

Reversed, Rendered and Remanded and Opinion Filed June 25, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-00469-CV

**RISK POINT, LLC AND RISK THEORY INSURANCE SERVICES, LLC,
Appellants
V.
SANTANDER BANK, N.A., Appellee**

**On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-22-16051**

MEMORANDUM OPINION

Before Chief Justice Koch, Justice Evans, and Justice Wright¹
Opinion by Justice Wright

Appellants Risk Point, LLC (Risk Point) and Risk Theory Insurance Services, LLC (RTIS) challenge the trial court's April 4, 2024 Amended Order on Motions for Partial Summary Judgment (the Amended Order). Specifically, appellants challenge the trial court's interpretation of the Reconciliation Audit provision of their Program Management Agreement with appellee Santander Bank N.A. (Santander). Because that provision will govern, at least in part, the rights of these

¹ The Hon. David Evans and the Hon. Carolyn Wright, Justices, Assigned.

and other parties with claims below, we granted appellants' request for a permissive appeal of this limited issue as cast by the trial court:

The controlling issue of law to be presented on appeal is whether the Reconciliation Audit provision providing that audits may be initiated “in the calendar quarter following renewal or the expiration or earlier termination of Dealer’s coverage and/or at other times and from time to time as [Santander] requests” allows Santander to request and conduct reconciliation audits after the calendar quarter following renewal, expiration or earlier termination of Dealer’s coverage.

We conclude that the trial court’s interpretation of the Reconciliation Audit provision fails to harmonize and give meaning to all of the provision’s terms. We reverse the court’s Amended Order based on that interpretation; we render judgment that reconciliation audits may not be initiated after the first calendar quarter following renewal, expiration, or earlier termination of a Dealer’s coverage; and we remand the cause for further proceedings consistent with this opinion.

BACKGROUND

Santander provides financing to various automobile dealerships (the Dealers) to purchase their inventory of vehicles. Financing is secured by a Dealer’s inventory, and—to protect its collateral—Santander requires each Dealer to purchase Dealers Open Lot (DOL) insurance covering physical damage to the vehicles while on its lot.

Houston Specialty Insurance Company and Oklahoma Specialty Insurance Company (together, the Insurers) issue DOL insurance policies. The Insurers and Risk Point contracted in a Managing General Agency Agreement (the MGAA) for

Risk Point to be the Insurers' managing general agent for marketing, underwriting, and overseeing their DOL business. Risk Point, in turn, appointed RTIS as its "sub-producer" to place certain policies for that DOL business.

Santander contracted initially with Risk Point in 2016, and then with RTIS in 2017, to obtain DOL coverage from the Insurers. These identical Program Management Agreements (PMAs) provided the framework for the relationship between Risk Point and RTIS (together, the Risk Brokers) and Santander. Each Dealer signed a one-year policy with the Insurers. The premium amount for that policy was derived from the Dealer's estimated vehicle inventory for the policy year. Santander prepaid the estimated premium to the Risk Brokers, who subtracted their fees, taxes, and commissions, and sent the premium on to the Insurers. Santander then collected monthly premium payments from the Dealers based on their actual inventory levels during the month.

Because the DOL premiums were based upon estimated inventories, the parties included in both PMAs a provision for adjusting the premium amount based upon a Dealer's actual vehicle inventory. This provision states in full:

Reconciliation Audit – In the calendar quarter following renewal or the expiration or earlier termination of a Dealer's coverage and/or at other times and from time to time as [Santander] requests, RTIS and [Santander] shall review the total annual premium and Program fees paid by [Santander] for such Dealer (the "Total Amount") and compute an adjusted amount ("Adjusted Amount") over such time period equal to the amount of the premium (inclusive of applicable surplus lines tax, stamping fees, taxes and other fees) and Program Fees that would have been due based on the Dealer's actual daily inventory value of the

preceding year or portion thereof. If the Total Amount exceeds the Adjusted Amount for a Dealer, RTIS shall pay [Santander] the amount of such excess within 10 business days after the date [Santander] delivers an invoice for the excess to RTIS. If the Total Amount is less than the Adjusted Amount for a Dealer, [Santander] shall pay RTIS the amount of such shortfall within 10 business days after the date RTIS delivers an invoice for the excess to [Santander].

