



## **I. BACKGROUND**

This case stems from an insurance dispute concerning several properties owned by the Insureds. (Docs. 12 at 2; 13 at 3). Defendant issued two policies (the Policies) providing coverage for properties individually owned by each Insured, and managed by Woodcrest Capital. (Docs. 1 at 4–6; 13-3; 13-4). Woodcrest Capital and the property owners are named insureds under the Policies. (*See* Docs. 13-3, 13-4). Eleven (11) of the properties are located in Texas and three (3) in Missouri. *See id.* The first policy provided coverage from October 28, 2015, to October 28, 2016. (Doc. 13-3). The second policy provided coverage from October 28, 2016, to October 28, 2017. (Doc. 13-4). Additionally, the Policies contain the following relevant provisions:

**G. The Legal Action Against Us Condition in the COMMERCIAL PROPERTY CONDITIONS is replaced by the following:**

### **LEGAL ACTION AGAINST US**

No one may bring a legal action against us under this Commercial Property Coverage Part unless:

- 1.** There has been full compliance with all of the terms of this Commercial Property Coverage Part; and
- 2.** The action is brought within 2 years and one day from the date the cause of action first accrues. A cause of action first accrues on the date of the initial breach of our contractual duties alleged in the action.

(Docs. 13-3 at 212; 13-4 at 226).

### **VALUATION**

We will determine the amount of covered loss or damage as follows:

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2. Except as provided in 3., 5., 6., and 7. below, “**real property**” or “**personal property**”, other than “**improvements and betterments**”, which is not repaired, rebuilt, or replaced will be valued at the “**actual cash value**” at the time and place of loss or damage. If you commence the repair, rebuilding, or replacement of the lost or damaged “**real property**” or “**personal property**” within 24 months from the date the loss or damage occurred, upon completion of the repair, rebuilding, or replacement, we will pay you the difference between the “**actual cash value**” previously paid and the “**replacement cost**” at the time of loss or damage.

(Docs. 13-3 at 147; 13-4 at 127) (emphasis in original).

Between December 2015 and June 2017, the Insureds filed several insurance claims with Defendant for weather-related damage to the properties. (Docs. 12 at 2; 13 at 4–5). Due to a dispute regarding damages, the parties engaged in the contractual appraisal process for all properties except West Pafford, which is owned by Woodcrest Pafford. (Docs. 12 at 3; 13 at 5). Eventually, Defendant paid all policy benefits owed on the insurance claims. (Docs. 12 at 2; 13 at 5).

On May 21, 2020, the Insureds filed the instant lawsuit, raising claims for violations of the Texas Prompt Payment of Claims Act (TPPCA),<sup>2</sup> which is codified in Chapter 542 of the Texas Insurance Code (TIC), violations of Chapter 541 of the TIC, and breach of contract. (*See* Doc. 1). The Insureds seek damages for statutory interest and attorney fees under TIC §§ 542.058 and 542.060. *Id.* at 12.

In their Motion for Partial Summary Judgment (Plaintiffs’ Motion), Plaintiffs advise that the Insureds no longer wish to pursue their breach of contract or Chapter 541 claims against Defendant. (Doc. 12 at 3 n.2). Rather, noting that Defendant has made all payments owed under the Policies, the Insureds only seek damages for Defendant’s alleged violation of the TPPCA. *Id.* at 2–3. The eight Plaintiffs moving for partial summary judgment also argue Defendant violated

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2. The TPPCA claim is premised on fourteen insurance claims filed with Defendant. (*See* Doc. 1).

Chapter 542 of the TIC with respect to seven of the fourteen properties, all of which are owned individually by each moving Plaintiff. *Id.* Plaintiffs conclude Defendant owes statutory interest on each insurance claim for its alleged delay in paying the amount contractually owed. *Id.* at 4.

In its Motion for Partial Summary Judgment (Defendant’s Motion), Defendant contends Plaintiffs’ TPPCA claim is barred by the statute of limitations provision contained in the Policies. (*See* Doc. 13). Defendant also moves for summary judgment as to the Insureds’ claims for breach of contract and for violations of Chapter 541 of the TIC. *Id.* Finally, in its response opposing Plaintiffs’ Motion, Defendant maintains that for three of the seven properties which are the subject of Plaintiffs’ Motion, Plaintiffs cannot recover statutory interest on replacement-cost value (RCV) payments because Plaintiffs had not completed repairs as required by the Policies. (*See* Doc. 15).

## II. LEGAL STANDARD

Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must examine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52. In making this determination, the Court must consider the record as a whole by reviewing all pleadings, depositions, affidavits, and admissions on file, and drawing all justifiable inferences in favor of the party opposing the motion. *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). The Court may not weigh the evidence or evaluate the credibility of witnesses. *Id.*

The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party demonstrates an absence of evidence supporting the nonmoving party's case, then the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party cannot rest on the mere allegations of the pleadings to sustain this burden. Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248. "After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *Caboni*, 278 F.3d at 451. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. The admissibility of summary judgment evidence is subject to the same rules of admissibility applicable to a trial. *Resol. Tr. Corp. v. Starkey*, 41 F.3d 1018, 1024 (5th Cir. 1995) (citing *Munoz v. Int'l All. of Theatrical Stage Emps. & Moving Picture Mach. Operators of the US & Can.*, 563 F.2d 205, 297 n.1 (5th Cir. 1977)). Federal courts sitting in diversity apply state substantive law and federal procedural law. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 437 (2010) (citing *Gasperini v. Ctr. for Humans, Inc.*, 518 U.S. 415, 427 (1996)).

### III. DISCUSSION

As a preliminary matter, because the Insureds no longer wish to pursue Counts II (for violations of Chapter 541 of the TIC) and III (for breach of contract), the Court grants summary judgment for Counts II and III in Defendant's favor. Accordingly, Defendant's Motion is granted as to said claims. The only claim remaining is the Insureds' TPPCA claim.

