The Business Court of Texas,
Eleventh Division

ESI INCORPORATED OF TENNESSEE, *Plaintiff* v. ORION ENGINEERED CARBONS, LLC, and REDECAM USA, LLC, *Defendants*	§ § § § § § § § § §	Cause No. 26-BC11A-0075

SYLLABUS[1]

The court grants summary judgment in a dispute concerning construction delays. The economic-loss rule bars the general contractor's negligent-misrepresentation claim against the owner's subcontractor, a contractual stranger. Further, the contractor's collaboration with and "special confidence" in the subcontractor during the months preceding the formal business relationship constituted no evidence giving rise to an informal fiduciary duty required for the contractor's constructive-fraud claim.

The court concludes that the defendant–owner's motion to designate a responsible third party fails to allege facts establishing (1) any legal standard allegedly violated under the third party's agreement with the contractor; (2) timely disclosure under the limitations provision of Section 33.004(d) of the Texas Civil Practice and Remedies Code. The owner is granted leave to amend its allegations under Section 33.004(g)'s mandatory repleading requirement.

[1] NOTE: The syllabus was created by court staff and is provided for the convenience of the reader. It is not part of the Court's opinion, does not constitute the Court's official description or statement, and should not be relied upon as legal authority.

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THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION

ESI INCORPORATED OF TENNESSEE, *Plaintiff* v. ORION ENGINEERED CARBONS, LLC, and REDECAM USA, LLC, *Defendants*	§ § § § § § § § § §	Cause No. 26-BC11A-0075

OPINION AND ORDER

¶1 Before the court are the Combined Traditional and No-evidence Motion for Summary Judgment filed by Defendant Redecam USA, LLC ("Redecam") on August 18, 2026; the response filed by Plaintiff ESI Incorporated of Tennessee ("ESI") on September 4, 2026; and Redecam's reply and objections to summary-judgment evidence. Also before the court are the Motion for Leave to Designate Responsible Third Party filed by Defendant Orion Engineered Carbons LLC ("Orion") and Redecam's Renewed Joinder in the Motion, both filed on September 4, 2026; ESI's response; and Orion's reply.

¶2 On September 23, 2026, the court conducted a hearing at which counsel for all parties appeared. Having considered the parties' briefing and oral argument, the pleadings, and the relevant law, the court grants summary judgment and dismisses the motion for

leave to designate a responsible third party without prejudice for the reasons that follow.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 This case concerns the design and construction of emissions-reduction systems for Orion's carbon-black plants. Following project delays, construction company ESI sued Orion and Orion's subcontractor Redecam. ESI's alleges Orion's late delivery of owner-provided equipment and Redecam's disorganized and untimely shipments of unmarked components and incorrect design details disrupted ESI's work, compressed the schedule, reduced productivity, and drove over ten million dollars of added costs. ESI further alleges it relied on representations by Orion and Redecam when bidding, pricing, and executing the Engineering, Procurement and Construction Agreement with Orion in August 2021 (the "Agreement"). ESI claims these misrepresentations concerning the equipment's delivery timing and condition induced ESI to commit to the project's milestones and pricing. Orion counters that it met its supply and delivery obligations, but that ESI missed project milestones and failed to pay subcontractors, leaving Orion to advance costs to ESI that ESI has failed to repay.

¶4 The parties jointly removed their case from Harris County District Court to this court as a suit that pre-existed creation of the Texas Business Court under the newly added Section 25A.021 of the Texas Government Code.

LEGAL STANDARD

¶5 **Traditional Summary Judgment:** "A party that moves for traditional summary judgment must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Energen Res. Corp. v. Wallace*, 642 S.W.3d 502,

509 (Tex. 2022); *see* TEX. R. CIV. P. 166a. The court takes as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. *First Sabrepoint Cap. Mgmt., L.P. v. Farmland Partners Inc.*, 712 S.W.3d 75, 84 (Tex. 2025). If the movant meets its initial burden, the burden then shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *See Wal-Mart Stores, Inc. v. Xerox State & Loc. Sols., Inc.*, 663 S.W.3d 569, 584–85 (Tex. 2023).

