

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

I. NATURE AND STAGE OF THE PROCEEDINGS 1

II. FACTUAL BACKGROUND 2

 A. Underwriting and Policy Coverage 2

 B. The Loss and Adjustment 5

III. STATEMENT OF ISSUES AND SUMMARY JUDGMENT STANDARD 6

IV. SUMMARY OF ARGUMENT 7

V. ARGUMENT AND AUTHORITIES 8

 A. The Policy Clearly and Unambiguously Only Covers Damage From Named Storms. 8

 B. The January 24, 2023 Tornado Was Not A Named Storm Or Caused By A Named Storm. 11

 a. The January 24 tornado was not a named storm as defined by the Policy. 11

 b. There was no Named Storm that caused the tornado. 14

 C. Eduro’s Counterclaim Alleging Violations Of The Texas Insurance Code Fails Independently Because Plaintiffs Are Not Liable For The Claim Under The Policy. 15

VI. CONCLUSION 17

PRAYER 17

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 248 (1986).....	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 322 (1986).....	6, 7
<i>Landmark Am. Ins. Co. v. SCD Mem. Place II</i> , 25 F.4th 283, 286-87 (5th Cir. 2022).....	14
<i>Weitzman v. Allstate Vehicle & Prop. Ins. Co.</i> , 597 F. Supp. 3d 1100, 1103 (S.D. Tex. 2022).....	8
State Cases	
<i>Am. Mfrs. Mut. Ins. Co. v. Schaefer</i> , 142 S.W.3d 154, 158 (Tex. 2003).....	9
<i>Balandran v. Safeco Ins. Co. of Am.</i> , 972 S.W.2d 738, 740-41 (Tex. 1998).....	8
<i>Barbara Techs. Corp. v. State Farm Lloyd’s</i> , 589 S.W.3d 806, 813 (Tex. 2019).....	16
<i>Coker v. Coker</i> , 650 S.W.2d 391, 393 (Tex. 1983).....	6, 9
<i>de Laurentis v. United Servs. Auto. Ass’n</i> , 162 S.W.3d 714, 721 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (op. on rehearing).....	9
<i>Empl’rs Cas. Co. v. Block</i> , 744 S.W.2d 940, 944 (Tex. 1988).....	7
<i>Essex Ins. Co. v. Eldridge Land, L.L.C.</i> , 442 S.W.3d 366, 370 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).....	9
<i>Gilbert Tex. Constr. L.P. v. Underwriters at Lloyd’s London</i> , 327 S.W.3d 118, 124 (Tex. 2020).....	8
<i>JAW The Pointe, L.L.C. v. Lexington Ins. Co.</i> , 460 S.W.3d 597, 603 (Tex. 2015).....	8

Love of God Holiness Temple Church v. Union Standard Ins. Co.,
860 S.W.2d 179, 181 (Tex. App.—Texarkana 1993, writ denied).....7

Rodriguez v. Safeco Ins. Co. of Ind.,
No. 23-0534, 2024 WL 388142 (Tex. Feb. 2, 2024)16

Sec. Mut. Cas. Co. v. Johnson,
584 S.W.2d 703, 704 (Tex. 1979).....9

Serger v. Yorkshire Ins. Co., Ltd.,
503 S.W.3d 388, 400-401 (Tex. 2016)8

Stroman v. Fidelity & Cas. Of N.Y.,
792 S.W.2d 257, 261 (Tex. App.—Austin 1990, writ denied).....8

Thompson v. Geico Ins. Agency, Inc.,
527 S.W.3d 641, 643-44 (Tex. App.—Houston [14th Dist.] 2017, no pet.).....8

Universal C.I.T. Credit Corp. v. Daniel,
243 S.W.2d 154, 157 (Tex. 1951).....6

Federal Statutes

33 U.S.C. § 3611(a)(6).....13

42 U.S.C. § 4057(a)(5).....13

State Statutes

LA. STAT. ANN. §§ 22:1341, 22:1267.113

MISS. ADMIN. CODE pt. 1, R. 41:03.....13

Texas Insurance Code § 542.....16, 17

Texas Insurance Code §§ 542.055, 542.058 and 542.08916

Other Authorities

Ex. F, National Oceanic & Atmospheric Administration National Hurricane
Center Tropical Cyclone Names - Atlantic Names, *available at*
<https://www.nhc.noaa.gov/aboutnames.shtml>12

Ex. G, National Oceanic & Atmospheric Administration National Hurricane
Center 2023 Tropical Cyclone Advisory Archive, *available at*
<https://www.nhc.noaa.gov/archive/2023/>15

Federal Rule of Civil Procedure 566

LAW INSIDER, *Named Storm Definition*, available at
<https://www.lawinsider.com/dictionary/named-storm>.....13

