

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.:

TRACY HEALY,
Plaintiff,

0704096

FEB 23 2007

vs.

STATE FARM FLORIDA INSURANCE COMPANY
Defendant.

A TRUE COPY
HOWARD C. FORMAN
CLERK OF CIRCUIT COURT

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COMPLAINT-CLASS REPRESENTATION

COMES NOW the Plaintiff, individually and as representative of a putative class of similarly situated insured individuals, by and through the undersigned attorney, and sues the Defendant, State Farm Florida Insurance Company (hereinafter sometimes referred to as "STATE FARM") and alleges as follows:

1. This is an action with damages greater than Fifteen Thousand Dollars (\$15,000), exclusive of interest, costs, and attorney's fees. The action is based upon Defendant STATE FARM's pattern and practice of failing to pay for permitting and other similar fees when adjusting roof damage claims in Florida.

2. Defendant STATE FARM, and its authorized representatives, failed to pay and/or properly adjust claims by utterly ignoring permitting and other similar fees as a cost of repair related to roof damage claims. State Farm has failed to pay for permitting fees on vast numbers of roof damage repairs which required permitting from local agencies, related to various hurricanes which ravaged the State of Florida over the past several years.

3. As a result of its failure to take the permitting requirements into account in its adjustment of claims, thousands of Floridians were under-compensated for their losses related to the recent Florida hurricanes, and State Farm has profited at the expense of the citizens of this State. At the same time State Farm has made representations in the media that “Like a good neighbor, State Farm is there”, and has touted its insurance policies as among the “broadest forms available today” and as “an outstanding value for your insurance dollars”.

4. Defendant’s STATE FARM’s actions in failing to pay for permitting and other related fees with regard to roof damage are inexcusable, and evince a lack of candor in their public positions taken in the media and in their statements to their policy holders.

5. The history of homeowner’s insurance is instructive in understanding the broad duties and responsibilities a carrier like State Farm has under the policies of insurance it issues in Florida. Prior to the 1950’s, individuals could purchase separate policies for various damaging events that could affect a home. A homeowner would choose and perhaps purchase various policies which would protect them against the events which might damage their homes (commonly referred to as a “peril” or “perils”). Common perils insured against include wind, rain, hail, fire, theft and virtually any other catastrophe that could befall a homeowner.

6. Since the 1950’s, there has been a steady evolution of insurance policies combining all perils onto one policy. Indeed, homeowners today purchase the vast majority of their homeowner’s coverage from one carrier¹, with insurance carriers using

¹ The main exception to this is Flood Coverage which is sold, maintained, and adjusted through the federal government’s National Flood Insurance Program.

standardized forms developed and maintained through a private company from New Jersey, Insurance Services Office (commonly referred to as "ISO").

7. Standardization is now the norm in the insurance industry, with the most commonly written form being the "HO-3" which is designed to cover all aspects of the home, its structure, and its contents. The coverage provided in such a policy is often referred to as an "all-risk" or "all-perils" policy which covers any direct, physical loss to the property. All losses are presumed to be included unless the insurance carrier can prove that there is a separate exclusion limiting coverage.

8. STATE FARM, from a review of its insurance policies, has gone even further and issued (and copyrighted) its own policy which proclaims it to be among the broadest available today. The language of their policy is similar in some sections, slightly different in others, but clearly is based upon the "HO-3" standard policy. In that regard, STATE FARM's policies state "we insure for accidental direct physical loss to the property...except as provided...". Accordingly, similar to the standard "HO-3", the policy issued by State Farm in Florida is a broad "all-risk" policy which provides payment for any losses related to a peril which has not been specifically excluded.

9. Consequently, STATE FARM's policy imposes substantial requirements upon the company when adjusting claims related to roof losses. Indeed, simple roof repair or replacement is *impossible* in virtually all Counties of Florida without a permit being issued to allow the repair or replacement to occur. Inexplicably, Defendant STATE FARM, with knowledge of these provisions, prescribed simple roof repair or replacement for virtually all of its insureds without any payments for permits and related fees, and

without any indication to the insured that permitting was covered under their insurance policy.

10. Defendant STATE FARM's actions were negligent, reckless, and perhaps willful and wanton in light of its superior knowledge of the requirements under its own insurance policy, Florida law, and local permitting requirements. At best, STATE FARM actions are a breach of the insurance contract to all individuals with roof damage requiring a permit to effect repairs.

CLASS REPRESENTATION ALLEGATIONS

11. Plaintiff (hereinafter sometimes referred to as the "putative representative") seeks to bring this case as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(1) and/or Florida Rule of Civil Procedure 1.220(b)(3), on behalf of herself and all other persons similarly situated in the State of Florida.

