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

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| HARTFORD FIRE INSURANCE COMPANY, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | 1:25-CV-41-RP |
| | § | |
| HUNT CONSTRUCTION GROUP, INC., | § | |
| | § | |
| Defendant. | § | |

**ORDER**

Before the Court is the report and recommendation from United States Magistrate Judge Mark Lane concerning Defendant's Motion for Judgment on the Pleadings, (Dkt. 15 (public), Dkt. 17 (sealed)). (R. & R., Dkt. 31). Pursuant to 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Judge Lane issued his report and recommendation on January 21, 2026. (*Id.*). Defendant timely filed objections to the report and recommendation. (Objs., Dkt. 32).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Defendant timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Defendant's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the Report and Recommendation of the United States Magistrate Judge, (Dkt. 31), is **ADOPTED**.

Defendant's Motion for Judgment on the Pleadings, (Dkt. 17), is **DENIED**.

**SIGNED** on March 17, 2026.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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

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|---|---|---|
| **HARTFORD FIRE INSURANCE COMPANY,** | § | |
| **Plaintiff,** | § | |
| **v.** | § | **CA 1:25-CV-41-RP** |
| | § | |
| **HUNT CONSTRUCTION GROUP, INC.,** | § | |
| **Defendant.** | § | |

**REPORT AND RECOMMENDATION**
**OF THE UNITED STATES MAGISTRATE JUDGE**

TO THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE:

Before the court is Defendant Hunt Construction Group, Inc.'s Motion for Judgment on the Pleadings (Dkt. 15 (public), 16 (sealed)),[1] and all related briefing. After reviewing the pleadings, the relevant case law, and conducting a hearing, the undersigned submits the following Report and Recommendation to the District Judge.

## I. BACKGROUND

Defendant Hunt Construction Group, Inc. was the general contractor for the construction of the Manchester Austin Hotel (the "Hotel"). Dkt. 1 (Compl.) ¶¶ 2, 12. Hunt purchased from Hartford Fire Insurance Company a consolidated general liability policy (the "Policy"), which provided coverage for certain types of damages arising out of the construction of the Hotel. Compl. ¶ 12.

Hunt and subcontractor Shambaugh & Son, L.P., d/b/a Northstar Fire Protection of Texas ("Northstar") entered into a subcontractor agreement (the "Northstar Subcontract"), in which

[1] The motion was referred by United States District Judge Robert Pitman to the undersigned for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. Text Order dated October 2, 2025.

Northstar agreed to design, furnish, and install the fire protection system for the Hotel. Compl. ¶ 21.

Hunt and subcontractor Cobb Mechanical Contractors, Inc. ("Cobb") also entered into a subcontractor agreement (the "Cobb Subcontract") (with the Northstar Subcontract, collectively the "Subcontracts"), in which Cobb agreed to design the mechanical and plumbing systems at the Hotel. Compl. ¶ 22.

The terms of the Subcontracts are substantially the same and provided that "Should any dispute between Hunt and the Subcontractor proceed to arbitration or to court, that forum shall award to the prevailing party all of its attorney's fees, disbursements or costs . . . incurred in connection with the prosecution or defense of the dispute." Compl. ¶ 24.

The Hotel's owner filed an arbitration asserting claims against Hunt arising out of the alleged negligent design and construction of the Hotel. Compl. ¶ 2. Hunt filed claims against s Northstar, Cobb (with Northstar, the "Subcontractors"), and other subcontractors; Northstar and Cobb asserted cross-claims against Hunt. Compl. ¶ 2. Northstar and Cobb are both Named Insureds under the Policy; accordingly, Hartford provided a defense to both Northstar and Cobb[2] in the Arbitration. Compl. ¶¶ 14, 2, 28-29.

The Arbitration Panel issued a Partial Award, in favor of Northstar and Cobb on all their respective claims, declaring them "prevailing parties," ordering Hunt to pay them both damages and finding they would be entitled to their attorney's fees and costs. Compl. ¶¶ 34-37. Northstar settled its claims with Hunt before the Arbitration Panel issued its Final Award. Compl. ¶¶ 4, 44. The Arbitration Panel's Final Award ordered Hunt to pay all of the fees Cobb requested that were associated with its defense against Hunt's claims and its prosecution of its own claims. Compl. ¶ 4.