Federal Rule of Civil Procedure 26(a) 1

Federal Rule of Civil Procedure 26(f) 1

Storm Prediction Center, FAQ – Tornado Forecasting, *available at*
<https://www.spc.noaa.gov/faq/tornado/> 11

COME NOW, Plaintiffs/Counter-Defendants QBE Specialty Insurance Company and Tokio Marine Underwriting Limited (“Plaintiffs”), in the above-entitled and numbered cause, and file this Motion for Summary Judgment and would show the Court as follows:

II. NATURE AND STAGE OF THE PROCEEDINGS

1. This litigation arises out of an insurance coverage dispute under a Named Storm commercial property insurance policy. On July 19, 2023, Plaintiffs filed a Complaint for Declaratory Judgment (“Complaint”) seeking a judgment declaring that no coverage is afforded to Defendant/Counter-Plaintiff Eduro Healthcare LLC (“Eduro”) under Policy Nos. MSP-37937 and AMR-78036 (collectively “Policy”) for a tornado loss occurring on or about January 24, 2023.

2. On November 29, 2023, Eduro filed an Answer to Plaintiffs’ Complaint for Declaratory Judgment and Original Counterclaim (“Answer” or “Counterclaim”) alleging breach of contract and Texas Insurance Code violations. Plaintiffs answered Eduro’s Counterclaim on December 18, 2023.

3. Consistent with the January 10, 2024 Joint Discovery/Case Management Plan Under Rule 26(f) Federal Rules of Civil Procedure, the Parties agreed and Court ordered that discovery will be deferred until resolution of early cross-motions for summary judgment. *See* ECF No. 16. The Parties have similarly deferred submission of Rule 26(a) initial disclosures until the Court rules on the cross-motions for summary judgment if such rulings do not resolve all issues in the case. *See* ECF No. 16.

III. FACTUAL BACKGROUND

A. Underwriting and Policy Coverage

4. In January 2022, Eduro’s surplus lines insurance broker—Alex Haskell with CRC Insurance Services, Inc. (“CRC”)—generated 17 separate commercial property insurance quotes in AmRisc, LLC’s¹ (“AmRisc”) online platform for Eduro’s Deer Park, Texas skilled nursing facility (the “facility”). Nine (9) of the quotes Mr. Haskell generated were for “all perils” coverage and the other eight (8) quotes were for “named wind” coverage only. Mr. Haskell generated these quotes with a range of deductible options.

5. On behalf of Eduro, CRC requested to bind one of the “named wind” quotes, and coverage was issued to Eduro for “Named Windstorm or Hail Only”. *See Ex. A²*, February 15, 2022 Waypoint Wholesale Quote ID No. 366382; *Ex. B*, February 16, 2022 Waypoint Wholesale Binder ID No. 366382.

6. Confirmation of the order for Eduro’s Named Wind/Hail Only policy was emailed to Mr. Haskell on February 15, 2022, with the binder following shortly thereafter. The confirmation emailed to Mr. Haskell expressly stated that coverage was bound for “**Peril Requested: Named Wind/Hail only.**”

¹ AmRisc is Plaintiffs’ managing general underwriter.

² Given that this Motion is filed prior to formal discovery in this matter, certain exhibits referenced herein are supported by a declaration signed by Kelli Kresowski (AmRisc LLC). *See Ex. H.*

From: Annalise Bowen (TX)
Sent: Tuesday, February 15, 2022 10:17 PM
To: Alex Haskell (WA)
Cc: Vy Hoang
Subject: RE: Bind Requested eff. 2/15/2022 by Alex Haskell for 941662: Eduro Healthcare, LLC

Hi Alex,

Thank you for the order. Coverage is bound as quoted. Binder to follow.

Have a wonderful day!

Annalise Bowen
Underwriter II, AVP



20405 SH 249, Ste. 430, Houston, TX 77070
Direct +1 803 231 6173 | Mobile +1 843 509 5582
AmRisc Online Main Contact: amrisconline@amrisc.com
Core Values: *Integrity | Relationships | Leadership | Excellence | Innovation*

From: amrisconline@amrisc.com <amrisconline@amrisc.com>
Sent: Tuesday, February 15, 2022 4:43 PM
To: AmRisc Online <Amrisconline@amrisc.com>
Subject: Bind Requested eff. 2/15/2022 by Alex Haskell for 941662: Eduro Healthcare, LLC

CC Emails:

Account Name:	Eduro Healthcare, LLC
Account:	941662 [2/15/2022 - 2/15/2023]
Broker:	Alex Haskell [ahaskell@crcgroup.com]
Branch:	Seattle WA
Company:	CRC Group
Inspection Contact Name:	Chris Zumhofe
Inspection Contact Phone:	541-636-2078
Inspection Contact Email:	chris.zumhofe@allianceinsgrp.com
Renewal:	False
Incumbent:	True
Peril Requested:	Named Wind/Hail Only
AmRisc Filing Taxes:	No
UW CMP:	N

See **Ex. C**, February 15, 2022 email string between A. Bowen, A. Haskell, V. Hoang.