Under the TPPCA, an insurer that delays payment for more than 60 days after receiving “all items, statements, and forms that the insurer reasonably believes, at that time, will be required from the claimant” must pay, “in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney’s fees.” Tex. Ins. Code §§ 542.0058(a), 542.055(a)(3), 542.060(a). Additionally, “an insurer’s acceptance and partial payment of the claim within the statutory deadline does not preclude liability for interest on amounts owed but unpaid when the statutory deadline expires.” *Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 658 (Tex. 2021). Statutory interest, however, will only accrue on the unpaid portion of a claim. *Id.* To prevail on a Chapter 542 cause of action for delay in payment of an insurance claim, a plaintiff must establish: “(1) the amount for which [the insurer] is contractually liable under the insurance policy; (2) that [the insurer] failed to comply with statutory deadlines; and (3) statutory damages based on the amount contractually owed less the amounts paid within the statutory deadline.” *Id.* at 658–59.

Plaintiffs move for summary judgment alleging Defendant violated Chapter 542 because it failed to pay seven insurance claims for which it accepted liability within sixty (60) days of receiving all items, statements, and forms it required to decide each claim. (Doc. 12).

Defendant counters that Plaintiffs’ claim under the TPPCA is time-barred because Plaintiffs waited more than two years and a day to file the claim in this Court, in violation of the statute of limitations provision in the Policies. (Doc. 15 at 2). Additionally, Defendant contends Plaintiffs cannot recover statutory interest on the RCV payments of at least three of the seven appraisal awards at issue because Plaintiffs had not complied with the requirements listed in the Policies. *Id.* at 3. Defendant alleges it complied with the terms of the Policies in paying the RCV owed on each insurance claim after Plaintiffs made repairs. *Id.*

Plaintiffs respond that the provision in the Policies limiting the time period within which an insured can raise a claim against Defendant does not apply to TPPCA claims. (Docs. 14, 16). Additionally, Plaintiffs allege Defendant cannot point to the date of the initial breach of its contractual duties as the date on which the statute of limitations clock began to run on the TPPCA claim. (Doc. 14 at 3). Plaintiffs urge the Court to apply the residual four-year statute of limitations in Texas Civil Practice and Remedies Code § 16.051 and to determine the accrual date by looking at the date of the initial breach. *Id.* at 10. Further, Plaintiffs argue there is no rule that bars the recovery of statutory interest for RCV. *Id.*

Before the Court can decide whether Defendant is liable to Plaintiffs under the TPPCA, the Court must determine whether Plaintiffs' TPPCA claim is time-barred. Accordingly, the Court will begin its analysis with the statute of limitations issue.

#### **A. The Statute of Limitations for the TPPCA Claim<sup>3</sup>**

Chapter 542 of the TIC does not contain a statute of limitations. *See generally* Tex. Ins. Code § 542.001 *et seq.* District courts in the Fifth Circuit are split on whether a two-year or four-year statute of limitations applies to claims brought under Chapter 542, and the Fifth Circuit has not considered the issue. *Hookham v. Penn-Am. Ins. Co.*, No. 6:16-CV-316-RP-JCM, 2016 WL 8674387-JCM, at \*3 (W.D. Tex. Nov. 22, 2016), *report and recommendation adopted*, No. 6:16-CV-316-RP, 2016 WL 8674065 (W.D. Tex. Dec. 14, 2016) (examining district court opinions discussing the two-year versus four-year statute of limitations disagreement); *see also Ruelas v. State Farm Lloyds*, No. CV B-10-286-AH, 2012 WL 13059192, at \*4 (S.D. Tex. July 6, 2012). The dispute is whether the two-year statute of limitations included in Chapter 541 of the TIC or the four-year statute of limitations in § 16.051 applies to claims arising under Chapter 542.

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3. Defendant does not allege that Palomino's claim is time-barred. (Doc. 13 at 7). Accordingly, the Court's analysis regarding the statute of limitations does not apply to Palomino's claim.

## 1. The Majority Rule

Most federal district courts in Texas, applying Texas state law, hold that the residual four-year statute of limitations outlined in § 16.051 applies to claims brought under Chapter 542. *See, e.g., Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 573 (W.D. Tex. 2019); *Life in Christ Fellowship of Abilene v. Allied Prop. & Cas. Ins. Co.*, No. 1:17-CV-0117-BL, 2018 WL 1157764, at \*7 (N.D. Tex. Jan. 9, 2018), *report and recommendation adopted*, No. 1:17-CV-0117-C, 2018 WL 1157944 (N.D. Tex. Mar. 2, 2018); *Morales v. Lloyd's*, No. 7:14-CV-1001, 2016 WL 7734651, at \*5 (S.D. Tex. Mar. 30, 2016). The Court is only aware of three cases that apply the two-year statute of limitations in Chapter 541 of the TIC to Chapter 542 claims. *See Ericsson, Inc. v. St. Paul Fire & Marine Ins. Co.*, 423 F. Supp. 2d 587, 591 (N.D. Tex. 2006). Those cases, however, do not explain why the two-year statute of limitations under Chapter 541 applies to claims for violations of Chapter 542 of the TIC. *See generally id.*; *see also Ozor v. CNA Ins. Co.*, CIV.A.3:02-CV-1572AH, 2002 WL 31059790 (N.D. Tex. Sept. 13, 2002); *Wetsel v. State Farm Lloyds Ins. Co.*, CIV.A.3:02-CV-0510-D, 2002 WL 1592665 (N.D. Tex. July 18, 2002). Moreover, in two of the three cases, the applicable statute of limitations was not in dispute. *See Ozor*, 2002 WL 31059790, at \*2; *Wetsel*, 2002 WL 1592665, at \*2. And the third case did not explain the legislature's intent when it used the following language in drafting Article 21 (now Chapter 541): "All actions *under this Article* must be commenced within two years after the date on which the unfair method of competition or unfair or deceptive act or practice occurred or within two years after the person bringing the action discovered or, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair method of competition or unfair or deceptive act or practice." *See Tex. Ins. Code art. 21.21 § 16(d)* (emphasis added) (setting the limitations period for actions "under" Article 21.21



(now Chapter 541) of the TIC)). Although the language quoted above is from a previous version of Chapter 541, the current provision closely tracks the above language. *Compare* Tex. Ins. Code art. 21.21 § 16(d), *with* Tex. Ins. Code § 541.162. Specifically, the amended language attaches the limitations period to actions “under this chapter.” *See* Tex. Ins. Code § 541.162.

