United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MAGHSOUD TAGHAVI	§	
	§	
v.	§	CIVIL ACTION NO. 3:25-CV-1735-S-BN
	§	
BROOKLYN SPECIALTY INSURANCE COMPANY RRG, INC.	§	
	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Objections were filed. The Court reviewed de novo those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("FCR") [ECF No. 21].

Accordingly, the Court **GRANTS** Defendant's 12(b)(6) Motion to Dismiss Plaintiff's Stowers Liability, Breach of Contract, and Insurance Code Claims [ECF No. 11]. While Plaintiff's proposed Second Amended Complaint for Declaratory Judgment [ECF No. 24] does not adequately remedy the deficiencies identified in the FCR, given the arguments raised in Plaintiff's Objections to the FCR and Motion for Leave to File Second Amended Complaint [ECF No. 23], the Court **GRANTS** Plaintiff leave to amend the Complaint. The Court **ORDERS** Plaintiff to file any revised amended complaint by no later than **March 25, 2026**. If Plaintiff does not do so, the Court will enter judgment dismissing this lawsuit with prejudice without further notice.

Finally, in light of this Order, the Court **TERMINATES AS MOOT** Plaintiff's Motion for Leave to File Amended Complaint [ECF No. 15].

SO ORDERED.

SIGNED March 11, 2026.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MAGHSOUD TAGHAVI,	§	
	§	
Plaintiff,	§	
	§	
V.	§	No. 3:25-cv-1735-S-BN
	§	
BROOKLYN SPECIALTY INSURANCE COMPANY RRG, INC.,	§	
	§	
	§	
Defendant.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Maghsoud Taghavi filed a complaint against Defendant Brooklyn Specialty Insurance Company Risk Retention Group, Inc.'s ("BSIC") asserting claims for breach of contract, violation of the Texas Insurance Code, and *Stowers* liability and requesting a declaratory judgment under 28 U.S.C. § 2201. *See* Dkt. No. 1.

United States District Judge Karen Gren Scholer referred this lawsuit to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b). *See* Dkt. No. 6.

BCIS simultaneously answered the complaint and moved to dismiss its substantive claims under Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. Nos. 11 & 12. Taghavi responded to the motion and moved for leave to amend his complaint, and BCIS replied and responded to the motion for leave to amend. *See* Dkt. Nos. 14-16.

For the reasons and to the extent set out below, the Court should grant the motion to dismiss, deny as futile the motion for leave to amend, and dismiss this lawsuit.

Legal Standards

A motion under Rule 12(b)(6) is "not meant to resolve disputed facts or test the merits of a lawsuit" but "instead must show that, even in the plaintiff's best-case scenario, the complaint does not state a plausible case for relief." *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577, 581 (5th Cir. 2020).

Considering such a motion, the Court "accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205-06 (5th Cir. 2007).

But a plaintiff still must plead "enough facts to state a claim to relief that is plausible on its face" and must plead those facts with enough specificity "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 555 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

So a court's "obligation [is] to accept [the] complaint's factual allegations as true and assess whether those facts permit a reasonable inference that [a defendant] is liable." *Sewell*, 974 F.3d at 581; *cf. Bryant v. Ditech Fin., L.L.C.*, No. 23-10416, 2024 WL 890122, at *3 (5th Cir. Mar. 1, 2024) ("[J]ust as plaintiffs cannot state a claim using speculation, defendants cannot defeat plausible inferences using speculation.").

This "plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

So, "[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (cleaned up; quoting *Twombly*, 550 U.S. at 557); *see, e.g.*, *Parker v. Landry*, 935 F.3d 9, 17 (1st Cir. 2019) (Where "a complaint reveals random puffs of smoke but nothing resembling real signs of fire, the plausibility standard is not satisfied.").

And, while Federal Rule of Civil Procedure 8(a)(2) does not mandate detailed factual allegations, it does require that a plaintiff allege more than labels and conclusions.

So, while a court must accept a plaintiff's factual allegations as true, it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Consequently, a threadbare or formulaic recitation of the elements of a cause of action, supported by mere conclusory statements, will not suffice. *See id.*; *Armstrong v. Ashley*, 60 F.4th 262, 269 (5th Cir. 2023) ("[T]he court does not 'presume true a number of categories of statements, including legal conclusions; mere labels; threadbare recitals of the elements of a cause of action; conclusory statements; and naked assertions devoid of further factual enhancement.'" (quoting *Harmon v. City of Arlington, Tex.*, 16 F.4th 1159, 1162-63 (5th Cir. 2021))).