[2] It appears that Cobb, at least, was also provided a defense by another insurer.

Cobb moved to enforce the Final Award in a confirmation lawsuit before this court. Compl. ¶ 61; *see Hunt Constr. Grp. v. Cobb Mech. Contractors, Inc.,* Case No. 1:17-CV-00215-DAE. Senior District Judge David Ezra confirmed the Final Award but denied Hartford's motion to intervene. Compl. ¶ 65. Relying on Cobb's representation that it had not sought to recover any fees paid by Hartford, Judge Ezra held that Hartford did not have the right to intervene and that he would not exercise his discretion to grant permissive intervention. Compl. ¶ 65; 1:17-CV-00215-DAE, Dkt. 250 (sealed) at 26. Instead, Judge Ezra suggested Hartford pursue its fees in a separate proceeding. Compl. ¶ 65; 1:17-CV-00215-DAE, Dkt. 65 (sealed). The parties, which did not include Hartford, then settled their claims and moved to dismiss with prejudice, which Judge Ezra granted. Compl. ¶ 66; 1:17-CV-00215-DAE, Dkts. 254, 255. The Order stated that "Each party is to bear its own costs, attorneys' fees, and expenses." 1:17-CV-00215-DAE, Dkt. 255.

Hartford paid over $800,000 of Northstar's attorneys' fees and costs and $2,128,208.36 of Cobb's attorneys' fees and costs. Compl. ¶ 5. Hartford now seeks to recover those fees from Hunt. For each of Northstar's and Cobb's attorneys' fees and costs, Hartford asserts claims for subrogation and money had and received. Compl. ¶¶ 73-111. Hunt moves for judgment on the pleadings under Rule 12(c) arguing that Hartford cannot prevail on its claims.

## II. Standard of Review

"A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6)." *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 209 (5th Cir. 2009). When evaluating a motion to dismiss for failure to state a claim under Rule 12(b)(6) the complaint must be liberally construed in favor of the plaintiff and all facts pleaded therein must be taken as true. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

Although Federal Rule of Civil Procedure 8 mandates only that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief," this standard demands more than unadorned accusations, "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "naked assertion[s]" devoid of "further factual enhancement." *Bell Atl. v. Twombly*, 550 U.S. 544, 555-57 (2007). Rather, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id*. at 570. The Supreme Court has made clear this plausibility standard is not simply a "probability requirement," but imposes a standard higher than "a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The standard is properly guided by "[t]wo working principles." *Id*. First, although "a court must 'accept as true all of the allegations contained in a complaint,' that tenet is inapplicable to legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. at 678. Second, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, in considering a motion to dismiss, the court must initially identify pleadings that are no more than legal conclusions not entitled to the assumption of truth, then assume the veracity of well-pleaded factual allegations and determine whether those allegations plausibly give rise to an entitlement to relief. If not, "the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" *Id*. at 679 (quoting FED. R. CIV. P. 8(a)(2)).

In deciding the motion, the court may "rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (internal quotation omitted); *see also Carter v. Target Corp.*, 541 F. App'x 413, 416 (5th Cir. 2013) ("[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim"). The court may likewise take judicial notice of matters of public record, such as documents filed in the county property records. *Norris v. Hearst Tr.*, 500 F.3d 454, 461 n.9 (5th Cir. 2007).

## III. INSURANCE CONTRACTS

Texas substantive law governs the insurance contracts at issue in this diversity action. *See Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938); *Bexar Cnty. Hosp. Dist. v. Factory Mut. Ins. Co.*, 475 F.3d 274, 276 (5th Cir. 2007). "Texas courts interpret insurance policies according to the rules of contract construction." *Tetra Techs., Inc. v. Cont'l Ins. Co.*, 814 F.3d 733, 746 (5th Cir. 2016) (quoting *Likens v. Hartford Life & Accident Ins. Co.*, 688 F.3d 197, 199 (5th Cir. 2012)). The court "evaluate[s] the contract based on its plain meaning, determining what the words of the contract say the parties agreed to do." *Id.* The court "must examine the policy as a whole, seeking to harmonize all provisions and render none meaningless." *Id.* (quoting *In re Deepwater Horizon*, 470 S.W.3d 452, 464 (Tex. 2015)). If policy language is worded so that it can be given a definite or certain legal meaning, it is not ambiguous," and the court must "construe [the policy] as a matter of law and enforce it as written." *Id.* "An ambiguity does not exist . . . simply because the parties interpret a policy differently." *Id.* Instead, a policy is ambiguous "if the contractual language is susceptible to two or more reasonable interpretations." *Id.* Ambiguous policy language—in particular, exclusionary language—must be construed "strictly against the insurer and liberally in favor of the insured." *Id.* "If the insured's construction of an ambiguous exclusionary provision is reasonable, the court must adopt it, even if it is not the most reasonable position." *Id.*

