Texas law, whether the insured expects or intends the injury is of no consequence to [the court's] determination of whether his actions were an 'accident.' If the resulting injury ordinarily follows from or could be 'reasonably anticipated' from the intentional act, then the act is not an accident, and thus not an occurrence." *Discover Prop. & Cas. Ins. Co. v. Blue Bell Creameries USA, Inc.*, 73 F.4th 322, 331 (5th Cir. 2023) (citations omitted; cleaned up). *See also Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Puget Plastics Corp.*, 532 F.3d 398, 402 (5th Cir.2008) ("In Texas, deliberate acts may constitute an accident unless: (1) the resulting damage was highly probable because it was the natural and expected result of the insured's actions, (2) the insured intended the injury, or (3) the insured's acts constitute an intentional tort, in which case, the insured is presumed to have intended the injury.")(citation and quotation marks omitted).

Shea threw a Molotov cocktail. Molotov cocktails (a/k/a "firebombs") are designed to start and spread fire. "The dictionary definition of a Molotov cocktail is 'a crude hand grenade made of a bottle filled with a flammable liquid (as gasoline) and fitted with a wick or saturated rag taped to the bottom and ignited at a moment of hurling.'" *United States v. Ross*, 458 F.2d 1144, 1145, n. 2 (5th Cir. 1972) (citing Webster's Third New International Dictionary of the English Language (1961)). *See also United States v. Wilson*, 546 F.2d 1175, 1177 (5th Cir. 1977) ("while gasoline, bottles and rags all may be legally possessed, their combination into the type of home-made incendiary bomb commonly known as a Molotov cocktail creates a destructive device")(citations omitted). It is an "incendiary bomb," designed to start a fire. *See, e.g.*, *United States v. York*, 600 F.3d 347, 354 (5th Cir. 2010) (reviewing cases and holding "that a Molotov

cocktail falls within the definition of a destructive device under section 921(a)(4)(A) because it is an incendiary bomb.").[3]

Regardless of what exactly Shea intended to accomplish by throwing a Molotov cocktail, throwing it was an intentional act (and a crime). "Texas courts have been extremely reluctant to declare the consequences of an unlawful act as accidental. Where the type but not the extent of the damages is predictable, Texas courts refuse to classify the act or its effects as an 'accident.'" *Matl v. St. Paul Fire & Marine Ins. Co.*, 31 Fed. App'x. 838 (5th Cir. 2002) (citation omitted). Moreover, by its very nature, fire is difficult to contain – all the more true of a fire started via Molotov cocktail. The fact that the fire spread is the natural and expected result of such a bomb, regardless of whether it spread beyond Shea's intended target. The property that was destroyed by that fire was, thus, not destroyed by an "accident" and the intentional loss exclusion applies to bar coverage.

4. Many courts have applied similar exclusions as Liberty asks this Court to do.

In *IDS Prop. Cas. Ins. Co. v. Crawford*, 16 F. Supp. 3d 1236 (W.D. Wash. 2014), *aff'd*, 671 Fed. App'x. 524 (9th Cir. 2016), the court applied an identical intentional loss exclusion to bar coverage for damages caused by the insured's intentional acts. The court summarized Washington case law: "If intent to cause an injury is established, it does not matter that the scope of the actual injuries are greater than or different from that which was intended." *Id*. at 1239

[3] Myriad cases confirm or are at least premised on the understanding that Molotov cocktails are designed to cause fire. *See, e.g.*, 126 A.L.R. Fed. 597, Validity, construction, and application of provisions of the National Firearms Act (26 U.S.C.A. § 5845(f)) and Omnibus Crime Control and Safe Streets Act (18 U.S.C.A. § 921(a)(4)) defining "destructive device" (Originally published in 1995), III. Particular Working Devices as "Destructive," B. Homemade or Altered Devices, §14[a] (collecting cases in which "Firebombs, Molotov cocktails, and similar explosive fire–causing devices" were held to be "destructive devices" under 26 U.S.C.A. § 5845(f)) and §14[b] ("Firebombs, Molotov cocktails, and similar explosive fire–causing devices" held not to be "destructive devices").