Summed up, "to survive" dismissal under *Twombly* and *Iqbal*, plaintiffs must "plead facts sufficient to show" that the claims asserted have "substantive plausibility" by stating "simply, concisely, and directly events" that they contend entitle them to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)).

Federal Rule of Civil Procedure 15 requires that leave to amend be granted freely "when justice so requires." FED. R. CIV. P. 15(a)(2).

Because this rule provides a "strong presumption in favor of granting leave to amend," *Fin. Acquisition Partners, LP v. Blackwell*, 440 F.3d 278, 291 (5th Cir. 2006), the Court must do so "unless there is a substantial reason to deny leave to amend," *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. Nov. 1981).

One such reason is futility. That is, "[i]f the complaint, as amended, would be subject to dismissal, then amendment is futile and the district court [is] within its discretion to deny leave to amend." *Martinez v. Nueces Cnty., Tex.*, 71 F.4th 385, 391 (5th Cir. 2023) (quoting *Ariyan, Inc. v. Sewage & Water Bd. of New Orleans*, 29 F.4th 226, 229 (5th Cir. 2022)).

In this regard, the Court must "ask whether, in his proposed amended complaint, [a plaintiff] has pleaded 'factual content that allows the court to draw the reasonable inference that [a] defendant is liable for the misconduct alleged.'" *Id.* (quoting *Iqbal*, 556 U.S. at 678); *cf. Peña v. City of Rio Grande City*, 879 F.3d 613, 618 (5th Cir. 2018) ("Where the district court's denial of leave to amend was based solely on futility, [the United States Court of Appeals for the Fifth Circuit] applies a de novo standard of review identical, in practice, to the standard used for reviewing a dismissal under Rule 12(b)(6).” (cleaned up)).

Aside from “matters of which judicial notice may be taken under Federal Rule of Evidence 201,” *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 900 (5th Cir. 2019) (citations omitted), a court cannot look beyond the pleadings in deciding a Rule 12(b)(6) motion, *see Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999); *see also Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.*, 976 F.3d 585, 589 (5th Cir. 2020) (Federal Rule of Evidence 201(d) “expressly provides that a court ‘may take judicial notice at *any* stage of the proceeding,’ and our precedents confirm judicially noticed facts may be considered in ruling on a 12(b)(6) motion.” (citations omitted)).

Pleadings in the Rule 12(b)(6) context include attachments to the complaint. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007); *see also Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 511 (11th Cir. 2019) (“The Civil Rules provide that an attachment to a complaint generally becomes ‘part of the pleading for all purposes,’ including for ruling on a motion to dismiss.” (quoting FED. R. CIV. P. 10(c); citations omitted)).

And, “[w]hen an allegation is contradicted by the contents of an exhibit attached to the pleading,” “the exhibit and not the allegation controls.” *Rogers v. City of Yoakrum*, 660 F. App’x 279, 285 n.6 (5th Cir. 2016) (per curiam) (cleaned up; quoting *United States ex rel. Riley v. St. Luke’s Episcopal Hosp.*, 355 F.3d 370, 377 (5th Cir. 2004) (citing *Simmons v. Peavy-Welsh Lumber Co.*, 113 F.2d 812, 813 (5th Cir. 1940))).

Documents "attache[d] to a motion to dismiss are considered to be part of the pleadings, if they are referred to in the plaintiff's complaint and are central to her claim." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)).

And, while the Fifth Circuit "has not articulated a test for determining when a document is central to a plaintiff's claims, the case law suggests that documents are central when they are necessary to establish an element of one of the plaintiff's claims. Thus, when a plaintiff's claim is based on the terms of a contract, the documents constituting the contract are central to the plaintiff's claim." *Kaye v. Lone Star Fund V (U.S.), L.P.*, 453 B.R. 645, 662 (N.D. Tex. 2011).