7. Subsequent to binding, Plaintiffs issued the Named Storm Policy to Eduro with a policy period of February 15, 2022 through February 15, 2023. The facility, which consists of 3 one-story wings housing 96 units, was insured for a value of \$4,178,000, along with contents valued at \$576,000 and business income loss valued at \$1,480,778, for a total insured value of \$6,234,778. See **Ex. B**, February 16, 2022 Waypoint Wholesale Binder ID No. 366382 at p. 16,

Eduro Healthcare LLC Statement of Values. A copy of the Policy was e-mailed to Mr. Haskell on March 7, 2022. *See Ex. D*, March 7, 2022 e-mail from V. Hoang to A. Haskell.

8. As reflected in both the quote and the binder issued to Eduro, the Policy provided coverage for loss or damage resulting from “Windstorm or Hail caused by or resulting from Named Storm.” *See* ECF No. 1-1 at p. 6, End. 1, ¶8.

9. The coverage afforded is reflected on the Policy’s Supplemental Declarations page, which notes the “Covered Causes of Loss” to be “Windstorm or Hail caused by or resulting from Named Storm Only”:

COMMERCIAL PROPERTY COVERAGE PART SUPPLEMENTAL DECLARATIONS						
ACCOUNT NO. 941662		COMPANY		See Contract Allocation Endorsement AR CA		
NAMED INSURED Eduro Healthcare LLC						
DESCRIPTION OF PREMISES GOV NURSING HOMES						
PREM. NO.	BLDG. NO.	LOCATION, CONSTRUCTION AND OCCUPANCY				
ALL	ALL	Per schedule on file with Program Manager.				
COVERAGES PROVIDED						
PREM. NO.	BLDG. NO.	COVERAGE	LIMITS OF INSURANCE	COVERED CAUSES OF LOSS	COINSURANCE* RATES	
ALL	ALL	Real & Personal Property and Business Income/Rents.	Per schedule on file with Program Manager; subject to or sublimits stated elsewhere Only. in the policy; and based on Total Insurable Values of \$6,234,778.	Windstorm or Hail caused by or resulting from Named Storm	Waived	

See ECF No. 1-1 at p. 7, Commercial Property Coverage Part – Supplemental Declarations.

10. The restriction of coverage to only Named Storm-related windstorm or hail damage is similarly reflected elsewhere in the Policy, as well. Specifically, while the standard policy form on which the Policy is written includes various covered causes of loss at Paragraphs A.3.a.-k., an endorsement to the Policy—SP 05 98 Endorsement—modifies the Policy to delete **all** causes of loss besides the named perils of Windstorm or Hail. *See* ECF No. 1-1 at p. 69. (expressly deleting items A.3.a.,b.,c.,e.,f.,g.,h.,i.,j., and k. and leaving only item A.3.d, “Windstorm or Hail”). Policy

Endorsement No. 1 further modifies the policy form’s “Covered Causes of Loss” provision to delete the remaining “Windstorm or Hail” coverage in its entirety and replace it with the following:

A.3.d. Windstorm or Hail *caused by or resulting from Named Storm*, but not including:

- (1) Frost or cold weather;
- (2) Ice (other than hail), snow or sleet, whether driven by wind or not;
- (3) Loss or damage to the interior of any building or structure, or the property inside the building or structure, caused by rain, snow, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters; or
- (4) Loss or damage by hail to lawns, trees, shrubs or plants which are part of a vegetated roof.

See ECF No. 1-1 at p. 6, Endorsement No. 1 at ¶ 8 (emphasis added).

11. The Policy defines “Named Storm” as follows:

The term “Named Storm” shall include, but not be limited to, storm, cyclone, typhoon, atmospheric disturbance, depression or other weather phenomena designated by the US National Hurricane Center and where a name (and not only a number) has been applied.

See ECF No. 1-1 at p. 30, Property Endorsement at ¶ 3.H.³

B. The Loss and Adjustment

12. On January 24, 2023, a tornado struck the facility. The Parties do not dispute that the facility was damaged by a tornado.

13. Eduro submitted a property loss notice to Plaintiffs the next day, January 25, 2023. See **Ex. E**. Plaintiffs timely acknowledged the claim and advised third party claim administrator Sedgwick Delegated Authority (“SDA”) of the loss. Ernesto Barrios of SDA wrote to Eduro on January 27, 2023 acknowledging receipt of the claim.