(citation omitted). Applying that law, the court inferred the insured's intent from her actions: "Houses are necessarily damaged when they are set on fire. Crawford admits to intentionally pouring fuel all around her garage and then setting it on fire." *Id*. The Ninth Circuit affirmed, explaining that, although the insured claimed that "she had no subjective intent to damage her insured property, the nature of her actions – setting fire to her car and garage in order to commit suicide – is one where the act is indissolubly bound with the injury, so the law imputes the intent to injure to the insured, and the exclusion applies." 671 Fed. App'x. at 525 (cleaned up; citations omitted).

In *Taylor v. LM Ins. Corp.*, No. 20-3166, 2022 WL 2662080, at *1 (10th Cir. July 11, 2022), the Tenth Circuit affirmed the trial court's summary judgment for the insurer based its application of an intentional loss exclusion. In that case, the insured was angry at her father. Aiming to upset her father, she intended to burn a bedspread. *Taylor v. LM Ins. Corp.*, No. 19-1030-JWB, 2020 WL 4000958, *2 (D. Kan. July 15, 2020). The policy contained an exclusion for "Intentional Loss," defined as "any loss arising out of any act committed: (1) By or at the direction of an 'insured'; and (2) With the intent to cause a loss." *Id*. at *3. The court summarized Kansas law applying "intentional acts" exclusions:

> The insured must have intended both the act and to cause some kind of injury or damage. Intent to cause the injury or damage can be actual or it can be inferred from the nature of the act when the consequences are substantially certain to result from the act. … [I]t is not essential that the harm be of the same character and magnitude as that intended.

Id. at *5 (citation omitted; cleaned up). Applying that law, the court held that the carrier did not need to prove that the insured intended to burn down the house. "All that is required is the intent to cause some damage (or, as applied to the policy, a loss)." *Id*. at *5 (citation omitted).[4]

[4] The policy did not define "loss." "Reading the policy as a whole," the court reasoned, "a loss under the exclusion is a disappearance or diminution of value in the insured's property." *Id*. at*5.

In *Nationwide Mutual Fire Ins. Co. v. May*, 860 F.2d 219, 223 (6th Cir. 1988), the subject exclusion defined "intentional acts" as "a loss resulting from an act committed by or at the direction of an insured if there is intent to cause a fire" *Id*. at 221. Reviewing Kentucky cases applying such exclusions, the Court found that "the exclusion clearly does not require a specific intent to cause the injury suffered." *Id*. at 223 (citations omitted). Instead, "Kentucky courts have more generally concluded that an intentional act exclusion will be invoked when the injury is a foreseeable or expected consequence of the actor's volitional acts, and not merely fortuitous or accidental. Consequently, the requisite intention may be proved either by direct evidence of actual intent, or it may be inferred by the nature of the act and the accompanying reasonable foreseeability of harm." *Id*. (citations omitted).[5]

In *Tartour v. Safeco Ins. Co. of Illinois*, No. 17-1896, 2020 WL 489467 (E.D. Pa. Jan. 30, 2020), the subject policy only covered accidental losses and it contained an intentional loss exclusion that excluded "any loss arising out of any act committed: (a) by or at the direction of any insured; (b) with the intent to cause a loss." *Id*., at *2. The insured started a fire in his bedroom attempting to commit suicide. The court found that the fire was not accidental and, thus, not covered. It analyzed the policy's exclusion in the alternative. The court summarized Pennsylvania case law interpreting intentional loss exclusions: "an actor is presumed to intend the natural and expected results of his actions. Intentional loss exclusions extend to injury and damage of the same general type which the insured intended to cause." *Id*. at *4 (citations omitted; cleaned up).

[5] The case turned on whether the adult son (who shot and killed his mother, the named insured, and set fire to the house) was an "insured" and whether he had the mental capacity necessary to invoke the "intentional act" exclusion. *Id*. at 220-22.

