

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

THE BAPTIST COLLEGE OF
FLORIDA, INC.

Plaintiff,
v. CASE NO.: 5-22-CV-00158-MW-MJF

CHURCH MUTUAL INSURANCE
COMPANY, S.I.

Defendant.

/

COUNTERCLAIM FOR DECLARATORY JUDGMENT

Defendant Church Mutual Insurance Company, S.I., by and through its undersigned counsel, hereby files this Counterclaim for Declaratory Judgment against Plaintiff The Baptist College of Florida, Inc., and in support thereof would state as follows:

THE PARTIES

1. Church Mutual Insurance Company, S.I. (“Church Mutual”) is a mutual insurer and is organized and existing under the laws of Wisconsin, with its principal place of business located in Merrill, Wisconsin.

2. The Baptist College of Florida, Inc. (“Baptist College”) is a

not-for-profit corporation, religious institution, and school incorporated under the laws of Florida with its principal place of business located in Graceville, Florida.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2201 for a declaratory judgment in that an actual controversy exists between Church Mutual and Baptist College as to their respective rights and obligations and the coverages provided under Commercial Property Insurance Policy No. 0075558-02-040182 (“Policy”), which has been attached as **Exhibit A**.

4. In particular, whether and to what extent that the May 24, 2022, Appraisal Award for damage to Baptist College’s property, which occurred on or about October 10, 2017, as a result of Hurricane Michael (“Loss”), included elements that are not covered under the Policy and what payments for covered elements of the Appraisal Award are due and owing, if any. The aforesaid controversy can be determined by a judgment of this Court.

5. This Court has subject matter jurisdiction within the meaning of 28 U.S.C. § 1332(a)(1) as the Complaint and Counterclaim allege an

action between citizens of different States. Church Mutual is a Wisconsin mutual insurer. Baptist College is a Florida corporation. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

6. Church Mutual's Counterclaim arises out of the same transaction and occurrence that is the subject matter of Plaintiff's Complaint (ECF No. 1-1).

7. The May 24, 2022, Appraisal Award, which has been attached hereto as **Exhibit B**, set for the following award to Baptist College under the Policy for the Loss:

We, the undersigned appraisers, have investigated and considered all the material facts and available information pertaining to this claim, and have decided on the appraisal award as described below.

<u>Coverage</u>	<u>RC Amount Of Loss</u>	<u>ACV Amount Of Loss</u>
Graceville Campus		
Buildings	\$10,992,039.42	\$10,414,630.84
Ordinance & Law	\$337,221.18	\$337,221.18
Marianna Campus		
Buildings	\$2,959,456.06	\$2,531,276.77
Ordinance & Law	\$197,545.51	\$197,545.51

(**Exhibit B** at 1).

8. Of the award amount, the Replacement Cost and Actual Cash Value award under the Policy's "Buildings" and "Ordinance & Law" coverages for the "Graceville Campus" and the Actual Cash Value award under the Policy's "Buildings" coverage for the Marianna Campus are at

issue.

9. Baptist College has demanded payment of the Appraisal Award from Church Mutual.

10. The Appraisal Award states that the award is “made without any consideration of any deductible amount, prior payments issued to the insured or any other terms, conditions, provisions or exclusions of the above policy.” *Id.*

11. The face of the Appraisal Award explicitly states that it was made without consideration of the Policy.

12. Church Mutual is therefore in doubt concerning its rights and obligation under the Policy with respect to the Appraisal Award.

13. To correctly compensate for the Loss and determine what elements of the Appraisal Award are covered under the Policy and are due and owing, Church Mutual finds it necessary to submit this Counterclaim for Declaratory Judgment.

14. Church Mutual respectfully requests an adjudication of its rights and obligations, if any, to pay the amounts that are now demanded by Baptist College pursuant to the Appraisal Award.

