

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

WILLIAM CARROLL O'NEAL and
DORIS O'NEAL,

Plaintiffs,

v.

STATE FARM FIRE & CASUALTY
COMPANY,

Defendant.

Case No. 09-CV-0778-DW

CLASS ACTION COMPLAINT

Plaintiffs William Carroll and Doris O'Neal ("Plaintiffs"), on their own behalf and as representatives of a class of persons similarly situated, for their Complaint against Defendant State Farm Fire & Casualty Company ("State Farm"), state and allege as follows:

Nature of the Case

1. State Farm has breached home owner insurance policies held by tens of thousands of persons throughout the United States.
2. In uniform policies issued throughout the Country for years, State Farm contractually agreed that any covered replacement or repair to a policy holder's wood shake or shingle roof would meet all building code requirements.
3. State Farm routinely and uniformly violates this contractual provision. As is the case with the named Plaintiffs and all proposed Class Members, State Farm pays for only limited and "spot" replacement of individually damaged wood shakes or shingles. As explained in further detail below, this "spot" replacement of wood shakes or

shingles violates the uniform building code adopted in virtually every State in the Country.

4. State Farm has consciously chosen to breach its contractual obligations to policy holders, choosing instead to place its financial bottom line ahead of its policy holders' contractual rights.

5. Plaintiffs therefore bring this class action lawsuit to rectify the unethical and illegal conduct that State Farm has uniformly undertaken against policy holders in the United States for years.

Parties

6. Plaintiffs William Carroll O'Neal and Doris O'Neal ("Plaintiffs" or the "O'Neals"), husband and wife, are citizens and residents of the State of Missouri.

7. Defendant State Farm Fire & Casualty Company ("State Farm") is an Illinois Company, authorized to conduct business in the State of Missouri. State Farm does business in all states throughout the United States, including Missouri, in its own name, and by or through its subsidiaries, affiliates, and/or agents.

Jurisdiction and Venue

8. This Court has jurisdiction over the subject matter of this case under 28 U.S.C. § 1332(d)(2) because this is a class action with diversity of citizenship between the parties and more than \$5,000,000 is at issue, exclusive of interest and costs.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

Allegations Common to All Counts

The Proposed Class

10. Plaintiffs bring this action on behalf of themselves and the following class of persons (hereafter referred to as the “Class”):

All current and/or former State Farm home owner insurance policy holders in any State or jurisdiction where the International Residential Code applies who, within the last ten years, submitted a claim to State Farm for damage to their wood shake or shingle roofs, where State Farm provided coverage only for the replacement of individual wood shakes or shingles.

Excluded from the class are State Farm; officers, directors or employees of State Farm; any entity in which State Farm has a controlling interest; the affiliates, legal representatives, attorneys, heirs, or assigns of State Farm; and any federal, state or local governmental entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

State Farm’s Homeowner’s Policy

11. State Farm has been the largest insurer of homes in the United States since 1964.

12. The home owners’ policies issued to Plaintiffs and putative Class Members (hereafter the “Policies”) are uniform and the basic terms and obligations identical.

13. Plaintiffs and the Class Members paid State Farm an annual (or bi-annual) premium for their policies.

14. The payment of these premiums has been extremely lucrative for State Farm.

15. The Policies specifically provide coverage for physical loss to Class Members’ dwelling due to wind or hail.

16. The Policies also contain a provision entitled “Option OL --- Building Ordinance or Law.” Under this provision, State Farm agrees to pay “for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning, or land use ordinance or law, if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.”

Wood Shake and Wood Shingle Roofs and the International Residential Code

17. Wood shakes and wood shingles are among the many commonly used roofing materials in the United States. As used throughout this Complaint, the term “Wood Roofs” means any roof covered with wood shakes or shingles.

18. Plaintiffs, as well as all Class Members, have a Wood Roof.

19. Wood shakes and shingles are susceptible to damage by wind and/or hail.

20. Wind damage is generally characterized by missing shakes or shingles, and/or individual shakes or shingles observed to have been raised at an unusual distance above the surrounding shakes or shingles.

21. Hail damage is generally characterized as splits or punctures in the wood resulting from a hailstone’s impact.

22. Installation and, in the case of damage, repair of Wood Roofs on one and two family dwellings is governed in Missouri and other States by the International Residential Code (“IRC”).

23. The 2000 version of the IRC is effective in Missouri and throughout the United States.

24. The IRC requires all wood shakes and shingles be attached to the roof by a minimum of four fasteners. This includes both the initial installation of the shakes and shingles, as well as any subsequent replacement of individual shakes or shingles.

25. The IRC is specific in requiring that any work done on an existing structure shall conform to all code requirements:

Regardless of the category of work being performed, the work shall not cause the structure to become unsafe, or adversely affect the performance of the building ... and unless expressly permitted by these provisions, shall not make the building any less conforming to this code or to any previously approved alternative arrangements than it was before the work was undertaken.