³ The Property Endorsement, by its terms applies “with respect to the coverage provided by all underwriters, carriers and insurers of this policy.” *Id.*

14. On February 3, 2023, Plaintiffs—via correspondence from SDA—denied coverage for the claim, advising that the Policy only covers damage caused by or resulting from a Named Storm, and that Eduro’s loss was not caused by Named Storm.

15. Counsel for Eduro wrote to Mr. Barrios in response on March 14, 2023, disputing that the tornado was not a “Named Storm” and requesting a written explanation as to why the loss was not caused by a Named Storm.

16. On April 24, 2023, counsel for Plaintiffs responded to Eduro’s counsel, reiterating that there was no evidence or information that the damage was caused by or resulted from a storm designated and named by the US National Hurricane Center. The April 24 letter invited Eduro to advise of a Named Storm from which Eduro believed the damage resulted. Eduro’s counsel wrote on May 4, disputing Plaintiffs’ position and asserting that the tornado was called the “Pasadena Tornado” by various media sources, which qualified it as a “Named Storm.”

17. Plaintiffs instituted this declaratory judgment action when it became apparent that the parties disagreed as to the scope of coverage available under the Policy. Plaintiffs now move for summary judgment because the plain language of the Policy, along with the available evidence, conclusively establishes that the damage was not a result of windstorm or hail caused by a Named Storm.

IV. STATEMENT OF ISSUES AND SUMMARY JUDGMENT STANDARD

18. Whether, under Federal Rule of Civil Procedure 56, Plaintiffs are entitled to summary judgment that no coverage exists for Eduro’s loss because the loss was not caused by the single named peril covered by the Policy, “Windstorm or Hail caused by or resulting from Named Storm[.]”

19. Summary judgment is proper when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The interpretation of an unambiguous contract is a question of law for the Court and summary judgment is proper. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983) (citing *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157 (Tex. 1951)). Rule 56 “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Catrett*, 477 U.S. at 322.

20. Once the moving party identifies the absence of evidence on an essential element of the non-moving party’s claims, the burden shifts to the nonmovant to demonstrate a genuine fact dispute. *Id.* at 324. To raise a genuine dispute, the evidence must be such that a reasonable jury could return a verdict in the nonmovant’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

V. SUMMARY OF ARGUMENT

21. Plaintiffs are entitled to summary judgment because there is no question of law or fact that the Policy only covers damage resulting from windstorm or hail caused by a “Named Storm,” and the tornado which caused the damage was neither itself a Named Storm nor caused by a Named Storm. Further, because the Policy does not cover Eduro’s losses, Plaintiffs cannot be in breach of the Policy by denying non-covered claims.

22. For the same reason, Plaintiffs cannot be found to have violated any of their obligations under the Texas Insurance Code. Eduro’s Counterclaim alleging violations of the Texas Insurance Code also fail independently because Plaintiffs timely investigated the claim and have no liability for the claim under the Policy.

VI. ARGUMENT AND AUTHORITIES

23. It is well established under Texas law that “[t]o recover under a specific peril insurance policy, the insured must both plead and prove that his loss is covered by the policy.” *Love of God Holiness Temple Church v. Union Standard Ins. Co.*, 860 S.W.2d 179, 181 (Tex. App.—Texarkana 1993, writ denied) (citing *Empl’rs Cas. Co. v. Block*, 744 S.W.2d 940, 944 (Tex. 1988); *Stroman v. Fidelity & Cas. Of N.Y.*, 792 S.W.2d 257, 261 (Tex. App.—Austin 1990, writ denied)); *see also JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597, 603 (Tex. 2015) (citing *Gilbert Tex. Constr. L.P. v. Underwriters at Lloyd’s London*, 327 S.W.3d 118, 124 (Tex. 2020) (“Initially, the insured has the burden of establishing coverage under the terms of the policy.”)); *Weitzman v. Allstate Vehicle & Prop. Ins. Co.*, 597 F. Supp. 3d 1100, 1103 (S.D. Tex. 2022) (“In a suit to recover on an insurance contract, the insured bears the initial burden of showing that there is coverage.”). Specifically, “[t]o prove coverage, the [insured] must establish that the injury or damage *is the type covered by the policy.*” *Serger v. Yorkshire Ins. Co., Ltd.*, 503 S.W.3d 388, 400-01 (Tex. 2016) (emphasis added).

24. The parties do not dispute that the facility suffered tornado damage on January 24, 2023. However, the tornado damage to the facility did not result from a Named Storm, as required by the Policy. In order to avoid summary judgment, Eduro must show that there is a genuine question of law or fact as to whether the Policy covers the loss caused by the January 24 tornado. By its plain language, the Policy only covers damage caused by a Named Storm. Eduro cannot offer any genuine evidence that the January 24 tornado either was—or was caused by—a Named Storm. As such, Eduro fails to meet its burden under Texas law, and summary judgment in favor of Plaintiffs is proper.