In fact, the court was unable to find a single case applying the two-year statute of limitations in Chapter 541 to Chapter 542 claims after 2006. Accordingly, the Court sides with sister courts holding the residual four-year statute of limitations in § 16.051 applies to Chapter 542 claims. *See, e.g., Gonzales v. Meridian Sec. Ins. Co.*, No. 4:20-CV-00643, 2021 WL 3190523-ALM, at \*5–8 (E.D. Tex. July 28, 2021); *Silo*, 420 F. Supp. 3d at 572–73; *Hookham*, 2016 WL 8674387, at \*3; *Life in Christ Fellowship of Abilene*, 2018 WL 1157764, at \*7–8; *Morales*, 2016 WL 7734651, at \*5; *Ruelas*, 2012 WL 13059192, at \*4 (agreeing with *Rx.com*); *Rx.com Inc. v. Hartford Fire Ins. Co.*, 426 F. Supp. 2d 546, 564 (S.D. Tex. 2006).

Also relevant is that these cases<sup>4</sup> hold that an insured’s claim for statutory interest under the TPPCA is “contract-based,” relying on *Rx.com*. The *Rx.com* court specifically noted that Chapter 542 “is a contract-based remedy for an insurer’s failure to pay a claim promptly.” *Rx.com*, 426 F. Supp. 2d at 564. However, the district court in that case did not explain why TPPCA claims are based in contract when the statute provides both the cause of action and the remedy. *See id.* In adopting the reasoning in *Rx.com*, most district courts apply the residual limitations period in § 16.051, reasoning that because § 16.051 applies to breach of contract claims, it should apply to Chapter 542 claims as well. *See, e.g., Gonzales*, 2021 WL 3190523, at \*5 (refusing to apply a two-year statute of limitations requirement because “typical Texas contract law imposes a four-year statute of limitations”); *Silo*, 420 F. Supp. 3d at 573 (“Had the policy not set a contractual limitations period, the Court would apply the residual limitations

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4. Including cases cited by Plaintiffs in their response opposing Defendant’s Motion. (*See* Doc. 14 at 8–9).

period of four years set out in [TCPRC] § 16.051.”); *Hookham*, 2016 WL 8674387, at \*4 (finding Chapter 542 “creates a contract-based remedy for an insurer’s failure to pay a claim promptly”); *Life in Christ Fellowship of Abilene*, 2018 WL 1157764, at \*7 (noting the insurer did not provide evidence that a contractual based limitations period applied to the insured’s Chapter 542 claims); *Morales*, 2016 WL 7734651, at \*5 (noting the absence of a contract-based limitations period); *Olivarez v. Lloyds*, No. 7:14-CV-896, 2015 WL 12552011, at \*3 (S.D. Tex. Sept. 22, 2015); *Ruelas*, 2012 WL 13059192, at \*4 (finding *Rx.com* convincing). However, these courts also fail to explain why a TPPCA claim is “contract-based” or a “contract-based statutory remedy.”

Only *Delgado* appears to provide an explanation. See *Delgado v. Allstate Tex. Lloyds*, 7:15-CV-123, 2015 WL 12552012-RC, at \*2 (S.D. Tex. Aug. 12, 2015). In *Delgado*, the district court noted that Chapter 542 does not contain a statute of limitations. *Id.* The district court went on to apply the statute of limitations for a breach of contract claim. *Id.* It did so “because the remedy for violation of the prompt payment provision in Chapter 542 is payment of the amount due *under the contract* plus interest and attorney’s fees.” *Id.* (emphasis in original). Consequently, it was logical to that district court to turn to the contract itself for the applicable statute of limitations. *Id.* Further, the court believed “it would make little sense to allow a shorter limitations period for a claim for breach of the underlying contract than a claim that is dependent on the success of that underlying claim.” *Id.* This reasoning, however, contravenes the Texas Supreme Court’s holding in *Menchaca*, which held that, “An insured’s claim for breach of an insurance contract is ‘distinct’ and ‘independent’ from claims that the insurer violated its extra-contractual common-law and statutory duties.” *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018) (citations omitted). Although the Texas Supreme Court was discussing

claims under Chapter 541 of the TIC when it made that statement, the procedural requirements in Chapter 542 are also “statutory duties” imposed on insurers in addition to the duties included in the insurance policy. *See id.* (“[T]he Insurance Code supplements the parties’ contractual rights and obligations by imposing procedural requirements that govern the manner in which insurers review and resolve an insured’s claim for policy benefits.”). Further, although an insured can only succeed on a claim for TPPCA damages under § 542.060 if he or she establishes the insurer’s liability under the policy, the insured need not raise or succeed on a breach of contract claim to raise a Chapter 542 claim. *See Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 813 (Tex. 2019), *reh’g denied* (Dec. 13, 2019). Rather, liability may be established even if the insurer did not breach its duties under the policy. *Id.* Accordingly, the reasoning in *Delgado* is unpersuasive.<sup>5</sup>

Other courts in the Fifth Circuit have also considered whether a contractual provision limits the statute of limitations for a Chapter 542 claim. In *Silo*, on which both parties rely, the parties stipulated, and the district court agreed, that “because Section 542 of the [TIC] does not include a limitations provision and is a contract-based remedy . . . ‘it is [] subject to appropriate limitation by the insurance policy.’” *Id.* (citations omitted). The district courts in *Olivarez* and *Delgado* applied a two-year statute of limitations to all of the insured’s claims, including those brought under Chapter 542 of the TIC, based on the limitations period included in the insurance policies. *See, e.g., Olivarez*, 2015 WL 12552011, at \*3 (assuming the four-year statute of limitations applies to Chapter 542 claims but applying a two-year statute of limitations because

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5. More recently, the Eastern District of Texas held that the “TPPCA provides a contract-based remedy directly relating to the contract, suggesting that a four-year statute of limitations is appropriate.” *Gonzalez*, 2021 WL 3190523, at \*8. However, the Court fails to see how a contract’s factual relevance suggests that the claim is “contract-based” when the claim is based on the violation of duties imposed by statute and the remedy sought is also supplied by statute.

the parties agreed, in the insurance policy, to shorten that period to two years); *Delgado*, 2015 WL 12552012, at \*2.