15. Venue is proper in this District pursuant to 28 U.S.C. §

1391(b)(2). Substantially all events giving rise to the claim at issue in this controversy occurred in this District, Baptist College resides in and is domiciled in this District, the property at issue in this litigation is located within this District, and the Policy was entered into between the Parties in this District.

THE POLICY AND ENDORSEMENTS

16. On or about October 3, 2017, Church Mutual issued Commercial Property Insurance Policy No. 005558-02-040182 to Baptist College, which had effective dates of October 15, 2017 through October 15, 2018. **Exhibit A** at 4.

17. The Policy's Property Coverage Part provided certain coverages to 96 buildings located at Baptist College's Graceville, Florida Campus and 17 buildings located at Baptist College's Marianna, Florida Campus. **Exhibit A** at 7-80.

18. The Policy's Building coverage was provided primarily on a Replacement Cost basis.

19. The Policy also provided Ordinance & Law coverage.

20. The Policy's Property Conditions Form A 100 (01-01) contains the following clauses:

C. LOSS CONDITIONS

[***]

2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

[***]

4. Loss Payment.

- a. In the event of loss or damage covered by this Coverage Part, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
 - (3) Take all or any part of the property at an agreed or appraised value; or

- (4) Repair, rebuild or replace the property with other property of comparable kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

[***]

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part; and:

- (1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

[***]

7. Valuation.

a. Replacement Cost. If Replacement Cost is shown in the Declarations Page as applicable to Covered Property, we will determine the value of Covered Property in the event of loss or damage as follows:

- (1) At Replacement Cost (without deduction for depreciation) as of the time of loss or damage, except as provided under c. below.
- (2) You may make a claim for loss or damage covered by this insurance on an “Actual Cash Value” basis instead of on a Replacement Cost basis. In the event you elect to have loss or damage settled on an “Actual Cash Value” basis:

- (a) We will then determine the value of Covered Property on an “Actual Cash Value” basis when applying the Coinsurance Condition;
- (b) You may still make a claim on a Replacement Cost basis if you notify us of your intent to do so within 180 days after the date of the loss or damage.

(3) We will not pay on a Replacement Cost basis for any loss or damage:

- (a) Until the lost or damaged property is actually repaired or replaced; and
- (b) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

(4) We will not pay more for loss or damage on a Replacement Cost basis than the least of:

- (a) The Limit of Insurance applicable to the lost or damaged property;
- (b) The cost to replace “on the same premises” the lost or damaged property with other property:
 - 1) Of comparable material and quality; and
 - 2) Used for the same purpose; or
- (c) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

The term “on the same premises” is a limitation on the amount of loss or damage we will pay. It does not require you to replace lost or damaged property at the same site.

(5) The cost of repair or replacement does not include the increased cost attributable to enforcement of any

ordinance or law regulating the construction, use or repair of any property.

- b. “Actual Cash Value.” If “Actual Cash Value” is shown in the Declarations Page as applicable to Covered Property, we will determine the value of Covered Property in the event of loss or damage at “Actual Cash Value” as of the time of loss or damage except as provided under c. below.

[***]

M. DEFINITION

1. “Actual Cash Value” means the amount it would cost to repair or replace Covered Property with material of comparable kind and quality, less allowance for deterioration and depreciation, including obsolescence.

Exhibit A at 107-113.

17. The Policy’s Building and Personal Property Coverage Form A 101 (04-06) contains the following clauses:

A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations Page caused by or resulting from any Covered Cause of Loss.

1. Covered Property.

Covered Property, as used in this Coverage Form, means the type of property described in this section, A. 1., and limited in A. 2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

- a. Building, meaning the building or structure described in the Declarations Page, including:

[***]

F. COVERAGE EXTENSIONS

Each of the following Coverage Extensions are additional insurance. The Coinsurance Condition does not apply to these Extensions.

[***]

9. Structures on Premises.

You may extend the insurance that applies to your buildings or personal property to apply to permanent structures owned by you. The permanent structures must be located on the premises described in the Declarations Page and be separated from buildings by clear space.

