UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS

CHAD HARRIS,	§	
	§	
Plaintiff,	§	
	§	
versus	§	CIVIL ACTION NO. 1:18-CV-523
	§	
FLORENCE WIGGINS,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

Pending before the court is Defendant Florence Wiggins's ("Wiggins") Motion for Summary Judgment (#16) wherein she claims that she is entitled to the proceeds of Albert Harris's ("Albert") life insurance policy and there are no contested issues of fact. Plaintiff Chad Harris ("Harris") filed a responsive brief (#17) contending that he is the proper beneficiary of Albert's life insurance policy proceeds. Having considered the pending motion, the submissions of the parties, the pleadings, and the applicable law, the court is of the opinion that summary judgment is warranted.

I. Background

This dispute arises from both Wiggins and Harris's claiming Albert's life insurance policy proceeds. On December 1, 1988, Massachusetts Indemnity and Life Insurance Company, now known as Primerica Life Insurance Company ("Primerica"), issued policy no. 0420171913 (the "Policy") to Albert, which provided $100,000.00 in life insurance coverage (the "Policy Proceeds"). Albert initially designated Beulah Benjamin, his sister, as the primary beneficiary and Cheryl Freeman, his friend, as the contingent beneficiary. Primerica received two beneficiary change forms after issuing the Policy.

On February 27, 2014, Albert executed the first Policy change, which designated Harris, his biological son, as the primary beneficiary and Wiggins, his friend, as the contingent beneficiary. On May 13, 2018, Albert submitted his second Policy change, which designated Wiggins, his fiancée at the time, as the primary beneficiary and Corey Wiggins, Wiggins's son whom Albert identified as his son on the form, as the contingent beneficiary. On July 16, 2018, Albert entered hospice, and three days later, on July 19, 2018, Albert and Wiggins were married. On July 25, 2018, Albert passed away.

On August 17, 2018, Primerica received Wiggins's written claim for the Policy Proceeds. Harris also submitted a claim to Primerica for the Policy Proceeds, alleging that Albert did not have the requisite mental capacity to execute the beneficiary change form submitted on May 13, 2018.[1] Primerica had reasonable doubt as to the identify of the person entitled to the Policy Proceeds and no interest in the Policy Proceeds other than fulfilling its contractual obligation to pay the sum owed to the appropriate party. On October 15, 2018, Primerica, originally the plaintiff, filed its Complaint for Interpleader seeking to have Wiggins and Harris, originally named as defendants in this matter, settle this dispute among themselves. On November 19, 2018, Primerica deposited $100,526.03 into the court's registry. Subsequently, the court terminated Primerica as a party with prejudice and realigned Harris as the plaintiff and Wiggins as the defendant.

In the instant motion, Wiggins seeks to establish there is no genuine dispute of material fact that she is the appropriate designated beneficiary. Meanwhile, Harris contends that Albert did not

[1] According to Primerica's complaint, Harris "claims that during May 2018, Albert was hospitalized with significant medical problems and was improperly coerced by Wiggins to change the primary beneficiary under the Policy."

make the 2018 beneficiary change. Alternatively, Harris asserts that Albert either lacked the required capacity to make the beneficiary change or the change was the result of undue influence by Wiggins. Wiggins and Harris acknowledge that Albert and Wiggins knew each other for more than 20 years; however, Harris questions Wiggins's characterization of the relationship. It is unclear from the record how long or when Albert was hospitalized due to his failing health. Nonetheless, Wiggins maintains that Albert personally called Primerica to request a beneficiary change form and that it was Albert's idea to change the beneficiary of the Policy. On May 13, 2018, according to Wiggins's affidavit, she witnessed Albert sign the beneficiary change form, which was subsequently submitted to Primerica. On May 15, 2018, Albert executed a Power of Attorney, witnessed by Albert Thigpen ("Thigpen"), a notary public. Wiggins further maintains that Albert was of sound mind in May 2018 despite being hospitalized. Wiggins supports this assertion through video evidence of questions propounded to Albert regarding the Power of Attorney and his responses, the signed and notarized Power of Attorney, and Thigpen's certification as notary. On May 23, 2018, Primerica acknowledged the receipt of the May 13, 2018, beneficiary change form.