## IV. The Policy

The Policy contains several relevant provisions to this suit:

> **Transfer Of Rights Of Recovery Against Others To Us**
> a. Transfer of Rights Of Recovery
> If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Dkt. 1-1 (Policy) at 23.[3]

> **Joint Defense And Separation Of Insureds**
> **. . . .**
> Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:
> a. As if each Named Insured were the only Named Insured; and
> b. Separately to each insured against whom claim is made or "suit" is brought. . . .

Dkt. 1-1 (Policy) at 53.

## V. Analysis

### A. Subrogation Claims

There are two types of subrogation. *Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co.*, 236 S.W.3d 765, 774 (Tex. 2007). Contractual (or conventional) subrogation is created by an agreement or contract that grants the right to pursue reimbursement from a third party in exchange for payment of a loss, while equitable (or legal) subrogation does not depend on contract but arises in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter. *Id*. In either case, the insurer stands in the shoes of the insured, obtaining only those rights held by the insured against a third party, subject to any defenses held by the third party against the insured. *Id*.

[3] The page number refers to the CMECF page number in the document header.

The anti-subrogation rule provides that an insurer has no right of subrogation against its own insured for a claim arising from the very same risk for which the insured was covered. *State Farm Mut. Auto. Ins. Co. v. Perkins*, 216 S.W.3d 396, 401 (Tex. App.—Eastland 2006); *see also Dow Chem. Co. v. M/V Roberta Tabor*, 815 F.2d 1037, 1043 (5th Cir. 1987) ("[A]n insurer cannot by way of subrogation recover against its insured or an additional assured any part of its payment for a risk covered by the policy.").

Hartford asserts it is entitled to step into Northstar's and Cobb's shoes to seek its attorneys' fees and costs from Hunt. Hartford bases its entitlement to attorneys' fees on: (1) the Policy provision providing that if an insured has rights to recover all or part of any payment that Hartford has made, that right is transferred to Hartford, *see* Dkt. 1-1 at 23 (Policy § IV.8); (2) the Subcontracts entitled the prevailing party of any dispute to attorneys' fees and costs; and (3) the Arbitration Panel's Partial Award naming Northstar and Cobb as prevailing parties entitled to their attorneys' fees and costs. Compl. ¶¶ 74-77.

Hunt argues Hartford's subrogation claims fail because: (1) Texas's anti-subrogation rule prohibits Hartford's equitable subrogation claims; (2) the Policy prohibits Hartford's contractual subrogation claim; and (3) Hartford has no viable subrogation rights against Hunt because neither Northstar nor Cobb would be able to recover defense costs from Hunt due to their settlements. Because this third issue is potentially dispositive of the first two, the court will take these issues in reverse order. Accordingly, the court first begins with whether Hartford has any right to seek Northstar's or Cobb's attorneys' fees.

1. <u>Settlement Agreements</u>

Hunt argues Hartford has no viable subrogation rights because the Subcontractors have no right to recover from Hunt.

Hunt and Northstar settled before the Arbitration Panel issued its Final Award. Compl. ¶ 44. The Northstar Settlement Agreement recognized that Hartford paid no more than $809,619.40 in attorneys' fees and costs defending Northstar. Compl. ¶ 46. Hunt agreed to pay Northstar a settlement sum in exchange for mutual releases of Hunt's and Northstar's respective claims against each other. Compl. ¶ 47. Hartford pleaded the settlement amount "did not include any fees or litigation costs that Hartford paid on behalf of Northstar" and the release language "explicitly carved out and did not include claims arising out of or related to the attorneys' fees and costs paid by Hartford on Northstar's behalf, and specifically stated that the release was not intended to affect Hartford's reimbursement claims against Hunt." Compl. ¶¶ 48-49. Hunt argues the Arbitration Panel's Final Award dismissed with prejudice all claims that Northstar had against Hunt, including any right to attorneys' fees and costs. Hunt asserts, in light of the Northstar Settlement Agreement and the Arbitration Panel's Final Award, Northstar has no right to recover further from Hunt and therefore neither does Hartford.

