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May 15, 2023

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND ELECTRONIC MAIL

Mr. Richard Henderson

Senior Claims Officer

Octank Insurance Company, Inc.

800 Financial Place, 35th Floor

New York, NY 011011

[rhenderson@ocktankinsurance.com](mailto:rhenderson@ocktankinsurance.com)

Re: Insured: Westlake Commercial Properties, LLC

Policy No.: PCCP-785493-22

Date of Loss: December 8, 2022

Claim No.: PIN-2022-78549

Location: 478 Industrial Parkway, Seattle, WA

Our File No.: TWM-23-0472

## DEMAND LETTER AND NOTICE OF BAD FAITH CLAIMS HANDLING PRACTICES

Dear Mr. Henderson:

Please be advised that this firm has been retained to represent the interests of Westlake Commercial Properties, LLC ("Westlake" or "Insured") with respect to the above-referenced first-party commercial property insurance claim, as well as the constellation of consequential damages that have accrued due to Ocktank Insurance Company, Inc.'s ("Ocktank" or "Carrier") egregious and demonstrably vexatious claims handling practices. All further communication regarding this matter should be directed to the undersigned counsel. Any direct communication with our client without our express written authorization will be considered a violation of the Rules of Professional Conduct and potentially actionable interference with the attorney-client relationship.

This correspondence shall serve as formal notice that Westlake hereby demands payment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as compensation for Ocktank's numerous breaches of contractual and extra-contractual obligations, including but not limited to: breach of the insurance contract; violation of the implied covenant of good faith and fair dealing; violation of Washington State's Insurance Fair Conduct Act (IFCA), RCW 48.30.015; violations of the Washington Administrative Code provisions governing unfair claims settlement practices, WAC 284-30-330 et seq.; violation of the Consumer Protection Act, RCW 19.86 et seq.; and negligent and/or intentional infliction of emotional distress upon Westlake's principals.

### I. FACTUAL BACKGROUND

On December 8, 2022, the insured premises located at 478 Industrial Parkway, Seattle, Washington, sustained substantial structural damage when an unexpected atmospheric river event caused catastrophic flooding throughout the property, resulting in the complete destruction of both the building's electrical infrastructure and HVAC systems, as well as causing extensive contamination from Category 3 black water intrusion. The three commercial tenants occupying the premises were forced to vacate immediately, and the property has remained uninhabitable and unleased for the ensuing five (5) months.

Westlake promptly notified Ocktank of the loss on December 9, 2022, at approximately 8:47 a.m. PST, in full compliance with the notice provisions delineated in Section IV(A)(1) of the subject policy. Westlake further took all reasonable and necessary emergency mitigation measures, including but not limited to: deploying emergency water extraction services; installing industrial dehumidification equipment; implementing temporary weatherproofing measures; securing the premises against unauthorized entry; and salvaging tenant personal property to the extent practicable.

Your field adjuster, Ms. Veronica Pullman, did not inspect the premises until December 19, 2022—a full ten (10) days after notification—despite the clear emergency circumstances and notwithstanding Westlake's seven (7) documented requests for immediate inspection. By the time Ms. Pullman arrived, secondary damage had occurred that could have been prevented had Ocktank responded with reasonable promptitude.

## II. POLICY COVERAGE PROVISIONS

Westlake Commercial Properties, LLC is the named insured under Ocktank Commercial Property Policy No. PCCP-785493-22 ("the Policy"), with effective dates from March 1, 2022, to March 1, 2023. The Policy provides, inter alia, the following relevant coverages:

1. Building coverage with limits of \$4,500,000, subject to a \$10,000 deductible;
2. Business Personal Property coverage with limits of \$750,000, subject to a \$5,000 deductible;
3. Business Income and Extra Expense coverage with limits of \$1,500,000, with a 72-hour waiting period;
4. Ordinance or Law Coverage with combined limits of \$1,000,000;
5. Debris Removal coverage with limits of \$250,000;
6. Pollutant Clean-Up and Removal coverage with limits of \$100,000;
7. Civil Authority coverage for a period of thirty (30) days;
8. Extended Business Income coverage for a period of ninety (90) days; and

#### 9. Utility Services coverage with limits of \$250,000.

The Policy contains a Water Damage Endorsement (Form PI-WD-2022) which specifically provides coverage for flood damage, subject to a sublimit of \$2,500,000 per occurrence. The endorsement explicitly defines "flood" as "the overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, mudslides or mudflows proximately caused by flooding."

