IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ALLAH-PAK PROPERTIES LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:23-cv-301**
	§	
CENTURY SURETY COMPANY,	§	
	§	
Defendant.	§	

BRIEF IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

/s/ Nohayia Javed

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MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Allah-Pak Properties LLC ("Allah-Pak"), files this Memorandum in Opposition to Defendant's Motion for Summary Judgment (the "MSJ"), and would show:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. This is a first-party insurance claim, in which Allah-Pak seeks damages for the complete loss of an electrical panel that powered its commercial retail center located at 2833 S. Padre Island Dr. in Corpus Christi, Texas.

2. Allah-Pak does not dispute Defendant's statement of facts and that Defendant's engineer, Matthew Rem with YA Engineering Services, LLC concluded that the root cause of water intrusion into the property was improper maintenance practices relating to the roof-mounted conduit fittings and that there was evidence of prior water intrusion events and repeated exposure to intrusive water. [*See* Doc. 21 at p. 7]. Allah-Pak further does not dispute that wind did in fact damage the roof, which allowed water instrusion into the interior of the property and that these damages are not covered under the policy's Wind or Hailstorm Exclusion.

3. Rather, Allah-Pak contends that the electrical panel itself was damaged by a failure of the circuit breakers to trip and prevent overheating to the panel. Allah-Pak's engineer, Moises A. Cruz, offered his opinions as to this condition and its cause in his deposition. [Doc. 21-7 at 75:16-80:7] [1] Mr. Cruz additionally opined that rust patterns detected during his investigation were consistent with prolonged exposure to high humidity in the Corpus Christi area and this could have conditioned the roof for water leaks. [*Id.* at 139:23-141:17.; Doc. 21-9 at p. 7]

4. Allah-Pak agrees damage caused by *windstorm or hailstorm* is an exclusion to an otherwise Covered Cause of Loss, but the policy requires a nexus between the excluded peril and the damage it causes.

[1] Alternatively, if these are disputed facts, then the MSJ must be denied because a material fact issue exists as to the cause of the damage. Put differently, the MSJ solely rests on whether water entering the building from wind created openings in the roof was the sole cause of damage to the electrical panel.

5. Importantly, the property's electrical panel is Covered Property (a point Defendant concedes) unless damage to it is excluded. Consequently, because the electrical panel is Covered Property under the Building and Personal Property Coverage Form [*see* Doc. 21-9 at p. 392], this Court must deny the MSJ unless summary judgment evidence conclusively establishes that wind was the original event that caused the damage to the panel.

II. ISSUES TO BE RULED UPON

6. Defendant seeks summary judgment on Allah-Pak's contractual claims claiming that the insurance policy does not provide coverage for any of the damages alleged. Allah-Pak concedes that Defendant does not owe any damages for the roof, damages related to extra expenses incurred, or damages resulting from business income loss. Defendant is, however, liable for coverages related to damage of the property's electrical panel and the $144,237.00 amount incurred to replace it.

III. SUMMARY OF ARGUMENT

7. The issue is very simple because no party disputes that the policy insures the property's electrical panel. As the panel's damage was not caused by *windstorm* (as defined), there is not an exclusion which justifies Defendant's failure to pay Allah-Pak's claim related to the electrical panel.

8. Generally, insurance policies are construed like other contracts, with two special rules important here. One is that any uncertainty is resolved by construing it in such a way that favors the insured, a rule with extra force when construing exclusions and limitations. The other is a court must adopt the insured's reasonable construction (including its construction of exclusions and limitations), even if the insurer's construction objectively is more reasonable.

9. Defendant's argument rests entirely on the supposition that *windstorm* was the originating event that caused the damage to the electrical panel. But, as noted above, the summary

judgment evidence conclusively establishes that the electrical panel was destroyed by overheating caused from failures of the circuit breakers. Such failures of the breakers is not an Excluded Cause of Loss, and Defendant cites no other policy language to support its argument. Thus, the Court must deny Defendant's MSJ.

IV. ARGUMENT & AUTHORITIES

10. Allah-Pak agrees with the summary judgment rules stated in the MSJ. Defendant must show the policy excludes coverage for the property's electrical panel damage (which it cannot do because it concedes, and the policy shows, the opposite is true) or that the damage to the electrical panel is an Excluded Cause of Loss. Here, that means Defendant must show the electrical panel was destroyed by *windstorm*, as defined in the Policy. As there is no evidence to support that claim, the Court must deny the MSJ.

A. Any Uncertainty Over the Meaning of the Policy Is Resolved by Adopting a Reasonable Construction that Most Favors the Insured, Particularly Insofar as Defendant Expands Exclusions or Limitations to Coverage.

