IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HARBOR LAKES HOMEOWNERS ASSOCIATION, INC., *et al.*	§	
	§	
v.	§	**NO. 4:23-CV-00620-ALM-BD**
	§	
TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

In this diversity case, plaintiffs Harbor Lakes Homeowners Association, Inc., and Texas Star Community Management, LLC, sued Travelers Casualty & Surety Company of America for breach of an insurance policy and violation of the Texas Insurance Code. Dkt. 8; *see* 28 U.S.C. § 1332. Texas Star moved for partial summary judgment, seeking a determination that three exclusions in the policy are inapplicable based on the underlying facts. Dkt. 13. Travelers filed a combined response to that motion and cross-motion for summary judgment. Dkt. 14; *see* Dkts. 15 (Texas Star's combined reply in support of its motion for partial summary judgment and response to Travelers' cross-motion for summary judgment), 18 (reply in support of Travelers' cross-motion for summary judgment). The court will recommend that Texas Star's motion for partial summary judgment be denied and that Travelers' motion for summary judgment be granted.

BACKGROUND

I. Factual Background

Harbor Lakes is a Hood County homeowners' association. Dkt. 8 at 1. In 2016, it hired Texas Star as its management company. Dkt. 14 at 8. Under the contract that governed their relationship, Texas Star was to report any claims against Harbor Lakes to its insurer. *Id.*

Later that year, Harbor Lakes resident Scott Hoyt began complaining to Texas Star that Harbor Lakes had failed to remove debris from a waterway, as required by his contract with Harbor Lakes. Dkt. 13-4 at 5–6. He demanded reimbursement, *id.*, and, in July 2019, sued Harbor Lakes for breach

of contract, *Hoyt v. Harbor Lakes Homeowners Ass'n*, No. C-2019150 (355th Dist. Ct., Hood Cnty., Tex. July 12, 2019). Texas Star, however, did not notify Liberty Insurance Underwriters, Inc., Harbor Lakes' insurer, of Hoyt's claim. Dkts. 13 at 4, 13-4 at 2, 4. After Habor Lakes settled with Hoyt without the benefit of its insurer's defense, it sued Texas Star for breach of contract. Dkt. 13 at 3–4; *Harbor Lakes Homeowners Ass'n, Inc. v. Liberty Ins. Underwriters, Inc.*, No. 471-03226-2020 (471st Dist. Ct., Collin Cnty., Tex. July 6, 2020).

At the relevant time, Texas Star had an insurance policy of its own. That policy was with Travelers, and it covered, among other things, defense of civil proceedings against it. Dkt. 13-6 at 44. Texas Star submitted a claim to Travelers based on Harbor Lakes's suit against it, but Travelers denied the claim, asserting that it was subject to a "professional service" exclusion in the policy but reserving other defenses. Dkt. 13-7 at 4. Texas Star provided for its own defense and eventually settled with Harbor Lakes. Dkt. 14 at 9. Then it, along with Harbor Lakes, sued Travelers for breach of contract, violation of the Prompt Payment of Claims Act, Tex. Ins. Code § 542.051 *et seq.*, and attorneys' fees, Dkt. 8 (operative complaint).

II. Procedural History

Harbor Lakes and Texas Star initially sued Travelers in state court. Dkt. 2. Travelers removed the case to this court based on diversity of the parties' citizenships, Dkt. 1, and the plaintiffs amended their complaint, Dkt. 8.

During their rule 26(f) conference, the parties agreed that discovery should occur in phases, with the first phase focused on whether any insurance-coverage exclusion applies. Dkt. 11 at 3. The court entered a scheduling order that called for cross-motions for summary judgment on that issue. Dkt. 12. Texas Star filed its motion first, arguing that three potentially applicable exclusions do not, in fact, apply. Dkt. 14. Travelers responded with its own motion, making no argument that one of the three exclusions applies but arguing that both of the other two do. Dkt. 14 at 10 n.4. The arguably applicable exclusions are for a "professional service" and an "express contract." Dkt. 13-6 at 48–49, 77.

SUMMARY-JUDGMENT STANDARD

A summary-judgment movant bears the initial burden of demonstrating, by reference to record evidence, if necessary, that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material if, under the governing substantive law, it could affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

When the nonmovant would bear the burden of proof at trial, the movant may carry its initial summary-judgment burden by asserting that "the nonmovant has failed to establish an element essential to" its case. *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 335 (5th Cir. 2017). The nonmovant may then avoid summary judgment by demonstrating the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "[A] party opposing a properly-supported summary judgment motion may not rest upon mere allegations contained in the pleadings, but must set forth and support by summary judgment evidence specific facts showing the existence of a genuine issue for trial." *Johnson v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 90 F.4th 449, 460 (5th Cir. 2024) (quotation marks omitted). Although the court must resolve all reasonable doubts in the nonmovant's favor, *Casey Enters., Inc. v. Am. Hardware Mut. Ins. Co.*, 655 F.2d 598, 602 (5th Cir. Unit B Sept. 1981), "[c]onclusional allegations and denials, speculation, and unsupported assertions are insufficient to avoid summary judgment," *Sanches v. Carrollton-Farmers Branch ISD*, 647 F.3d 156, 165 (5th Cir. 2011).