Furthermore, the Policy includes the Platinum Plus Endorsement (Form PI-PP-2022) which provides that, in the event of a covered loss, Ocktank will pay the full Replacement Cost Value (RCV) without deduction for depreciation and without a requirement that repairs be completed prior to receiving full replacement cost payment.

### III. CLAIMS HANDLING DEFICIENCIES AND BAD FAITH CONDUCT

Ocktank's handling of Westlake's claim has been characterized by numerous deficiencies and delays that rise to the level of statutory and common law bad faith. These improper practices include, but are not limited to, the following:

#### A. Unreasonable Delay in Investigation

As previously noted, Ocktank failed to dispatch an adjuster to inspect the loss location for ten (10) days following notification, despite the emergency nature of the situation. This delay contravenes WAC 284-30-330(2), which requires insurers to "acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies."

Further, once Ms. Pullman completed her cursory inspection on December 19, 2022, Ocktank waited an additional twenty-one (21) days before engaging independent consultants to evaluate the building's structural integrity, electrical systems, and HVAC components. This protracted timeline violates WAC 284-30-330(3), which mandates that insurers "adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies."

## B. Misrepresentation of Policy Provisions

On January 17, 2023, Ocktank's claims supervisor, Mr. Thomas Barrett, advised Westlake via email that the water damage was subject to a \$100,000 sublimit pursuant to the "Water Backup and Sump Overflow" endorsement (Form PI-WB-2022). This representation constitutes a material mischaracterization of the applicable policy provisions, as the loss clearly resulted from flood as defined in the Water Damage Endorsement (Form PI-WD-2022), which provides a substantially higher sublimit of \$2,500,000.

This misrepresentation appears to be either a product of gross incompetence or a deliberate attempt to minimize Ocktank's exposure, both of which contravene WAC 284-30-330(1), which prohibits insurers from "misrepresenting pertinent facts or insurance policy provisions."

## C. Failure to Provide Advance Payments

Despite acknowledged coverage for at least a portion of the loss, Ocktank has failed to issue any advance payments to Westlake to facilitate emergency repairs, stabilize the building, or offset ongoing carrying costs. This contravenes industry standard practices, Ocktank's own internal guidelines as set forth in its Claims Handling Manual (Section 7.3: "Emergency Advance Payments"), and the implied covenant of good faith and fair dealing.

## D. Improper Depreciation Methodology

In its preliminary estimate dated February 6, 2023, Ocktank applied excessive depreciation deductions to building components, resulting in an Actual Cash Value (ACV) offer that represents only 47% of the Replacement Cost Value (RCV). This methodology:

1. Contravenes the explicit provisions of the Platinum Plus Endorsement, which expressly states that Ocktank will pay full RCV without deduction for depreciation;

2. Utilizes depreciable life expectancies that are inconsistent with industry standards and actuarial data;

3. Applies depreciation to categories of property that are not legitimately depreciable, such as labor costs, general contractor overhead and profit, and building code upgrade components; and

4. Fails to account for the actual condition of the property prior to the loss event, as documented in the pre-loss appraisal dated November 15, 2022.