Many other cases apply the same or similar exclusions to bar coverage when the insured's intentional actions cause damage, even if the insured did not intend to cause all the damage that resulted from the intentional act. *See Lucterhand*, 564 F.3d at 816, n. 5 (underlying suit involved only intentional injuries (IIED, false imprisonment, and wrongful employment termination), not accidental; thus, no accident or occurrence) ("an intentional-acts exclusion applies where an intentional act is substantially certain to produce injury, and this is so even if the harm that occurs is different in character or magnitude from that intended by the insured")(citation and internal quotation marks omitted); *Auto-Owners Ins. Co. v. Taylor,* No. 1:17-CV-02632-JMC, 2018 WL 4078579, at *3, 5 (D.S.C. Aug. 24, 2018) ("intent to cause a loss" was unambiguous and barred coverage if an insured "intended to set the fire, regardless of whether he intended the house to burn down"); *Thomas v. Benchmark Ins. Co.,* 285 Kan. 918, 933, 179 P.3d 421, 431 (2008) (speeding to evade police, insured lost control of the vehicle and crashed, killing herself and a passenger; Kansas Supreme Court held that the intentional act exclusion applied and insured's intentional actions barred coverage"); *id*. at 285 Kan. At 935, 179 P.3d 432 ("injury was substantially certain to result under these circumstances: driving the wrong way against traffic, failing to stop at a stop sign, and driving at 100 m.p.h. through neighborhoods"); *Smith v. Am. Family Mut. Ins. Co.*, No. 2006AP611, 2007 WL 2728277, ¶¶ 26-29, 740 N.W.2d 901 (Wisc. Ct. App. Sept. 20, 2007) (finding similar exclusion unambiguous and concluding that "the intentional loss exclusion applies if [the insured] intended the act that caused the loss, i.e., setting fire to the curtains, regardless of whether [she] intended to cause the total loss of the home"); *S.C. Farm Bureau Mut. Ins. Co. v. Kelly*, 345 S.C. 232, 241, 547 S.E.2d 871, 876 (Ct. App. 2001)(exclusion applied; rejecting insured's argument that intentional loss exclusion did not apply because his adult son did not start the fire to obtain insurance benefits but only "to rid

himself of his sister's memories"); *Auto-Owners Ins. Co. v. Hamin*, 368 S.C. 536, 541, 629 S.E.2d 683, 684-685, 686 (Ct. App. 2006) ("intent to cause loss" was not ambiguous and barred coverage; insured admitted that she started the fire because she was upset with her mother and wanted to get her attention but did not think the house would ignite); *Lachman v. Farmers Ins. of Columbus*, 8th Dist. Cuyahoga No. 96904, 2012-Ohio-85, 2012 WL 112637, *5 (holding more narrow intentional-acts exclusion ("If any insured directly causes or arranges for a loss to covered property in order to obtain insurance benefits" (at *2)) applied to claim for fire damage where the fire was intentionally set, although the scope of the property damage was not intended); *Deeter v. Indiana Farmers Mut. Ins. Co.*, 999 N.E.2d 82, 85 (Ind. Ct. App. 2013) (an intentional loss exclusion barred coverage; rejecting argument that insured (Mrs. Deeter) did not set fire to cause a loss and recover insurance proceeds but because she was angry with Mr. Deeter for having an affair).

As set forth above, the incontrovertible evidence shows that the fire that destroyed Shea's property was not accidental. No reasonable jury could conclude otherwise. While Shea may not have intended to destroy all the property he destroyed, he intentionally threw an incidendiary devise that was, by definition, designed to ignite and spread fire. He did so on the insured property, in the middle of the dwelling and other structures. The intentional loss exclusion applies even if the loss was only indirectly caused by Shea's actions committed with the intent to cause a loss. Shea intentionally started a fire by throwing a Molotov cocktail close to and/or in the midst of various covered property (dwelling, structures, and contents). Regardless of the scope of the destruction he intended, the loss Plaintiff claims was caused directly or indirectly by his intentional conduct designed to cause destruction or loss.

C. Under no circumstances would the Estate ever have been entitled to insurance proceeds for the dwelling destroyed by the fire.

As recounted above, Liberty paid Sylvia Craig 100% of her insured interest as the mortgagee listed on the Policy ($177,870.00 under Coverage A (Dwelling) and $715.24 for the Appurtenant Structures ($2,409.24 less the $1,694 deductible per the Policy), for a total of $178,585.24. (App.168-169). That payment exhausted the policy limits under Coverage A. There is simply no additional coverage available for the Dwelling. As a practical matter, given Ms. Craig's interest as the mortgagee, the Estate would never have been entitled to any insurance proceeds for the dwelling. (Though, again, Ms. Craig is the Estate's sole beneficiary.) It is unclear what Plaintiff seeks with respect to Coverage B, but, again, Liberty paid the claimed damaged in full – to Ms. Craig as mortgagee. The only remaining coverage available is Coverage C, Contents. Because the contents were destroyed by Shea's intentional acts, the Policy's intentional loss exclusion bars coverage for those damages.