On July 1, 2022, Santander requested a reconciliation audit of the premiums paid for DOL policies that expired from the first quarter of 2018 through the third quarter of 2020. The Risk Brokers performed the audit and concluded the actual inventories were lower than what had been projected, leading to a premium overpayment of \$2,391,551. Santander made a demand for reimbursement, and the Risk Brokers forwarded the demand to the Insurers. The Insurers refused the demand, asserting that the audits had not been timely requested and performed. Santander pressed its demand against the Risk Brokers.

Litigation ensued:

- The Risk Brokers filed suit against the Insurers and Santander seeking a declaration of all parties' rights and obligations concerning Santander's demand and, should Santander's demand be held valid, stating claims against the Insurers for indemnity pursuant to the MGAA.
- The Insurers counterclaimed against the Risk Brokers—citing their never-disclosed agreement to the Reconciliation Audit provision with Santander—and urging claims for breach of the MGAA, breach of fiduciary duty, unjust enrichment, and indemnity.
- Santander counterclaimed against the Risk Brokers alleging breach of the PMA and money had and received and seeking declarations favoring its interpretation of the Reconciliation Audit provision.

The Insurers moved for partial summary judgment on the Risk Brokers' and Santander's declaratory and breach-of-contract claims. They argued that the PMA did not entitle Santander to perform an audit of an insurance policy beyond the calendar quarter after a policy's expiration, making its 2022 demand for refund untimely.² Santander also moved for partial summary judgment on its declaratory and breach-of-contract claims, arguing that the Reconciliation Audit provision, on its face, permitted those audits at times other than the calendar quarter following expiration, renewal or termination of Dealer's coverage; thus, it argued, its 2022 audit request was timely and valid.

The trial court denied the Insurers' motion and granted Santander's motion.

The court ordered declaratory relief, stating:

- a) the Reconciliation Audit provision of the Program Agreements providing that audits may be initiated "at other times and from time to time as [Santander] requests" permits reconciliation audits at times other than the calendar quarter following renewal or termination of Dealer's coverage; and
- b) Santander's reconciliation audit of the DOL Policies in October 2022 is [a] timely and valid request for reconciliation audit of premium overpayments under the Program Agreements.

The court ordered further that Santander had conclusively established its claim against RTIS for breach of the PMA and was entitled to recover actual damages in

² The Insurers also argued that the DOL policies could not support recovery by the Risk Brokers or Santander. This argument was rejected when the trial court denied the Insurers' motion "in all things." But no argument involving the DOL policies is before us in this appeal.

the amount of \$2,391,551.00, exclusive of interest, attorneys' fees, and costs from RTIS.

The Risk Brokers filed a motion seeking permission to appeal the court's orders granting and denying the motions for partial summary judgment. Following a hearing, the trial court granted the motion, and signed its Amended Order stating that:

The controlling issue of law to be presented on appeal is whether the Reconciliation Audit provision providing that audits may be initiated "in the calendar quarter following renewal or the expiration or earlier termination of Dealer's coverage and/or at other times and from time to time as [Santander] requests" allows Santander to request and conduct reconciliation audits after the calendar quarter following renewal, expiration or earlier termination of Dealer's coverage.

Subsequently, we also granted the motion for permissive appeal. We limit our review to the issue framed by the trial court.

DISCUSSION

"The construction of an unambiguous contractual provision—meaning that the provision has only one reasonable construction—is an issue of law we review de novo using well-settled contract-construction principles." *Samson Expl., LLC v. Bordages*, 694 S.W.3d 195, 200 (Tex. 2024).³ Our primary objective is to ascertain and give effect to the parties' intent as expressed in the instrument. *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018). We presume that parties intend

³ Neither party contends that the provision at issue is ambiguous, and we conclude through our discussion below that only one reasonable interpretation exists.

what the words of their contract say, so we interpret contract language according to its plain meaning unless the contract directs otherwise. *Id.* at 764. That said, words must be construed in the context in which they are used. *Id.* We may not rewrite a contract under the guise of interpretation. *Sundown Energy LP v. HJSA No. 3, Ltd. P'ship*, 622 S.W.3d 884, 889 (Tex. 2021). “An interpretation that gives each word meaning is preferable to one that renders one surplusage.” *U.S. Metals, Inc. v. Liberty Mut. Grp., Inc.*, 490 S.W.3d 20, 23–24 (Tex. 2015). Our goal is to harmonize all parts of a provision even if its different parts might appear contradictory or inconsistent. *See Mosaic Baybrook One, L.P. v. Simien*, 674 S.W.3d 234, 257 (Tex. 2023).