#### E. Arbitrary Coverage Determinations

On March 3, 2023, Ocktank issued a partial denial letter that arbitrarily bifurcated the loss into "covered" and "excluded" categories without adequate investigation or explanation. Specifically, Ocktank:

1. Denied coverage for electrical system replacement based on the "wear and tear" exclusion, despite overwhelming evidence that the system was functioning properly prior to the flood and was damaged solely as a result of the covered water intrusion;

2. Denied coverage for mold remediation, asserting that it constitutes a "secondary loss" not covered under the Policy, despite the fact that the mold resulted directly from the covered water damage event and manifested during the unreasonable delay in adjustment;

3. Limited Business Income coverage to thirty (30) days, based on a hypothetical "reasonable repair period," despite contractor estimates unanimously projecting a minimum restoration period of six (6) to eight (8) months; and

4. Denied Ordinance or Law coverage for required upgrades to meet current building codes, despite clear policy language affording such coverage and documentation from the Seattle Building Department confirming the legal requirement for such upgrades.

#### F. Failure to Consider Evidence

Ocktank has persistently ignored substantive evidence submitted by Westlake, including:

1. A comprehensive damage assessment prepared by Nelson Forensic Engineers dated January 12, 2023;

2. A detailed restoration proposal from Cascade Restoration Services dated January 19, 2023;

3. A building code compliance analysis prepared by Seattle Code Consultants dated January 29, 2023;

4. Business interruption calculations prepared by Foster & Williams Accounting, LLP dated February 8, 2023; and

5. Tenant statements regarding damaged personal property inventory.

This systematic disregard for relevant and material evidence contravenes WAC 284-30-330(4), which requires insurers to conduct "a reasonable investigation based upon all available information" before refusing to pay claims.

#### G. Unreasonable Delay in Determination

As of the date of this correspondence, one hundred fifty-seven (157) days have elapsed since the date of loss, and Ocktank has yet to issue a final coverage determination or tender payment for the undisputed portions of the loss. This protracted timeline exceeds any reasonable standard for claims resolution and violates WAC 284-30-330(5), which prohibits insurers from failing to "affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed."

#### H. Engagement in Dilatory Tactics

Throughout the adjustment process, Ocktank has engaged in numerous dilatory tactics, including but not limited to:

1. Making repeated, duplicative requests for information previously provided;
2. Scheduling and subsequently canceling inspection appointments;
3. Rotating claim handler assignments without proper transition or communication (the claim has been reassigned three times);
4. Failing to return telephone calls and emails for extended periods; and
5. Conditioning further claim investigation on Westlake's agreement to execute a non-standard Reservation of Rights acknowledgment containing prejudicial admissions.

These tactics constitute a clear violation of WAC 284-30-330(7), which prohibits insurers from "compelling insureds to institute or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings."



#### IV. DAMAGES

As a direct and proximate result of Ocktank's improper claims handling practices, Westlake has suffered substantial damages, including but not limited to:

##### A. Contract Damages

1. Building repair and restoration costs: \$1,875,000
2. Code-required upgrades: \$425,000
3. Business personal property replacement: \$215,000
4. Debris removal expenses: \$175,000
5. Remediation costs: \$295,000

##### B. Consequential Damages

1. Lost rental income (to date): \$287,500
2. Projected future rental income losses: \$345,000
3. Additional financing costs: \$122,000
4. Loss of favorable lease arrangements: \$115,000
5. Carrying costs (property taxes, insurance, utilities): \$87,500
6. Administrative expenses: \$45,000

##### C. Statutory Damages

Pursuant to the Washington Insurance Fair Conduct Act, RCW 48.30.015, Westlake is entitled to recover triple damages, attorneys' fees, and expert witness costs upon establishing that Ocktank

has acted unreasonably in denying a claim for coverage or payment of benefits, or violated any of the unfair claims settlement practices regulations set forth in WAC 284-30-330 et seq.

#### D. Punitive/Exemplary Damages

While Washington generally does not permit punitive damages, Ocktank's systematic pattern of bad faith conduct may justify the imposition of exemplary damages under the Consumer Protection Act, particularly given evidence suggesting that Ocktank's conduct toward Westlake reflects a corporate practice rather than an isolated occurrence.