D. Plaintiff's breach of contract claim fails as a matter of law because the alleged losses were not accidental and barred by the intentional loss exclusion.

"A Texas breach of contract claim has four elements: (1) a valid contract, (2) plaintiff's performance, (3) defendant's breach, and (4) resulting damages." *Taylor v. Root Ins. Co.*, 109 F.4th 806, 809 (5th Cir. 2024) (citation omitted). Plaintiff asserts that Liberty "breached the insurance contract by wrongfully denying coverage for the fire that occurred on June 23, 2022, despite the Fire Marshall's [*sic*] determination that the fire was accidental and unintentional, which should have been covered under the policy terms." (Complaint (ECF No. 7) at ¶ 4.06.)

Contrary to Plaintiff's allegations, the Fire Marshal concluded "that the fire originated from the incendiary device that [Shea] threw out from the rear of the structure." (App.135, Ebel Aff., ¶ 11.) While Shea may not have intended to burn down his house, "his actions caused the fire." (*Id.*) As recounted above, not only did the Fire Marshal's report detail how the fire was

caused by Shea's throwing the Molotov cocktail, it did not identify evidence of any alternative cause of the fire. Plaintiff's allegations are, at best, misguided. The Fire Marshal's report directly and repeatedly contradicts the notion that the fire was caused by anything other than Shea's firebombing the law enforcement agents attempting to arrest him.[6]

Because the fire was caused by Shea's intentional tort, not an accident, the Intentional Loss exclusion bars coverage for the damage he caused. Thus, Plaintiff is not entitled to coverage for property destroyed in the fire. As a matter of law, Liberty did not breach the insurance contract because Plaintiff is not entitled coverage for the damage caused by Shea's tortious actions.

E. Plaintiff's extra-contractual claims fail with her contract claim because Shea's Estate was and is not entitled to coverage for the damage Shea caused.

Plaintiff asserts three categories of extra-contractual claims: "Violations of the Texas Insurance Code (Count II), Violations of the Texas Prompt Payment of Claims Act (Count III), and Breach of the Duty of Good Faith and Fair Dealing (Count IV). Each of these claims is based on Plaintiff's mischaracterization of the Fire Marshal's report. Each of these claims depends on the underlying breach of contract claim. Without the right to some insurance benefits, each of these extracontractual claims fails as a matter of law

1. Plaintiff's extracontractual claims presume that she was entitled to coverage:

a. Insurance Code Claim (Count II)

Plaintiff alleges that Liberty violated Texas Insurance Code § 541.060 "by engaging in unfair settlement practices" in three ways, all of which presume that the Estate was entitled to coverage that Liberty wrongfully denied:

[6] There is no basis for Plaintiff allegation that the "Fire Marshall's [*sic*] report found no evidence of a Molotov Cocktail, other incendiary devices, or any other indications of any intentional acts to have caused the fire." (Complaint (ECF No. 7) at ¶ 3.10.)

> - "Misrepresenting material facts relating to the coverage at issue by claiming the fire was intentionally set when the Fire Marshall [*sic*] had determined it was accidental;"
> - "Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear based on the Fire Marshall's [*sic*] report;" and
> - "Refusing to pay the claim without conducting a reasonable investigation with respect to the claim by ignoring the official Fire Marshall's [*sic*] findings."

(Complaint (ECF No. 7), Count II (Violations of Texas Insurance Code), at ¶4.12.)

b. Texas Prompt Payment of Claims Act (Count III)

Plaintiff asserts Liberty violated the Texas Prompt Payment of Claims Act (TPPCA) by

> delaying payment of the claim for a period exceeding 60 days after receiving all items, statements, and forms reasonably requested and required, and by wrongfully denying the claim on September 28, 2023, despite having the Fire Marshall's [*sic*] report dated August 25, 2023, which determined the fire was accidental.

(*Id*., Count III (Prompt Payment of Claims Act), ¶ 4.22, citing Texas Insurance Code § 542.058.)

c. Duty of Good Faith and Fair Dealing (Count IV)

Finally, Plaintiff asserts that Liberty breached its duty of good faith and fair dealing by "denying the claim without a reasonable basis, strictly based upon hearsay evidence and unsubstantiated reports, while intentionally ignoring the official Fire Marshall [*sic*] findings that expressly stated the fire was 'accidental' and 'unintentional.'" (*Id*., ¶4.26.)