What is a Reconciliation Audit?

We begin with a general understanding of the parties’ reconciliation audit process. Paragraph 1(o) of the 2017 PMA provides:

Reconciliation Audit – In the calendar quarter following renewal or the expiration or earlier termination of a Dealer’s coverage and/or at other times and from time to time as [Santander] requests, RTIS and [Santander] shall review the total annual premium and Program fees paid by [Santander] for such Dealer (the “Total Amount”) and compute an adjusted amount (“Adjusted Amount”) over such time period equal to the amount of the premium (inclusive of applicable surplus lines tax, stamping fees, taxes and other fees) and Program Fees that would have been due based on the Dealer’s actual daily inventory value of the preceding year or portion thereof. If the Total Amount exceeds the Adjusted Amount for a Dealer, RTIS shall pay [Santander] the amount of such excess within 10 business days after the date [Santander] delivers an invoice for the excess to RTIS. If the Total Amount is less than the Adjusted Amount for a Dealer, [Santander] shall pay RTIS the

amount of such shortfall within 10 business days after the date RTIS delivers an invoice for the excess to [Santander].

The annual premium for a DOL policy (together with any program fees owed to the Risk Brokers) was determined at the start of the policy’s year-long term and was based upon an estimate of the average daily inventory on the Dealer’s lot; that estimated amount is identified in this paragraph as the “Total Amount.” The Reconciliation Audit provision gave the parties a mechanism for reviewing that Total Amount and reconciling it—*i.e.*, making it consistent or harmonizing it—with actual Dealer inventories. *See Reconciliation*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reconciliation> (last visited June 24, 2025) (defining “reconciliation” in business context to mean “action of making financial accounts consistent; harmonization”).

The first sentence of the paragraph tells us that both RTIS and Santander shall be involved in the process of reviewing the Total Amount.⁴ They must compute an “Adjusted Amount” from the same time period “that would have been due based on the Dealer’s actual daily inventory value of the preceding year or portion thereof.”

The second and third sentences of the paragraph address the outcome of the audit. If the Total Amount is greater than the Adjusted Amount, then Santander has

⁴ It is possible to read the paragraph’s “shall” language to require that a reconciliation audit be performed for every DOL policy after its coverage expires, is renewed, or is terminated before expiration. The record is clear that no party sought an audit of the requested policies until Santander did years later. Moreover, neither party relies on such a reading, and such a requirement does not appear to be an issue within our limited appellate scope. For our purposes, we note only that had audits of the 2018–2020 policies been mandated, Santander’s 2022 request would have been redundant.

overpaid; it is to deliver an invoice for the overpayment, and RTIS is to refund that amount within ten days. Likewise, if the audit establishes the Adjusted Amount is greater than the Total Amount, then RTIS is to deliver an invoice for the shortfall, and Santander is to pay that amount within ten days.

With this understanding of the basic audit procedure, we turn to the specific source of contention below.

When May the Audit Take Place?

In a somewhat unusual grammatical construction, the Reconciliation Audit paragraph begins not with the subject and predicate of the first sentence, but with an adverbial clause explaining *when* such a reconciliation audit may take place. We break the clause down into segments for ease of reference:

[1] In the calendar quarter following renewal or the expiration or earlier termination of a Dealer's coverage (the first provision)

[2] and/or [a] at other times and [b] from time to time as Santander requests (the second provision).

Plain Meaning of the Two Provisions

We begin by looking at the plain meaning of these phrases. *See Endeavor Energy Res., L.P. v. Energen Res. Corp.*, 615 S.W.3d 144, 148 (Tex. 2020) (most important consideration in interpreting contract is agreement's plain, grammatical language). The first provision identifies a definite time period: the calendar quarter (or three-month period) immediately after one of three possible events in the contractual relationship. The calendar quarter could follow the parties' renewal of

coverage for a Dealer, the expiration of a Dealer’s coverage, or the termination of a Dealer’s coverage before that coverage was due to expire on the policy’s terms.⁵ The Dealer’s coverage for which Santander sought premium reconciliation had apparently been renewed at the end of one-year policies in 2018, 2019, and 2020. Accordingly, in our case, under this first provision of the initial clause, a reconciliation audit could be requested during the three months following renewal of each of those policies. If no earlier partial audit was requested, then the first provision calls for examination of actual inventories for the one-year term of the policy.