#### V. DEMAND FOR RESOLUTION

Based on the foregoing, and without waiving any rights or remedies available at law or in equity, Westlake hereby demands:

1. Payment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) to resolve all claims arising from the subject loss, including contract damages, consequential damages, and statutory enhancements;
2. Written confirmation that Ocktank will provide coverage for all restoration work required to return the property to its pre-loss condition;
3. Written confirmation that Ocktank will provide full Business Income coverage for the actual period of restoration, without artificial time limitations; and
4. Written confirmation that any and all rights of subrogation that Ocktank may possess against Westlake's tenants are hereby waived.

PLEASE TAKE NOTICE that Ocktank is required to respond to this demand within seventy-two (72) hours of receipt. Failure to provide a substantive response within this timeframe will be deemed a waiver of all policy limits and a concession that such limits are no longer legally binding upon Westlake for purposes of any future litigation or settlement discussions.

Should Ocktank fail to respond appropriately to this demand, Westlake intends to pursue all available legal remedies, including but not limited to filing a first-party bad faith action seeking contract damages, consequential damages, treble damages under the IFCA, attorneys' fees, prejudgment interest, and all other available relief.

#### VI. PRESERVATION OF EVIDENCE/LITIGATION HOLD

This letter further serves as formal notice that Westlake anticipates litigation in this matter and hereby demands that Ocktank preserve and maintain all documents, data, information, and materials that may be relevant to this claim. This litigation hold extends to, but is not limited to:

1. The complete claim file, including all notes, reports, photographs, correspondence, and internal communications;
2. All underwriting files pertaining to Westlake and the subject property;
3. All draft reports, preliminary assessments, and internal evaluations;
4. All communications with vendors, experts, and consultants;
5. All internal guidelines, procedures, and manuals related to water damage claims, business interruption calculations, and large loss protocols;
6. All training materials provided to claims personnel handling first-party property claims;

7. All performance evaluations and compensation records for all claims personnel who handled any aspect of this claim;

8. All reinsurance communications regarding this claim;

9. All reserve information and reserve change authorizations; and

10. All electronic data, including emails, text messages, instant messages, and other electronic communications related to this claim.

Ocktank is specifically cautioned against destroying, altering, or modifying any potentially relevant evidence, including metadata associated with electronic documents. The failure to preserve such evidence may result in a request for sanctions, including adverse inferences, monetary penalties, and other appropriate relief.

## VII. CONCLUSION

Ocktank's handling of Westlake's claim represents an egregious departure from the standards of reasonable claims practices and constitutes bad faith under both statutory and common law principles. The protracted delay, arbitrary coverage determinations, and apparent pattern of seeking to minimize legitimate payment obligations have substantially exacerbated Westlake's damages and warrant significant compensation.

We look forward to your prompt response to this demand. Should you have any questions regarding the contents of this correspondence, please do not hesitate to contact me directly.

This letter is without prejudice to and expressly reserves all of Westlake's rights, remedies, and causes of action under the Policy, at law, and in equity.

Very truly yours,

CTRL, ALT & DELETE, LLP

Margaret E. Alt, Esq.

Senior Partner

Insurance Recovery Practice Group

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cc:

- Ctrl Weiss, Esq., Managing Partner
- Alt Montgomery, Esq., Litigation Department Chair
- Max C, CEO, Westlake Commercial Properties, LLC
- Washington State Office of the Insurance Commissioner
- Washington State Insurance Fair Conduct Act Registry

Enclosures:

1. Policy No. PCCP-785493-22 (complete copy)
2. Notice of Loss documentation
3. Photographic evidence of damage (compiled set)
4. Nelson Forensic Engineers Report (January 12, 2023)
5. Cascade Restoration Services Proposal (January 19, 2023)
6. Seattle Code Consultants Analysis (January 29, 2023)
7. Foster & Williams Business Interruption Calculations (February 8, 2023)
8. Tenant Statements and Inventories

9. All correspondence between Westlake and Ocktank (December 9, 2022 - present)
10. Seattle Building Department Code Enforcement Notices
11. Pre-Loss Appraisal (November 15, 2022)
12. Meteorological Data regarding December 8, 2022 atmospheric river event