DISCUSSION

I. Texas Law on Contract Interpretation

The parties agree that Texas law governs this case. *See* Dkts. 13 at 5, 14 at 15–17. Under that law, an insured suing for breach of an insurance policy bears the burden to show that the policy exists and that the relevant risk falls within its coverage. *Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W.3d 773, 782 (Tex. 2008). The insurer can avoid liability by showing that the loss is excluded

from coverage. *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's Lond.*, 327 S.W.3d 118, 124 (Tex. 2010).

The parties also agree that a valid policy was in force at the time of the underlying lawsuit; they disagree only as to whether Travelers must pay for Texas Star's defense. The answer to that question depends on interpretation of the policy.

An insurance policy is a contract like any other; the court interprets it according to the rules of contract construction. *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 118 (Tex. 2015). The court's goal is to "ascertain the intentions of the parties as expressed in the document." *Id.* To do so, it must give undefined "words and phrases their ordinary and generally accepted meaning" and "give effect to all of the words and provisions so that none is rendered meaningless." *Id.* Any defined term, however, has the specific meaning the policy assigns it. *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 219 (Tex. 2003).

When interpreting an exclusion, "Texas courts apply the 'eight corners rule,'" which requires them to "look only to the four corners of the policy and the four corners of the underlying [pleading] to determine whether a duty to defend exists." *Admiral Ins. Co. v. Ford*, 607 F.3d 420, 424 (5th Cir. 2010) (citing *Nat'l Union Fire Ins. Co. of Pittsburgh v. Merchs. Fast Motor Lines, Inc.*, 939 S.W.2d 139, 141 (Tex. 1997)). To properly apply that synecdochic rule, a court must

> focus on the factual allegations in the underlying pleading rather than the legal theories alleged. If the pleading contains allegations that, when fairly and reasonably construed, state a cause of action that is potentially covered by the policy, then the insurer has a duty to defend the insured in the underlying lawsuit. If a petition does not allege facts within the scope of coverage, an insurer is not legally required to defend the suit against its insured.

Id. at 424–25 (citations and quotation marks omitted).

If more than one reasonable interpretation of a policy provision is possible, the provision is ambiguous. *RSUI*, 466 S.W.3d at 118. The court must construe ambiguities in provisions that limit coverage in favor of the insured, "even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent." *Id.*

II. The Applicability of the Contract Exclusion

As noted, Travelers makes no argument that one of the three potentially applicable exclusions, for property damage and mold, applies here. Dkt. 14 at 10 n.4. The parties debate at some length whether a second potentially applicable exclusion, for a professional service, applies. Extensive though it is, the parties' briefing on that point still leaves material questions unanswered. For example, the term "Specified Professional Service" in the exclusion is defined in a schedule as "administrative, financial, consulting, development and architectural review." Dkt. 13-6 at 77. The use of "and," rather than "or," in the schedule suggests that the singular "Specified Professional Service" must encompass all five listed components. *See Berkshire Settlements v. Ashkenazi*, No. 09-cv-0006 FB JO, 2012 WL 4928845, at *1 (E.D.N.Y. Aug. 23, 2012) (reflecting that a schedule in an insurance policy may contain just one item), *report and recommendation adopted,* 2012 WL 4928864 (E.D.N.Y. Oct. 16, 2012). To read it more broadly, as encompassing any one of five distinct types of "Service" (or perhaps any one of five distinct types of "review") would arguably require changing the singular "Service" to the plural "Services" and changing the "and" to an "or." The parties do not engage on those interpretative issues or others that arise from the text of the professional-service exclusion.

The court need not, either, because the third exclusion unambiguously disclaims coverage of Texas Star's suit. It provides:

> 13. The Company will not be liable for Loss for any Claim, with respect to Insuring Agreement C. only:
>
> . . .
>
> e. for any liability of the Insured Organization under any express contract or agreement. For the purposes of this exclusion, an express contract or agreement is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making.

Dkt. 13-6 at 49.

That provision requires a little unpacking, starting with terms defined elsewhere in the policy. Travelers is "[t]he Company," *id.* at 9; Texas Star is the "Insured Organization," *id.* at 9, 21, 45.