The second provision is less straightforward, and we look carefully at its language and structure. It begins with the alternative conjunction “and/or.” Thus, this second provision provides for an *additional* time—*i.e.*, along with the first calendar quarter following renewal of coverage—for a reconciliation audit (the “and” of “and/or”). The second provision also provides for an *alternative* time—*i.e.*, instead of the first calendar quarter after renewal of coverage—for such an audit (the “or” of “and/or”). Whether additional or alternative, an audit under the second provision must necessarily be initiated at a time “other” than the first calendar quarter after the end of coverage. Moreover, the agreement’s use of the plural word

⁵ Both parties reserved the right to terminate the insurance policies under certain circumstances, but the record includes no suggestion that the policies at issue in this appeal were terminated before the one-year period of policy coverage.

“times” indicates that more than one additional or alternative audit may be performed. Finally, the audits may take place “from time to time,” suggesting that second-provision audits may take place in intervals if requested by Santander.

Reading the Two Provisions Together

The plain meaning of the second provision, then, is that reconciliation audits may be available at additional and alternative times. We must identify these “other times” by assuring that we give reasonable meaning to the entire clause.

Reading the two provisions together, we reach the following conclusions:

- Nothing in this clause, or in the remainder of the Reconciliation Audit paragraph, provides for repeating or re-doing an audit. Thus, an audit that reconciles the premium for an entire policy year, or for a specific portion of the year, can be performed only once.
- To avoid repetition, any audit under the second provision that is “additional” to the one performed under the first provision must examine only a portion of the policy year; the first-provision audit would then be available to examine a different portion of the policy year.
- The “other times” and “time to time” language of the second provision clearly permit multiple audits. If they are “additional” to a first-provision audit, they must speak to partial audits of different portions of the policy year. This language could embrace either sequential audits—such as monthly or quarterly reviews of corresponding portions of the policy year—or occasional

audits of different portions of the policy year. The first-provision audit would then be available to audit any portions of the term not covered by earlier requests for partial audits.

- If Santander chose to have two or more partial audits that together covered the entire policy year, then that process would be an “alternative” to a first-provision single audit of the entire year in the months following renewal.
- Likewise, if Santander requested one or more partial audits during the term and then determined it had no need for review of the remainder of the term, then the partial audit(s) would be “alternative” to a first-provision audit.
- Nothing in the language of these provisions, when read together, provides for initiation of an audit after the first calendar quarter following the end of coverage.

These conclusions allow the dual timing provisions to be read in harmony: the first provision provides for an audit to be initiated during the three-month period following the end of coverage; the second provision allows an audit to be initiated one or more times during the one-year term of the policy. Together, the two provisions create an efficient and flexible system. As the year-long term progresses, Santander receives accurate monthly inventory numbers from the Dealers, and it can request a partial audit as it discovers a variance between the earlier-estimated inventories and those actual numbers. If Santander obtains only a partial audit during the policy term, an additional audit of the remainder of the term can be requested

under the first provision. If Santander has obtained partial audits that reviewed the entire term, or if it is satisfied with whatever partial audit(s) it obtained, then it has exercised its option for an alternative to a first-provision audit. In this way, the two provisions work together and make sense together.

By comparison, Santander’s argument that “other times” can be interpreted to mean “any time” does not yield the kind of coherent audit system outlined above. Instead, Santander’s interpretation of the second provision renders the first provision meaningless: the specific time period of three months following the end of coverage would add no meaning to the Reconciliation Audit provision under Santander’s interpretation, because the boundless second provision would simply incorporate and swallow the specific provision whole. We strive to harmonize contract provisions, not to read them in a manner that creates surplusage. *See Wal-Mart Stores, Inc. v. Xerox State & Loc. Sols., Inc.*, 663 S.W.3d 569, 587 (Tex. 2023) (referencing the “long-established precedent that provisions should be considered together and harmonized, when possible, so that none will be rendered meaningless”).