But, "if a document referenced in the plaintiff's complaint is merely evidence of an element of the plaintiff's claim, then the court may not incorporate it into the complaint." *Id.*

Analysis

Where Taghavi has submitted a proposed first amended complaint with his response to the motion to dismiss [Dkt. No. 15-1] and BSIC has responded to that proposed pleading by arguing that Taghavi's "requested amendment would be futile because no additional facts can possibly create a legally cognizable cause of action for *Stowers* Liability, Breach of Contract, or Insurance Code Claims," Dkt. No. 16 at 1, the Court should review the proposed amended complaint under the standards of Rule 12(b)(6) to determine if leave to amend is futile.

This lawsuit is related to a prior action in this Court, brought by Taghavi against Defendants Enrique Leblanc, Y&S Trucking ("Y&S"), and Ignacio Iser, in which the Court entered default judgment and awarded Taghavi $1,746,017.03 in damages, jointly and severally, against Leblanc, Y&S, and Iser, *see Taghavi v. Soto*, No. 3:21-cv-2557-S-BN, 2024 WL 4191731 (N.D. Tex. Aug. 21, 2024), *rec. accepted*, 2024 WL 4194326 (N.D. Tex. Sept. 13, 2024), and then granted Taghavi's motion under Federal Rule of Civil Procedure 64 and Section 31.002 of the Texas Civil Practice and Remedies Code for a turnover order awarding to him all rights and title to Leblanc, Y&S, and Iser's causes of action against BSIC, its subsidiaries, and any entity having an ownership stake of at least 51% in BSIC, *see Taghavi v. Soto*, No. 3:21-cv-2557-S-BN, 2025 WL 1773008 (N.D. Tex. June 4, 2025), *rec. accepted*, 2025 WL 1798942 (N.D. Tex. June 26, 2025).

Through his proposed amended complaint, Taghavi "seeks a declaratory judgment that [BSIC] provided coverage under the MCS-90 endorsement attached to the policy … to its insured, Y&S Trucking, LLC," and he characterizes this as a direct action authorized by federal law under 49 U.S.C. § 13906 and 49 C.F.R. § 387. Dkt. No. 15, ¶¶ 1.3 & 1.4.

And, so, the undersigned agrees with BSIC that, as pleaded, Taghavi's action is based on the MCS-90 endorsement. *See also id.*, ¶ 8.2 (seeking a "judgment declaring that [t]he insurance policy issued by [BSIC] was in effect at the time of the underlying crash; [t]he insurance policy issued by [BSIC]was issued with an MCS-90 endorsement; [t]he MCS-90 endorsement is applicable to the Judgment; and [BSIC] is obligated to pay the Judgment under the MCS-90 endorsement" (cleaned up)).

An "MCS-90 endorsement is not insurance. Instead, it 'creates a suretyship, which obligates an insurer to pay certain judgments against the insured, even though the insurance contract would have otherwise excluded coverage." *Wesco Ins. Co. v. Rich*, No. 22-60283, 2023 WL 166418, at *2 (5th Cir. Jan. 12, 2023) (per curiam) (cleaned up; quoting *Canal Ins. Co. v. Coleman*, 625 F.3d 244, 247 (5th Cir. 2010); citing 49 C.F.R. §§ 387.3; 387.7).

This endorsement, "required under the federal Motor Carrier Act," "is intended to protect the public by requiring registered interstate motor carriers to file with the Department of Transportation proof of insurance 'sufficient to pay ... for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property.'" *Progressive Com. Cas. Ins. Co. v. Xpress Transp. Logistics, LLC*, Civ. A. No. H-21-2683, 2022 WL 103555, at *3 (S.D. Tex. Jan. 11, 2022) (quoting 49 U.S.C. § 13906(a)(1)).

> To ensure that motor carriers have the minimum levels of financial responsibility required, the Motor Carrier Act and its accompanying regulations provide that obtaining an MCS-90 endorsement in a policy is one of the ways that a motor carrier can submit proof of the required financial responsibility. 49 C.F.R. § 387.7(d). This endorsement requires the insurer to pay "any final judgment recovered against the insured for public liability resulting from negligence in the operation ... or use of motor vehicles ... regardless of whether [it] is specifically described in the policy." *See* 49 C.F.R. § 387.15. The endorsement then allows the insurer to seek reimbursement from the insured. *Id.*

Id. (parenthetical omitted).

And, so, "[t]he endorsement does not protect the insured, but the public, by filling an insurance gap; it guarantees a source of recovery when a registered motor carrier negligently injures a member of the public and coverage does not otherwise apply." *Id.* at *4.