[***]

The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown on the Declarations Page, for any one occurrence.

[***]

G. ADDITIONAL COVERAGES

Each of the following Additional Coverages provides an additional amount of insurance unless otherwise indicated.

[***]

10. Building Ordinance.

a. If a Covered Cause of Loss occurs to covered building property, we will pay:

[***]

(3) Increased Cost of Construction Coverage.

- a) With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:
 - 1) Repair or reconstruct damaged portions of that Building property; and/or
 - 2) Reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required; when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

However:

- 1) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning, or land use ordinance or law.
- 2) We will not pay for the increased cost of construction if the building is not repaired, reconstructed, or remodeled

[***]

c. Loss Payment

[***]

(4) Loss payment under Increased Cost of Construction Coverage will be determined as follows:

- a) We will not pay under Increased Cost of Construction Coverage:

- 1) Until the property is actually repaired or replaced, at the same or another premises; and
- 2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

[***]

The most we will pay under this Additional Coverage is \$100,000, unless a higher limit is shown on the Declarations Page, for any one occurrence.

Exhibit A at 119-132.

18. The Policy's Cause of Loss – Special Form A 127 (04-06) contains the following clauses:

A. COVERED CAUSES OF LOSS

1. When Special is shown in the Declarations Page, Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:
 - a. Excluded in Paragraph B., Exclusions; or
 - b. Limited in Paragraph C., Limitations;

that follow.

B. EXCLUSIONS

[***]

2. We will not pay for loss or damage caused by or resulting from any of the following:

[***]

- d. (1) Wear and tear;
- (2) Rust, or other corrosion, decay, deterioration, hidden or latent defect, or any quality in property that causes it to damage or destroy itself;

[***]

- (4) Settling, cracking, shrinking, or expansion;

[***]

- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture, or vapor that occurs over a period of 14 days or more.

[***]

- 3. We will not pay for loss or damage caused by or resulting from any of the following 3. a. through 3. c. but if an excluded cause of loss that is listed in 3. a. through 3. c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

[***]

- c. Faulty, inadequate, or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation, or remodeling; or

- (4) Maintenance; of part or all of any property on or off the described premises.

C. LIMITATIONS

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited to this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

[***]

- c. The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand, or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand, or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet, or ice on the building or structure.

Exhibit A at 151-158.

19. As a commercial property insurance policy, section 626.9744, Florida Statutes, which mandates certain “matching” requirements for homeowner’s insurance policies, does not apply.

20. Further, Baptist College as a religious institution is believed to be exempt from Florida’s Sales and Use Tax. *See § 212.08(7)(m), Fla.*

Stat.

FACTUAL BACKGROUND

21. On or about October 10, 2018, Baptist College's property was damaged by the Loss.

22. On or about October 11, 2018, Baptist College reported the Loss to Church Mutual and made an insurance claim seeking the cost to repair or replace its damaged covered property.

23. Thereafter, Church Mutual opened an insurance claim that was assigned Claim No. 1364568 ("Claim").

24. Church Mutual began its adjustment of the Claim in coordination with Baptist College.

25. During this period, Church Mutual made a payment of \$1,954,196.12 to Baptist College. This payment represented the Actual Cash Value portion of the estimated Replacement Cost Value of the Loss.

26. The Claim ultimately resulted in disputes concerning what elements of the Loss were covered under the Policy as well as the value of the Loss

27. After approximately three years, Baptist College demanded appraisal.

28. The Policy provides that Church Mutual may still deny a claim following appraisal. **Exhibit A** at 107.

29. In accordance with the Policy, Baptist College selected John Minor (“Baptist College’s Appraiser”) with Complete General Contractors, Inc. (“CGC”) to act as its appraiser. Church Mutual selected Tim Lozos (“Church Mutual’s Appraiser”) with DeFacto Consulting Group, Inc. (“DeFacto”) (collectively “Appraisers”).