Harris contends that at the time of the beneficiary change, Albert was very ill, often times disorientated and confused; thus, Albert could not have known what he was signing. Specifically, Harris highlights that the designated beneficiary portion of the form is not in his father's handwriting. Harris further contends that the listed contingent beneficiary, Corey Wiggins, is not Albert's biological son; therefore, the identification of Corey Wiggins as Albert's son is a blatant error that establishes his father's diminished mental capacity and inauthenticity of the beneficiary change form. Harris asserts that there is "no way that his father would have made the beneficiary

change without letting [him] know." Harris also alleges that it is peculiar that Wiggins moved to Texas from Mississippi only after Albert became hospitalized. More significantly, Harris asserts that Albert and Wiggins's wedding, just three days after he entered hospice, is suspicious and indicates Wiggins's influence over Albert. Therefore, Harris maintains that there is a genuine dispute as to whether the May 13, 2018, beneficiary change is valid.

II. Analysis

A. Summary Judgment Standard

A party may move for summary judgment without regard to whether the movant is a claimant or a defending party. *See Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369, 380 (5th Cir. 2019); *Apache Corp. v. W&T Offshore, Inc.*, 626 F.3d 789, 793 (5th Cir. 2010); *CQ, Inc. v. TXU Mining Co., L.P.*, 565 F.3d 268, 272 (5th Cir. 2009). Rule 56(a) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *Parrish*, 917 F.3d at 378; *Hefren v. McDermott, Inc.*, 820 F.3d 767, 771 (5th Cir. 2016). The party seeking summary judgment bears the initial burden of informing the court of the basis for her motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which she believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019); *Mabry v. Lee Cty.*, 849 F.3d 232, 234 (5th Cir. 2017).

"A fact issue is material if its resolution could affect the outcome of the action." *Hemphill v. State Farm Mut. Auto. Ins. Co.*, 805 F.3d 535, 538 (5th Cir. 2015), *cert. denied*, 136 S. Ct.

1715 (2016); *see Parrish*, 917 F.3d at 378; *Tiblier v. Dlabal*, 743 F.3d 1004, 1007 (5th Cir. 2014). "Factual disputes that are irrelevant or unnecessary will not be counted." *Tiblier*, 743 F.3d at 1007 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "An issue is '*genuine*' if it is real and substantial, as opposed to merely formal, pretended, or a sham." *Hudspeth v. City of Shreveport*, 270 F. App'x 332, 334 (5th Cir. 2008) (quoting *Bazan ex rel. Bazan v. Hidalgo Cty.*, 246 F.3d 481, 489 (5th Cir. 2001)); *see Nall v. BNSF Ry. Co.*, 917 F.3d 335, 340 (5th Cir. 2019). Thus, a genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Hefren*, 820 F.3d at 771 (quoting *Anderson*, 477 U.S. at 248); *Tiblier*, 743 F.3d at 1007; *accord Haverda v. Hays Cty.*, 723 F.3d 586, 591 (5th Cir. 2013). The moving party, however, "need not negate the elements of the nonmovant's case." *Pioneer Expl., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014); *Bayle v. Allstate Ins. Co.*, 615 F.3d 350, 355 (5th Cir. 2010); *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

Once a proper motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to demonstrate the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322 n.3; *see Beard v. Banks*, 548 U.S. 521, 529 (2006) (quoting FED. R. CIV. P. 56(e)); *Hassen v. Ruston La. Hosp. Co., L.L.C.*, 932 F.3d 353, 356 (5th Cir. 2019); *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013). The court "should review the record as a whole." *Black v. Pan Am. Labs., LLC*, 646 F.3d 254, 273 (5th Cir. 2011) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)); *see City of*