Reading the Provisions in Larger Context

When we extend our inquiry beyond the first adverbial clause to the first sentence as a whole, the text supports our conclusions. Following the two timing provisions, the contract dictates the audit’s process:

RTIS and [Santander] shall review the total annual premium and Program fees paid by [Santander] for such Dealer (the “Total Amount”) and compute an adjusted amount (“Adjusted Amount”) over such time period equal to the amount of the premium (inclusive of applicable surplus lines tax, stamping fees, taxes and other fees) and Program Fees that would have been due based on the Dealer’s actual daily inventory value of the preceding year or portion thereof.

This process is tied specifically and repeatedly to the one-year term of insurance coverage. The parties are to review “the total annual premium,” compute the Adjusted Amount over “such time period,” based on the actual inventory “of the preceding year or portion thereof.” Indeed, the final phrase of the sentence parallels the essence of the two timing provisions as we have read them: the first speaking to a review of the year preceding expiration; the second speaking to additional or alternative audits of a portion of that preceding year. To read the second provision to allow audits to be initiated at any time, as Santander proposes, would ignore the full sentence’s repeated references to the single year preceding expiration.

It is axiomatic that contract terms must be construed in the context in which they are used. *See URI, Inc.*, 543 S.W.3d at 764. We have endeavored to interpret the second timing provision as it relates to the first timing provision and to the full sentence in which it appears. The Texas Supreme Court has also instructed that when interpreting a contract’s language, “context” may encompass the circumstances present when the contract was entered. *Id.* Such evidence may only “give the words of a contract a meaning consistent with that to which they are reasonably susceptible.” *Id.* at 765. Santander’s summary judgment evidence asserted that it

paid the estimated annual premium at the beginning of each policy term, but it collected monthly payments from the Dealers based upon their actual inventories. Accordingly, as the contract term proceeded, Santander obtained information monthly that would allow it to determine the accuracy of the initial estimated premium. Thus, given our reading of the second timing provision, Santander did not have to wait until the expiration of the policy to request reconciliation of premiums based on actual rather than estimated inventories. It could request one or more audits during the coverage term. Our reading of the timing provisions is consistent with allowing Santander to employ the Reconciliation Audit provision when and in the manner that served its interests. At the same time, our reading prevents Santander from sleeping on known rights and preventing both the Risk Brokers and the Insurers from closing their books on a one-year insurance policy.

CONCLUSION

We are persuaded that only one interpretation of the Reconciliation Audit paragraph's two-provision timing clause is consistent with the entirety of the reconciliation plan. Pursuant to the first provision, Santander may initiate a reconciliation audit of the annual estimated premium during the three-month period following expiration of coverage. But pursuant to the second provision, Santander need not wait until after expiration to seek reconciliation of premiums for any portion of the coverage year. It may initiate one or more additional or alternative audits during the policy's term for a challenged portion of the year.

We reverse the trial court's April 4, 2024 Amended Order. We render judgment that reconciliation audits may not be initiated after the first calendar quarter following renewal, expiration, or earlier termination of a dealer's coverage. And we remand the cause for further proceedings consistent with this opinion.

/Carolyn Wright/

CAROLYN WRIGHT
JUSTICE, ASSIGNED



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

RISK POINT, LLC AND RISK
THEORY INSURANCE
SERVICES, LLC, Appellants

No. 05-24-00469-CV V.

SANTANDER BANK, N.A.,
Appellee

On Appeal from the 134th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-22-16051.
Opinion delivered by Justice Wright.
Chief Justice Koch and Justice Evans
participating.

In accordance with this Court's opinion of this date, the April 4, 2024 Amended Order of the trial court is **REVERSED** and judgment is **RENDERED** that reconciliation audits may not be initiated after the first calendar quarter following renewal, expiration, or earlier termination of a dealer's coverage.

We **REMAND** the case for further proceedings consistent with our opinion.

It is **ORDERED** that appellants RISK POINT, LLC and RISK THEORY INSURANCE SERVICES, LLC recover their costs of this appeal from appellee SANTANDER BANK, N.A..

Judgment entered this 25th day of June 2025.