Finally, three district courts applied the four-year residual limitations period to Chapter 542 claims after finding that the insurance policy in question did not contain a limitations period, that the contractual limitation did not apply, or because there was no evidence to suggest the existence of a contractual limitations period. *See Gonzales*, 2021 WL 3190523, at \*6; *Life in Christ Fellowship of Abilene*, 2018 WL 1157764, at \*7; *Morales*, 2016 WL 7734651, at \*5.

Although the Court is not convinced that Plaintiffs' TPPCA claim is contract-based such that the contractual limitations period in the Policies applies to the TPPCA claim, because it would not make a difference, the Court considers whether the "Legal Action Against Us" provision in the Policies bars Plaintiffs' claim for statutory interest. For the following reasons, the Court rules that it does not.

## **2. The Contractual Limitation in the Policies**

The contractual limitation in the Policies states that no one may sue Defendant "under this Commercial Property Coverage Part unless[.]" in relevant part, "[t]he action is brought within 2 years and one day from the date the cause of action first accrues." (Docs. 13-3 at 212; 13-4 at 226). Under the Policies, "[a] cause of action first accrues on the date of the initial breach of *our contractual duties* alleged in the action." *Id.* (emphasis added). An insurance contract is governed by general contract interpretation rules under Texas law. *See Tex. Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999). The primary goal of the court interpreting an insurance policy is to "give effect to the written expression of the parties' intent." *Nat'l Union Fire Ins. Co. v. Willis*, 296 F.3d 33, 339 (5th Cir. 2002). When possible, "Texas law requires an insurance policy to be construed against the insurer and in favor of the insured." *Id.*

In the instant case, with regard to Plaintiffs' TPPCA claim, Plaintiffs do not argue that Defendant breached any of its contractual duties, nor could they since their breach of contract claim is foreclosed. *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 132 (Tex. 2019), *reh'g denied* (Dec. 13, 2019) (holding that an "insurer's payment of an appraisal award in the face of similar allegations of pre-appraisal underpayment forecloses liability on a breach of contract claim"). Rather, Plaintiffs contend Defendant violated § 542.058 when it failed to pay Plaintiffs' insurance claims within sixty (60) days after receiving all items, statements, and forms requested. (Doc. 1 at 12). Plaintiffs conclude that their TPPCA claim arises under the statute, not under the Policies; therefore, the contractual limitation does not apply to their TPPCA claim. (*See* Doc. 16). Additionally, Plaintiffs argue the contractual limitation in the Policies does not apply to the TPPCA claim because the language in the Policies suggests that it only applies to claims for breach of duties imposed by the Policies. *Id.* The Court agrees with Plaintiffs.

First, Plaintiffs correctly note that insureds seeking statutory interest under § 542.060 for an insurer's violation of § 542.058 need not allege a breach of a contractual duty. *See Ortiz*, 589 S.W.3d at 133–35 (distinguishing statutory duties and contractual duties). Rather, a TPPCA claim is distinct and independent from a breach of contract claim. *Id.*

Additionally, the Legal Action Against Us provision explicitly limits its application to "a legal action against [Defendant] *under this Commercial Property Coverage Part . . .*" (Docs. 13-3 at 212; 13-4 at 226) (emphasis added). Thus, only claims arising "under" the Policies are governed by the contractual limitation. The Court finds Plaintiffs' TPPCA claim arises under Chapter 542 of the TIC, not under the Policies. In doing so, the Court relies on caselaw concerning the application of arbitration provisions. In *5556 Gasmer*, the district court held that because "no interpretation of the insurance policy [was] necessary to adjudicate the

misrepresentation claims” and the plaintiff was not seeking to hold the defendants liable pursuant to the duties imposed by the policy, enforcing the arbitration provision in the policy in that case was not warranted. *5556 Gasmer Mgmt. LLC v. Underwriters at Lloyd’s, London*, 463 F. Supp. 3d 785, 794 (S.D. Tex. 2020). Although a different context, the Court finds the same logic applies in this case. Here, the Court need not interpret the insurance policy to adjudicate Plaintiffs’ TPPCA claim, and the duty Plaintiffs allege Defendant violated is imposed by the TIC, not the Policies. Plaintiffs’ TPPCA claim does not arise under the Policies.<sup>6</sup> *See id.* Thus, Plaintiffs’ TPPCA claim is not governed by the Legal Action Against Us provision in the Policies.

Further, the Policies state that a cause of action “accrues on the date of the initial breach of our contractual duties alleged in the action.” (Docs. 13-3 at 212; 13-4 at 226). However, delaying payment for more than sixty (60) days violates a procedural requirement imposed by statute, not a “contractual duty” imposed by the Policies.<sup>7</sup> Because Defendant would not breach a contractual duty by delaying payment for more than sixty (60) days—a § 542.058 violation—if the Court were to apply the contractual limitation to the TPPCA claim, it seems a cause of action for a § 542.058 violation would never accrue. This interpretation of the contractual limitation is illogical, and contravenes Texas law requiring courts to give meaning to “every sentence, clause, and word [in a contract] to avoid rendering any portion inoperative.” *Markel Ins. Co. v. Muzyka*, 293 S.W.3d 380, 385 (Tex. App.—Fort Worth 2009, no pet.) (citing *Balandran v. Safeco. Ins. Co. of Am.*, 972 S.W.2d 738, 741 (Tex. 1998)).

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6. Applying Eleventh Circuit case law, this Court has previously interpreted narrowly claims that arise under a contract. *See Baker v. Cajun Energy Servs. & Rentals, LLC*, MO:19-CV-37-DC, 2020 WL 3579206, at \*7 (W.D. Tex. Mar. 24, 2020) (considering whether the plaintiffs’ FLSA claims relied on the terms of a Master Service Agreement, and distinguishing between factual and legal relevance).