Alexandria v. Brown, 740 F.3d 339, 350 (5th Cir. 2014). All the evidence must be construed in the light most favorable to the nonmoving party, and the court will not weigh the evidence or evaluate its credibility. *Reeves*, 530 U.S. at 150; *Nall*, 917 F.3d at 340; *Tiblier*, 743 F.3d at 1007; *see Hefren*, 820 F.3d at 771. The evidence of the nonmovant is to be believed, with all justifiable inferences drawn and all reasonable doubts resolved in his favor. *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (citing *Anderson*, 477 U.S. at 255); *Davenport v. Edward D. Jones & Co., L.P.*, 891 F.3d 162, 167 (5th Cir. 2018); *Hemphill*, 805 F.3d at 538; *Pioneer Expl., L.L.C.*, 767 F.3d at 511. Nevertheless, the court's obligation to draw reasonable inferences "does not extend so far as to allow a wholly 'unreasonable inference' or one which amounts to 'mere speculation and conjecture.'" *Mack v. Newton*, 737 F.2d 1343, 1351 (5th Cir. 1984) (quoting *Bridges v. Groendyke Transp., Inc.*, 553 F.2d 877, 879 (5th Cir. 1977) ("[A]n inference would be unreasonable if it would allow a jury to rest its verdict on mere speculation and conjecture.")).

"Further, although courts view evidence in the light most favorable to the nonmoving party, they give greater weight, even at the summary judgment stage to the facts evidenced from video recordings taken at the scene." *Griggs v. Brewer*, 841 F.3d 308, 312 (5th Cir. 2016) (citing *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011)). "When opposing parties tell two different stories, one of which is blatantly contradicted by [video evidence], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). Nevertheless, when, despite the events in question being captured on videotape, the events at issue remain unclear, the court must view the evidence in the light most favorable to the nonmovant. *Ramirez v. Martinez*, 716 F.3d 369, 375 (5th Cir. 2013) ("The video does not blatantly contradict

Ramirez's version of the facts; accordingly, we view the evidence in the light most favorable to Ramirez."); *see Ross v. Burlington N. & Santa Fe Ry. Co.*, 528 F. App'x 960, 964 (10th Cir. 2013) ("When parties present conflicting evidence at the summary judgment stage, a court may rely on video footage to grant summary judgment if the recording utterly discredits the opposing party's version of the facts.").

Summary judgment is mandated if the nonmovant fails to make a showing sufficient to establish the existence of an element essential to his case on which he bears the burden of proof at trial. *Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993); *Celotex Corp.*, 477 U.S. at 322; *Tiblier*, 743 F.3d at 1007; *Curtis v. Anthony*, 710 F.3d 587, 594 (5th Cir. 2013). "[W]here the nonmoving party fails 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, no genuine issue of material fact can exist." *Apache Corp.*, 626 F.3d at 793. In such a situation, "'[a] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial' and 'mandates the entry of summary judgment' for the moving party." *United States ex rel. Farmer v. City of Houston*, 523 F.3d 333, 337 (5th Cir.) (quoting *Celotex Corp.*, 477 U.S. at 322-23)*, cert. denied*, 555 U.S. 1012 (2008).

B. Fraud

In essence, Harris alleges fraud with respect to the May 13, 2018, change of beneficiaries of the Policy. In order to succeed on a fraud claim, Harris's pleadings must satisfy the federal pleading standards. *In re Sherwin Alumina Co., L.L.C.*, 952 F.3d 229, 235 (5th Cir. 2020); *see Massey v. EMC Mortg. Corp.*, 546 F. App'x 477, 481 (5th Cir. 2013). Rule 9(b) of the Federal Rules of Civil Procedure provides that in order to state a claim for fraud in federal court, the