¶6 **No-Evidence Summary Judgment:** A no-evidence motion for summary judgment seeks to show there is "no evidence of an essential element of a claim or defense on which the nonmovant would have the burden of proof at trial." TEX. R. CIV. P. 166a(a)(2). The motion "must state the elements of the claim or defense as to which there is no evidence." *Id.* R. 166a(b)(2)(D). The court must grant the motion "unless the respondent produces summary judgment evidence raising a genuine issue of material fact." *Id.* R. 166a(h)(3). No-evidence summary judgment is proper when "(a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact." *Lozada v. Posada*, 718 S.W.3d 262, 266 (Tex. 2025). Less than a scintilla of evidence exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion of a fact." *Id.* (internal quotations omitted). More than a scintilla of evidence exists when the evidence "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Id.*

¶7 **Responsible Third Party:** "A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party." TEX. CIV. PRAC. & REM. CODE § 33.004(a). To survive an objection to third-party designation, the movant "must satisfy only th[e] fair-notice requirement" of Texas Rule of Civil Procedure 47, which requires pleading sufficient facts for a party to ascertain the "nature, basic issues, and type of evidence that might be relevant to the controversy[.]" *In re YRC Inc.*, 646 S.W.3d 805, 809–10 (Tex. 2022).

ANALYSIS

I. Redecam's Motion for Summary Judgment is granted.

¶8 ESI's claims for negligent misrepresentation and constructive fraud both accuse Redecam of making false statements that induced ESI's project pricing, timing, and execution of the Agreement with Orion. Pet. ¶¶ 45–50, 61. According to ESI, it relied on Redecam's statements concerning project materials, drawings, schedule, milestones, and fabrication details. *Id.* ¶¶ 20–22, 24–25, 47–49, 67–68. Redecam represented the schedule as accurate, assuring ESI that the required equipment would be timely and properly supplied by Orion or Redecam. *See id.*

¶9 Redecam moves for traditional and no-evidence summary judgment on four discrete grounds as to these claims. The court grants the motion as follows:

A. The economic-loss rule bars ESI's negligent-misrepresentation claim.

¶10 Redecam moves for traditional summary judgment against ESI's negligent-misrepresentation claim, contending it is barred by the economic-loss rule. The court agrees.

¶11 The economic-loss rule "restrict[s] recovery of purely economic damages unaccompanied by injury to the plaintiff or his property" in actions for unintentional torts. *LAN/STV v. Martin K. Eby Constr. Co.*, 435 S.W.3d 234, 235 (Tex. 2014). ESI seeks to avoid the economic-loss rule, noting ESI was not in contractual privity with Redecam, the subcontractor.

¶12 The Texas Supreme Court has thoroughly analyzed the application of the economic-loss rule to suits for construction delays between contractual strangers. *LAN/STV*, 435 S.W.3d at 236. In *LAN/STV*, the Court applied the rule to a construction company's claim for economic damages against the architect. *Id.* There, the transit authority contracted with the architect to design a light-rail system, then used the architect's plans to solicit bids. *Id.* The contractor placed the winning bid and contracted with the transit authority to build the system. *Id.* After delays in the project drove up its cost of performance, the contractor sued the architect for negligent misrepresentations in the plans. *Id.* at 236–37.

¶13 The Court held the economic-loss rule "clearly" barred the contractor's subcontractors from recovering delay damages against the architect—and that the contractor itself "should not be treated differently." *Id.* at 249–50. The Court explained its reasoning as follows:

> We think it beyond argument that **one participant on a construction project cannot recover from another**—setting aside the architect for the moment—for economic loss caused by negligence. If the roofing subcontractor could recover from the foundation subcontractor damages for extra costs incurred or business lost due to the latter's negligent delay of construction, the risk of liability to everyone on the project would be magnified and indeterminate[.]

Id. at 246 (emphasis added). Like the contractor in *LAN/STV*, ESI seeks to recover economic losses in tort from another project participant based on alleged misrepresentations in project information.

¶14 ESI seeks to avoid this result, noting that "Redecam was not contractually obligated to ESI." Resp. at 12. But the entirety of *LAN/STV* concerns tort liability between contractual strangers. 435 S.W.3d at 243–48.

¶15 ESI also asks this court to diverge from *LAN/STV* because Orion's contract with Redecam failed to bind Redecam to the stated deadlines, which were representations Redecam made directly to ESI rather than to an "unknown class of potential bidders." Resp. at 12. These facts do nothing to remove this case from *LAN/STV*'s holding or reasoning. Under *LAN/STV*, the economic-loss rule applies because of the **availability** of contractual protection to a contractor in a construction project, regardless of whether the contractor did, in fact, secure that protection. 435 S.W.3d at 246–48 (reasoning that "[c]onstruction projects operate by agreements among the participants," and that, "if contractors want to be protected, they can insist on that protection from the owner.") (quoting William Powers, Jr. & Margaret Niver, *Negligence, Breach of Contract, and the "Economic Loss" Rule*, 23 TEX. TECH L. REV. 477, 521 n.205 (1992)). Taking as true ESI's subjective reliance on Redecam's statements and Orion's failure to secure an adequate contractual commitment from Redecam, these facts align squarely with the Court's very reasons for applying the economic-loss rule to construction relationships like this one. *See LAN/STV*, 435 S.W.3d at 247 ("the contractor's principal reliance must be on the presentation of the plans by the owner, with whom the contractor is to reach an agreement, not the architect, a contractual

stranger."). The same rationale applies whether ESI was one of many bidders or the sole bidder relying on Redecam's statements.

¶16 ESI cites two cases recognizing a negligent-misrepresentation claim, but the Texas Supreme Court expressly addressed those cases in *LAN/STV,* noting they allowed recovery against professionals for negligent misrepresentations without citing the economic-loss rule. *Id.* at 245. In the first case, the Court permitted a borrower to recover costs incurred from reliance on the lender's representations that the borrower was approved for a loan. *See Fed. Land Bank Ass'n of Tyler v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991).

¶17 In the second case, the Court decided a nonclient could bring a claim for negligent misrepresentation against attorneys with whom it was not in privity. *See McCamish, Martin, Brown & Loeffler v. F.E. Appling Ints.*, 991 S.W.2d 787, 791–92, 794 (Tex. 1999). The Court cautioned that neither case should be construed as holding that "recovery of economic loss is broader for negligent misrepresentation than for negligent performance of services." *LAN/STV*, 435 S.W.3d at 245. Nothing in either case undermines *LAN/STV*'s holding that the economic-loss rule barred a general contractor's negligent-misrepresentation claim against a contractual stranger and co-participant in the construction project. *Id.* at 248–50. Though a contractor may not contract with the owner for damages caused in the event the "project is not as represented or for any other breach . . . the availability of contractual remedies must preclude tort recovery in the situation generally." *Id. LAN/STV*'s facts **and** reasoning are on all fours with the construction-delay dispute between these parties.

¶18 The economic-loss rule applies here—and not because of a "categorical bar" against all tort liability between contractual strangers. *See* Resp. at 13. ESI alleges economic losses arising from its performance of its construction contract with Orion. *See* Pet. ¶¶ 45–50, 61, 67–68, 77. The parties allocated project-related risks and remedies in contract, including through the ESI-Orion Agreement, which included a merger clause covering the Agreement's subject matter, and which forms the basis of ESI's contract claims in this suit. Pet. Ex. 1 at 2; Mot. Ex. 1 at 2. ESI does not allege its claims against Redecam are "[]accompanied by injury to the plaintiff or [its] property" or that they would exist but for its Agreement with Orion. *See LAN/STV*, 435 S.W.3d at 235; *e.g.*, *Asset Risk Mgmt., LLC v. Comal Energy Servs., LP*, No. 01-24-00277-CV, __S.W.3d__, 2026 WL 2023233, at *8–10 (Tex. App.—Houston [1st Dist.] July 14, 2026, no pet. h.) (barring an engineering contractor's negligent-misrepresentation claim against accounting firm and reasoning that, "[i]f there were no contract here, there would be no claim.").

¶19 Just as the "reasons for the economic loss rule support its application in [*LAN/STV*] to preclude a general contractor from recovering delay damages from the owner's architect," 435 S.W.3d at 250, the rule bars ESI's recovery against Redecam. The court grants Redecam's motion for traditional summary judgment on that claim.

B. The constructive-fraud claim is dismissed for lack of evidence of a special or fiduciary relationship.

¶20 Redecam also moves for summary judgment as to the constructive-fraud claim, arguing there is no evidence of a special or fiduciary relationship. The court grants the motion on that basis.

¶21 Constructive fraud is "the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests." *Keyes v. Weller*, 692 S.W.3d 274, 278 n.4 (Tex. 2024). ESI alleges that Redecam owed ESI an informal fiduciary duty giving rise to the constructive-fraud claim. Resp. at 15–19.

¶22 Without expressly affirming the doctrine, the Texas Supreme Court has recently acknowledged its precedent holding "that an informal fiduciary relationship can arise from personal relationships of special trust and confidence." *Pitts v. Rivas*, 709 S.W.3d 517, 528 (Tex. 2025). But the Court has also long held that "[t]he fact that people have had prior dealings with each other and that one party subjectively trusts the other does not establish a confidential relationship." *Consol. Gas & Equip. Co. of Am. v. Thompson*, 405 S.W.2d 333, 336 (Tex. 1966). Texas "law will not lightly impose fiduciary duties" in a commercial setting, *Pitts*, 709 S.W.3d at 528, and prior "arms-length transactions entered into for the parties' mutual benefit" are not enough, *Meyer v. Cathey*, 167 S.W.3d 327, 330 (Tex. 2005). Where a plaintiff over an extensive period of time "relied heavily" on and had "a high degree of trust and confidence" in defendants, including a history as family friends, enjoying dinners together, and exchanging free or discounted services for each other over the years, the Texas Supreme Court has emphasized that this "evidence comes nowhere close to creating a fiduciary relationship under our precedents." *Pitts*, 709 S.W.3d at 529.

¶23 Nine months passed between Orion executing its contract with Redecam and Orion executing its Agreement with ESI. Resp. at 3; Mot. Exs. 1–2. During those intervening months, ESI describes working together with Redecam "for the same principal on the same

Project." Resp. at 16; *see* Exs. A, I, K). ESI points to evidence that Redecam selected ESI's vendors, held purchase orders for the project, and tracked fabrication and procurement. *Id.*; Exs. B, H, K). Taking ESI's evidence as true, Redecam prepared and revised the project schedule and provided delivery information—such that ESI relied on Redecam when ESI created and committed to the project schedule and terms. *Id.* at 17; Exs. A, B, F, K. And Redecam knew the information it provided was necessary to ESI's planning and execution of the project. Resp. at 5; Ex. E.

¶24 ESI's collaboration with and reliance on Redecam in furtherance of a commercial transaction during the nine months leading up to the ESI-Orion Agreement does not, without more, establish the "special trust and confidence" required for an informal fiduciary relationship under *Pitts* and *Meyer*. Taking as true that "ESI placed special confidence in Redecam" concerning these matters, Resp. at 17, such "subjective trust in the [defendant] is **no evidence** of a fiduciary relationship." *Pitts*, 709 S.W.3d at 529 (emphasis added). Viewing the record most favorably to ESI, ESI worked jointly with Redecam in an business transaction toward the same end—coordinating and planning a construction project for their shared client, plant owner Orion.

¶25 This record reflects no evidence of a special or other fiduciary relationship as defined by the Texas Supreme Court, so Redecam's motion on this ground is granted.

C. The court need not address evidence of falsity or justifiable reliance.

¶26 Redecam also moves for traditional summary judgment against ESI's negligent-misrepresentation and constructive-fraud claims on the basis that (a) ESI presents no

evidence of falsity of the alleged misrepresentation at the time it was made and (b) the evidence conclusively disproves ESI's justifiable reliance on any misrepresentation.

¶27 Having concluded that ESI's fraud theories fail for the reasons described above, the court does not reach Redecam's remaining two theories.

D. Redecam's evidentiary objection is overruled.

¶28 Redecam objects that one exhibit supporting ESI's Response is inadmissible hearsay. But ESI's Professional Services Agreement with Orion is offered to show that ESI was retained to provide engineering deliverables and prepare a bid-specification package, not to prove the truth of any out-of-court factual assertion. *See* Resp. at 3 (citing Ex. J § 2). ESI also authenticated the document as a business record. *Id.* Ex. K ¶ 3. The court overrules Redecam's objection.

II. Orion's Motion to Designate a Responsible Third Party is dismissed without prejudice to repleading.

¶29 Orion moves to designate Brown and Root as a responsible third party based on alleged staffing and equipment deficiencies that resulted in project delays.[1]

A. Section 33.004's procedural mechanism limits the court to review of the pleadings at this stage.

¶30 Chapter 33 of the Texas Civil Practice and Remedies Code governs the apportionment of responsibility for damages in "any cause of action based on tort." *JCW Elecs., Inc. v. Garza*, 257 S.W.3d 701, 702 (Tex. 2008) (quoting TEX. CIV. PRAC. & REM. CODE § 33.002(a)(1)). A party may be designated if it "is alleged to have caused or

[1] Redecam filed a joinder of Orion's motion, but its request is rendered moot by the above summary-judgment ruling in its favor as to both claims against it.

contributed to causing in any way the harm for which recovery of damages is sought, whether by negligen[ce]" or by any "conduct or activity that violates an applicable legal standard." TEX. CIV. PRAC. & REM. CODE § 33.011(6). A "defendant may designate a responsible third party even though that party possesses a defense to liability, or cannot be formally joined as a defendant, or both." *In re Mobile Mini, Inc.*, 596 S.W.3d 781, 787 (Tex. 2020).

¶31 If a motion to designate a responsible third party is granted, that designation remains subject to an opposing party's motion to strike the designation. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(l). "In contrast to the lenient pleading requirements for obtaining leave to file the initial designation, the filing of a motion to strike the designation place[s] the burden on the [designating party] to produce sufficient evidence to raise a genuine fact issue[.]" *See K&K Inez Props., LLC v. Kolle*, 741 S.W.3d 83, 90 (Tex. 2026) (internal quotations and citations omitted).

¶32 Though both parties cite to evidence in the record, the court is limited to the pleadings at this stage in considering whether to grant Orion's motion for leave to designate in the first instance. *See id.*; *In re Greyhound Lines, Inc.*, No. 05-13-01646-CV, 2014 WL 1022329, at *2 (Tex. App.—Dallas Feb. 21, 2014, no pet.) ("In determining whether to grant a motion for leave to designate a responsible third party, the trial court is restricted to evaluating the sufficiency of the facts pleaded by relators and is not permitted to engage in an analysis of the truth of the allegations or consider evidence on the third party's ultimate liability.").

B. Orion's factual allegations fall short of Section 33.004's substantive requirements.

¶33 ESI attacks both the substance and procedure of Orion's designation. As to the substantive requirements of Chapter 33, Orion must allege that Brown and Root (1) "contributed to cause" ESI's harm; (2) by conduct that "violated some applicable legal standard[.]" *K&K Inez Props.*, 741 S.W.3d at 91.

1. Orion adequately alleges Brown and Root contributed to ESI's harm.

¶34 Orion adequately alleges that Brown and Root contributed to the same harm at issue in ESI's claims against Orion. ESI has sued Orion for harm caused at least in part by project delay. *See, e.g.*, Pet. ¶ 28 (pleading that "Owner Caused Delays, drawing revisions, loss of productivity, schedule compression and delays, disruption and additional scope" caused damages); *id.* ¶¶ 49, 56 (pleading that Orion made misrepresentations knowing the project would be delayed, increasing costs and scope and reducing productivity).

¶35 Orion's motion accuses Brown and Root's inventory and equipment shortcomings, including failing to provide an onsite receiving team and track equipment, of contributing to the project delay. *Id.* ¶¶ 17–21. Orion alleges that Brown and Root was ESI's subcontractor responsible for site management, quality, safety, and staffing. Mot. for Leave ¶¶ 5, 12. The motion states Brown & Root's staffing failures disrupted sequencing, left work fronts unworked, and materially damaged the project schedule. *Id.* ¶ 16. According to Orion, Brown & Root breached its ESI subcontract by inadequately performing its duties and supplying insufficient manpower to timely complete the project. *Id.* ¶ 12. Orion alleges

facts showing Brown and Root "contributed to cause" the delay-related harm that ESI pleads. *See K&K Inez Props.*, 741 S.W.3d at 91.

2. Orion does not adequately plead Brown and Root's violation of a legal standard.

¶36 Orion has not, however, adequately pleaded facts supporting violation of a legal standard by Brown and Root. While Chapter 33 concerns designation of a responsible third party for tort liability, its broad definition of "responsible" applies to a party that has contributed to harm by any "conduct or activity that violates an applicable legal standard." TEX. CIV. PRAC. & REM. CODE § 33.011(6). The legal standard allegedly violated by the responsible third party need not be the same standard allegedly violated by the defendant. *Preston Hollow Cap., LLC v. Truist Bank*, 2026 Tex. Bus. 5, ¶¶ 41–43, 730 S.W.3d 646, 653 (1st Div.). By its terms, the statute contains no requirement that the movant plead the third party violated a duty in tort rather than a duty in contract. TEX. CIV. PRAC. & REM. CODE § 33.011(6); *see Preston Hollow Cap., LLC*, 2026 Tex. Bus. 5, ¶ 53 ("[V]iolating an 'applicable legal standard' as used in § 33.011(6) may include violation of the standards established by contract.").

¶37 But Orion's motion, which attaches no proposed pleading, makes only passing mention of a contract breach rather than satisfying the fair-notice requirement of Rule 47(a). *See In re YRC Inc.*, 646 S.W.3d at 809–10. The motion describes no other legal standard Brown and Root violated. Unlike the movant in *YRC*, Orion pleads neither a contractual duty that was breached nor sufficient facts in support of that duty or breach. *See id.*; *see also Brumley v. McDuff*, 616 S.W.3d 826, 831 (Tex. 2021) (holding a cause of action is sufficiently pleaded if "the elements of the claim and the relief sought may be discerned

from the pleadings alone"). Orion's existing filing lacks fair notice of the "nature, basic issues, and type of evidence that might be relevant to the controversy" between ESI and Brown and Root. *See In re YRC Inc.*, 646 S.W.3d at 809–10.

¶38 However, this court lacks discretion to deny a motion to designate without first granting the movant leave to replead. TEX. CIV. PRAC. & REM. CODE § 33.004(g)(2); *see In re Smith*, 366 S.W.3d 282, 287 (Tex. App.—Dallas 2012, no pet.) ("[U]nder section 33.004(g)(2), [the objecting party] bore the burden of showing that [the designating parties] were given leave to replead before the trial judge could have discretion to deny [the] motion for leave to designate."). Orion is therefore granted leave to replead to provide fair notice of the applicable legal standard, and violation of that standard, by Brown and Root.

C. Orion has not met its burden as to Section 33.004's procedural requirements.

¶39 ESI also identifies procedural deficiencies in Orion's motion. ESI's counsel concedes the motion to designate complied with the suit's original docket-control order in Harris County district court, the Scheduling Order deadlines in this court, and the statutory 60-day deadline. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(a); *In re Coppola*, 535 S.W.3d 506, 508 (Tex. 2017) (rejecting argument that 60 days runs from the "initial trial setting rather than the trial date at the time a motion to designate is filed"). While ESI complains that the discovery period in this suit has now run, ESI admits it sought no discovery extension concerning Brown & Root once its designation was disclosed by Orion's counsel—and ESI seeks no such extension now, even though the parties did extend the discovery period by agreement concerning other topics since the time ESI received the disclosure.

¶40 However, ESI also argues that the relevant statute of limitations bars Brown and Root's designation. A designation cannot be made after the limitations period has run on the plaintiff's claim with respect to the third party "if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure." *In re Mobile Mini, Inc.*, 596 S.W.3d at 784 (quoting TEX. CIV. PRAC. & REM. CODE § 33.004(d)). Subsection 33.004(d) "places the burden on the defendant to timely disclose potentially responsible third parties or risk forfeiting the ability to designate such persons as responsible third parties after limitations has expired." *In re Mobile Mini, Inc.*, 596 S.W.3d at 786; *see In re Bertrand*, 602 S.W.3d 691, 706 (Tex. App.—Fort Worth 2020, no pet.) (describing the "objective of Section 33.004(d)" to minimize gamesmanship to afford "plaintiffs [] their opportunity to make a claim against the responsible third party within limitations").

¶41 The Texas Supreme Court deems a disclosure timely under Section 33.004(d) if it satisfies Texas Rule of Civil Procedure 194.2(b)(12), which requires disclosure of "the name, address, and telephone number of any person who may be designated as a responsible third party" within 30 days of defendant's appearance in the suit. TEX. R. CIV. P. 194.2(b)(12); *see In re Dawson*, 550 S.W.3d 625, 629-30 (Tex. 2018). The Court has specifically outlined the Rules' requirements for supplementation of an initial disclosure under Rule 194.2:

> The rules require parties to timely respond to written discovery with "a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made." *Id.* 193.1. The rules also require a party to supplement a response when it learns the response "was incomplete or incorrect when made" or has become so since it

> was made. *Id.* 193.5(a). And the rules don't allow a party to drag its feet—the supplemental or amended response must be provided "reasonably promptly after the party discovers the necessity for such a response." *Id.* 193.5(b).

In re Dawson, 550 S.W.3d at 629–30.

¶42 Orion admittedly did not name Brown and Root as a responsible third party in its initial disclosures under Texas Rule of Civil Procedure 194.2(b)(12), which were due in early 2024. Orion's amended disclosure naming Brown and Root was served nearly two years later, in January 2026. Orion presents various arguments related to the timing of the amended disclosure—but does not include sufficient facts in its motion or pleadings demonstrating it satisfied the requirements of the Texas Rules of Civil Procedure, as outlined above.

¶43 Further, Orion first moved for designation of Brown and Root in January 2024 in the Harris County district court, where the motion remained pending until the suit was removed to this court earlier this year. A claim against Brown and Root for breach of the subcontract would be subject to a four-year limitations period, and "[a] claim for breach of contract accrues when the contract is breached." *Cosgrove v. Cade*, 468 S.W.3d 32, 39 (Tex. 2015). While the parties posit differing theories as to when that claim would have accrued, they identify no specific facts that would demonstrate when Brown and Root's breach occurred.

¶44 The court cannot discern, based on the record before it, whether Orion satisfied its obligation to timely disclose Brown and Root under Rules 193 and 194, nor whether it moved for the designation before the four-year limitations period ran on that claim. When

repleading, Orion will be afforded the opportunity to demonstrate its satisfaction with Section 33.004(d).

CONCLUSION AND ORDER

For these reasons, it is ORDERED that Redecam's evidentiary objection is OVERRULED and Redecam's Motion for Summary Judgment is GRANTED. It is ORDERED that ESI's claims against Redecam are dismissed with prejudice.

It is further ORDERED that Orion's Motion for Leave to Designate Responsible Third Party is dismissed without prejudice and that Orion is GRANTED LEAVE to amend its motion for leave to designate Brown and Root as a responsible third party no later than November 9, 2026. It is finally ORDERED that Orion shall, when filing its amended motion, attach its proposed amended pleading containing the third-party designation of Brown and Root.

SO ORDERED.

Stacy Rogers Sharp

STACY ROGERS SHARP
Judge of the Texas Business Court,
Fourth Division, *sitting by assignment in the Eleventh Division*

SIGNED ON: October 20, 2026