A. The Policy Clearly and Unambiguously Only Covers Damage From Named Storms.

25. The interpretation of insurance policies under Texas law is governed by general principles of contract construction, requiring that all parts of an insurance policy are read together in their entirety to give effect to the written expression of the parties' intent. *Thompson v. Geico Ins. Agency, Inc.*, 527 S.W.3d 641, 643-44 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (citing *Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d 738, 740-41 (Tex. 1998)). In determining the parties' intent, Texas law looks “only within the four corners of the insurance agreement to see what is actually stated, not what was allegedly meant.” *de Laurentis v. United Servs. Auto. Ass'n*, 162 S.W.3d 714, 721 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (op. on rehearing).

26. Policy language is given its “ordinary and generally accepted meaning unless the policy shows that the words used are intended to impart a technical or different meaning.” *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 142 S.W.3d 154, 158 (Tex. 2003) (citing *Sec. Mut. Cas. Co. v. Johnson*, 584 S.W.2d 703, 704 (Tex. 1979)). Texas law requires courts to “examine and consider the entire writing in an effort to harmonize and give effect to all of the policy provisions ‘so that none will be rendered meaningless.’” *Essex Ins. Co. v. Eldridge Land, L.L.C.*, 442 S.W.3d 366, 370 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) (quoting *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983)).

27. If policy language “can be given a definite or certain legal meaning, the policy is not ambiguous and it is construed as a matter of law.” *de Laurentis*, 162 S.W.3d at 721 (internal citations omitted). The mere existence of conflicting interpretations is insufficient to create an ambiguity: “ambiguity exists only when the contract is susceptible of two or more *reasonable* interpretations.” *Essex Ins. Co.*, 442 S.W.3d at 370 (citing *Schaefer*, 124 S.W.3d at 157) (emphasis added).

28. As described above, the endorsements to the Policy combine to restrict coverage to the single named peril of damage from “Windstorm or Hail caused by or resulting from Named Storm.” ECF No. 1-1 at p. 6, Endorsement No. 1 at ¶ 8. “Named Storm,” in turn, is defined in the Policy to “include, but not be limited to, storm, cyclone, typhoon, atmospheric disturbance, depression or other weather phenomena *designated by the US National Hurricane Center and where a name (and not only a number) has been applied.*” See ECF No. 1-1 at p. 30, Property Endorsement at ¶ 3.H (emphasis added).

29. The Policy’s plain intent to cover Named Storm damage alone is reflected not only in the above-referenced endorsements, but also on the Policy’s declarations page and contract allocation provision. See ECF No. 1-1 at p. 7, Commercial Property Coverage Part Supplemental Declarations – Coverages Provided; p. 8, Contract Allocation Endorsement (showing “NW”⁴ as the covered peril).

30. The clear intent of the Policy, as shown and confirmed multiple times throughout the Policy, is therefore only to cover wind or hail damage caused by a Named Storm. Other “all wind” coverage was available on the AmRisc quoting platform if Eduro wanted to procure broader wind-damage coverage, but the Policy as quoted, bound, and issued only covers Named Storms. To interpret the Policy as providing coverage for damage caused by the January 24, 2023 tornado would render meaningless the Policy’s endorsements and definitions restricting coverage only to the peril of Named Storm damage, in contravention of well-established Texas law on the interpretation and application of insurance policies.

⁴ The symbol “NW” is identified in the Contract Allocation Endorsement as “Named Windstorm”. Another symbol, “AOW” is identified as “All Other Windstorm” and would have been used in the Policy were the intent to cover windstorm damage resulting from other, non-Named Storms.

31. The four corners of the Policy clearly state that only wind and hail damage resulting from a Named Storm is covered. Because the damage to Eduro’s facility did not result from a Named Storm, the loss is not covered by the Policy.

B. The January 24, 2023 Tornado Was Not A Named Storm Or Caused By A Named Storm.

a. The January 24 tornado was not a named storm as defined by the Policy.

32. In its Answer and Counterclaims, Eduro alleges that the January 24 tornado was “named” the Pasadena Tornado, stating it was “repeatedly referred to as the ‘Pasadena tornado’ in local media and on social media. As such, Eduro contends, the tornado is a ‘Named Storm’ that falls within the Policy’s grant of coverage.” ECF No. 13 at p. 9, ¶20.

33. The Policy definition of “Named Storm” plainly imposes two requirements for coverage: the storm, cyclone, or weather phenomena that causes a loss must be (1) “designated by the US National Hurricane Center” and (2) be given an applied “name (and not only a number).” ECF No. 1-1 at p. 30, Property Endorsement at ¶ 3.H.

