

CAUSE NO. 067-280567-15

COMPASS WELL SERVICES, LLC	§	IN THE DISTRICT COURT
	§	
	§	
VS.	§	67 TH JUDICIAL DISTRICT
	§	
	§	
GREAT AMERICAN INSURANCE COMPANY OF NEW YORK	§	TARRANT COUNTY, TEXAS

COURT'S CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your cell phone or any other electronic device during your deliberations for any reason. I have given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “**preponderance of the evidence**” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

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.

7. Some questions might ask you for a dollar amount. For those specific questions, answer in dollars and cents, if any. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average. Again, your answer must be based on a preponderance of the evidence.
8. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
9. Do not answer questions by drawing straws or by any method of chance.

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10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed the answers to the questions must be based on the decision of at least 10 of the 12 jurors. **THE SAME 10 JURORS MUST AGREE ON EVERY ANSWER.** Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

1. "Compass" means Compass Well Services, LLC.
2. "GAIC" means Great American Insurance Company of New York.
3. "Policy" means Insurance Policy IMP 0-24-70-25-01 admitted in evidence as GAIC's Exhibit No. 1.
4. "Incident" means the May 13, 2013 pressure-spike incident involving Compass' fracking equipment at the Skeeter 2-H Well in Atascosa County.

QUESTION NO. 1

Did GAIC fail to comply with the terms of the Policy?

GAIC failed to comply with the terms of the policy if GAIC failed to pay for direct physical "loss" to covered property from any covered cause of loss.

"Covered cause of loss" means risks of direct physical "loss" to covered property except those causes of "loss" listed in the Exclusions.

"Loss" means accidental loss or damage.

Answer "Yes" or "No."

Answer: Yes

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If you answered "Yes" to Question No. 1, then answer Question No. 2. Otherwise, do not answer Question No. 2.

QUESTION NO. 2

Did Compass fail to comply with the terms of the Policy?

Answer "Yes" or "No."

Answer: Yes

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If you answered "Yes" to Question No. 2, then answer Question No. 3. Otherwise, do not answer Question No. 3 and go to Question No. 4.

QUESTION NO. 3

Do you find that GAIC was prejudiced by Compass' failure to comply with the terms of the Policy?

"Prejudice" means that GAIC was deprived of a right or benefit that it could have reasonably anticipated from Compass' full compliance under the terms of the Policy.

Answer "Yes" or "No."

Answer: No

If you answered "Yes" to Question No. 1 AND answered "No" to Question No. 2 OR Question No. 3, then answer Question No. 4. Otherwise, do not answer Question No. 4.

QUESTION NO. 4

What sum of money, if any, if now paid in cash, would fairly and reasonably compensate Compass for its damages, if any, that resulted from GAIC's failure to comply?

Consider the following three (3) elements of damages, if any, listed below and none other.

Do not include any amounts previously paid by GAIC or any other entity. Do not compensate for the same invoice more than once. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, for the following:

(A) Policy benefits owed to Compass under the Oil and Gas Equipment Coverage Form; and \$ 592,620.49

(B) Policy benefits owed to Oil and Gas Equipment Leased or Rented From Others Coverage Endorsement. \$ 96,941.66

Note: Policy benefits under (A) the Oil and Gas Equipment Coverage Form and (B) the Oil and Gas Equipment Leased or Rented From Others Coverage Endorsement are calculated based on the "replacement cost" of the covered property on May 14, 2013, without deduction for depreciation.

"Replacement cost" means the cost to repair or replace covered property with new property of comparable material and quality used for the same purpose.

(C) Policy benefits owed to Compass under the Special Floater Coverage Form; and \$ 346,132.63

Note: Policy benefits under (C) the Special Floater Coverage Form are calculated based on the "actual cash value" of the covered property, adjusted for depreciation.

"Actual cash value" means the "replacement cost" of covered property on May 14, 2013, as defined above, less the value of physical depreciation as to the item damaged.

If you answered ANY subpart (A), (B) or (C) in Question No. 4 with any amount greater than "\$0", then answer Question No. 5. Otherwise, do not answer Question No. 5.

QUESTION NO. 5 – UNFAIR PRACTICES

Did GAIC engage in any unfair insurance settlement practice that caused damages to Compass?

Unfair insurance settlement practice means any of the following listed below.

Answer "Yes" or "No" for those acts listed below:

ANSWER

(1) Refusing to pay Compass' claim without conducting a reasonable investigation of the claim; or

Yes

(2) Failing to affirm or deny coverage of Compass' claim within a reasonable time; or

Yes

(3) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of Compass' claim when GAIC's liability had become reasonably clear.

Yes

If you answered "Yes" for ANY subpart in Question No. 5, then answer with regards to the corresponding subpart in Question No. 6. Otherwise, do not answer Question No. 6 for the corresponding subpart.

QUESTION NO. 6 – DAMAGES FOR UNFAIR PRACTICES

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Compass for its damages, if any, that resulted from GAIC's conduct that you found in any subpart of your answers to Question No. 5?