plaintiff must state with particularity the circumstances constituting the fraud. *See* FED. R. CIV. P. 9(b); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007); *In re Sherwin Alumina Co., L.L.C.*, 952 F.3d at 235; *Mun. Emps.' Ret. Sys. of Mich. v. Pier 1 Imports, Inc.*, 935 F.3d 424, 429 (5th Cir. 2019); *Neiman v. Bulmahn*, 854 F.3d 741, 746 (5th Cir. 2017). Specifically, Rule 9(b) states: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." FED. R. CIV. P. 9(b); *see Tellabs, Inc.*, 551 U.S. at 319; *In re Sherwin Alumina Co., L.L.C.*, 952 F.3d at 235; *Mun. Emps.' Ret. Sys. of Mich.*, 935 F.3d at 429; *IAS Servs. Grp., L.L.C. v. Jim Buckley & Assocs., Inc.*, 900 F.3d 640, 647 (5th Cir. 2018). Therefore, instead of the "short and plain statement of the claim" required by Rule 8(a) of the Federal Rules of Civil Procedure, Rule 9(b) imposes a heightened standard of pleading for averments of fraud. *See* FED. R. CIV. P. 8(a), 9(b); *In re Sherwin Alumina Co., L.L.C.*, 952 F.3d at 235; *Mun. Emps.' Ret. Sys. of Mich.*, 935 F.3d at 429. A party must plead, at the minimum, the "who, what, when, where, and how of the alleged fraud." *In re Sherwin Alumina Co., L.L.C.*, 952 F.3d at 235; *United States ex rel. Colquitt v. Abbott Labs.*, 858 F.3d 365, 371 (5th Cir. 2017).

This higher standard of pleading "stems from the obvious concerns that general, unsubstantiated charges of fraud can do damage to a defendant's reputation." *Guidry v. Bank of LaPlace*, 954 F.2d 278, 288 (5th Cir. 1992) (citing *Segal v. Gordon*, 467 F.2d 602, 607 (2d Cir. 1972)); *Weiss v. Gen. Motors LLC*, 418 F. Supp. 3d 1173, 1184 (S.D. Fla. 2019); *Halprin v. Fed.*

Deposit Ins. Corp., No. 5:13-CV-1042-RP, 2016 WL 5718021, at *3 (W.D. Tex. Sept. 30, 2016). In fact, the requirements of Rule 9(b) serve several purposes:

> to ensure that the defendant has sufficient information to formulate a defense by having notice of the conduct complained of; to protect defendants against frivolous suits; to eliminate fraud actions in which all the facts are learned after discovery; and to protect defendants from undeserved harm to their goodwill and reputation.

Civelli v. J.P. Morgan Chase Sec., LLC, No. CV H-17-3739, 2018 WL 8755508, at *3 (S.D. Tex. Oct. 11, 2018); *Green v. AmerisourceBergen Corp.*, No. 4:15-CV-379, 2017 WL 1209909, at *4 (S.D. Tex. Mar. 31, 2017).

The Fifth Circuit applies Rule 9(b) to fraud complaints "with 'bite' and 'without apology'" but also recognizes that Rule 9(b) "supplements but does not supplant Rule 8(a)'s notice pleading." *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185 (5th Cir. 2009) (quoting *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 178 (5th Cir. 1997)); *see IAS Servs. Grp., L.L.C.*, 900 F.3d at 647. Therefore, Rule 9(b) "requires only simple, concise, and direct allegations of the 'circumstances constituting fraud,' which after [*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 (2002)] must make relief plausible, not merely conceivable, when taken as true." *Grubbs*, 565 F.3d at 186. Generally, "to state a claim for fraud, a plaintiff must plausibly plead facts establishing 'the time, place and contents of the false representation[], as well as the identity of the person making the misrepresentation and what that person obtained thereby.'" *IAS Servs. Grp., L.L.C.*, 900 F.3d at 647 (quoting *Grubbs*, 565 F.3d at 186); *Flaherty & Crumrine Preferred Income Fund, Inc. v. TXU Corp.*, 565 F.3d 200, 207 (5th Cir.) (noting the plaintiff must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." (quoting *Williams*, 112 F.3d at 177)), *cert. denied*, 558 U.S. 873 (2009).

