

**No. 16-0347**

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In The  
**Supreme Court of Texas**

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**RICHARDSON EAST BAPTIST CHURCH,**

*Petitioner,*

v.

**PHILADELPHIA INDEMNITY INSURANCE COMPANY**

**and**

**JAMES GREENHAW,**

*Respondents.*

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On Petition for Review from the Fifth Court of Appeals, Dallas, Texas

Case No. 05-14-01491-CV

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**RESPONDENT PHILADELPHIA INDEMNITY'S  
RESPONSE TO PETITIONER'S  
OPPOSED THIRD MOTION FOR EXTENSION OF TIME  
TO FILE BRIEF ON THE MERITS**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Respondent Philadelphia Indemnity Insurance Company (“Philadelphia”) makes this response to the Third Motion for Extension of Time to File Brief on the Merits, filed in this case by Petitioner Richardson East Baptist Church (“Petitioner”), and incorrectly identified as an unopposed motion.

## I.

1. Petitioner's motion correctly notes that it marks the third time Petitioner has asked this Honorable Court to grant a 30-day extension of the deadline by when Petitioner must file its Brief on the Merits. The first two extensions set out various scheduling conflicts from other client commitments of Petitioner's counsel. Neither Philadelphia nor the other Respondent before the Court, James Greenhaw, opposed those prior motions.

2. Petitioner's third and latest motion for extension also follows three extensions Petitioner sought and received in the court of appeals below and three other extensions it sought and received in this Court, as follows:

- a. Unopposed Motion for Extension to File Appellant's Brief, filed in the Fifth Court of Appeals on March 2, 2015;
- b. Unopposed Second Motion to File Appellant's Brief, filed in the Fifth Court of Appeals on March 31, 2015;
- c. Motion for Extension to File Appellant's Reply Briefs, filed in the Fifth Court of Appeals on June 29, 2015;
- d. Petitioner Richardson East Baptist Church's Unopposed Motion for Extension to file their Petition for Review with the Supreme Court of Texas May 12, 2016;
- e. Richardson East Baptist Church's Second Motion for Extension to file their Petition for Review with the Supreme Court of Texas, filed on June 15, 2016; and
- f. Richardson East Baptist Church's [Third] Unopposed Motion for Extension to file Petition for Review with the Supreme Court of Texas, filed on July 18, 2016.

3. Philadelphia has joined in one motion for extension of time. On May 7, 2015, it joined with co-Respondent Greenhaw to jointly file an Unopposed Motion for Extension of Time to File Appellee's Briefs.

4. Petitioner's motions have already delayed the proceedings in this case by more than six months. Petitioner's latest motion, like its previous ones, recites other cases on which Petitioner's counsel has been engaged. The signature block for that motion identifies three (3) attorneys representing Petitioner.

5. Only of those attorneys, Peter M. Kelly, is identified in the pleadings of the four cases listed as conflicting with Petitioner's now-past deadline. Petitioner's motion lists the first of those other cases as follows: "Preparation for trial in *Henry Jefferson v. Doe, Rebecca Rutherford, et al.*, Cause No. 2014-28653, in the 152nd Judicial District Court of Harris County." The Harris County District Court website shows that the trial judge has continued the trial of that case from the May 1, 2017 trial docket on which it was previously set.

6. The second matter cited as the basis for the requested extension was an appellate brief due to the Fifth Circuit on April 24, 2017, in *RLI Insurance Co. v. Costello*. The court's record in that case shows Mr. Kelly filed that brief on that date. The record also shows, however, that the Fifth Circuit issued the scheduling order setting that deadline on March 13, 2017. Petitioner's counsel therefore knew of the due date for the brief in that *Costello* case even before they filed their *second* motion for extension of time to file Petitioner's Brief on the Merits in this case.

7. Mr. Kelly also filed the post-submission brief in the Fourteenth Court of Appeals in *Garza v. Harrison, et al.*, on April 20, 2017. The three-and-a-half page body of that brief cites authorities of the appellate court's consideration following oral argument on March 29, 2017.

8. Finally, on April 17, 2017, Mr. Kelly filed appellant's brief with the U.S. Court of Appeals for the Fifth Circuit, in *Littell, et al. v. Houston Independent School District*. That filing occurred after appellants filed two motions for extensions. Mr. Kelly filed the second of those motions on March 17, 2017 – one day after he filed a notice of appearance in the case. Mr. Kelly therefore knew of that filing deadline, too, when Petitioners here sought their second motion for extension from this Court.

9. Petitioner filed this latest motion for extension of time on the evening of the date Petitioner's brief was due. Petitioner's underlying claims included a claim for delaying payment on an insurance policy, in violation of the Prompt Payment of Claims Act in chapter 542 of the Texas Insurance Code. Petitioner's many extensions, culminating with the one now before the Court, have the potential to prejudice Philadelphia because that provision of the Code imposes "interest on the amount of an insurance claim at the rate of 18 percent a year as damages." Tex. Ins. Code 542.060(a).

10. Philadelphia would show the Court that these other case activities by one of Petitioner's three attorneys fail to justify another month-long delay in this case. *Cf. Curry v. Clayton*, 715 S.W.2d 77, 79 (Tex. App.—Dallas 1986, no writ).

**II.**

**PRAYER**

Based on the foregoing, Respondent Philadelphia Indemnity Insurance Company prays that the Supreme Court of Texas denies Petitioner Richardson East Baptist Church's Third Motion for Extension of Time to File Brief on the Merits.

Respectfully submitted,

**KANE RUSSELL COLEMAN LOGAN PC**

By:           /s/ William R. Pilat          

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**ATTORNEY FOR RESPONDENT PHILADELPHIA  
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**CERTIFICATE OF SERVICE**

I certify that on April 27, 2017, the foregoing *Respondent Philadelphia Indemnity's Response to Petitioner's Opposed Third Motion for Extension of Time to File Brief on the Merits* was electronically filed with the Clerk of the Court by filing it through [www.efileTexas.gov](http://www.efileTexas.gov), which will send notification of such filing to all counsel of record, including the following:

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          /s/ William R. Pilat            
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