11. First, as the moving party asserting an exclusion to coverage, Defendant carries the burden of proof. *See Guaranty Nat'l Ins. Co. v. Vic Mfg. Co.,* 143 F.3d 192, 193 (5th Cir. 1998).

12. The construction of an insurance policy is a legal issue for the court. *Progressive County Mut. Ins. Co. v. Sink*, 47 S.W.3d 715, 718 (Tex. 2003). Generally, an insurance contract is subject to ordinary rules of contract construction. *Id.*, 47 S.W.3d at 718.

13. The primary object when construing an insurance policy is to enforce it as the written expression of the parties' intent. *State Farm Life Ins. Co. v. Beatson*, 907 S.W.2d 430, 433 (Tex. 1995). Objective, not subjective, intent controls this determination. *Utica Nat'l Ins. Co. v. Fid. & Cas. Co.*, 812 S.W.2d 662 (Tex. App.- Dallas 1991, writ denied) (citing *City of Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515, 518 (Tex. 1968)).

14. Words used in a policy are given their plain, ordinary and generally accepted

meaning unless the policy itself indicates they are used in a technical or specialized sense. *Sec. Mut. Cas. Co. v. Johnson,* 584 S.W.2d 703, 704 (Tex. 1979).

15. If an instrument is worded so that it can be given only one reasonable construction, it will be enforced as written. *State Farm Fire & Cas. Co. v. Vaughan,* 968 S.W.2d 931,933 (Tex. 1998). But, if an insurance contract is susceptible to more than one reasonable interpretation, any uncertainty must be resolved by adopting the construction most favoring the insured. *Grain Dealers Mut. Ins. Co. v. McKee,* 943 S.W.2d 455, 458 (Tex. 1997). This is particularly true when construing a policy's exclusions, exceptions or limitations to coverage. *National Un. Fire Ins. Co. v. Hudson Energy Co.,* 811 S.W.2d 552, 555 (Tex. 1991) ("Exclusions or limitations on liability are strictly construed against the insurer and in favor of the insured" and "an intent to exclude coverage m st be expressed in clear and unambiguous language"); *see also Gore Design Completions, Ltd. v. Hartford Fire Ins. Co.,* 538 F.3d 365, 370 (5th Cir. 2008) (same). If an interpretation offered by the insured of an ambiguous policy provision is reasonable, it shall be adopted even if the insurer's interpretation objectively is more sensible. *Hudson Energy Co.,* 811 S.W.2d at 555.

B. The Policy Requires a Causal Nexus Between the Damage and the Exclusion, Something Defendant Ignores.

16. More significant to the outcome of the MSJ**,** Defendant ignores the requirement of a causal nexus between *windstorm* and damage. In other words, Defendant must link the cause of the electrical panel's damage to *windstorm,* yet Defendant makes no such nexus.

17. The Hail or Windstorm Exclusion on which Defendant's argument depends specifically states it "will not pay for loss or damage: (1) Caused directly or indirectly by Windstorm or Hail regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage; or (2) Caused by rain, water, snow, sand or dust, whether driven by wind or not, if that loss or damage would not have occurred but for the windstorm or hail. But, if the Windstorm or Hail damages a heating system [or electrical panel in this case] and a fire results, the loss or

damage attributable to the fire is covered subject to any other applicable policy provisions. [Doc. 21-9 at MSJ 000400; 000405]

18. Simply put, I *windstorm or hail* did not cause the electrical panel's damage, then the Windstorm or Hail Exclusion Endorsement does not apply.

19. Here, that means Defendant must show the damage to the electrical panel was solely caused by wind created openings in the property's roofing system that allowed water to penetrate those openings and into the electrical panel, further causing a failure of the circuit breakers. Defendant has failed to conclusively establish that scenario thus creating at minimum, a fact issue. [*See* Doc. 21-7 at 75:16-80:7; 139:23-141:17.; Doc. 21-9 at p. 7] Accordingly, the Court should deny the MSJ.

V. CONCLUSION & PRAYER

20. The policy plainly covers the property's electrical panel under the Building and Personal Property Coverage Form A. Coverage; 1. Covered Property; b. Your Business Personal Property, which includes (1) Furniture and fixtures and (2) Machinery and equipment. Defendant failed to carry its burden of proof, *see Vic Manufacturing*, 143 F.3d at 193, as no language in the policy purports to exclude the electrical panel as Covered Property or can be read as excluded damage under the Hail or Windstorm Exclusion Endorsement, unless that damage was caused by *a windstorm or hail,* as defined.

21. Based on the foregoing, Playa Vista Conroe, a Condominium Association, respectfully prays that the Court deny Defendant's Motion for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all parties and counsel of record have been served with this document on this the 23rd day of April 2025 pursuant to the Federal Rules of Civil Procedure.

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