34. As an initial note, the tornado was not “designated” by the US National Hurricane Center; nor could it have been. The US National Hurricane Center does **not** designate, monitor, or forecast any tornadoes; the only weather agency in the United States involved in forecasting tornadoes is the National Weather Service. *See* Storm Prediction Center, FAQ – Tornado Forecasting, *available at* <https://www.spc.noaa.gov/faq/tornado/>. Because the US National Hurricane Center does not designate tornadoes generally, and specifically did not designate the January 24 tornado, the definition of “Named Storm” is not satisfied by the January 24 tornado and thus Policy’s coverage is not triggered.

35. Further, even if colloquially the media or social media posts may have called the January 24 tornado the “Pasadena tornado” for purposes of ease of identification, this does not

satisfy the Policy’s Named Storm definition. Eduro’s attempts to argue otherwise require an unreasonable interpretation of Policy language and should be rejected.

36. First, the media’s unilateral selection of a label does not qualify as a designation of the storm and application of a “name” by the US National Hurricane Center as required by the Policy. This is further underscored by the fact that “Pasadena” is not one of the names *ever* used by the US National Hurricane Center in naming storms or weather phenomena.

37. The US National Hurricane Center’s naming of tropical storms is performed consistent with a strict procedure and specific list of names established by the United Nations World Meteorological Organization. For Atlantic storms, there are six lists of names which are rotated through annually:

Atlantic Names

[Atlantic Pronunciation Guide \(PDF\)](#)

2023	2024	2025	2026	2027	2028
Arlene	Alberto	Andrea	Arthur	Ana	Alex
Bret	Beryl	Barry	Bertha	Bill	Bonnie
Cindy	Chris	Chantal	Cristobal	Claudette	Colin
Don	Debby	Dexter	Dolly	Danny	Danielle
Emily	Ernesto	Erin	Edouard	Elsa	Earl
Franklin	Francine	Fernand	Fay	Fred	Farrah
Gert	Gordon	Gabrielle	Gonzalo	Grace	Gaston
Harold	Helene	Humberto	Hanna	Henri	Hermine
Idalia	Isaac	Imelda	Isaias	Imani	Idris
Jose	Joyce	Jerry	Josephine	Julian	Julia
Katia	Kirk	Karen	Kyle	Kate	Karl
Lee	Leslie	Lorenzo	Leah	Larry	Lisa
Margot	Milton	Melissa	Marco	Mindy	Martin
Nigel	Nadine	Nestor	Nana	Nicholas	Nicole
Ophelia	Oscar	Olga	Omar	Odette	Owen
Phillippe	Patty	Pablo	Paulette	Peter	Paula
Rina	Rafael	Rebekah	Rene	Rose	Richard
Sean	Sara	Sebastien	Sally	Sam	Shary
Tammy	Tony	Tanya	Teddy	Teresa	Tobias
Vince	Valerie	Van	Vicky	Victor	Virginie
Whitney	William	Wendy	Wilfred	Wanda	Walter

Since 1953, Atlantic tropical storms had been named from lists originated by the National Hurricane Center. They are now maintained and updated through a strict procedure by an international committee of the [World Meteorological Organization](#).

The six lists above are used in rotation and re-cycled every six years, i.e., the 2023 list will be used again in 2029. The only time that there is a change in the list is if a storm is so deadly or costly that the future use of its name for a different storm would be inappropriate for reasons of sensitivity. If that occurs, then at an annual meeting by the WMO committee (called primarily to discuss many other issues) the offending name is stricken from the list and another name is selected to replace it. Several names have been retired since the lists were created. Here is more information on the [history of naming tropical cyclones and retired names](#).

If a storm forms during the off-season, it will take the next name in the list based on the current calendar date. For example, if a tropical cyclone formed on December 28th, it would take the name from the previous season's list of names. If a storm formed in February, it would be named from the subsequent season's list of names.

In the event that more than twenty-one named tropical cyclones occur in the Atlantic basin in a season, any additional storms will take names from an [alternate list of names approved by the WMO](#). Here are the pronunciation guides for the [Atlantic basin](#).

Ex. F, National Oceanic & Atmospheric Administration National Hurricane Center Tropical Cyclone Names - Atlantic Names, *available at* <https://www.nhc.noaa.gov/aboutnames.shtml>.

“Pasadena” is not one of the names used in rotation by the US National Hurricane Center, and therefore any media usage of the label “Pasadena tornado” when referring to the January 24 tornado would not qualify as a Named Storm under the Policy definition.

38. Second, even if the Policy definition for Named Storm could be construed as including coverage for storms beyond a weather event designated by the US National Hurricane Center—which is denied—Eduro’s argument that media usage of a label to identify the tornado qualifies as a “Named Storm” is unreasonable, illogical, and inconsistent with the clear language of the Policy. To accept Eduro’s argument would effectively convert the Named Storm Policy into an all-wind policy, rendering the Policy provisions limiting coverage meaningless and unjustifiably expanding coverage under the Policy beyond the clear intent of the parties.

