

NO. 12-15-00223-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>INTERNATIONAL BUSINESS MACHINES CORP., APPELLANTS/CROSS-APPELLEES</i>	§	<i>APPEAL FROM THE 159TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>LUFKIN INDUSTRIES, INC., APPELLEE/CROSS-APPELLANT,</i>	§	<i>ANGELINA COUNTY, TEXAS</i>

SUPPLEMENTAL MEMORANDUM OPINION

In our opinion issued on July 12, 2017, this Court reversed the portion of the trial court's judgment awarding Lufkin Industries, Inc. (Lufkin), \$11,000,000.00 in mitigation expenses and suggested a remittitur in the amount of \$3,455,455.00, resulting in \$7,544,545.00 in mitigation expenses, thereby reducing total actual damages to \$17,544,545.00.

In our opinion and order, we stated that if Lufkin filed the remittitur with the trial court clerk within fifteen days of our opinion and notified this Court of such, we would modify the judgment and affirm the damages award in accordance with the remittitur, thereby obviating the need for a new trial. *See* TEX. R. APP. P. 46.3, 46.5.

On July 27, 2017, the trial court clerk filed a supplemental clerk's record in this Court containing Lufkin's remittitur, which showed that it had timely filed the remittitur with the clerk. Accordingly, we *modify* the trial court's judgment to reflect that the amount of the judgment for mitigation damages awarded to Lufkin is reduced to the sum of \$7,544,545.00, resulting in a reduction of total actual damages to \$17,544,545.00. *See* TEX. R. APP. P. 46.3, 46.5.

The judgment of the trial court awarding an alternative judgment of \$6,000,000.00 to Lufkin on its fraud claim is *reversed* and *rendered* that Lufkin take nothing on that claim.

As part of its remittitur, Lufkin requests that we recalculate the trial court's prejudgment interest award. This court has the power to modify the judgment of the court below to make the

record speak the truth when we have the necessary information to do so. *See* TEX. R. APP. P. 43.2(b); *Shamoun v. Shough*, 377 S.W.3d 63, 78 (Tex. App.—Dallas 2012, pet. denied). Lufkin’s total actual damages are \$17,544,545.00, and it is entitled to prejudgment interest at the rate of 5% per year from January 18, 2013 to September 10, 2015. Therefore, Lufkin is entitled to prejudgment interest in the amount of \$2,319,244.65 (965 days multiplied by \$2,403.36 per day), for a total award of \$19,863,789.60. IBM agrees with this calculation.

We *affirm* the trial court’s judgment in all other respects. This Court’s opinion of July 12, 2017, otherwise remains in effect.

JAMES T. WORTHEN
Chief Justice

Opinion delivered August 16, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

AUGUST 16, 2017

NO. 12-15-00223-CV

INTERNATIONAL BUSINESS MACHINES CORP.,
Appellants/Cross-Appellees
V.
LUFKIN INDUSTRIES, INC.,
Appellee/Cross-Appellant

Appeal from the 159th District Court
of Angelina County, Texas (Tr.Ct.No. CV-02073-13-02)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, it is the opinion of this court that there was error in the judgment of the court below insofar as the trial court's judgment awarded \$6,000,000.00 in damages to Appellee on its fraud claim, and \$11,000,000.00 in mitigation expenses on its fraudulent inducement claim.

It is therefore ORDERED, ADJUDGED, and DECREED that the portion of the trial court's judgment awarding \$6,000,000.00 to Appellee on its fraud claim be **reversed** and **rendered** that Appellee take nothing on that claim.

It is further ORDERED, ADJUDGED and DECREED that the portion of the trial court's judgment awarding \$11,000,000.00 in mitigation expenses be **modified** to reflect an award of \$7,544,545.00 in mitigation expenses, thereby reducing total actual damages to \$17,544,545.00.

It is further ORDERED, ADJUDGED and DECREED that the portion of the trial court's judgment awarding \$2,776,025.10 in prejudgment interest be **modified** to reflect an award to Lufkin in the amount of \$2,319,244.65.

It is further ORDERED, ADJUDGED and DECREED that, in all other respects, the trial court's judgment is **affirmed**; all costs of this appeal be assessed one-half against the Appellant, **INTERNATIONAL BUSINESS MACHINES CORP.**, and one-half against the Appellee, **LUFKIN INDUSTRIES, INC.**, for which execution may issue; and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.