Taghavi asserts several claims that he contends the Court has turned over to him: (1) that BSIC breached its agreement with the judgment debtors (Leblanc, Y&S, and Iser) by failing to defend and indemnify them; (2) that, in various ways, BSIC violated Chapters 541 and 542 of the Texas Insurance Code; and (3) that BSIC failed to comply with the duties required of an insurer provided with a *Stowers* demand letter and thus failed to act with ordinary prudence and exposed Y&S to the judgment against it.

And, to the extent that Taghavi seeks a declaratory judgment under Section 2201, "the law makes clear that – although the Declaratory Judgment Act provides a remedy different from an injunction – it does not provide an additional cause of action with respect to the underlying claim." *Okpalobi v. Foster*, 244 F.3d 405, 423 n.31 (5th Cir. 2001) (citation omitted).

So, because "[a] request for declaratory judgment is not itself a cause of action," "a claim for a declaratory judgment necessarily fails if there is no underlying cause of action." *Wesner as Tr. of Charles Wesner, Jr. Living Tr. v. Southall*, No. 3:22-cv-927-B, 2023 WL 7107123, at *3 (N.D. Tex. Sept. 22, 2023) (cleaned up); *see also Val-Com Acquisitions Tr. v. CitiMortgage, Inc.*, 421 F. App'x 398, 400-01 (5th Cir. 2011) (per curiam) ("In a declaratory judgment action, the parties litigate the underlying claim, and the declaratory judgment is merely a form of relief that the court may grant." (citing *Collin Cnty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods (HAVEN)*, 915 F.2d 167, 171 (5th Cir. 1990))).

As to the underlying claims, BSIC argues that the *Stowers* claim should be dismissed because Taghavi alleges that BSIC "is obligated to pay the [default] judgment under the MCS-90 endorsement," *e.g.*, Dkt. No. 15-1, ¶ 1.6(c), and, while his *Stowers* claim is based on BSIC's failure to pay a pre-judgment demand, *see id.*, ¶¶ 7.1-7.3, the MCS-90 endorsement only provides for payment of final judgments, *see* Dkt. No. 11, Ex. A.

First, it's undisputed that the applicable policy in this case has an MCS-90 endorsement. *See generally* Dkt. No. 1 & Dkt. No. 15-1 (referencing the endorsement); Dkt. No. 11, Ex. A (actual endorsement attached to motion to dismiss). And, so, it's proper to consider the MCS-90 endorsement attached to the motion to dismiss, as it's referenced in Taghavi's operative (and proposed amended) complaint and central to his claims. *See Collins*, 224 F.3d at 498-99; *Kaye*, 453 B.R. at 662.

The court in *Xpress* addressed the intersection of a *Stowers* claim and a federally mandated MCS-90 endorsement:

> Under Texas law, an insurer has a *Stowers* duty, "to exercise ordinary care in the settlement of claims to protect its insureds against judgments in excess of policy limits." *Am. Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 843 n.2 (Tex. 1994). The "duty is not activated by a settlement demand unless: (1) the claim against the insured is within the scope of coverage, (2) there is a demand within policy limits, and (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured's potential exposure to an excess judgment." *Am. Guarantee & Liability Ins. Co. v. ACE Am. Ins. Co.*, 990 F.3d 842, 847 (5th Cir. 2021) (citing *Tex. Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312, 314 (Tex. 1994)). "This well-recognized duty arises from the obligations to defend