The particularity demanded by Rule 9(b), however, necessarily differs with the facts of each case. *IAS Servs. Grp., L.L.C.*, 900 F.3d at 647; *Grubbs*, 565 F.3d at 188. While the "time, place, contents, and identity" standard is traditionally required, "depending on the claim, a plaintiff may sufficiently 'state with particularity the circumstances constituting fraud or mistake' without including all the details of any single court-articulated standard." *Grubbs*, 565 F.3d at 188. Nonetheless, "Rule 9(b) requires the 'who, what, when, where, and how' to be laid out." *IAS Servs. Grp., L.L.C.*, 900 F.3d at 647. "Anything less fails to provide defendants with adequate notice of the nature and grounds of the claim." *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n.6 (5th Cir. 2000); *accord Williams*, 112 F.3d at 178 (citing *Tuchman v. DSC Commc'n Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994)). "Facts and circumstances constituting charged fraud must be specifically demonstrated and cannot be presumed from vague allegations." *Howard v. Sun Oil Co.*, 404 F.2d 596, 601 (5th Cir. 1968); *see Nathenson v. Zonagen Inc.*, 267 F.3d 400, 419-20 (5th Cir. 2001).

In short, Harris's conclusory allegations that "Albert Harris did not make the May 13, 2018, beneficiary change on the Policy" and there is "no way that his father would have made the beneficiary change without letting [him] know" are too vague and imprecise to state a claim for fraud under Rule 9(b). *See McCrimmon v. Wells Fargo Bank, N.A.*, 516 F. App'x 372, 375 (5th Cir. 2013) (finding that the plaintiff's pleadings did not meet the heightened standard because they "contain[ed] no specific statements made or omitted, no identified speakers, no times or places, and no explanation of why the statements were fraudulent"); *Chance v. Aurora Loan Servs., L.L.C.*, No. 3:11-CV-1237-BH, 2012 WL 912939, at *6 (N.D. Tex. Mar. 19, 2012) (holding that a plaintiff's allegation that "she 'was never provided full, complete and truthful disclosure

regarding all financial instruments she was compelled to sign,' and was not apprised of 'the very nature and exact particulars of the . . . entire process" failed to state a claim under Rule 9(b)); *Anderson v. Nat'l City Mortg.*, 3:11-CV-1687-N, 2012 WL 612562, at *5 (N.D. Tex. Jan. 17, 2012) (plaintiff did not satisfy Rule 9(b) where she alleged, among other things, that she "was induced into a contract without a full disclosure by an attorney"). In this instance, to the extent Harris alleges fraud in effecting the change in beneficiaries, his claims do not comply with Rule 9(b) and are subject to dismissal. *See Owens v. BAC Home Loan Servicing, L.P.*, 2012 WL 1494231, at *6 (S.D. Tex. Apr. 27, 2012) (alleged representations made by lender about deferring, modifying, or waiving mortgage payments deemed too vague to satisfy Rule 9(b)); *George-Baunchand v. Wells Fargo Home Mortg., Inc.*, No. H-10-3828, 2011 WL 6250785, at *10 (S.D. Tex. Dec. 14, 2011) (statements made by bank personnel regarding loan modification and foreclosure forbearance found lacking the specificity required by Rule 9(b)).

C. Compliance with the Policy

It is well recognized that "[i]nsurance policies are contracts." *Certain Underwriters at Lloyd's of London v. Lowen Valley View, L.L.C.*, 892 F.3d 167, 170 (5th Cir. 2018); *see One Beacon Ins. Co. v. Crowley Marine Servs., Inc.*, 648 F.3d 258, 271 (5th Cir. 2011); *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 488 (Tex. 2018) ("[A]n insurance policy is a contract that establishes the respective rights and obligations to which an insurer and its insured have mutually agreed."). *JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597, 603 (Tex. 2015); *Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W. 3d 773, 778 (Tex. 2008). As with other contracts, a federal court, sitting in diversity in Texas, applies Texas law in the interpretation of insurance policies. *Citigroup Inc. v. Fed. Ins. Co.*, 649 F.3d 367, 371 (5th Cir. 2011) (citing *Erie*