7. Neither party argues the Policies impose a deadline similar to that in § 542.058. (*See* Docs. 12–17).

Finally, the cases that actually applied the contractual limitation in the insurance policy involved a stipulation regarding the statute of limitations by the parties, *see, e.g., Silo*, 420 F. Supp. 3d at 573, or general contractual limitation provisions that are easily distinguishable from the Legal Action Against Us provision in this case, *see, e.g., Olivarez*, 2015 WL 12552011, at \*3; *Delgado*, 2015 WL 12552012, at \*2. In *Olivarez*, the “Suit Against Us” provision stated: “No suit or action can be brought unless the policy provisions have been complied with. Action brought against us must be started within two years and one day after the cause of action accrues.” 2015 WL 12552011, at \*2. Unambiguously, all claims against the insurer in *Olivarez* had a two-year statute of limitations. *Id.* Similarly, in *Delgado*, the policy read: “No suit or action can be brought unless the policy provisions have been complied with. Action brought against us must be started within two years and one day after the cause of action accrues.” Appendix for Movant Doc. 11 at 53, *Delgado v. Allstate Tex. Lloyds*, No. 7:15-CV-00123-RC, 2015 WL 12552012 (S.D. Tex. July 29, 2015). By contrast, the Policies limit the application of the contractual limitation to actions brought under the Policies.

Assuming for the sake of argument that Plaintiffs’ TPPCA claim is “contract-based,” the Court finds the Legal Action Against Us provision does not apply to the TPPC claim. The Court further rules that the residual four-year statute of limitations in § 16.051 applies to Plaintiffs’ TPPCA claim.

#### **B. Accrual Date for TPPCA Claim**

Defendant argues the Insureds’ TPPCA claim accrued between August 2016 and August 2018. (Doc. 13 at 7). The Insureds dispute the date of accrual. (Doc. 15 at 9–16). Because the Court rules a four-year statute of limitations applies, the Insureds’ TPPCA claim as to the fourteen insurance claims would have expired between August 2020 and August 2022. Using

Defendant's alleged date of accrual, the Insureds' TPPCA claim was timely filed on May 21, 2020, approximately three months before the four-year statute of limitations expired on the Insureds' oldest insurance claim. Accordingly, the Court finds the Insureds' TPPCA claim is not time-barred and denies Defendant's Motion as to said claim.

### **C. Compliance with the TPPCA**

Plaintiffs seek summary judgment as to their claim for statutory interest against Defendant relating to seven of the fourteen properties. (Doc. 12). According to Plaintiffs, with relation to the seven properties at issue, Defendant admitted liability and failed to pay the insurance claims within the time period required by § 542.058. *Id.* Accordingly, Plaintiffs seek summary judgment as to the statutory damages for those seven properties. *Id.*

Defendant, in addition to the statute of limitations defense, argues that Plaintiffs "improperly seek[] statutory interest on the full [RCV] of at least three of the seven appraisal awards at issue in [Plaintiffs' Motion.]" (Doc. 15 at 3). According to Defendant, the RCV was not due until Plaintiffs completed repairs to storm-damaged properties, Plaintiffs did not repair the damaged properties until several months after the appraisals were completed, and Defendant fully paid Plaintiffs the RCV for each appraisal award within days of being provided proof that Plaintiffs completed the repairs. *Id.*

As previously noted, to establish liability for delay in payment of a claim, Plaintiffs must establish: "(1) the amount for which [the insurer] is contractually liable under the insurance policy; (2) that [the insurer] failed to comply with statutory deadlines; and (3) statutory damages based on the amount contractually owed less the amounts paid within the statutory deadline." *Hinojos*, 619 S.W.3d at 658–59.

#### **1. Liability Under the Policies**



Defendant does not dispute that it accepted liability for the seven claims associated with the seven properties which are the subject of Plaintiffs' Motion.<sup>8</sup> (*See* Docs. 13, 15, 17). Moreover, the summary judgment evidence establishes that Defendant accepted Plaintiffs' claims for coverage for the seven properties at issue, and the amounts for which Defendant is contractually liable. *See* App. to Pls.' Mot. Summ. J. 9–50, ECF No. 12-1. Accordingly, Plaintiffs have provided summary judgment evidence to establish the first element. Moreover, Defendant does not raise a genuine issue of material fact for trial concerning this element.

## **2. Failure to Comply with Statutory Deadline**

Defendant does not dispute the dates on which it received all information and/or documentation required from Plaintiffs. (*See* Docs. 13, 15, 17). The record also establishes the dates on which Defendant received all documents required from Plaintiffs. *See* App. to Pls.' Mot. Summ. J. 31–37. The dates on which Defendant received all documents required as to the seven insurance claims are as follows:

- (1) April 14, 2017, for College Park Center;
- (2) July 17, 2018, for Campus Office Tower,
- (3) December 9, 2016, for Park Glen Summit;
- (4) April 14, 2017, for South Main Street Plaza;
- (5) April 14, 2017, for Santa Fe Shopping Center;
- (6) August 9, 2017, for Country Shopping Center; and
- (7) April 17, 2017, for North Hills Village.

*Id.* Accordingly, the statutory deadlines for each insurance claim—60 days from the date it received all documents—are:

- (1) June 13, 2017, for College Park Center;
- (2) September 15, 2018, for Campus Office Tower,

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8. Defendant generally denies that it violated the TPPCA. (*See* Doc. 15 at 7). However, Defendant's general denial is not sufficient to raise a genuine issue of material fact for trial.

- (3) February 7, 2017, for Park Glen Summit;
- (4) June 13, 2017, for South Main Street Plaza;
- (5) June 13, 2017, for Santa Fe Shopping Center;
- (6) October 8, 2017, for Country Shopping Center; and
- (7) June 16, 2017, for North Hills Village.

Interest started accruing as to each claim the day after the statutory deadline, regardless of whether Defendant made partial payments on the amount contractually owed. *See generally Hinojos*, 619 S.W.3d at 651. Defendant paid the actual cash value (ACV) and/or RCV on each of the seven claims after the statutory deadline. *See App. to Pls.’ Mot. Summ. J.* 39–50. Accordingly, regardless of whether Defendant was required to pay the RCV by the statutory deadline, the summary judgment record evinces that Defendant failed to pay the ACV owed within sixty (60) days of receiving all requested documents. Thus, Plaintiffs have established the second element of their TPPCA claim, that Defendant failed to comply with the statutory deadline in relation to the seven insurance claims. Further, Defendant does not raise a genuine issue of material fact concerning this element.

