

CAUSE NO. 2018DCV-3027-D

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

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IN THE DISTRICT COURT OF

v.

NUECES COUNTY, TEXAS

TEXAS WINDSTORM INSURANCE
ASSOCIATION
Defendant.

105TH JUDICIAL DISTRICT

PROPOSED FINAL JUDGMENT

On February 3, 2020, came on to be heard the above-entitled and numbered cause and Plaintiff, Commerce Office Park-One, L.P. (hereinafter referred to as “Plaintiff”), appeared in person through its duly authorized representative and by its attorney of record and announced ready for trial. Defendant, Texas Windstorm Insurance Association (hereinafter referred to as “Defendant”), appeared in person through its duly authorized representative and by its attorneys of record and announced ready for trial. A jury of twelve (12) qualified jurors was duly empaneled and the case proceeded to trial.

At the conclusion of the evidence, the Court submitted its Charge to the jury. The Charge of the Court and the verdict of the jury are incorporated herein by reference for all purposes and are attached hereto as “Exhibit A.”

In its verdict, the jury determined that:

1. Defendant TWIA’s denial of Plaintiff’s insurance claim was improper under the policy because Plaintiff’s buildings sustained covered damage, defined as direct physical loss to the insured property caused by wind, or by rain that first enters through wind-created openings, that was caused by the windstorm that occurred on or about August 25, 2017 (Hurricane Harvey) (Question 1);



2. Plaintiff would be fairly and reasonably compensated for Defendant TWIA's improper denial of the claim for the covered damage sustained to Plaintiff's Building 1 and caused by the windstorm that occurred on or about August 25, 2017 (Hurricane Harvey) in the amounts of \$905,910.00 for Replacement Cost Value, \$816,000.00 for Actual Cash Value, and \$440,000.00 for Increased Cost of Construction [all damage elements having been defined in the Charge incorporated herein]; the jury was instructed not to consider insurance deductibles (Question 2);
3. Plaintiff would be fairly and reasonably compensated for Defendant TWIA's improper denial of the claim for the covered damage sustained to Plaintiff's Building 2 and caused by the windstorm that occurred on or about August 25, 2017 (Hurricane Harvey) in the amounts of \$603,840.00 for Replacement Cost Value, \$544,000.00 for Actual Cash Value, and \$300,000.00 for Increased Cost of Construction [all damage elements having been defined in the Charge incorporated herein]; the jury was instructed not to consider insurance deductibles (Question 2);
4. Clear and convincing evidence exists that Defendant TWIA mishandled Plaintiff's claim to Plaintiff's detriment by intentionally (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; (2) rejecting the claim without conducting a reasonable investigation with respect to the claim; and/or (3) denying coverage for the claim in part or in full when TWIA's liability became reasonably clear as a result of its investigation with respect to the denied claim (Question 3);

5. Plaintiff is entitled to additional damages in the amount of \$500,000.00 because TWIA's conduct in mishandling Plaintiff's claim was committed intentionally (Question 4).

The questions submitted to the jury and the jury's findings entitle Plaintiff Commerce Office Park-One, L.P. to Final Judgment against Defendant Texas Windstorm Insurance Association as follows:

The Court **ORDERS, ADJUDGES AND DECREES** that:

Plaintiff shall recover the covered loss payable under the terms of the association policy, that is, actual damages from Defendant for Building 1 in the amount of \$1,301,699.00 (Replacement Cost Value plus Increased Cost of Construction, less deductible) for Defendant's improper denial of Plaintiff's insurance claim under the policy;

Plaintiff shall recover the covered loss payable under the terms of the association policy, that is, actual damages from Defendant for Building 2 in the amount of \$873,462.00 (Replacement Cost Value plus Increased Cost of Construction, less deductible) for Defendant's improper denial of Plaintiff's insurance claim under the policy;

Plaintiff shall recover, in addition to the covered loss payable under the terms of the association policy, \$500,000.00 in additional damages from Defendant because clear and convincing evidence established that the association mishandled Plaintiff's claim to Plaintiff's detriment intentionally in each of the following ways: by failing to notify Plaintiff of TWIA's final coverage decision no later than 60 days after receipt of Plaintiff's claim, without good cause; by rejecting the claim without conducting a reasonable investigation with respect to the claim; and by denying coverage for the claim in part or in full when TWIA's liability became reasonably clear as a result of its investigation with respect to the denied claim ; and

Plaintiff shall recover 5% simple prejudgment interest on the total actual damages award of \$2,175,171.00, in the amount of \$272,280.50 through April 25, 2020, with a per diem thereafter of \$297.97 per day until the day judgment is entered.

Pursuant to the agreement of counsel on the record, the parties agreed that the amount of reasonable and necessary attorney's fees to be awarded Plaintiff would be determined by the Court. Plaintiff submitted its Motion for Award of Attorney's Fees, with evidence in support. The Court has considered Plaintiff's Motion for Award of Attorney's Fees and the evidence presented by Plaintiff in support, and the Response, and any replies.

The Court finds, and **ORDERS, ADJUDGES AND DECREES** that:

Plaintiff shall recover \$1,100,000.00 in reasonable and necessary attorney's fees through trial and the completion of proceedings in the trial court;

Plaintiff shall recover additional reasonable and necessary attorney's fees in the amount of \$100,000.00 for representation through appeal to the Court of Appeals; and

Plaintiff shall recover additional reasonable and necessary attorney's fees in the amount of \$15,000.00 for representation at the petition for review stage in the Texas Supreme Court, \$35,000.00 for representation at the briefing on the merits stage in the Texas Supreme Court, and \$20,000.00 for representation through Oral Argument and the completion of proceedings in the Texas Supreme Court.

All of the above attorney's fees shall be considered costs of court.

Plaintiff shall recover its additional incurred taxable court costs pursuant to Texas Rule of Civil Procedure 131.

IT IS FURTHER **ORDERED** that Plaintiff shall recover post-judgment interest on the entire sum of this judgment (save for appellate attorney's fees) at a rate of 5.00% per annum,

compounded annually, from the date the judgment is rendered until satisfied. Plaintiff shall recover 5.00% compounded post-judgment interest on appellate attorney's fees to accrue as the law provides, from the date of accrual until the judgment is satisfied.

All writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary. This judgment is final, disposes of all claims and all parties, and is appealable. All other relief not expressly granted is denied.

SIGNED on this _____ day of _____, 2020.

Signed: 7/21/2020 08:05 PM

Signed: 7/21/2020 08:05 PM



HONORABLE JUDGE JACK W. PULCHER