12. The issues of law and fact in this class action are set forth above and are common to the putative representative and the putative class. These include, but are not limited to:

- A. Whether Defendant STATE FARM owes a duty to its insureds to include permitting and related fees when adjusting claims for roof damage.
- B. Whether Defendant STATE FARM has breached its duty to its insureds by failing to include payment for permitting and other related fees in its post-loss estimates for roof damage.

C. Whether Defendant STATE FARM has breached its duty to its insureds by failing to pay for permitting fees and other related fees to insureds with roof damage.

D. Whether Defendant STATE FARM owes damages, including attorneys fees and costs, to its insureds for failing to pay permitting fees and other related fees related to roof damage.

13. The putative representative's claim is typical of those of the class in that each has the same interest in recovering damages for the difference between the cost of simple roof replacement or repair [as allowed by STATE FARM] and the upgraded requirements of roof replacement or repair *plus permitting and other similar fees* as required under the "all-risk" insurance policy. As insureds under insurance policies which provide precisely the same "all risk" coverage, all putative class members (including the Plaintiff) are situated identically with respect to the issues presented in the case.

14. The class consists of approximately fifty thousand individuals, who are defined as follows: "All insureds with coverage issued by STATE FARM FLORIDA INSURANCE COMPANY with roof damage requiring permitting, who were not provided insurance proceeds for permitting fees and other similar fees."

15. The putative representative/Plaintiff will fairly and adequately represent and protect the interests of the class members, and has no interest antagonistic to those of the class. Plaintiff has retained counsel who are competent and experienced in insurance law, and committed to resolution of issues of great importance to the consumers of this State.

16. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

- A. It is economically impracticable for Class Members to prosecute individual actions because the individual claims are so small.
- B. Class members are generally unaware of the technical requirements which govern their claims, and the vast majority of claims such as these would never be brought.
- C. Questions of law or fact common to the claims or defenses of the representative party and the class predominate over any question of law or fact affecting its individual members.
- D. It is desirable to concentrate these claims in a single forum where inconsistent adjudications may be avoided, and consistent conduct be determined and followed throughout all affected areas of the State.
- E. The members of the class are so numerous that separate joinder of each member is impracticable.
- F. Plaintiff is aware of no other litigation concerning this controversy already commenced by its class members.
- G. There are no difficulties likely to be encountered in the management of this class action, given the limited issue presented, defendant's record-keeping requirements under Florida law, and the simplicity of data retrieval for the defendant.

BREACH OF CONTRACT

17. At all material times hereto, Plaintiff was a resident of Florida, and the policies of insurance written by STATE FARM were issued by Defendant STATE FARM to Plaintiff, and all similarly situated individuals, in the State of Florida.

18. At all material times hereto, Defendant STATE FARM was a corporation duly licensed to transact insurance business in the State of Florida. Defendant does business, has offices, and/or maintained agents for the transaction of its customary business in Broward County.

19. Plaintiff, and all members of the putative class, sought property owner's insurance from Defendant STATE FARM to cover their property, and a policy of insurance, including but not limited to coverages to protect against wind and rain, was issued by the Defendant.

20. Over the past several years, Plaintiff's, and all members of the putative class', dwellings and other property in Florida were damaged by wind and rain and sustained roof damage requiring permitting .

21. The above homeowner's insurance with Defendant STATE FARM was in full force and effect as to the Plaintiff and the putative class members when their property was damaged. True and correct copies of the policies of insurance are in control of Defendant STATE FARM, and will be provided through discovery, if necessary.

22. Plaintiff, and all members of the putative class, have timely notified Defendant STATE FARM of the loss and otherwise complied with all conditions precedent to entitle recovery under the policy or the conditions have been waived.

23. Jurisdiction and venue are proper in Broward County.

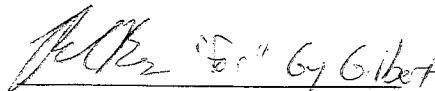
24. Despite demand for payment, Defendant STATE FARM has failed or refused to pay all of Plaintiff's, and the putative class', covered losses. Defendant's STATE FARM failure to make proper reimbursement for all items required under their "all-risk" policy is a breach of contract. Plaintiff and all members of the putative class have been damaged as a result of Defendant's conduct.

25. As a result of Defendant's STATE FARM breach of contract, it has become necessary that Plaintiff, and the putative class, retain the services of the undersigned attorney.

26. Plaintiff, and the members of the putative class, are entitled to reimbursement of attorney's fees and costs under F.S. §627.428.

WHEREFORE, Plaintiff, and the members of the putative class, demand judgment against Defendant STATE FARM for all covered losses with interest on any overdue payments, costs, and attorney's fees pursuant to F.S. §627.428, and trial by jury is hereby demanded.

Dated this 23rd day of February, 2007.



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