2. Because Plaintiff's claim is excluded, her extracontractual claims fail as a matter of law.

"To have a bad faith claim under either the Texas Insurance Code or Texas common law, the insured must have a claim covered under an insurance policy." *Certain Underwriters at Lloyds London v. Corp. Pines Realty Corp.*, 355 Fed. App'x. 778, 783 (5th Cir. 2009) (citing *Progressive County Mut. Ins. Co. v. Boyd,* 177 S.W.3d 919, 922 (Tex.2005) (per curiam)). *See also Taylor v. Root Ins. Co.*, 109 F.4th 806, 809 (5th Cir. 2024)("a TPPCA violation exists only if

the insurer is liable for a claim under a policy")(agreeing with *Tremago, L.P. v. Euler-Hermes Am. Credit Indem. Co.*, 602 F. App'x 981, 983 (5th Cir. 2015)). Simply put, because Liberty properly denied Plaintiff's claim for coverage, she has no basis for her extracontractual claims.

"An insurer has a duty to deal fairly and in good faith with its insured in the processing and payment of claims. A breach of the duty of good faith and fair dealing is established when: (1) there is an absence of a reasonable basis for denying or delaying payment of benefits under the policy and (2) the carrier knew or should have known that there was not a reasonable basis for denying the claim or delaying payment of the claim." *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 340 (Tex. 1995) (citations omitted). Both prongs or elements of that test presume coverage; that is, they both require a finding that the insured is entitled to policy benefits. "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." *Id.* (citations omitted).

The Texas Supreme Court has repeatedly made clear that, in most instances, bad faith claims cannot survive when there is no underlying policy coverage. The Court has explained that there are only "two paths an insured may take to establish the damages caused by an insurer's violation of the Insurance Code: either the insured establishes (1) a right to receive benefits under the policy or (2) an injury independent of a right to benefits." *In re State Farm Mut. Auto. Ins. Co.*, 629 S.W.3d 866, 872–73 (Tex. 2021) (citations and internal quotation marks omitted). As the Supreme Court explained:

> Under the first path, if an insured establishes a right to receive benefits under the insurance policy [he] can recover those benefits as "actual damages" under the [Insurance Code] if the insurer's statutory violation causes the loss of benefits. And under the second path, if an insurer's statutory violation causes an injury independent of the insured's right to recover policy benefits, the insured may recover damages for that injury even if the policy does not entitle the insured to receive benefits.

Id. at 873 (citations and internal quotation marks omitted). Moreover, the Supreme Court has re-iterated: "there is no alternative to these two pathways. An insured cannot recover any damages based on an insurer's statutory violation if the insured had no right to receive benefits under the policy and sustained no injury independent of a right to benefits." *Id*. (citation and internal quotation marks omitted).

As set forth above, the Estate is not entitled to insurance benefits. Thus, Plaintiff can have no extra-contractual claim based on the denial of such policy benefits. Plaintiff does not allege an injury independent of the right insurance benefits and can have no extra-contractual claim on that basis, either. Thus, Liberty is entitled to judgment as a matter of law on Plaintiff's extracontractual claims.

VI. Conclusion

Based upon the unambiguous provisions of the Policy and the undisputed fact that Shea's intentional act caused fire, the policy does not cover the damages he caused. The damages Plaintiff seeks were not caused by an accident, so the "intentional loss" exclusion bars coverage. Accordingly, Liberty is entitled to judgment as a matter of law on Plaintiff's breach of contract claim. Because Plaintiff's extracontractual claims are all premised on a claim to policy benefits, those claims also fail as a matter of law.

WHEREFORE, PREMISES CONSIDERED, Defendant Liberty Mutual Personal Insurance Company prays that this Court grant its Motion for Summary Judgment; that Plaintiff take nothing by its claims; and for such other and further relief to which it may be justly entitled.

[*signature on following page*]

Respectfully submitted,

/s/ John D. Ormond

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Certificate of Service

In accordance with the FEDERAL RULES OF CIVIL PROCEDURE, I certify that this document was served on Plaintiff's counsel of record (James I. Harlan: jharlan@harlanlaw.com) via the court's ECF system on September 14, 2026.

/s/ John D. Ormond
John D. Ormond