Similarly, Hunt argues Hartford cannot recover from Hunt because Cobb cannot recover. Hartford paid $2,128,208.36 of attorneys' fees and costs to defend Cobb against Hunt's arbitration claims. Compl. ¶ 5. The Arbitration Panel's Final Award ordered Hunt to pay Cobb's fees. Compl. ¶ 41. Cobb moved to enforce the Final Award in court. Compl. ¶ 61; *see Hunt Constr. Grp. v. Cobb Mech. Contractors, Inc.,* Case No. 1:17-CV-00215-DAE. The parties, which did not include Hartford, settled their claims and moved to dismiss with prejudice. Compl. ¶ 66; 1:17-CV-00215-DAE, Dkts. 254, 255. The dismissal order stated that "Each party is to bear its own costs, attorneys' fees, and expenses." 1:17-CV-00215-DAE, Dkt. 255. Accordingly, Hunt argues Cobb has no right to recover attorneys' fees from Hunt and thus neither does Hartford.

Hartford argues that Northstar and Cobb could not release Hartford's attorneys' fees claims because Hartford exclusively possessed the defense cost reimbursement claims upon paying for Northstar's and Cobb's defenses. After considering the parties' arguments, the court agrees with Hartford.

The Policy language supports Hartford's arguments that the right to attorneys' fees and costs was vested in Hartford as soon as either Subcontractor had the right to recover the fees and costs. The Policy states: "If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights *are* transferred to us." Dkt. 1-1 (Policy) at 23 (emphasis added). This language is present tense and not conditional upon any further act by Hartford or the Insured.

Case law also supports this position. In *City of Lubbock v. Payne*, No. 07-10-0486-CV, 2011 WL 2463125, at *3 (Tex. App.—Amarillo June 17, 2011), the court held that "once the subrogee's rights become fixed via payment, a change in the subrogor's ability to pursue a cause of action does not affect the subrogee's ability." In other words, "if (1) the subrogor enters into a settlement with and gives a release to the wrongdoer after such payment, (2) while the tortfeasor knows of the subrogee's rights of subrogation, and (3) the subrogee is not party to the settlement, then settlement does not bar the subrogee from enforcing its subrogation right." *Payne*, 2011 WL 2463125, at *3. Similarly, *International Insurance Co. v. Medical-Professional Building*, 405 S.W.2d 867, 869 (Tex. Civ. App.—Corpus Christi 1966), held that "[i]f the insured, having a claim against a tort-feasor at the time when payment of insurance is made to him by his insurer, enters into a settlement with and gives a release to the wrongdoer after such payment, the latter having knowledge of insurer's rights of subrogation, and to which settlement the insurer is not a party, this does not bar an action to enforce the insurer's right of subrogation."

Finally, public policy and common sense support this conclusion. Without such a conclusion, an insured could settle all claims, including attorneys' fees paid by the insurer, with a tortfeasor in exchange for a kickback or inflated settlement amount to dismiss the insurer's right to attorneys' fees. The court is not speculating that either Northstar or Cobb did so here, but must consider the possible implications if the court were to follow Hunt's reasoning.

The Subcontracts gave the prevailing party in any dispute the right to their defense costs. Dkt. 1 ¶ 24. When the Arbitration Panel's Partial Award found the Subcontractors were "prevailing parties," their right to recover their defense costs came into existence. Under the Policy, because Hartford had already paid those costs, that right was immediately transferred to Hartford. Northstar and Cobb could only settle the rights and claims they had, and they no longer had the right to Hartford's defense costs. As such, neither Subcontractor had any ability, without Hartford's consent, to compromise or settle Hartford's rights. Accordingly, neither the settlement agreements themselves, nor the Arbitration Panel's Final Award including the Agreed Stipulation for Dismissal[4] (in the case of Northstar), nor the court's order confirming the Final Award or dismissal (in the case of Cobb)[5] could affect Hartford's right to recoup its defense costs from Hunt.