With exceptions that neither party argues apply here, "Loss" means "Defense Expenses and money which an Insured is legally obligated to pay as a result of a Claim, including settlements, judgments, back and front pay, compensatory damages, punitive or exemplary damages or [their equivalent], prejudgment and postjudgment interest, and legal fees and expenses awarded pursuant to a court order or judgment." *Id.* at 45 (boldface removed); *see id.* at 21 (reflecting that "Defense Expenses" include "reasonable and necessary legal fees and expenses incurred by the Company or the Insured, with the Company's consent, in the investigation, defense, settlement and appeal of a Claim"). "Claim" means one of several things, including "a civil proceeding commenced by service of a complaint or similar pleading . . . against an Insured," such as Texas Star, "for a Wrongful Act." *Id.* at 44–45; *see id.* at 46 (defining "Wrongful Act" as, among other things, "any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty or neglect by, or any matter asserted against, the Insured Organization" (boldface removed)). And by virtue of "Insuring Agreement C," Travelers agreed to "pay on behalf of . . . the Insured Organization, Loss for Wrongful Acts, resulting from any Claim first made during the Policy Period." *Id.* at 44; *see id.* at 9, 21 (defining "Policy Period" as the time between March 1, 2020, and March 1, 2021, which includes the date on which Harbor Lakes filed its petition against Texas Star, *see* Dkt. 13-4 at 2).

The language after "Insured Organization" contains no defined terms. That means the words in that part of the provision bear their ordinary and generally accepted meanings. *See Pharr-San Juan-Alamo ISD v. Tex. Pol. Subdivisions Prop./Cas. Joint Self Ins. Fund*, 642 S.W.3d 466, 473 (Tex. 2022). Several of those words are in contention here.

Texas Star looks beyond the underlying pleading to argue that one of the provisions in its management contract with Harbor Lakes lacks "explicit or distinct language." Dkt. 13 at 15. It notes that the provision required Texas Star to notify an "appropriate insurer," as opposed to a specific insurer, to take "necessary steps," as opposed to specific steps, to "effect a prompt disposition," as opposed to a disposition by a specified time, of certain claims. *Id.* (emphasis removed) (quoting Dkt. 13-2 at 4–5). In other words, Texas Star maintains that the words

"appropriate," "necessary," and "prompt" render the management contract something less than "distinct" or "explicit," as those words are used in the policy's contract exclusion. It then says that its position "makes sense," claiming that "the message" that Travelers supposedly communicated to Texas Star through the contract exclusion is: "We will provide coverage to you if you violate a general contract term, but will not provide coverage to you if you violate an explicit term or requirement of the contract." Dkt. 13 at 15.

Travelers begins its response to that point by refuting a waiver or forfeiture argument that Texas Star did not make. Dkt. 14 at 21–22; *see* Dkt. 13 at 14 (Texas Star's observation that Travelers initially "chose not to rely upon" the contract exclusion "in denying coverage," but arguing that the exclusion "[d]oes [n]ot [a]pply," not that Travelers waived or forfeited the issue, raised in the summary-judgment filings, of whether the exclusion applies); *Garlington v. O'Leary*, 879 F.2d 277, 282 (7th Cir. 1989) (explaining that "a defense of waiver can itself be waived by not being raised"); *see also Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021) (explaining the difference between waiver and forfeiture but noting that some courts use the terms interchangeably). It then argues that the exclusion applies because the dispute between Texas Star and Harbor Lakes was for breach of contract and the contract exclusion applies when an underlying lawsuit asserts claims arising out of contractual obligations. Dkt. 14 at 22–23 (citing Harbor Lakes' state-court pleading, which alleged that Texas Star breached its contractual obligation to promptly notify Liberty Insurance of Hoyt's claim, Dkt. 13-4 at 8; *see id.* at 5–6, 10 (related factual allegations and declaratory-judgment claim)); *see also* Dkts. 15 at 12–14, 18 at 8–10 (the parties' further briefing on this point). Travelers is correct.

To begin, it is worth noting what is undisputed here. Texas Star does not deny that Harbor Lakes made a "Claim" against it, that the claim was "with respect to Insuring Agreement C.," or that the claim was for a "liability of the Insured Organization"—that is, Texas Star. Dkt. 13-6 at 49. Based on how those words are defined, it is unclear how Texas Star could make a credible argument about any of them. Similarly, Texas Star does not deny that Harbor Lakes made a claim "under," *id.*, the management contract, *see* Dkts. 13 at 15, 15 at 13–14.

That leaves in play only the phrases "express contract or agreement" and "actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making." And even with respect to those phrases, Texas Star's argument is limited. As noted, it takes the position that its written contract with Harbor Lakes was not "express" because its terms were not "stated in distinct or explicit language." Dkt. 13 at 14–15.

