

CAUSE NO. 2018DCV-3027-D

COMMERCE OFFICE
PARK-ONE, L.P.
Plaintiff,

v.

TEXAS WINDSTORM INSURANCE
ASSOCIATION
Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

NUECES COUNTY, TEXAS

105TH JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been admitted for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss or concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the results to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the jury not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No," unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence, unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." Whenever a question requires an answer other than a "Yes" or "No," your answer must also be based on a preponderance of the evidence, unless otherwise instructed.

"Preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

If you answer questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other questions about damages. Do not speculate about what any party's ultimate recovery may or may

not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

The term "Plaintiff" shall refer to Commerce Office Park-One, L.P.

The term "TWIA" shall refer to Defendant Texas Windstorm Insurance Association.

The term "policy" shall refer to policy number 94919902 issued by TWIA to Plaintiff.

The term "claim" shall refer to a request for payment under a TWIA policy.

"Covered damage" consists only of direct physical loss to insured property caused by wind or rain, but only if rain first enters through wind-created openings in the insured property.

"Replacement Cost Value" shall refer to the replacement cost of item(s), or any part thereof, with material of like kind and quality on the same premises and intended for the same occupancy and use.

"Actual Cash Value" shall refer to Replacement Cost Value less depreciation.

"Increased Cost of Construction" shall refer to the increased cost of construction incurred due to the requirement to rebuild or repair a covered structure in accordance with the windstorm code applicable to the specific area in which the structure is located.

QUESTION 1:

Was TWIA's denial of Plaintiff's insurance claim improper under the policy?

TWIA's denial of coverage was improper if Plaintiff's buildings sustained covered damage that was caused by the windstorm that occurred on or about August 25, 2017 (Hurricane Harvey).

Answer "Yes" or "No."

Answer: Yes

If you have answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer Question 2.

QUESTION 2:

In answering the question below, do not consider Plaintiff's insurance deductibles for any reason.

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for the covered damage sustained to each insured building, if any, that were caused by the windstorm that occurred on or about August 25, 2017 (Hurricane Harvey)?

Answer separately in dollars and cents, if any,

Answer:

Building 1:

Structural Damages:

Replacement Cost Value \$ 905,910.00

Actual Cash Value \$ 816,000.00

Increased Cost of Construction: \$ 440,000.00

Building 2:

Structural Damages:

Replacement Cost Value \$ 603,840.00

Actual Cash Value \$ 544,000.00

Increased Cost of Construction: \$ 300,000.00

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION 3:

Do you find by clear and convincing evidence that TWIA mishandled Plaintiff's claim to Plaintiff's detriment by intentionally performing one of the actions listed below?

"Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the jury a firm belief or conviction as to the truth of the allegations sought to be established.

"Intentionally" means actual awareness of the facts surrounding the act or practice listed below, coupled with the specific intent that Plaintiff suffer harm or damages as a result of the act or practice.

Specific intent may be inferred from objective manifestations that TWIA acted intentionally or from facts that show that TWIA acted with flagrant disregard of TWIA's duty to avoid the acts or practices listed below.

Prior to TWIA's denial of coverage on this claim, because TWIA initially accepted coverage to wind damage to the roof systems of the buildings, that portion of Plaintiff's claim would have been subject to the appraisal process, which would have determined both the scope of damages and the amount of payment to repair those damages, if any.

Answer "Yes" or "No."

Mishandling Plaintiff's claim means any one or more of the following:

- A. Failing to notify Plaintiff of TWIA's final coverage decision no later than 60 days after receipt of Plaintiff's claim, without good cause; or
- B. Rejecting the claim without conducting a reasonable investigation with respect to the claim; or
- C. Denying coverage for a claim in part or in full if TWIA's liability has become reasonably clear as a result of its investigation with respect to the denied claim.

Answer: Yes

Answer the following question only if you answered "Yes" to Question No. 3. Otherwise, do not answer the following question.

QUESTION NO. 4

What sum of money in addition to damages found in Question No. 3, if any, should be awarded to Plaintiff because TWIA's conduct was committed intentionally?

Answer in dollars and cents, if any:

Answer: \$ 500,000.00

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

Judge Presiding

FILED
FEB 12 2020
BY: [Signature]
ANNE ASBETH, CLERK
COUNTY DISTRICT COURTS, TARRANT COUNTY, TEXAS
DEPUTY