30. The Appraisers selected Michael Ruskin (“Umpire”) with Disaster Pro Consulting, Inc. to serve as the Umpire.

31. Each Appraiser and the Umpire prepared their own analysis of the purported value of the Loss and each created Xactimate Estimates that calculated the alleged value of the Loss.

32. On or about April 9, 2020, Baptist College sold the Marianna Campus for \$3,000,000.00 to Camp Anderson Ministries, Inc. of Florida.

33. Upon information and belief, Baptist College thereafter altered its claim for the Marianna Campus from a Replacement Cost claim and instead elected to settle that portion of its claim on an Actual Cash Value basis.

34. On April 14, 2022, the Umpire and Baptist College’s

Appraiser entered the Original Appraisal Award, which has been attached as **Exhibit C**.

35. The Original Appraisal Award was based on the Umpire's Xactimate Estimates and found as follows:

We, the undersigned appraisers, have investigated and considered all the material facts and available information pertaining to this claim, and have decided on the appraisal award as described below.

<u>Coverage</u>	<u>RC Amount Of Loss</u>	<u>ACV Amount Of Loss</u>
Graceville Campus		
Buildings	\$14,019,291.63	\$13,342,621.28
Ordinance & Law	\$ 541,521.22	\$ 541,521.22
Marianna Campus		
Buildings	\$3,691,608.29	\$3,167,978.54
Ordinance & Law	\$ 244,125.20	\$ 244,125.20

42. The Original Appraisal Award “made without any consideration of any deductible amount, prior payments issued to the insured or any other terms, conditions, provisions or exclusions of the above policy.” *Id.* at 1.

43. Because the Original Appraisal Award explicitly stated that it was made without consideration of the Policy’s terms, conditions, provisions, and exclusions, Church Mutual reasonably believed that the award included non-covered elements or elements that were excluded or limited from coverage including, but not limited to, “matching” costs, sales taxes, interior damages that did not result from a covered cause of loss to the roof or walls of a building, or included award amounts exceeded the Policy’s limit of insurance for Ordinance & Law coverage.

44. On May 5, 2022, in the Appraisal Proceeding, Church Mutual moved to Modify or Correct the Appraisal Award Pursuant to Section 682.10, Florida Statues, (“Motion”). *See Generally Exhibit D.*

45. The relief requested included a modification of the award to utilize an October 2018 instead of a March 2022 Xactimate Price list, consistent with the Policy’s valuation requirements. **Exhibit D** at 8.

46. Church Mutual also requested clarification of the award that addressed what non-covered, excluded, or limited elements have been included and incorporated into the total award amount. **Exhibit D** at 10-11.

47. While a ruling on the Motion was pending, Church Mutual tender a supplemental payment of \$1,132,474.78 to Baptist College. This payment represented the Actual Cash Value portion of the estimated Replacement Cost Value of the Loss as determined by Church Mutual’s Appraiser, who applied the Policy’s terms, conditions, provisions, and exclusions in evaluating the loss.

48. To date, Church Mutual has tendered \$3,086,670.90 to Baptist College.

49. On May 24, 2022, the Umpire and Baptist College’s Appraiser

entered a revised appraisal award (the Appraisal Award). See, **Exhibit B** at 1, *supra* at 3.

50. The Appraisal Award was based on the Umpire's revised Xactimate Estimates that utilized an October 2018 Xactimate Price List, as opposed to a March 2022 Price List.

51. No further ruling on Church Mutual's Motion was made nor was any clarification provided regarding what non-covered, limited, or excluded elements of the Loss were incorporated into the Appraisal Award.

52. The Appraisal Award, as with the Original Appraisal Award, also provided that it was made without consideration of any "terms, conditions, provision, or exclusions" of the Policy. **Exhibit B** at 1.