R.R. Co. v. Tompkins, 304 U.S. 64 (1938)); *see Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 770 (5th Cir. 2016); *Lowe v. Hearst Commc'ns, Inc.*, 487 F.3d 246, 252 n.4 (5th Cir. 2007). Under Texas law, the interpretation of insurance policies is governed by the same rules that apply to the interpretation of other contracts. *ADI Worldlink, L.L.C. v. RSUI Indem. Co.*, 932 F.3d 369, 376 (5th Cir. 2019) (citing *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994); *Lawyers Title Ins. Corp. v. Doubletree Partners, L.P.*, 739 F.3d 848, 858 (5th Cir. 2014); *Pendergest-Holt v. Certain Underwriters at Lloyd's*, 600 F.3d 562, 569 (5th Cir. 2010); *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 892-93 (Tex. 2017); *JAW The Pointe, L.L.C.*, 460 S.W.3d at 603. Moreover, "the proper interpretation of an insurance policy is a question of law." *Cooper Indus., Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 876 F.3d 119, 128 (5th Cir. 2017); *see Allstate Ins. Co. v. Disability Servs. of the Sw. Inc.*, 400 F.3d 260, 263 (5th Cir. 2005) (citing *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 853 (5th Cir. 2003)).

The relevant provision of the Policy is PART 3, entitled Beneficiary Provisions:

> Change of Beneficiary - You can change a Beneficiary by Notice to Us. You can only change a Beneficiary while the Insured is alive. A Beneficiary designated irrevocably on Our records may not be changed except with the written consent of that Beneficiary. A Beneficiary change will take effect on the date You signed the Notice to Us. If the Insured died before We receive this Notice, the change is effective, subject to any prior payment of proceeds.

It appears from the record that Albert complied with the Policy provisions by properly submitting a beneficiary change form which he signed on May 13, 2018. Primerica acknowledged receipt of this change on May 23, 2018. Harris contends that portions of the beneficiary change form were in someone else's handwriting; therefore, his father did not make the change. The Policy, however, does not require that the form be wholly in the insured's handwriting to be valid. The court construes Harris's blanket contention that Albert "did not make the beneficiary change"

as a challenge to the authenticity of Albert's signature. To counter this assertion, Wiggins provided an affidavit, wherein she states that Albert personally signed the change of beneficiary form. Furthermore, Wiggins provided video evidence of Albert's responding to questions about the Power of Attorney, the signed and notarized Power of Attorney dated May 15, 2018, and the notary public's certificate authenticating Albert's signature on the Power of Attorney form.

Rule 902 of the Texas Rules of Evidence, entitled Evidence That is Self-Authenticating, subpart 8, Acknowledged Documents, includes "[a] document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments." TEX. R. EVID. 902(8). In Texas, the law is well settled that a certificate of acknowledgment is prima facie evidence that the signatory of a document appeared before the notary and executed the document in question for the purposes and consideration expressed therein. *Pulido v. Gonzalez*, 01-12-00100-CV, 2013 WL 4680415, at *4 (Tex. App.—Houston [1st Dist.] Aug. 29, 2013, no pet.); *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d 326, 330 (Tex. App.—Dallas 1987, writ denied). "Where the authenticity of a signature is in dispute, the trier of fact may make a comparison with specimens which have been authenticated." *Clifton v. Anthony*, 401 F. Supp. 2d 686, 691 (E.D. Tex. 2005) (citing FED. R. EVID. 901(b)(3)); *see United States v. Bikundi*, 926 F.3d 761, 787 (D.C. Cir. 2019) ("The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person. . . . A comparison with an authenticated specimen by an expert witness or the trier of fact" may satisfy "the requirement of authenticating or identifying an item of evidence."). "To be authenticated under Rule 901,

there only need be evidence sufficient to support a finding that the matter in question is what its proponent claims." *Clifton*, 401 F. Supp. 2d at 691 (citing FED. R. EVID. 901(b)(3)).