> and indemnify pursuant to the insurance contract and the control the policy grants to the insurer over the insured's defense." *St. Paul Fire & Marine Ins. Co. v. Convalescent Servs., Inc.*, 193 F.3d 340, 342 (5th Cir. 1999) (citation omitted).
>
> The Fifth Circuit treats the MCS-90 endorsement as a suretyship, rather than an indemnity relationship between an insurer and insured. *See Travelers Indem. Co. of Ill. v. W. Am. Specialized Transp. Servs., Inc.*, 409 F.3d 256, 260 (5th Cir. 2005) ("The prevailing law ... is that the MCS-90 endorsement imposed a suretyship obligation on [the insurer] to the [public]."). "A suretyship is a three-party relationship where the surety undertakes to perform to an obligee if the principal fails to do so. The surety stands in the shoes of the principal and must complete any obligation due the obligee at the time of default." 74 AM. JUR. 2d SURETYSHIP § 1 (2021 Update).
>
> The MCS-90 endorsement is a "safety net" for the public, and "not an ordinary insurance provision to protect the insured." *Travelers Indem.*, 409 F.3d at 260. The reasons behind a duty to settle in the indemnity-insurance context, in which the insurer has a duty to defend and indemnify the insured, do not apply to the MCS-90 endorsement context, in which the insurer owes only an obligation to pay the remaining debt of an insured after the insured's debt has been established. *See John Deere Ins. Co. v. Truckin' U.S.A.*, 122 F.3d 270, 275 (5th Cir. 1997) (the MCS-90 endorsement did not create a duty to indemnify among the insurers); *T.H.E. Ins. Co. v. Larsen Intermodal Servs., Inc.*, 242 F.3d 667, 677 (5th Cir. 2001) (recognizing that the MCS-90 endorsement does not itself create a duty to defend the insured).

Xpress, 2022 WL 103555, at *6.

Under this authority, the court in *Xpress* then rejected the argument that the insurer "has a duty to settle under the MCS-90 endorsement." *Id.* at *7.

And, to the extent that Taghavi has brought this lawsuit under the premise that BSIC "is obligated to pay the judgment under the MCS-90 endorsement" – and because Taghavi alleges no other contractual terms that could apply to this claim – the Court should dismiss this claim with prejudice for the reasons set out in *Xpress*. *Cf.* 2022 WL 103555, at *7 ("The outcome might be different if the insurance contract, by terms other than those in the MCS-90 endorsement, imposed a duty to defend and indemnify on [the insurer] that encompassed claims brought under the MCS-90 endorsement. *See T.H.E. Ins. Co.*, 242 F.3d at 677 ('[A]lthough the MCS-90 itself does not impose a duty to defend upon the insurer, neither does it negate such a duty that might fall upon the insurer under the Policy as interpreted according to state law.'). But that is not what [was] pleaded in [the] counterclaim [there].").

For these reasons, Taghavi also has not plausibly pleaded a breach of contract claim where he seeks coverage under the MCS-90 endorsement, centers this claim on that BCIS "breached the contract by failing to defend and indemnify the Judgment Debtors, causing them to sustain damages," and alleges no other provisions under which the contractual duty could arise nor that he presented BSIC with the applicable final judgment. Dkt. No. 15-1, ¶ 5.2; *see T.H.E. Ins. Co.*, 242 F.3d at 677 ("agree[ing] with [the insurer] that the MCS-90 does not impose a duty to defend on the insurer where such a duty would not have otherwise existed").

Turning next to the Texas Insurance Code claims,

> Chapter 541 of the Insurance Code prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." TEX. INS. CODE § 541.001(1); *Lyda Swinerton Builders, Inc. v. Okla. Sur. Co.*, 903 F.3d 435, 450 (5th Cir. 2018). The overlapping common law duty of good faith and fair dealing prohibits an insurer from denying or delaying payment of a claim when it lacks a "reasonable basis" for doing so or "should have known that no such basis existed." *Wells v. Minn. Life Ins. Co.*, 885 F.3d 885, 897 (5th Cir. 2018) (citation omitted).

Peterson v. Safeco Ins. Co. of Ind., No. 3:21-cv-2186-K, 2024 WL 3378393, at *5 (N.D. Tex. July 11, 2024).

And the undersigned agrees with BSIC that, like claims under the Texas Deceptive Trade Practices Act ("DTPA"), Chapter 541 claims cannot be assigned (or turned over). *See Great Am. Ins. Co. v. Fed. Ins. Co.*, No. 3:04-cv-2267-H, 2006 WL 2263312, at *10 (N.D. Tex. Aug. 8, 2006) ("Like the DTPA, the Insurance Code remedies are personal and punitive in nature. *See Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 9 (Tex. 1991) (holding Insurance Code treble damages to be punitive and designed to deter Code violations). Like the DTPA, the Insurance Code makes no provision for assignability. Like the DTPA treble damages, Insurance Code damages are intended to encourage suits by aggrieved consumers. *See id.* In fact each and every policy argument articulated by the Texas Supreme Court against assignment of a DTPA claim applies with equal force to a claim brought under the Texas Insurance Code."); *Goin v. Crump*, No. 05-18-00307-CV, 2020 WL 90919, at *15 (Tex. App. – Dallas Jan. 8, 2020) ("As with the DTPA, Chapter 541 provides remedies that are personal and punitive in nature. *See Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 9 (Tex. 1991) (noting that treble damages provision in predecessor statute to Insurance Code section 541.152(b) is punitive in nature and designed to deter violations of the Code).").