The first problem with that argument is that it is based on the underlying contract, not the "underlying pleading." *Admiral Ins.*, 607 F.3d at 424. Travelers correctly focused the court on Harbor Lakes' petition. *See id.*

The bigger problem, though, is that Harbor Lakes' petition sought to hold Texas Star liable for an alleged breach of the management agreement. That means there could be no question that the "underlying pleading . . . state[s] a cause of action that is potentially covered by" the contract exclusion. *Id.* And the cause of action is in fact covered. The contract was "express" in both the ordinary, generally accepted legal sense of that term, *see Contract*, Black's Law Dict. (11th ed. 2019) (defining an "express contract" as one "whose terms the parties have explicitly set out"), and under the language of the policy's contract exclusion, Dkt. 13-6 at 49. That is to say, there could be no serious contention that the terms of the management contract were not "openly stated," *id.*; without dispute, they appeared in a written contract between Harbor Lakes and Texas Star.

Nor could Texas Star be right to say that the relevant terms were not stated "in distinct or explicit language." *Id.* Although the terms "appropriate," "necessary," and "prompt," Dkt. 13 at 15, perhaps gave Texas Star some minimal wiggle room, they still appeared as part of distinct or explicit language defining its responsibilities to Harbor Lakes that, according to the "underlying pleading," *Admiral Ins.*, 607 F.3d at 424, Texas Star breached. Indeed, as described by that pleading, the contract had clear terms; it required "Texas Star . . . to report all claims and lawsuits to the applicable insurer, . . . Liberty Insurance." Dkt. 13-4 at 6. Because Texas Star allegedly failed to do so, the claim falls within the policy's contract exclusion.

At least one other court has reached the same conclusion on similar facts. In *Julio & Sons Co. v. Travelers Casualty & Surety Company of America*, the Southern District of New York applied Texas law on policy interpretation to conclude, under the "eight corners" rule, that the same contract exclusion at issue here applied to a breach-of-contract claim alleged in the relevant underlying pleading. 591 F. Supp. 2d 651, 655, 656–61 (2008). Unlike a breach-of-fiduciary duty claim that "d[id] not depend on the agreement," *id.* at 663, the breach-of-contract claim fell "clearly and unambiguously within the exclusion," *id.* at 661. And this court explained in another case that an insurance policy's differently worded contract exclusion "limit[ed the insurer's] duty to defend claims . . . made in connection to a contract or an agreement," finding it "clear from the eight-corners," as it is in this case, "that the [matters at issue] ar[o]se solely in connection with the [relevant contract]." *Conifer Health Sols., LLC v. QBE Specialty Ins. Co.*, No. 4:17-CV-00664, 2018 WL 4620613, at *8 (E.D. Tex. Sept. 26, 2018) (Mazzant, J.). In short, the contract exclusion applies.

III. Travelers' Entitlement to Summary Judgment

Texas Star and Harbor Lakes bring two causes of action against Travelers: breach of contract and violation of Chapter 542 of the Texas Insurance Code. Dkt. 8. Neither survives Travelers' motion for summary judgment.

To state a claim for breach of contract, the plaintiff must, naturally enough, show that the defendant breached the contract. *Tyler v. Citi-Residential Lending Inc.*, 812 F. Supp. 2d 784, 787 (N.D. Tex. 2011). Because the policy excluded coverage for Texas Star's claim, Travelers was not in breach.

Liability under Chapter 542 is likewise dependent on liability under an insurance contract. *Bush Constr., Inc. v. Tex. Mut. Ins. Co.*, 557 S.W.3d 817, 824 (Tex. App.—Texarkana 2018, no pet.). Without a breach of contract, neither Texas Star nor Harbor Lakes could recover damages or attorneys' fees. *See* Tex. Civ. Prac. & Rem. Code § 38.001.

In short, because the contract exclusion applies, the policy does not provide coverage for Texas Star's claim regardless of whether another exclusion might also apply. Travelers is therefore entitled to summary judgment.

RECOMMENDATION

It is **RECOMMENDED** that:

1) Texas Star's motion for partial summary judgment, Dkt. 13, be **DENIED**;
2) Travelers' motion for summary judgment, Dkt. 14, be **GRANTED**; and
3) the complaint, Dkt. 8, be **DISMISSED WITH PREJUDICE**.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1).

A party is entitled to a de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* § 636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*; 28 U.S.C. § 636(b)(1) (extending the time to file objections from 10 to 14 days).

So **ORDERED** and **SIGNED** this 18th day of February, 2026.

Bill Davis
United States Magistrate Judge