Consequently, Hartford's right to its defense costs has not been extinguished. The court next turns to whether the Policy itself or the anti-subrogation rule prohibits Hartford from seeking those costs from Hunt.

### 2. The Policy

Hunt argues Hartford cannot pursue subrogation under the Policy's terms because contractual subrogation "grants the right to pursue reimbursement from a third party," *see Mid-*

[4] Dkt. 17-1 (sealed) at 201.
[5] Dkts. 250 & 255 in 1:17-CV-00215-DAE.

*Continent*, 236 S.W.3d at 774, and Hunt is a "Named Insured" to the Policy, not a third party. Further, Hunt argues the Policy provides for subrogation only against third parties:

> If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Dkt. 1-1 (Policy) at 23. That section is titled "Transfer of Rights of Recovery Against Others to Us," which Hunt asserts supports its position that the Policy only contemplated subrogation against third parties. *Id.*; *see RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 121 (Tex. 2015) ("We agree that the "title, like every other portion of a contract, may be looked to in determining its meaning because headings and titles provide context and can inform the meaning of the sections they label.") (citation modified). Hunt further argues the Policy distinguished between "Others" and "Insureds" and if Hartford intended the Policy to depart from the anti-subrogation rule, it should have used unambiguous language to inform Hunt that Hartford could subrogate against its Named Insureds.

Hartford argues the "Transfer of Rights of Recovery Against Others to Us" provision does not support Hunt's argument because the word "others" only appears in the heading of that section and does not appear in the language describing Hartford's subrogation rights. Hartford further argues that "although 'courts may consider the title . . . the greater weight must be given to the operative contractual clauses of the agreement.'" *See RSUI Indem. Co.*, 466 S.W.3d at 121. Moreover, Hartford contends the word "others" is not defined by the Policy and does not exclude insureds—it simply refers to a broad category of anyone other than the particular insured being considered or referenced in that provision. Hartford argues Hunt's interpretation is contrary to the principle that an insurance agreement "should not be interpreted in an unreasonable or strained manner under the guise of contractual interpretation to enlarge or to restrict its provisions beyond what is reasonably contemplated by unambiguous terms or achieve an absurd conclusion." *See Barrios v. River Ventures, L.L.C.*, No. 21-30431, 2022 WL 1013848, at *3 (5th Cir. Apr. 5, 2022).

In reply, Hunt argues the "Transfer of Rights of Recovery Against Others to Us" limitation reflects Hunt's and the Subcontractors' expectations that Hartford agreed to assume all construction liability risks from cross-claims between insureds. Hunt contends that to the extent the parties offer competing, reasonable interpretations of the "Transfer of Rights of Recovery Against Others to Us" provision, the provision must be construed against Hartford and in favor of Hunt.

Hunt's arguments ignore the "Joint Defense and Separation of Insureds" provision, which states:

> Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:
> a. As if each Named Insured were the only Named Insured; and
> b. Separately to each insured against whom claim is made or "suit" is brought. . . .

Dkt. 1-1 (Policy) at 53; *see* Compl. ¶ 18. Hunt contends this provision only addresses potential conflicts of interest when multiple insureds are named in a claim or suit. This provision does address that situation, but it is not so limited by its terms. Under this provision, Hunt was plainly an "'Other," not an "Insured," with respect to claims—including Hunt's—against[6] the Subcontractors.

[6] It is undisputed that the Policy did not cover prosecution of any claims by a party, only defense of claims. The court recognizes that this does create a circular situation where Hunt could also be an "insured" as to the Subcontractors' affirmative claims against Hunt. At the hearing, Hunt argued that if it had not exhausted the Policy, it would ask Hartford to pay the Subcontractors' defense costs to Hartford. But rather than support Hunt's argument that such an interpretation would lead to a senseless situation, that example supports the court's reasoning. In that situation, Hartford would bear the risk of the defense costs.