39. For example, while other definitions of “Named Storm” may differ slightly, they all require a meteorological organization specifically assigning the weather event a name in order to satisfy the definition. *See, e.g.*, 33 U.S.C. § 3611(a)(6); 42 U.S.C. § 4057(a)(5) (each defining “named storm” as “any organized weather system with a defined surface circulation and maximum sustained winds of at least 39 miles per hour *which the National Hurricane Center of the United States National Weather Service names* as a tropical storm or a hurricane”) (emphasis added); LA. STAT. ANN. §§ 22:1341, 22:1267.1, 19 MISS. ADMIN. CODE pt. 1, R. 41:03 (all defining “named storm” as “a storm system that has been *declared a named storm by the National Hurricane Center* of the National Weather Service.”) (emphasis added); *see also* LAW INSIDER, *Named Storm Definition*, available at <https://www.lawinsider.com/dictionary/named-storm> (collecting various definitions of “Named Storm” which require a declaration from some official meteorological service division).

40. Media sources' usage (or social media posts) labeling the January 24 tornado as the "Pasadena tornado" do not render the tornado a "Named Storm" for purposes of the Policy coverage. Any attempt to argue otherwise would require an unreasonable interpretation of the clear Policy wording. The January 24 tornado was an unnamed wind event to which the Policy was not intended to—and does not—respond.

b. There was no Named Storm that caused the tornado.

41. Only if a Named Storm causes windstorm or hail damage is the Policy's coverage triggered. As described above, the tornado was not, in and of itself, a named storm. Similarly, the tornado was not *caused by* a Named Storm.

42. Considering similar policy language, the Fifth Circuit—applying Texas law—recently determined that a policy phrase reading: "Perils Covered: Windstorm or Hail associated with a Named Storm" "defines carefully which perils it covers; all others can be understood to be excluded." *Landmark Am. Ins. Co. v. SCD Mem. Place II*, 25 F.4th 283, 286-87 (5th Cir. 2022) (applying Texas law). Although the parties in *Landmark* did not dispute whether the damage—water and flood damage stemming from Hurricane Harvey—was caused by a Named Storm under that policy's definition, the court's recognition that this policy wording carefully and expressly indicates what perils are encompassed by the Policy is applicable here as well.

43. For the 2023 year, the US National Hurricane center identified 19 Named Storms in the Atlantic region beginning with Tropical Storm Arlene in June 2023 and ending with Hurricane Tammy in October 2023. There were also two unnamed but numbered storms, Tropical Depression Twenty-One (October 2023) and Potential Tropical Cyclone Twenty-Two (November 2023):



2023 Tropical Cyclone Advisory Archive

1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023

Atlantic

Tropical Storm ARLENE
Tropical Storm BRET
Tropical Storm CINDY
Hurricane DON
Tropical Storm GERT
Tropical Storm EMILY
Hurricane FRANKLIN
Tropical Storm HAROLD
Hurricane IDALIA
Tropical Storm JOSE
Tropical Storm KATIA
Hurricane LEE
Hurricane MARGOT
Hurricane NIGEL
Tropical Storm OPHELIA
Tropical Storm PHILIPPE
Tropical Storm RINA
Tropical Storm SEAN
Hurricane TAMMY
Tropical Depression TWENTY-ONE
Potential Tropical Cyclone TWENTY-TWO

E. Pacific

Hurricane ADRIAN
Hurricane BEATRIZ
Hurricane CALVIN
Tropical Depression FOUR-E
Hurricane DORA
Tropical Storm EUGENE
Hurricane FERNANDA
Tropical Storm GREG
Hurricane HILARY
Tropical Storm IRWIN
Hurricane JOVA
Tropical Depression TWELVE-E
Tropical Storm KENNETH
Tropical Depression FOURTEEN-E
Hurricane LIDIA
Tropical Storm MAX
Hurricane NORMA
Hurricane OTIS
Tropical Storm PILAR
Tropical Storm RAMON

C. Pacific

Ex. G, National Oceanic & Atmospheric Administration National Hurricane Center 2023 Tropical Cyclone Advisory Archive, available at <https://www.nhc.noaa.gov/archive/2023/>.

44. None of the storms named by the US Hurricane Center occurred in or near January 2023 and could not, therefore, be responsible for causing the tornado that damaged the facility.

45. Based on the unambiguous language of the Policy and the facts of the loss, the January 24 tornado was not a Named Storm, nor caused by a Named Storm, and as such the tornado damage to the facility is not covered under the Policy. Summary judgment in Plaintiffs' favor is therefore proper. For the same reasons Plaintiffs are entitled to summary judgment on their declaratory judgment action, Eduro's counterclaim for breach of contract must also fail. Specifically, because there was no coverage for the tornado damage to the facility, Plaintiffs did not breach the contract in properly denying the claim.