### **3. Statutory Damages**

Defendant argues Plaintiffs are not entitled to recover statutory interest for the RCV on three of the seven insurance claims because Plaintiffs had not completed repairs as required by the Policies. (Doc. 15). Plaintiffs counter that it is not relevant whether they had completed repairs, although they concede that the Policies require that the Insureds make repairs before Defendant is required to pay the RCV. (Doc. 16). Accordingly, the parties disagree as to the statutory damages owed.

#### **a. *Plaintiffs Are Not Entitled to Statutory Interest on the RCV***

The Policies contain the following relevant provision:

#### **VALUATION**

We will determine the amount of covered loss or damage as follows:

....

2. Except as provided in 3., 5., 6., and 7. below, “**real property**” or “**personal property**”, other than “**improvements and betterments**”, which is not repaired, rebuilt, or replaced will be valued at the “actual cash value” at the time and place of loss or damage. If you commence the repair, rebuilding, or replacement of the lost or damaged “**real property**” or “**personal property**” within 24 months from the date the loss or damage occurred, upon completion of the repair, rebuilding, or replacement, we will pay you the difference between the “**actual cash value**” previously paid and the “**replacement cost**” at the time of loss or damage.

(Docs. 13-3 at 147; 13-4 at 127). Further, “replacement cost” is defined as the lesser of “repair cost”, “rebuilt cost”, or “replace cost”. (Docs. 13-3 at 135–36; 13-4 at 115–16). Repair, rebuild, and replace costs in turn include the cost to either repair, rebuild, or replace the property “at the time of direct physical loss or damage with new materials of like kind and quality, of similar size, for the same use or occupancy, and in compliance with all applicable zoning, land use, or construction codes in force at the time of loss or damage.” *Id.* The parties do not dispute that the appraisal awards included the RCV, and that Plaintiffs did not make repairs until a later date.<sup>9</sup>

Recently, a sister court held that an insured’s payment of actual cash value “constitutes full payment of the appraisal award where [p]laintiff has made no repairs[.]” *Lakeside FBBC, LP v. Everest Indem. Ins. Co.*, SA-17-CV-491-XR, 2020 WL 1814405, at \*7 (W.D. Tex. Apr. 8, 2020). The district court relied on *Mainali*, where the Fifth Circuit found that “payment of [ACV] sufficed as payment of an appraisal award where the insured had not yet completed repairs.” *Id.* (citing *Mainali Corp. v. Covington Specialty Ins. Co.*, 872 F.3d 255, 257 (5th Cir.

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9. Plaintiff does not present evidence regarding the dates on which repairs were completed for any property at issue.

2017), *as revised* (Sept. 27, 2017)).<sup>10</sup> Likewise, the provision in the Policies requires that the Insureds repair, rebuild, or replace the property before Defendant is required to pay the “difference between the ‘actual cash value’ previously paid and the ‘replacement cost’ at the time of loss or damage.” (Doc. 13-3 at 147; 13-4 at 127). Thus, under the Policies, Defendant was not required to pay the RCV until the “completion of the repair, rebuilding, or replacement.” *Id.*

Plaintiffs argue that Texas Supreme Court precedent forecloses Defendant’s RCV argument. (Doc. 16 at 4). Specifically, Plaintiffs argue the *Hinojos* court held that there is no reasonableness exception to the TPPCA. *Id.* The Court, however, is not holding Defendant’s partial payment was reasonable. Rather, it is holding that, under the Policies, the amount that “must be paid[,]” before repairs are made by the Insureds, does not include the RCV; thus, Defendant did not violate Chapter 542 when it withheld payment for the RCV. This holding does not contravene the Texas Supreme Court’s holding in *Hinojos*, which requires insurers to promptly pay the “amount contractually owed.” 619 S.W.3d at 659. Section 542.058 provides a private right of action for a delay in payment owed under an insurance policy. Here, the RCV was not owed under the policy until after Plaintiffs completed repairs.

For these reasons, the Court rules that Plaintiffs’ Motion is denied as to the request for statutory interest on the RCV.<sup>11</sup> However, Plaintiffs are entitled to summary judgment on their request for statutory damages for Defendant’s failure to pay the ACV within the statutory deadline.

#### **b. Statutory Interest Owed**

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10. Although the Texas Supreme Court distinguished *Mainali* in *Hinojos*, it did not disapprove of *Mainali*. See *Hinojos*, 619 S.W.3d at 657 n.34.

11. Plaintiffs do not point to summary judgment evidence establishing when the repairs were completed so as to determine whether the RCV was timely paid.

Plaintiffs claim they are owed \$2,977,655.54<sup>12</sup> in statutory damages for the seven properties in question. (*See* Doc. 12 at 5, 17). Specifically, Plaintiffs seek the following:

	<b>Property/Owner</b>	<b>Interest Owed</b>
1	College Park Center owned by CPSC	\$1,073,006.36
2	Campus Office Tower owned by Campus Six	\$38,334.35
3	Park Glen Summit owned by Park Glen	\$6,399.92
4	South Main Street Plaza owned by South Main	\$59,919.70
5	Santa Fe Shopping Center owned by Woodcrest West	\$74,982.56
6	Country Shopping Center owned by Town & Country	\$697,079.05
7	North Hills Village owned by Candleridge	\$1,027,933.60
	<b>Total Statutory Interest:</b>	<b>\$2,977,655.54</b>

*Id.* Plaintiffs arrived at these numbers by utilizing the following formula:  $P$  (amount of the claim)  $\times R$  (the interest rate)  $\times T$  (the time) =  $I$  (statutory interest owed). (*See generally* Doc. 12). Additionally,  $T$  is calculated by dividing the number of days the payment was late by 365 days, the days in a year.

For example, for the College Park Center claim, Plaintiffs began their calculation with a \$3,227,257.38 balance, which includes the RCV and ACV for that property. (Doc. 12 at 12). Plaintiffs subtracted from the total Defendant's timely payment on April 17, 2017, resulting in a \$1,821,106.17 balance, again, including the RCV and ACV owed. *Id.* Plaintiffs also calculated the number of days the payment was late—457 days. *Id.* Plaintiffs then applied the equation  $P \times R \times T = I$ :

$$\$1,821,106.71 \times .18 \times 1.25205479 = \$410,422.45.$$

According to Plaintiffs, the statutory interest owed by Defendant on September 14, 2018, when it provided CPSC with an additional payment for its claim, is \$410,422.45. *Id.* Because Defendant paid \$768,453.76 on September 14, 2018, Defendant's new balance was \$1,052,652.41. *Id.*

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12. Plaintiffs suggest the amount of statutory interest owed by Defendant is \$2,981,275.23. (Doc. 12 at 5, 17). However, after adding—multiple times—the amounts provided by Plaintiffs for each property in question, the Court calculated \$2,977,655.54.

According to Plaintiffs' calculation, that amount continued to accrue interest until Defendant's next payment on September 3, 2019. *Id.* at 12–13. Applying the same equation, Plaintiffs arrived at \$421,003.28<sup>13</sup> in additional statutory interest owed by Defendant by September 3, 2019. *Id.* at 13. The balance remaining after the September 3 payment was \$473,306.12. *Id.* Applying the same equation, Plaintiffs calculated an additional \$241,580.63<sup>14</sup> in statutory interest accrued by the time Defendant made its final payment on the claim on April 14, 2020. *Id.*

Defendant successfully argued that Plaintiffs are not entitled to statutory interest on the RCV owed in relation to the following properties: College Park Center, Country Shopping Center, and North Hills Village. (*See* Doc. 15). Defendant, however, does not dispute the statutory damages owed as to the remaining four properties: Campus Office Tower, Park Glen Summit, South Main Street Plaza, and Santa Fe Shopping Center.<sup>15</sup> *Id.* Neither does Defendant challenge Plaintiffs' calculations. Consequently, Plaintiffs urge the Court to adopt their calculations. (Doc. 16 at 2).

The Court's task at the summary judgment stage is to determine whether Plaintiffs are entitled to judgment as a matter of law on the statutory damages claimed based on the evidence in the record. *See Calais v. Theriot*, 589 F. App'x 310, 311 (5th Cir. 2015). Thus, the Court must make its own calculation of the statutory interest owed based only on the ACV of each insurance claim. The Court will use the formula applied by Texas courts to determine the statutory interest owed— $P \times R \times T = I$ . *See, e.g., State Farm Life Ins. Co. v. Martinez*, 174 S.W.3d 772, 791 (Tex. App.—Waco 2005), *rev'd on other grounds by* 216 S.W.3d 799 (Tex. 2007) ("The correct amount is calculated by the formula  $P \times R \times T = I$ , where P is the amount of the claim

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13.  $\$1,052,652.41 \times .18 \times 2.2219178 = \$421,003.28$ .

14.  $\$473,306.12 \times .18 \times 2.83561643 = \$241,580.63$ .

15. As to these four properties, Defendant only raises the statute of limitations defense, which the Court rejected.

(\$500,000), R is the interest rate (.18), T is the time (274 days divided by 365 days = .75 years), and I (\$67,500) is the interest award.”).

(i) ***Campus Office Tower, Park Glen Summit, South Main Street Plaza, and Santa Fe Shopping Center***

As to the Campus Office Tower claim, the summary judgment record shows that the ACV was \$430,093.23. *See* App. to Pls.’ Mot. Summ. J. 43. However, Defendant made a timely payment of \$169,242.43 on July 30, 2018; the statutory deadline was September 15, 2018. *Id.*; *accord supra* Part III.C.2. Accordingly, the new balance on the claim was \$260,850.80. *Id.* Defendant made a final payment on the claim for the full amount owed on July 11, 2019—298 days after the expiration of the statutory deadline. Consequently, Defendant must pay statutory interest on \$260,850.80. Applying the formula— $\$260,850.80 \times .18 \times .8164383$ —the statutory interest due on the Campus Office Tower claim is \$38,334.35.

As to the Park Glen Summit claim, the summary judgment record shows that the ACV was \$401,071.23. *See* App. to Pls.’ Mot. Summ. J. 2. However, Defendant made a timely payment of \$376,351.96 on January 5, 2017; the statutory deadline was February 7, 2017. *Id.*; *accord supra* Part III.C.2. Accordingly, the new balance on the claim was \$24,719.27. *Id.* Defendant made a final payment on the claim for the full amount owed on July 18, 2018—525 days after the expiration of the statutory deadline. Consequently, Defendant must pay statutory interest on \$24,719.27. Applying the formula— $\$24,719.27 \times .18 \times 1.438356$ —the statutory interest due on the Park Glen Summit claim is \$6,399.92.

As to the South Main Street Plaza claim, the summary judgment record shows that the ACV was \$771,831.72. *See* App. to Pls.’ Mot. Summ. J. 45. However, Defendant made a timely payment of \$486,611.45 on April 17, 2017; the statutory deadline was June 13, 2017. *Id.*; *accord supra* Part III.C.2. Accordingly, the new balance on the claim was \$285,220.27. *Id.* Defendant

made a final payment on the claim for the full amount owed on August 14, 2018—426 days after the expiration of the statutory deadline. Consequently, Defendant must pay statutory interest on \$285,220.27. Applying the formula— $\$285,220.27 \times .18 \times 1.16712328$ —the statutory interest due on the South Main Street Plaza claim is \$59,919.70.

As to the Santa Fe Shopping Center claim, the summary judgment record shows that the ACV was \$459,588.42. *See* App. to Pls.’ Mot. Summ. J. 3. However, Defendant made a timely payment of \$163,899.90 on April 17, 2017; the statutory deadline was June 13, 2017. *Id.*; *accord supra* Part III.C.2. Accordingly, the new balance on the claim was \$295,688.52. Defendant made a partial payment of \$20,526.99 on December 13, 2017—182 days after the expiration of the statutory deadline. *See* App. to Pls.’ Mot. Summ. J. 3. Accordingly, the new balance was \$275,161.53. Defendant made a final payment on the claim for the full amount owed on June 6, 2018—357 days after the expiration of the statutory deadline and 175 days after the second payment was made. *Id.* Consequently, Defendant must pay statutory interest on the \$295,688.52 and the \$275,161.53.

Applying the formula— $\$295,688.53 \times .18 \times .49863013$ —the statutory interest owed when Defendant made the second payment on December 13, 2017, is \$26,539.06.