Hunt asserts Hartford could have unambiguously expanded its contractual subrogation rights against its insureds by excluding coverage for cross-claims between insureds arising from construction disputes, and Hartford must now live with how it drafted the Policy. A typical "cross-suits" exclusion provides no coverage for "any injury, loss or damage arising out of any claim … initiated or caused to be brought by any insured covered by this policy against any other insured covered by this policy" and will be enforced when plainly worded. *See Certain Underwriters v. Sterling Custom Homes, Inc.*, 705 F. App'x 259, 264 (5th Cir. 2017) (quoting policy language). But such language would not expand contractual subrogation rights—it would limit coverage—and subrogation would not be an issue because there would be no coverage. Moreover, Hunt does not explain why such a clause is necessary in light of the Policy's "Joint Defense and Separation of Insureds" provision.

Read as a whole, particularly reading the "Transfer of Rights of Recovery Against Other to Us" and the "Joint Defense and Separation of Insureds" provisions together, the court cannot find that the Policy prohibits subrogation in this situation.

### 3. The Anti-Subrogation Rule

Finally, Hunt argues the anti-subrogation rule prevents Hartford from bringing a subrogation claim against Hunt. Hunt argues that to allow Hartford to serve as both an ally and an adversary to an insured would turn Hartford's duty of good faith and fair dealing on its head. Hunt asserts it paid premiums so that Hartford, not Hunt, would pay for the Subcontractors' defense for disputes arising from the Hotel.

Hartford asserts Texas law strongly favors subrogation and the anti-subrogation rule does not apply here. Hartford argues the anti-subrogation rule applies to indemnity or liability payments for losses, but here Hartford seeks to recover defense costs. Hartford also argues there was no covered loss at issue because the claims against Hunt were not covered by the Policy. Similarly, Hartford argues that because the damage award against Hunt was not covered, Hartford did not accept Hunt's premiums to cover the judgment against Hunt. Lastly, Hartford attempts to distinguish the cases cited by Hunt.

In reply, Hunt argues Hartford's cases do not consider the unique circumstances of an insurer agreeing to defend and indemnify project-related cross-claims between two insureds. Hunt asserts Hartford also cites to cases supporting an insurer's *direct right* of reimbursement *against the insured receiving a defense* (not, as here, from the subrogor-insured pursuing the claim) "when the claims it was defending are not covered." Dkt. 21 at 6.

Again, here, under the Policy, Hunt was an "Other" as to the defense Hartford provided to Cobb and Northstar. Dkt. 1-1 (Policy) at 53. Additionally, Hunt had exhausted the Policy limits. Thus, Hunt received the full benefits of the Policy for which it had paid. Accordingly, the anti-subrogation rule does not prohibit Hartford's claims here.

**B. Money Had and Received**

Hartford also asserts claims for Money Had and Received. Compl. ¶¶ 95-111. Hartford alleges that Hunt has retained the attorneys' fees and costs paid by Hartford, which in equity and good conscience belong to Hartford. *Id*. Hunt moves for judgment on this claim, arguing that "[a] cause of action for 'money had and received' cannot be sustained when an express contract covers the subject matter of the parties' dispute." Dkt. 17 at 20 (citing *Fortune Prod. v. Conoco, Inc*., 52 S.W.3d 671, 684 (Tex. 2000)). Hartford argues that "money had and received is a valid claim because Hunt holds money that belongs to Hartford by virtue of the Policy, the prevailing party provision of the Subcontract, and the Partial Award in the Arbitration. Even where the anti-subrogation rule may bar recovery, insurers may pursue claims for recoupment, like money had and received. Dkt. 20 at 20 (citing *Adams v. Unione Mediterranea Di Sicurta*, 364 F.3d 646, 656 (5th Cir. 2004)).

While Hartford cannot recover under both the Policy and under a claim for money had and received, it can plead its claims in the alternative. FED. R. CIV. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency.). The undersigned will not recommend dismissing this claim at this time. Dismissal is especially inappropriate given the closeness of the dispute and the difficulty in resolving the motion with respect to Hartford's subrogation claims. That issue was a challenging one, and both sides put forth excellent, compelling arguments.

## VI. RECOMMENDATIONS

The court **RECOMMENDS** that the District Judge **DENY** Defendant Hunt Construction Group, Inc.'s Motion for Judgment on the Pleadings (Dkt. 15 (public), 16 (sealed).

## VII. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Sers. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

SIGNED January 21, 2026.

MARK LANE
UNITED STATES MAGISTRATE JUDGE