

THOUGHT LEADERSHIP

News

HARRIS COUNTY JURY REJECTS BREACH OF CONTRACT CLAIMS AGAINST TEXAS FAIR PLAN

Newsbrief

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On Tuesday May 17, 2016, a six person Harris County Jury rendered a unanimous verdict that Texas Fair Plan did not fail to comply with the insurance policy issued to its insured, Rosa Broussard. Ms. Rosa Broussard asserted a March 1, 2014, date of loss, but the claim was not presented until August 21, 2014 (170 days later). The insured initially claimed "water damage" without reference to a specific cause. It was investigated without a clear cause of loss, and no hail or wind damage was found. There was significant mechanical damage due to the foundation of the home settling - causing a 6-inch gap in the roof system. There was also un-repaired Hurricane Ike damage (which was the subject of a prior claim payment by TFPA). The 2014 claim was denied, and the insured requested a re-inspection through a roofing contractor who was working in the neighborhood named Lee Leal. Mr. Leal claimed he was working in the area replacing roofs as a result of an April 2013 storm. He also named several other possible dates of loss, all associated with hail and all outside the policy term. An engineer, Jarrod Burns, conducted a re-inspection and found no wind or hail damage. The claim was denied again. The insured told the TFPA Claims Examiner that she agreed there was no hail damage, but insisted there was wind damage.

Ms. Broussard sued Texas Fair Plan Association when she was dissatisfied with its adjustment of her claim for wind/hail damage to her residence. After trial in Harris County Court at Law No. 1 before Judge Clyde Raymond Leuchtag, the jury rendered a unanimous verdict that Fair Plan did not breach the contract; thereby awarding no recovery to Plaintiff Rosa Broussard and her counsel Eric Dick. A courtroom observer reported the jury completed their deliberations in the time it took the bailiff to return to the courtroom, gather the exhibits compiled by counsel, and deliver them back to the jury. The case was tried by Rogelio "Roger" Garcia and Chris Carmona for the Plaintiff. Eric Dick only participated in the trial outside the presence of the jury, primarily in bench conferences and the charge conference. Fair Plan was represented by James R. Old Jr., and Lori Daves of Jay Old & Associates, PLLC and MDJW congratulates them on this significant win.