The signed and notarized Power of Attorney is self-authenticating and competent evidence to establish the authenticity of Albert's signature. Thigpen, an objective, disinterested third party certified that he witnessed Albert sign the Power of Attorney. "It is presumed in the absence of evidence to the contrary that the notary public taking the acknowledgment performed his duty in compliance with law as to the use of the seal." *Tex. Dep't of Pub. Safety v. Rajachar*, 04-05-00354-CV, 2006 WL 467964, at *2 (Tex. App.—San Antonio Mar. 1, 2006, no pet.) (citing *Mills v. Snyder*, 387 S.W.2d 954, 956 (Tex. Civ. App.—Waco 1965, writ ref'd n.r.e.)). The record includes copies of Albert's 1988 signature, which is noticeably different from his 2014 and 2018 signatures. Nonetheless, a reasonable juror could find that the May 13, 2018, signature is in fact his signature because the signatures on the beneficiary change form and the notarized Power of Attorney, signed two days later, appear quite similar. Thus, it is reasonable to infer that Albert signed the beneficiary change form on May 13, 2018, effectively making Wiggins the primary beneficiary and Corey Wiggins the contingent beneficiary of the Policy. Harris fails to present competent summary judgment evidence, such as affidavits from witnesses or the opinion of a handwriting expert, to rebut Wiggins's evidence that Albert signed the change of beneficiary form. Thus, no genuine dispute exists as to the authenticity of Albert's signature. Therefore, Albert made an ostensibly valid beneficiary change, in accordance with the terms of the Policy.

D. Lack of Capacity

"Because an insurance policy is a contract governed by general rules of interpretation applicable to contract law, a person entering into a contract is presumed to be mentally

competent." *Reasoner v. Kelley*, No. 1:18-CV-1121-RP, 2020 WL 1902536, at *3 (W.D. Tex. Feb. 17, 2020); *Arndt v. Wells Fargo Bank NA*, 373 F. Supp. 3d 701, 705 (N.D. Tex. 2016); *Paige-Hull v. Wofford*, No. CIV A 3:05CV1339-BH, 2008 WL 4274504, at *6 (N.D. Tex. Sept. 17, 2008) (citing *Am. Standard Life Ins. Co. v. Redford*, 337 S.W.2d 230, 231 (Tex. Civ. App.—Austin 1960, writ ref'd n.r.e.)). "The law presumes that a person executing a contract or instrument had sufficient mental capacity at the time of its execution to understand his legal rights; therefore, the burden of proof rests on the person seeking to have the instrument set aside to show lack of mental capacity at the time of execution." *Transamerica Life Ins. Co. v. Quarm*, No. EP-16-CV-295-KC, 2017 WL 5476471, at *3 n.1 (W.D. Tex. Nov. 13, 2017) (citing *Decker v. Decker*, 192 S.W.3d 648, 652 (Tex. App.—Fort Worth 2006, no pet.)). Harris has not overcome the presumption that Albert had the requisite mental capacity to sign the beneficiary designation form.

Under Texas law, a person has"the mental capacity to contract if [he] appreciated the effect of what [he] was doing and understood the nature and consequences of [his] acts and the business [he] was transacting." *Reasoner*, 2020 WL 1902536, at *3; *accord Del Bosque v. AT&T Advert., L.P.*, 441 F. App'x 258, 262 (5th Cir. 2011) (quoting *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 845 (Tex. 1969)).

> A litigant may prove a lack of capacity with circumstantial evidence such as "(1) a person's outward conduct, manifesting an inward condition; (2) preexisting external circumstances tending to produce a special mental condition; and (3) prior or subsequent existence of a mental condition from which its existence at the time in question may be inferred."

Reasoner, 2020 WL 1902536, at *3 (quoting *Paige-Hull*, 2008 WL 4274504, at *6). "The pivotal issue is whether the decedent had the requisite mental capacity on the day the document was

executed." *Reasoner*, 2020 WL 1902536, at *3 (quoting *Paige-Hull*, 2008 WL 4274504, at *6); *Lee v. Lee*, 424 S.W.2d 609, 611 (Tex. 1968).