53. Based on a review of the Umpire's Xactimate Estimates, the Appraisal Award also includes sales tax in the total award amount.

54. Church Mutual is therefore in doubt as to what additional amount is owed for the loss, if any.

55. Further, in opposing Church Mutual's Motion, Baptist College asserted that Church Mutual does not have the right to deny elements of the Appraisal Award, only the claim as a whole.

56. Church Mutual disputes that position and reasonably believes it has the right under the Policy to deny elements of the Appraisal Award that are not covered by the Policy.

57. As set forth in greater detail below, Church Mutual now seeks a declaratory judgment from this Court that:

A. The Appraisal Award disclaimed the application of the Policy's terms, conditions, provisions, and exclusions in determining the award amount and did not determine the amount owed under the Policy for the Loss.

B. Church Mutual may deny elements of the Appraisal Award that are not covered under the Policy;

C. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that were not caused by a covered cause of loss;

D. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that are excluded from coverage by the Policy;

E. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that are limited in coverage by the

Policy;

F. Church Mutual is not obligated to tender payments for elements of the Appraisal Award in excess of any applicable limit of insurance;

G. Church Mutual is not obligated to tender payments for costs imposed by section 626.9744, Florida Statutes, or other inapplicable statutes, rules, or laws; and

H. Church Mutual is not obligated to tender payments for any cost, such as sales tax, that Baptist College will not actually incur and/or is exempt from paying.

COUNT I – DECLARATORY JUDGMENT

58. Church Mutual re-adopts and re-alleges each and every allegation contained in Paragraphs 1 through 57 of this Counterclaim.

59. Church Mutual issued a Policy to Baptist College that provided Building and Ordinance & Law coverages for Baptist College's property.

60. The Policy includes a permissive appraisal clause that allows for the value of the property or the amount of the loss to be determined by appraisal.

61. The Policy allows Church Mutual to deny a claim following appraisal.

62. The Policy only provides coverage for direct physical loss that resulted from a covered cause of loss.

63. The Policy excludes from coverage damage resulting from wear and tear, maintenance, ongoing water seepage, fault design, construction, or maintenance, and other exclusions more specifically itemized in the Policy.

64. The Policy limits from coverage interior damage that did not result from covered damage to a building's roof or walls, as well as other limitations itemized in the Policy.

65. The Policy's Ordinance & Law coverage limit of insurance is \$100,000.00.

66. Baptist College, as a religious institution, is exempt from Florida's Sales and Use Tax pursuant to section 212.08(7)(m), Florida Statutes.

67. The Appraisal Award on its face disclaims the application of the Policy's terms, conditions, provisions, and exclusions in arriving at the award amount.

68. The Appraisal Award therefore does not determine the amount that is reimbursable to Plaintiff under the Policy for the Loss.

69. The Appraisal Award includes costs that are either not covered, excluded or limited by the Policy, or includes costs for which Baptist College will not actually occur, is exempt from, or are in excess of applicable limits of insurance.

70. Baptist College has demanded payment of the Appraisal Award.

71. Baptist College disputes that Church Mutual may deny elements of the Appraisal Award.

72. An actual controversy exists between Church Mutual and Baptist College and their respective rights under the Policy, as described above, and there is a present and practical need for the Court to resolve this dispute.

73. A declaration by this Court of the rights and obligations of the parties under the Policy will materially advance the interests of the parties, and resolve the controversy.

74. All conditions precedent to bringing this action have occurred, been performed, or have been waived.

75. Because of the foregoing, and pursuant to 28 U.S.C. § 2201, Church Mutual seeks a declaration of its rights and obligations under the Policy.

76. Church Mutual respectfully requests this Court issue a declaratory judgment as follows:

A. Church Mutual, issued Commercial Property Insurance Policy No. 0075558-02-00182 to Baptist College, which provided Building and Ordinance & Law coverages;

B. The Policy incorporated, among other clauses and provisions, an appraisal clause, valuation clause, and clauses addressing covered causes of loss, coverage extensions, coverage exclusions, and coverage limitations;

C. The Appraisal Award was arrived at without application of the Policy's terms, conditions, provisions, or exclusions and therefore has not determined the amount that is owed to Plaintiff under the Policy for the Loss.

D. Church Mutual is not obligated to pay for portions of the Appraisal Award that are not covered or are excluded or limited from coverage;

E. The Policy's appraisal clause allows Church Mutual to deny elements of an appraisal award;

F. The Policy's coverage and cause of loss clauses limit Church Mutual's payment obligation to the elements of the Appraisal Award that resulted from direct physical loss or damage caused by a covered cause of loss. Church Mutual may deny elements of the Appraisal Award that did not result from direct physical loss or damage that resulted from a covered cause of loss;

G. The Policy's cause of loss clause limits Church Mutual's payment obligation to the elements of the Appraisal Award that are not excluded by the Policy. Church Mutual may deny elements of the Appraisal Award that are related to damage caused by an excluded cause of loss;

H. The Policy's cause of loss clause limits Church Mutual's payment obligation to elements of the Appraisal Award that are not limited by the Policy. Church Mutual may deny elements of the Appraisal Award that relate to damage whose coverage is limited by the Policy;

I. The Policy's coverage clause limits the policy Ordinance & Law coverage to \$100,000.00. Church Mutual's payment obligation of

the Appraisal Award is not greater than any applicable limit of insurance included in the Policy;

J. The Policy is a commercial property insurance policy and is not subject to the provisions section 626.9744, Florida Statute. Church Mutual may deny elements of the Appraisal Award that relate to any “matching” or other costs that would otherwise be required solely due to the application of section 626.9477, Florida Statues, or any other inapplicable statute, rule, or law; and,

K. Baptist College is a religious institution and exempt from Florida’s Sale and Use Tax. Church Mutual may deny the Appraisal Award with respect to any tax included in the award amount for which Baptist College is exempt from paying.

77. Church Mutual reserves the right to assert and rely upon additional provisions of the Policy to the extent that they are found to apply as this litigation progresses, and to seek such further declarations as may be appropriate.

78. Church Mutual would also request the right to conduct all discovery necessary to advance this litigation and obtain the necessary declaration on the issues raised herein.

79. Church Mutual requests this Court to issue such other and further relief at law or in equity, to which Church Mutual may be justly entitled.

WHEREFORE, Church Mutual respectfully requests that this Court grant Church Mutual judgment declaring:

A. The Appraisal Award was made without application of the Policy's terms, conditions, provisions, or exclusions and therefore has not determined the amount that is owed to Plaintiff under the Policy for the Loss;

B. Church Mutual is not obligated to pay for portions of the Appraisal Award that are not covered or are excluded or limited from coverage;

C. Church Mutual may deny elements of the Appraisal Award that are not covered under the Policy;

D. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that were not caused by a covered cause of loss;

E. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that are excluded from coverage by the

Policy;

F. Church Mutual is not obligated to tender payments for elements of the Appraisal Award that are limited in coverage by the Policy;

G. Church Mutual is not obligated to tender payments for elements of the Appraisal Award in excess of any applicable limit of insurance;

H. Church Mutual is not obligated to tender payments for elements of the Appraisal Award for costs related to section 626.9744, Florida Statutes, or any other inapplicable statute, rule, or law;

I. Church Mutual is not obligated to tender payments for elements of the Appraisal Award for any costs, such as material sales tax, that Baptist College will not actually incur or is exempt from paying; and,

J. Awarding Church Mutual such other and further relief as may be warranted, including its costs and fees.

Respectfully submitted on this the 14th day of September, 2022.

s/ Alexander S. Whitlock

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been served on this 14th day of September, 2022, via CM/ECF to:

J. Nixon Daniel, III
Terrie L. Didier
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s/ Alexander S. Whitlock
Attorney