Consider the following elements of damages, if any, and none other:

The amount of benefits, if any, that Compass established a right to receive under the policy if such conduct that you answered "Yes" to any subpart in Question No. 5 caused the loss of the benefits.

Do not add any amount for interest on damages, if any. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question 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.

Answer separately in dollars and cents for damages, if any, for the following subparts:

ANSWER

(1) Refusing to pay Compass' claim without conducting a reasonable investigation of the claim; or

\$ 1,035,694.78

(2) Failing to affirm or deny coverage of Compass' claim within a reasonable time; or

\$ 1,035,694.78

(3) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of Compass' claim when GAIC's liability had become reasonably clear.

\$ 1,035,694.78

If you answered ANY subpart of Question No. 6 with any amount greater than "0", then answer with regards to the corresponding subpart in Question No. 7. Otherwise, do not answer Question No. 7 for the corresponding subpart.

QUESTION NO. 7 – KNOWING CONDUCT

Did GAIC engage in any such conduct that you found in your answers to Question No. 5 knowingly?

"Knowingly" means actual awareness of the falsity, unfairness, or deceptiveness of the act or practice on which a claim for damages is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found resulted in damages to Compass.

Answer "Yes" or "No" for any "Yes" answer to any subpart in Question No. 5.

ANSWER

(1) Refusing to pay Compass' claim without conducting a reasonable investigation of the claim; or

Yes

(2) Failing to affirm or deny coverage of Compass' claim within a reasonable time; or

Yes

(3) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of Compass' claim when GAIC's liability had become reasonably clear.

Yes

If you answered "Yes" to ANY subpart of Question No. 7, then answer with regards to the corresponding subpart in Question No. 8. Otherwise, do not answer Question No. 8 for the corresponding subpart.

QUESTION NO. 8 – DAMAGES FOR KNOWING CONDUCT

What sum of money, if any, in addition to actual damages, should be awarded to Compass against GAIC because GAIC's conduct was committed knowingly?

Factors to consider in awarding additional damages, if any, are:

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of GAIC.
- d. The situation and the sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.

Do not add any amount for interest on damages, if any. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question 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.

Answer separately in dollars and cents for damages, if any, for the following subparts:

ANSWER

(1) Refusing to pay Compass' claim without conducting a reasonable investigation of the claim; or

\$ 1,035,694.78

(2) Failing to affirm or deny coverage of Compass' claim within a reasonable time; or

\$ 1,035,694.78

(3) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of Compass' claim when GAIC's liability had become reasonably clear.

\$ 1,035,694.78

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If you answered "Yes" to Question No. 1, then answer Question No. 9. Otherwise, do not answer Question No. 9.

QUESTION NO. 9 – PROMPT PAYMENT

Did GAIC fail to do either of the following acts within fifteen business days after GAIC received "all items, statements and forms required by the insurer to secure final proof of loss."?

"Business day" means every day except Saturday, Sunday or any state holiday(s).

1. Notify Compass in writing that the claim was accepted; or
2. Notify Compass in writing that the claim was rejected and the reasons for the rejecting.

Answer "Yes" or "No."

Answer: Yes

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If you answered "Yes" to Question No. 9, then answer Question No. 10. Otherwise, do not answer Question No. 10.

QUESTION NO. 10

By what date had GAIC received all items, statements, and forms it reasonably requested from Compass that were necessary to decide whether to accept or reject the claim?

Answer **with a date** in the blank below.

Answer: November 7, 2013

If you answered "Yes" to Question No. 1, then answer Question No. 11. Otherwise, do not answer Question No. 11.

QUESTION NO. 11

Did Compass make an "election of remedies" to recover from GE any damages, if any, which form the basis of this lawsuit?

You are hereby instructed that an "election of remedies" occurs when:

- (1) a person successfully exercises an informed choice;
- (2) between two or more remedies, rights, or states of facts;
- (3) that are so inconsistent as to;
- (4) constitute manifest injustice.

Answer "Yes" or "No"

Answer: no

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 Court's 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 you are told otherwise, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the Court's 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 Certificate.

If 11 jurors agree on every answer, those 11 jurors sign the Verdict Certificate.

If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the Verdict Certificate.

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 Certificate, only those 10 who agree on every answer will sign the Verdict Certificate.

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

SIGNED on March 4, 2019


DONALD J. COSBY, JUDGE PRESIDING

Verdict Certificate

CHECK ONE:

_____ Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the Verdict Certificate for all 12 of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the Verdict Certificate below.

Our Verdict Certificate is not unanimous. Ten of us have agreed to each and every answer and have signed the Verdict Certificate below.

JURORS SIGNATURES:

Janet Hinkle
Melody Escalante
Robert Rainey
Richard W. Luster
Kirsti Peterson
Elaine A. Wagner
Cornie Eversole
Alois Winkler
Robert Vanskake
Suzanne A. Vasquez

PRINTED NAME OF JUROR:

Janet Hinkle
Melody Escalante
ROBERT RAINNEY
Richard W. Luster
KIRSTI PETERSON
Elaine A. Wagner
CORNIE EVERSOLE
ALOIS WINKLER
Robert Vanskake
Suzanne A. Vasquez