Chapter 542 is entitled 'Processing and Settlement of Claims,'" and "[a] violation of Chapter 542 is not of the same character as a violation of Chapter 541." *Goin*, 2020 WL 90919, at *16 (citing *Berkley Reg'l Ins. Co. v. Phila. Indem. Ins. Co.*, No. A-10-CA-362-SS, 2011 WL 9879170, at *9 (W.D. Tex. Apr. 27, 2011) ("Because the rationale of *[PPG Indus., Inc. v. JMB/Houston Ctr. Partners Ltd.*, 146 S.W.3d 79 (Tex. 2004),] does not seem to apply with great force to Chapter 542 of the Texas Insurance Code, the Court declines to extend the holding of that case to claims under that chapter."), *rev'd on other grounds*, 690 F.3d 342 (5th Cir. 2012)).

But, because Taghavi's pleaded claim – for reimbursement of a judgment – is a third-party claim, it cannot fall under Chapter 542. *See, e.g.*, *W.W. Rowland Trucking Co., Inc. v. Max Am. Ins. Co.*, 559 F. App'x 253, 258 (5th Cir. 2014) (per curiam) ("By its terms, the Prompt Payment Statute only applies to first-party claims. [TEX. INS. CODE] § 542.051 …. The Prompt Payment Statute does not define first-party claims, but Texas law distinguishes between first-party and third-party claims 'based on the claimant's relationship to the loss.' *Evanston Ins. Co. v. ATOFINA Petrochemicals, Inc.*, 256 S.W.3d 660, 674 (Tex. 2008). In a first-party claim, the insured 'seeks recovery for the insured's own loss'; in a third-party claim, the insured 'seeks coverage for injuries to a third party.' *Id.* at 674.").

And, so, because Taghavi has not plausibly pleaded an "underlying cause of action," his "claim for a declaratory judgment necessarily fails." *Wesner*, 2023 WL 7107123, at *3.

For these reasons, granting Taghavi leave to file the proposed amended complaint would be futile, as the amended claims would not survive a challenge under Rule 12(b)(6). The Court should therefore grant the motion to dismiss, deny the motion for leave to amend, and dismiss this case with prejudice.

That is because Taghavi has now shown how he would amend his claims confronted with a motion to dismiss and has not shown that the claims as amended would be plausibly pleaded, so the Court should conclude that he has now stated his best case and need not allow further leave to amend. *See, e.g.*, *Allen v. Navy Fed.*

Credit Union, No. 3:24-cv-949-L-BN, 2025 WL 484818, at *13 (N.D. Tex. Feb. 13, 2025) ("Granting leave to amend … is not necessary when the plaintiff has pleaded his or her 'best case' after being apprised of pleading deficiencies. Likewise, a district court need not grant a motion to amend if doing so would be an exercise in futility." (citations omitted)).

But the opportunity to file objections to these findings, conclusions, and recommendation (as further explained below) allows Taghavi another opportunity to show that this case should not be dismissed with prejudice and that the Court should instead grant leave to amend. *See Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1209 (5th Cir. 2021) (per curiam) ("A court should freely give leave to amend when justice so requires, but a movant must give the court at least some notice of what his or her amendments would be and how those amendments would cure the initial complaint's defects. If the plaintiff does not provide a copy of the amended complaint nor explain how the defects could be cured, a district court may deny leave." (citations omitted)).

Recommendation

The Court should grant Defendant Brooklyn Specialty Insurance Company Risk Retention Group, Inc.'s motion to dismiss [Dkt. No. 11], deny as futile Plaintiff Maghsoud Taghavi's motion for leave to amend [Dkt. No. 15], and, unless Taghavi through timely objections to these recommendations shows a basis to amend to allege a plausible claim, the Court should dismiss this lawsuit with prejudice for failure to state a claim on which relief may be granted.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: February 9, 2026

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE