

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

MARK HOWELL AND LESLIE HOWELL,

Plaintiffs,

VS.

SOUTHERN FARM BUREAU LIFE
INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO. 9:24-CV-00037
JUDGE MICHAEL J. TRUNCALE

**ORDER DENYING DEFENDANT SOUTHERN FARM BUREAU LIFE
INSURANCE COMPANY’S CORRECTED MOTION FOR LEAVE
TO DESIGNATE RESPONSIBLE THIRD PARTY**

Before the Court is Defendant Southern Farm Bureau Life Insurance Company (“SFBLIC”)’s Corrected Motion for Leave to Designate Responsible Third Party. [Dkt. 15]. For the following reasons the motion is **DENIED**.

I. BACKGROUND

This is a case of first impression for the Court. This lawsuit arises out of SFBLIC’s denial of a life insurance claim. Wade Howell applied for a life insurance policy that named his parents, Plaintiffs Mark and Leslie Howell, as the beneficiaries. [Dkt. 4 at ¶¶ 7, 9]. Pending before the Court are claims of breach of contract and a violation of Chapter 542 of the Texas Insurance Code. *Id.* at ¶¶ 22–31.¹

In applying for the policy, SFBLIC alleges that Wade Howell was specifically asked whether he: (1) “ever [pled] guilty to or been convicted of a felony or misdemeanor, or have such charge currently pending” and (2) “used alcoholic beverages to excess . . . or been arrested for driving while intoxicated.” [Dkt. 15 at ¶¶ 1–2]. Wade answered “No” to both questions. *Id.* Wade’s application that contained these representations was signed on January 8, 2021, and January 12, 2021, respectively. *Id.* at ¶ 3. In reliance on Wade’s representations, SFBLIC issued his policy on January 15, 2021. *Id.* at ¶ 4.

¹ Plaintiffs also originally brought a claim for violations of Chapter 541 of the Texas Insurance Code. *Id.* at ¶¶ 20–21. This claim was dismissed with prejudice after Plaintiffs filed a stipulation of voluntary partial dismissal. [Dkts. 23, 24].

Tragically, on May 9, 2021, Wade died allegedly due to injuries sustained in a motor vehicle accident. *Id.* at ¶ 5. Later that month, Plaintiffs submitted a claim to SFBLIC. *Id.* SFBLIC conducted a routine contestable death claim investigation because Wade died within the first two years of the policy. *Id.* at ¶ 6. The investigation revealed that Wade was arrested for Driving Under the Influence (“DUI”) on or about February 26, 2017, and had been arrested for Driving While Intoxicated (“DWI”) on or about May 27, 2017. *Id.* Wade pled guilty to Obstructing a Roadway as to both charges. *Id.*

SFBLIC claims that Wade’s false representations on his life insurance policy application were material to its decision to issue the policy and that it relied on those representations. *Id.* at ¶ 7. SFBLIC argues that Wade’s representations “proximately caused or contributed to the alleged harm for which Plaintiffs seek to recover damages” because “[h]ad Wade Howell answered the application truthfully and disclosed the above criminal history to SFBLIC, [his] application would have been declined, and SFBLIC could not have issued the Policy . . . pursuant to its underwriting guidelines.” *Id.* Therefore, SFBLIC denied Plaintiffs’ life insurance claim. *Id.*

Based on the above allegations, SFBLIC filed the present motion to designate Wade Howell as a responsible third party. Plaintiffs timely filed their objection and response. [Dkt. 16]. The motion is ripe for review.

II. LEGAL STANDARD

Under Texas law, a defendant may move for leave to designate a person as a responsible third party. *See* Tex. Civ. Prac. & Rem. Code § 33.004(a). A responsible third party is someone that a party alleges “to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.” *Id.* § 33.011(6). The trial court “shall” grant leave to designate the named person as a responsible third party unless another party files an objection on or before the fifteenth day after service of the motion and the

objecting party establishes that “the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure.” *Id.* § 33.004(f), (g)(1).

III. DISCUSSION

SFBLIC seeks to designate Wade Howell as a responsible third party “so that the jury will be permitted to allocate a percentage of responsibility to [him] to the extent that any of his alleged wrongful acts and/or omissions caused or contributed to any of Plaintiffs’ alleged damages.” [Dkt. 15 at ¶ 9]. Plaintiffs object to the motion, arguing that SFBLIC’s reliance on Texas Civil Practice and Remedies Code § 33.004 is misplaced and that SFBLIC failed to properly allege any duty that Wade allegedly owed them. [Dkt. 16 at 2–4].

Plaintiffs argue that SFBLIC’s reliance on Texas Civil Practice and Remedies Code § 33.004 is misplaced because Plaintiffs’ action is based on breach of contract, not tort or the Texas Deceptive Trade Practices Act (“DTPA”). *Id.* at ¶ 6.² Under Texas Civil Practice and Remedies Code § 33.002(a), a party may designate a responsible third party applies for claims based in tort or brought under the DTPA. Tex. Civ. Prac. & Rem. Code § 33.002(a). SFBLIC concedes that its motion for leave does not apply to Plaintiffs’ breach of contract claim. [Dkt. 17 at ¶ 2 n.1]. However, SFBLIC contends that Plaintiffs’ claim brought under the Texas Insurance Code is “based in tort.” *Id.* at ¶ 2.

The Court finds that Plaintiffs’ live claim under Chapter 542 of the Texas Insurance Code is an action that sounds in tort for purposes of the proportionate fault provision of the Texas Civil Practice and Remedies Code. Although it is true that an insurance policy is a contract generally construed using the same rules that govern contract construction, an insurance policy “is a unique type of contract because an insurer generally ‘has exclusive control over the evaluation, processing[,] and denial of

² Plaintiffs also argue that SFBLIC’s reliance on § 33.004 is misplaced because of the available remedies under contract law and the Insurance Code. [Dkt. 16 at ¶ 7]. The Court does not address this argument because it finds that Chapter 33 does not apply to Plaintiffs’ claim under Chapter 542 of the Texas Insurance Code for a reason independent of damages.

claims,’ and it can easily use that control to take advantage of its insured.” *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 488 (Tex. 2018) (alteration in original) (quoting *Arnold v. Nat’l Cnty. Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167 (Tex. 1987)). This “special relationship” has therefore justified the imposition of a common-law duty of good faith and fair dealing on the insurer in its dealings with the insured. *Id.* As with this common-law duty, “the [Texas] 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.” *Id.* (citation omitted). “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.” *Id.* (collecting cases). For this reason, plaintiffs whose insurance claims have been denied typically bring both a breach of contract and extra-contractual claims under the Texas Insurance Code. *See Garza v. Allstate Fire & Cas. Ins. Co.*, 466 F. Supp. 3d 705, 710 (S.D. Tex. 2020). Thus, “[a] claim for breach of the policy is a ‘contract cause of action,’ while a common-law or statutory bad-faith claim ‘is a cause of action that sounds in tort.’” *Menchaca*, 545 S.W.3d at 489 (first citing *Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 666 (Tex. 1995); and then citing *Viles v. Sec. Nat’l Ins. Co.*, 788 S.W.2d 566, 567 (Tex. 1990)).

As applied to Texas Civil Practice and Remedies Code § 33.004, “Texas courts apply Chapter 33 to fraud claims and to statutory tort claims that do not include a separate and conflicting legislative fault allocation scheme.” *Werner v. KPMG LLP*, 415 F. Supp. 2d 688, 703 (S.D. Tex. 2006) (citing *Sw. Bank v. Info. Support Concepts, Inc.*, 149 S.W.3d 104, 111 (Tex. 2004)). “Extra-contractual claims under the Texas Insurance [C]ode, such as . . . claims of misrepresentation and failure to evaluate its insurance claim promptly, are often recognized as statutory tort claims.” *Lexington Ins. Co. v. N. Am. Interpipe, Inc.*, Civil Action No. H-08-3589, 2011 WL 178654, at *3 (S.D. Tex. Jan. 19, 2011) (citing *Higginbotham v. State Farm Mut. Auto Ins. Co.*, 103 F.3d 456, 460 (5th Cir. 1997)). The Texas Insurance Code does not contain a fault allocation scheme. *Id.* (citation omitted); *see also Samurai Glob. LLC v.*

Landmark Am. Ins. Co., No. 3:20-CV-3718-D, 2024 WL 1837960, at *17 (N.D. Tex. Apr. 26, 2024). Thus, courts have held that Texas Civil Practice and Remedies Code § 33.004 applies to claims brought under the Texas Insurance Code as a statutory tort claim. *Samurai Glob.*, 2024 WL 1837960, at *17. Accordingly, the Court concludes that Plaintiffs' insurance claim sounds in tort.

However, even though the Court finds that Plaintiffs' claim under the Texas Insurance Code falls within the scope of Chapter 33 of the Texas Civil Practice and Remedies Code as an action in tort, the Court does not believe that it applies in this case based on its reading of the statutory text. A responsible third party is someone that a party alleges "to have *caused or contributed to causing in any way the harm for which recovery of damages is sought*, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these." Tex. Civ. Prac. & Rem. Code § 33.011(6) (emphasis added). Here, Plaintiffs seek recovery under Texas Insurance Code § 542.058(a) [Dkt. 4 at ¶ 30], which states:

Except as otherwise provided, *if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060.*

Tex. Ins. Code § 542.058(a) (emphasis added). The Court does not see how Wade Howell, who passed away by the time the insurer received all documents and information to process Plaintiffs' claim, could "cause or contribute to causing" the harm for which § 542.058(a) seeks to provide a remedy. This section of the Texas Insurance Code is designed to provide damages to individuals whose claims were not promptly processed *by the insurer*. It was not Wade who delayed SFBLIC's alleged delayed payment of Plaintiffs' claims. By virtue of his death, which preceded the Plaintiffs' request for payment of life insurance benefits, Wade could not have caused or contributed to causing the alleged delay in payment of Plaintiffs' claims for death benefits under the policy. A dead person cannot cause or contribute to causing the harm for which § 542.058(a) seeks to provide a remedy. The alleged actions of Wade's

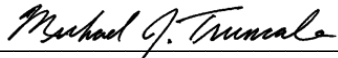
misrepresentation occurred while he was still alive, before any claim was made.³ Accordingly, Wade could not be a “responsible third party” under the definition provided in § 33.011(6).

For these reasons, the Court **DENIES** SFBLIC’s motion.

IV. CONCLUSION

It is therefore **ORDERED** that Defendant SFBLIC’s Corrected Motion for Leave to Designate Responsible Third Party [Dkt. 15] is hereby **DENIED**.

SIGNED this 28th day of January, 2025.



Michael J. Truncala
United States District Judge

³ Further, § 33.002 states that Chapter 33 applies to “any cause of action based on tort in which a . . . responsible third party is found responsible for a *percentage of the harm* for which relief is sought.” Tex. Civ. Prac. & Rem. Code § 33.002(a)(1) (emphasis added). Here, SFBLIC seeks to designate responsibility to Wade for his misrepresentations on his life insurance application policy. If the Court permitted this designation, the responsibility would be on Wade for all or none of Plaintiffs’ harm, not a fraction of it. Based on SFBLIC’s allegations, Wade either did nor did not misrepresent his DUI and DWI history, which means that SFBLIC would either be fully responsible or completely discharged of liability. Accordingly, Wade cannot be held responsible for a *percentage* of the harm—it’s all or nothing.

Moreover, SFBLIC asserted as an affirmative defense that Plaintiffs’ claims are barred due to Wade’s false representations on his policy application. This still provides SFBLIC the opportunity to be completely barred from liability as a result of Wade’s policy application answers.