Defendant must also pay statutory interest on the balance owed before he made final payment. However, the Court will calculate the interest owed on the balance after December 13, 2017, (\$275,161.53) by using the number of days that passed between the second payment and the final payment rather than the total number of days between the statutory deadline and the date that Defendant made the final payment. Utilizing the total number of days after the expiration of the statutory deadline—a position for which Plaintiffs advocate—would result in a miscalculation of the statutory interest because the statutory interest that accrued on the



\$275,161.52 for the first 182 days after the expiration of the statutory deadline is accounted for in the interest due on the \$295,688.53. Accordingly, applying the formula— $\$275,161.53 \times .18 \times .4794520547$ —the statutory interest that accrued after Defendant made its second payment is \$23,746.82.

In sum, Defendant owes \$50,285.88 in statutory interest on the Santa Fe Shopping Center claim.

**(ii) *College Park Center, Country Shopping Center, and North Hills Village***

As to the remaining three properties, the summary judgment evidence establishes that the ACV of the College Park Center claim was \$2,174,604.97, and that Defendant made a timely payment of \$1,406,151.21 on April 17, 2017; the statutory deadline was June 13, 2017.<sup>16</sup> *See* App. to Pls.' Mot. Summ. J. 39–40; *accord supra* Part III.C.2. Accordingly, the new balance on the College Park Center claim was \$768,453.76. *Id.* Defendant made a payment for that amount on September 14, 2018—457 days after the statutory deadline expired. *Id.* Accordingly, Defendant owes statutory interest on \$768,453.76. Applying the formula— $\$768,453.76 \times .18 \times 1.25205479$ —the statutory interest due on the College Park Center claim is \$173,186.32.

The summary judgment evidence establishes that the ACV of the Country Shopping Center claim was \$1,587,254.87, and that Defendant made a timely payment of \$826,187.56 on August 9, 2017; the statutory deadline was October 8, 2017. *See* App. to Pls.' Mot. Summ. J. 47–48; *accord supra* Part III.C.2. Accordingly, the new balance on the Country Shopping Center claim was \$761,067.31. *Id.* Defendant made a payment for that amount on September 6, 2018—332 days after the expiration of the statutory deadline. *Id.* Consequently, Defendant owes

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16. Plaintiffs' calculation of the statutory interest without the RCV contemplates a starting balance that includes the ACV and RCV. Because Defendant is not required to pay statutory interest on the RCV of these three properties, the Court must calculate the statutory interest with a starting balance that does not include the RCV.

statutory interest on \$761,067.31. *Id.* Applying the formula— $\$761,067.31 \times .18 \times .90958904$ —the statutory interest due on the Country Shopping Center claim is \$124,606.53.

The summary judgment evidence establishes that the ACV of the North Hills Village claim was \$1,742,543.93, and that Defendant made a timely payment of \$1,439,747.33 on April 17, 2017; the statutory deadline expired on June 16, 2017. *See App. to Pls.’ Mot. Summ. J.* 49–50; *accord supra* Part III.C.2. Accordingly, the new balance on the North Hills Village claim was \$302,796.60. *Id.* Defendant made a payment of \$242,760.02, on January 4, 2018—201 days after the statutory deadline. *Id.* The new balance became \$60,036.58. *Id.* Defendant made a payment for that amount on August 31, 2018—440 days after the statutory deadline and 239 days after Defendant made the second payment. *Id.* Accordingly, Defendant owes statutory interest on \$302,796.60 for 201 days and \$60,036.58 for 239 days.

Applying the formula— $\$302,796.60 \times .18 \times .55068493$ —the statutory interest due on the North Hills Village claim on January 4, 2018, is \$30,014.19.

Applying the formula to the new balance after January 4, 2018— $\$60,036.58 \times .18 \times .654794520$ —the statutory interest due on the North Hills Village claim on the balance after January 4, 2018, is \$7,076.09.

In sum, the statutory interest due on the North Hills Village claim is \$37,090.28.

### (iii) *Total Statutory Damages*

The Court rules that Plaintiffs have established the final element of their TPPCA claim—the statutory damages based on the amount contractually owed less the amounts paid within the statutory deadline. Further, Defendant does not raise a genuine issue of material fact concerning this element. Accordingly, the Court holds that Defendant owes Plaintiffs the following in statutory interest for each property:

	<b>Property/Owner</b>	<b>Interest Owed</b>
1	College Park Center owned by CPSC	\$173,186.32
2	Campus Office Tower owned by Campus Six	\$38,334.35
3	Park Glen Summit owned by Park Glen	\$6,399.92
4	South Main Street Plaza owned by South Main	\$59,919.70
5	Santa Fe Shopping Center owned by Woodcrest West	\$50,285.88
6	Country Shopping Center owned by Town & Country	\$124,606.53
7	North Hills Village owned by Candleridge	\$37,090.28
	<b>Total Statutory Interest:</b>	<b>\$489,822.98</b>

The Court finds that the total amount of statutory interest due in relation to the seven properties at issue in Plaintiffs' Motion is **\$489,822.98**.

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In sum, the Court grants in part and denies in part Plaintiffs' Motion. Specifically, Plaintiffs' claim under Chapter 542 is not time-barred. However, Plaintiffs are not entitled to recover statutory interest under Chapter 542 for the RCV.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiffs' Motion for Partial Summary Judgment. (Doc. 12).

The Court further **GRANTS IN PART** and **DENIES IN PART** Defendant's Motion for Partial Summary Judgment. (Doc. 13). Specifically, the Court **GRANTS** Defendant's Motion as it relates to Plaintiffs' claims for breach of contract and violations of Chapter 541 of the TIC. The Court **DENIES** Defendant's Motion as it pertains to the TPPCA claim.

The Court **ORDERS** that the statutory damages amount to **\$489,822.98** for the insurance claims concerning the following properties: Campus Office Tower, Park Glen Summit, South

Main Street Plaza, Santa Fe Shopping Center, College Park Center, Country Shopping Center, and North Hills Village.

It is so **ORDERED**.

SIGNED this 11th day of August, 2021.

A handwritten signature in black ink, appearing to read "David Counts", with a stylized star-like flourish at the end.

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DAVID COUNTS  
UNITED STATES DISTRICT JUDGE