Here, Harris provides only conjecture regarding Albert's mental capacity, which fails to show that Albert lacked the mental capacity to change the beneficiaries of the Policy. Harris does not claim to have been present at the time his father executed the change of beneficiary form or to have seen or spoken to him in person during this time frame. Harris contends that, during telephone conversations, Albert did not appear to remember certain details regarding his children's lives, which suggests that Albert lacked the mental capacity to effectuate the change of beneficiaries to the Policy. Additionally, Harris asserts that Albert's identifying Corey Wiggins as his son, when in fact he was not, is indicative of his father's diminished mental capacity. Harris challenges the apparent misidentification of Corey Wiggins as Albert's son on the beneficiary form, but he provides no evidence—affidavits of witnesses, medical records, depositions of medical professionals, list of medications, medical history—to establish his father's lack of mental capacity. "Evidence that creates only a suspicion of mental incapacity is not sufficient to support a finding of lack of mental capacity." *Reasoner*, 2020 WL 1902536, at *3; *Paige-Hull*, 2008 WL 4274504, at *6 (citing *Horton v. Norton*, 965 S.W.2d 78, 85 (Tex. App.—Fort Worth 1998, no pet.)). Thus, Harris proffers no competent evidence to support a reasonable inference that Albert lacked the mental capacity to sign the beneficiary change form.

E. Undue Influence

Under Texas law, undue influence is separate and distinct from incapacity, as "undue influence implies the existence of a testamentary capacity subjected to and controlled by a [dominant] influence or power." *Estate of Beauford Jones v. Smith*, No. 1-15-CV-076 RP, 2016

WL 429803, at *2 (W.D. Tex. Feb. 3, 2016) (quoting *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (Tex. 1963)).

> To show undue influence, a plaintiff must prove: "(1) the existence and exertion of an influence; (2) the effective operation of such influence so as to subvert or overpower the mind of the testator at the time of the execution of the testament; and (3) the execution of a testament which the maker thereof would not have executed but for such influence."

Wackman v. Rubsamen, 602 F.3d 391, 412-13 (5th Cir. 2010) (quoting *Rothermel*, 369 S.W.2d at 922); *accord Estate of Beauford Jones*, 2016 WL 429803, at *2. Undue influence can also void a change of beneficiary to a life insurance policy. *See Harmon v. Harmon*, 962 F. Supp. 2d 873, 881-82 (S.D. Tex. 2013) (analyzing claim challenging validity of change of beneficiary as result of undue influence); *Estate of Beauford Jones*, 2016 WL 429803, at *2; *Paige-Hull*, 2008 WL 4274504, at *7; *Cobb v. Justice*, 954 S.W.2d 162, 168 (Tex. App.—Waco 1997, pet. denied). The party seeking to set aside the instrument bears the burden of proving undue influence. *Estate of Beauford Jones*, 2016 WL 429803, at *2; *Rothermel*, 369 S.W.2d at 922.

In this instance, Harris points to the fact that Wiggins moved from Mississippi to Texas only after his father became ill to care for his father. Further, Harris references circumstances surrounding Wiggins and Albert's July wedding as evidence of her purported undue influence over Albert in May 2018. Harris proffers no evidence, however, other than potential opportunity and his personal opinion that Wiggins had and/or exerted influence over Albert. *See Wackman*, 602 F.3d at 413 (while undue influence may be proved by circumstantial evidence, "the evidence must show more than mere opportunity to exercise influence"). Harris does not establish that Wiggins effectively subverted or overpowered Albert's mind at the time of the beneficiary change. Lastly, Harris cannot show that the beneficiary change would not have occurred but for Wiggins's

purported influence over Albert. Consequently, Harris's assertion that Wiggins exerted undue influence over Albert is mere speculation. In the absence of adequate evidence of undue influence, Harris's claim must be rejected.

III. Conclusion

Accordingly, Wiggins's Motion for Summary Judgment (#16) is GRANTED. Harris fails to present a claim that warrants relief. There remain no material facts in dispute, and Wiggins is entitled to judgment as a matter of law.

SIGNED at Beaumont, Texas, this 3rd day of May, 2020.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE