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| TEXAS LAND TITLE ASSOCIATION, | § | IN THE DISTRICT COURT OF |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | |
| | § | |
| TEXAS DEPARTMENT OF | § | TRAVIS COUNTY, TEXAS |
| INSURANCE and CASSIE BROWN, | § | |
| IN HER CAPACITY AS | § | |
| COMMISSIONER OF THE TEXAS | § | |
| DEPARTMENT OF INSURANCE, | § | |
| <i>Defendants.</i> | § | 345TH JUDICIAL DISTRICT |

**TEXAS DEPARTMENT OF INSURANCE AND CASSIE BROWN’S
FRIST AMENDED PLEA TO THE JURISDICTION**

Defendants, the Texas Department of Insurance and Cassie Brown, in her capacity as Commissioner of the Texas Department of Insurance (collectively “TDI”), file this First Amended Plea to the Jurisdiction in response to Plaintiff Texas Land Title Association’s (TLTA) Original Petition and Application for Temporary Injunction. TDI asks the Court to dismiss TDI and Cassie Brown from this suit for lack of jurisdiction because: 1) sovereign immunity protects TDI from suit and liability; 2) sovereign immunity bars TLTA’s Uniform Declaratory Judgments Act (UDJA) claim for redundant declaratory relief; and 3) TLTA’s Administrative Procedure Act (APA) “rule challenge” is not ripe because TDI does not yet have a rule to challenge.

SUMMARY OF THE ARGUMENT

TDI is an agency of the State of Texas and is immune from suit, absent an express waiver of sovereign immunity. Cassie Brown, sued in her official capacity, enjoys the same protections of sovereign immunity as TDI. While TLTA has a right

to judicial review of TDI's order under Texas Insurance Code sections 36.201 through 36.205, TDI is immune from suit under waiver of sovereign immunity under the Texas APA, is immune from suit from TLTA's redundant UDJA claims, and is immune from suite from TLTA's unripe APA rule challenge claim. Therefore, all claims beyond the suit for judicial review must be dismissed for lack of subject matter jurisdiction.

BACKGROUND

This case is about the basic premium rate for title insurance in Texas. Title insurance protects homeowners from problems with title ownership when they buy real estate. All Texas companies charge the same rates for title insurance. The TDI Commissioner of Insurance sets the basic premium rates for title insurance in Texas by order following a public hearing. *See* Tex. Ins. Code §§ 2703.202(a)-(d), 2703.202(j), and 2703.206. TLTA now challenges the rate set after notice and hearing by TDI's order on February 6, 2025.

STANDARD OF REVIEW

“A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject matter jurisdiction.” *Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). At the earliest opportunity, the court must determine whether it has jurisdiction under the constitution or by statute to allow litigation to proceed. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). “The high costs of defending a suit against a governmental entity, borne ultimately by the public, is a strong motivation for allowing *any* jurisdictional issue to be resolved

before the merits of the suit are litigated.” *City of Austin v. L.S. Ranch, Ltd.*, 970 S.W.2d 750, 753 (Tex. App.—Austin 1998, no pet.).

Courts focus first on the plaintiff’s petition to determine whether the facts that were pled affirmatively demonstrate that jurisdiction exists. *Wise Reg’l Health Sys. v. Brittain*, 268 S.W.3d 799, 804 (Tex. App.—Fort Worth 2008, no pet.). Courts construe the pleadings liberally in favor of the plaintiff. *Miranda*, 133 S.W.3d at 226. If the pleadings affirmatively negate jurisdiction, then a plea to the jurisdiction may be granted without allowing an opportunity to amend. *Id.* at 227. If the pleadings do not affirmatively demonstrate the trial court’s jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiff should be afforded the opportunity to amend. *Id.* at 226–27. If a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court may consider evidence and must do so when necessary to resolve the jurisdictional issues raised. *Id.* at 227; accord *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000).

Sovereign immunity from suit defeats a trial court’s subject matter jurisdiction and thus is properly asserted in a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 225-26. Sovereign immunity from suit bars an action against the state unless the state expressly consents to the suit. *Tex. Dep’t of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). The party suing the governmental entity must establish the state’s consent to suit, which may be alleged either by reference to a statute or to express legislative permission. *Id.*; *Dall. Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542

(Tex. 2003); see *Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1, 3 (Tex. 2000). It is a well-established rule that for the Legislature to waive the state’s sovereign immunity, it must do so by clear and unambiguous language. Tex. Gov’t Code § 311.034; *Duhart v. State*, 610 S.W.2d 740, 742 (Tex. 1980); see *Miranda*, 133 S.W.3d at 226–27. “A party who sues the State must have an independent waiver of immunity from suit for each claim in the suit.” *State v. Sledge*, 36 S.W.3d 152, 156 (Tex. App.—Houston [1st Dist.] 2000, pet. denied).

ARGUMENT AND AUTHORITIES

I. Sovereign immunity protects TDI from suit and liability.

“Sovereign immunity protects the State of Texas and its agencies and subdivisions from suit and liability.” *PHI, Inc. v. Tex. Juvenile Justice Dep’t*, 593 S.W.3d 296, 301 (Tex. 2019) (citing *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57–58 (Tex. 2011)). Sovereign immunity bars Plaintiff’s suit against the TDI and the Commissioner, in her official capacity, unless the Legislature effects a waiver of sovereign immunity “by clear and unambiguous language.” *PHI, Inc.*, 593 S.W.3d at 301. Cassie Brown, sued in her official capacity, enjoys the same protections of sovereign immunity as the Board. See *Cloud v. McKinney*, 228 S.W.3d 326, 333 (Tex. App.—Austin 2007, no pet.) (“A suit against a governmental employee in [her] official capacity is essentially a suit against the governmental agency the person works for, rather than a suit against the individual.”); *Nueces Cty. v. Ferguson*, 97 S.W.3d 205, 214–15 (Tex. App.—Corpus Christi–Edinburg 2002, no pet.). The Legislature has not waived sovereign immunity for TLTA’s APA rule-challenge and UDJA claims, so they must be dismissed.

II. TLTA's UDJA claim is barred as a redundant remedy.

The Uniform Declaratory Judgments Act provides a means through which a party “may have determined any question of construction or validity arising under [an] instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code § 37.004(a). However, the UDJA does not enlarge a court’s power or permit “the rendition of advisory opinions.” *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Instead, the UDJA is “merely a procedural device for deciding cases already within a court’s jurisdiction. . . .” *Id.* Thus, the UDJA “is not a general waiver of sovereign immunity.” *Tex. Parks & Wildlife Dep’t v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011). Rather, “the UDJA’s sole feature that can impact trial-court jurisdiction to entertain a substantive claim is the statute’s implied limited waiver of sovereign or governmental immunity that permits claims challenging the validity of ordinances or statutes.” *Ex parte Springsteen*, 506 S.W.3d 789, 799 (Tex. App.—Austin 2016, pet. denied); *see* Tex. Civ. Prac. & Rem. Code § 37.004.

The Texas Insurance Code is the sole basis for jurisdiction for this action. Tex. Ins. Code §§ 2703.151-2703.152, 2703.201-2703.202 & 2703.206. “[C]ourts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels.” *Patel v. Tex. Dep’t of Licensing & Reg.*, 469 S.W.3d 69, 79 (Tex. 2015). “Where a statute provides a method for attack on a Commission order, an action for declaratory judgment does not lie.” *Tex. Emp’t Comm’n v. Child, Inc.*, 738 S.W.2d 56, 58 (Tex. App.—Austin 1987, writ denied) (citing *R.R. Comm’n of Tex. v. Home Transp. Co.*, 670 S.W.2d 319, 326 (Tex. Civ. App. 1984, no writ)). Here,

judicial review of the Commissioner’s decision will resolve the same controversy sought to be resolved by declaratory judgment. Thus, the claim for declaratory relief is merely incidental to the suit for judicial review. TLTA’s UDJA claim is barred as a redundant remedy and must be dismissed for lack of subject matter jurisdiction.

III. The APA “rule challenge” is not ripe because TDI does not yet have a rule to challenge.

The Texas Administrative Procedure Act contains a limited waiver of sovereign immunity to the extent of creating a cause of action for declaratory relief regarding the “validity” or “applicability” of a “rule,” as defined under the APA, if “it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” Tex. Gov’t Code § 2001.038(a); *see Tex. Logos, L.P. v. Tex. Dep’t of Transp.*, 241 S.W.3d 105, 123 (Tex. App.—Austin 2007, no pet.) (holding that “section 2001.038 is a grant of original jurisdiction and, moreover, waives sovereign immunity”). However, “[t]o the extent that no rule as defined by the APA is at issue, section 2001.038 does not provide any basis for the district court’s jurisdiction over appellees’ declaratory judgment action.” *Combs v. City of Webster*, 311 S.W.3d 85, 100 (Tex. App.—Austin 2009, pet. denied). Thus, “[i]f there is no ‘rule as defined by the APA’ being challenged, in other words, the claimant cannot obtain the declaratory relief the statute authorizes against the State, its agencies, or its agents, because sovereign immunity would bar the cause of action.” *Slay v. Tex. Comm’n on Env’tl. Quality*, 351 S.W.3d 532, 545 (Tex. App.—Austin 2011, pet. denied) (citing *Combs*, 311 S.W.3d at 100–01).

A “rule” under the APA is a “statement of general applicability that: implements, interprets, or prescribes law or policy; or describes the procedure or practice requirements of a state agency”. Tex. Gov’t Code § 2001.003(6)(A). Here, however, the decision is provided in a rate order under section 2703.202(g), not a rule, and TLTA has not identified any state agency statement of general applicability constituting a rule that provides the Commissioner’s final decision. TDI has not implemented or adopted a rule or statement of general applicability. As such, the APA does not waive TDI’s sovereign immunity from suit. *See Trinity Settlement Servs., LLC v. Tex. State Securities Bd.*, 417 S.W.3d 494, 501 (Tex. App.—Austin 2013, pet. denied) (noting that “a challenged agency action constituting a ‘rule’—as defined by the APA— must exist for a claimant to successfully invoke the trial court’s subject-matter jurisdiction under section 2001.038”). Accordingly, Plaintiffs claims are barred by sovereign immunity and they must be dismissed.

PRAYER

TDI respectfully asks the Court, upon notice and hearing, to grant this Plea to the Jurisdiction, dismissing Plaintiff’s UDJA and APA rule challenge claims with prejudice for lack of subject matter jurisdiction.

Respectfully submitted,

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BROWN, IN HER CAPACITY AS
COMMISSIONER OF THE TEXAS
DEPARTMENT OF INSURANCE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amended Plea to the Jurisdiction has been served on May 20, 2025, on the following attorneys-in-charge, by e-service and/or e-mail:

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