C. Eduro's Counterclaim Alleging Violations Of The Texas Insurance Code Fails Independently Because Plaintiffs Are Not Liable For The Claim Under The Policy.

46. Eduro’s counterclaim alleges certain purported violations of Texas Insurance Code § 542. This counterclaim fails because, as set forth above, Eduro has no viable breach of contract claim. In order to prevail on a claim for damages under § 542, “the insured must establish: (1) the insurer’s liability under the insurance policy, and (2) that the insurer has failed to comply with one or more sections of the TPPCA in processing or paying the claim.” *Barbara Techs. Corp. v. State Farm Lloyd’s*, 589 S.W.3d 806, 813 (Tex. 2019) (superseded by statute on other grounds, *Rodriguez v. Safeco Ins. Co. of Ind.*, No. 23-0534, 2024 WL 388142 (Tex. Feb. 2, 2024) (internal citations omitted)).⁵

47. The Texas Supreme Court has held: “If the insured fails to establish either that the insurer is liable for the claim or that the insurer failed to comply with a provision of the TPPCA, the insured is not entitled to TPPCA damages.” *Id.* Accordingly, an absolute prerequisite to recovery under Texas Insurance Code § 542 is Plaintiffs’ liability for the claim. Eduro has failed to advance any evidence of liability under the insurance policy, or specific evidence of Plaintiffs’ failure to comply with any specific sections of Chapter 542.

48. As set forth in detail above, the January 24 tornado is not a “Named Storm,” nor was it caused by a “Named Storm,” and thus the Policy’s general coverage grant of a single covered peril for Named Storm was not triggered by the facts and circumstances of the loss. The online quoting platform offered options for different intended coverages, including special/all-risk, all wind and Named Storm-only (which was the Policy that was bound and issued). Based on the plain wording of the Policy, the parties did not intend for the Policy to respond to tornado damage caused

⁵ Referencing Texas Insurance Code §§ 542.055, 542.058 and 542.089, Eduro’s counterclaims allege that Plaintiffs are liable under § 542 because they “denied coverage almost immediately after receiving notice of the claim and without conducting any investigation whatsoever in violation of the Texas Insurance Code.” As noted above, Plaintiffs acknowledged Eduro’s claim and commenced their investigation no more than two days after the loss notice was submitted, and after determining that the Policy did not cover the loss, timely advised Eduro of their coverage position promptly and without delay. See ¶¶ 13, 16 *supra*.

by a storm not named by the US National Hurricane Center, and as such, Eduro's claim is not covered. Absent liability under the Policy, Plaintiffs cannot be found to have violated § 542. Because there is no question of law or fact that the Policy does not respond to Eduro's loss, summary judgment in Plaintiffs' favor on Eduro's counterclaims is proper.

VII. CONCLUSION

49. The Policy only provides coverage for damage from a single named peril—Named Storm. The damage to the facility was caused by a tornado which was neither itself a Named Storm nor caused by a Named Storm as defined in the Policy. Accordingly, there is no coverage for Eduro's losses based on the plain language of the policy and the undisputed facts. Accordingly, Plaintiffs motion for summary judgment should be granted, and that this Court issue a declaration that Eduro's claim for damage to the facility is not covered.

50. For the same reasons, Plaintiffs are entitled to summary judgment on Eduro's counterclaims. Plaintiffs cannot be in breach of their contract for refusing to pay a non-covered claim. Similarly, because the claim is not covered Eduro's claims for alleged violations of the Texas Insurance Code are meritless.

PRAYER

WHEREFORE, Plaintiffs pray that this Court issue declarations that there is no coverage for Eduro's loss resulting from the January 24, 2023 tornado and order that Eduro take nothing on its counterclaims for breach of contract and violations of the Texas Insurance Code. Plaintiffs further request that this Court grant them such other and further relief, at law or in equity, that the Court deems just and right.

Respectfully submitted,

PHELPS DUNBAR LLP

By: /s/ Paige C. Jones
Paige C. Jones
State Bar No. 24054607
William R. de los Santos
State Bar No. 24125762
PHELPS DUNBAR LLP
2102 E. State Hwy. 114, Suite 207
Southlake, Texas 76092
Telephone: (817)488-3134
Facsimile: (817) 488-3214
paige.jones@phelps.com
william.delossantos@phelps.com

**ATTORNEYS FOR PLAINTIFFS QBE
SPECIALTY INSURANCE COMPANY AND
TOKIO MARINE UNDERWRITING LIMITED**

CERTIFICATE OF SERVICE

On May 3, 2024, I electronically filed the foregoing with the clerk of court using the CM/ECF system, which will electronically send notification to all counsel of record.

/s/ Paige C. Jones
Paige C. Jones