26. The work performed in replacing multiple wood shakes or wood shingles randomly located in a roof field must comply with the IRC's required materials and methods for installation of Wood Roofs.

27. The replacement of an individual wood shake or wood shingle in the middle of a roof field must reestablish the integrity of the four fastener attachment resulting from the IRC's installation requirements.

28. As a result, there are only two ways to replace individually damaged shakes or shingles and be in compliance with the IRC.

29. One method is to simply replace all shakes or shingles from the ridge line down to the eaves. In other words, replacing the entire side of the roof. In this manner, all of the replacement shakes and shingles will be fastened to the roof by the required four fasteners.

30. The other method is to replace all shakes and shingles from the ridge line down to the lowest damaged shake or shingle. This will also result in the replacement shakes or shingles being attached to the roof by the required four fasteners.

31. By contrast, simply replacing individual shakes or shingles without simultaneously replacing the shake or shingle above the damaged ones (up to the top of the ridge line) results in the individually replaced shakes and shingles being attached to the roof with only two – as opposed to the IRC required four – fasteners.

32. In other words, where only individual shakes and shingles are replaced, the replacement violates the IRC's four fastener requirement, and is otherwise unacceptable for reestablishing the integrity of the roof.

The O'Neals' Roof Claim

33. The O'Neals' home was damaged as a result of hail and/or wind on May 1 and 2, 2008.

34. Substantial damage was done to the O'Neals' wood shake roof.

35. As a result of the damage, and pursuant to the terms of the Policy, the O'Neals submitted a claim to State Farm.

36. On or about May 31, 2008, State Farm inspected the O'Neals' roof and approved their claim for the replacement of only 80 individual wood shakes, and 35 ridge cap shingles.

37. On May 26, 2009, State Farm advised the O'Neals that their roof claim had been approved for the replacement of only 80 individual shakes, and 35 roof cap shingles.

38. State Farm refused to replace the entire roof or to pay for the replacement of wood shakes and shingles in a manner that would conform to the IRC.

39. Instead, State Farm – consistent with its uniform practice – approved payment for replacing individual wood shakes, a remedy that does not satisfy the requirements of the IRC.

40. State Farm’s conduct further denied the O’Neals – like the Class Members they seek to represent – the benefit of the additional insurance provided under the Policy’s Option-OL.

State Farm’s Mishandling of its Insured’s

41. In the case of Wood Roof claims, State Farm’s adjustors routinely and systematically adjust these claims to allow for the replacement of a predetermined number of individual shakes or shingles, far less than the number actually required to remedy the damage to its policy holders’ Wood Roofs.

42. The replacement of individual wood shakes and wood shingles, as approved and recommended by State Farm’s adjustors, fails to comply with the requirements of the IRC.

43. State Farm’s systematic denial of procedures for fixing damage to its policyholders’ Wood Roofs that would meet the requirements of the IRC, in favor of a procedure that would not, wrongfully deprives its policyholders of the benefit of the insurance coverage provided under their homeowner’s policies, and of the additional insurance provided under Option-OL.

CLASS ACTION ALLEGATIONS

44. Plaintiffs incorporate and restate by reference all preceding allegations as if fully set forth herein.

45. Plaintiffs bring this action on behalf of themselves and the Class pursuant to Federal Rule of Civil Procedure 23(b)(1), (2) and (3).

46. Numerosity: The members of the proposed Class are so numerous that joinder of all Members is impracticable. The proposed Class includes tens of thousands of Members. The precise number of Class Members can and will be readily ascertained through discovery, which will include State Farm's records.

47. Commonality/Predominance: There is a well-defined community of interest and common questions of law and fact which predominate over any questions affecting only individual Members of the Class. These common legal and factual questions, which do not vary from one Class Member to another, and which may be determined without reference to the individual circumstances of any Class Member, include, but are not limited to the following:

- a. Whether State Farm engages in the systematic practice of approving, recommending and paying for replacing individual wood shakes shingles in violation of the IRC;
- b. Whether, in so doing, State Farm wrongfully denies the Class the benefit of the insurance provided under their homeowner's policies;
- c. Whether, in so doing, State Farm wrongfully denies the Class the benefit of the additional insurance provided under their homeowner's policies' Option-OL;
- d. Whether State Farm acted in bad faith by systematically approving and recommending the replacement of individual wood shakes and shingles in violation of the IRC;

- e. Whether State Farm based its claims decisions on factors not relevant to the claims such as profit margin, the amounts paid on other similar claims, or other factors irrelevant to the Policy; and
- f. Whether State Farm has been unjustly enriched by continuing to accept premiums from Plaintiffs and Class Members for coverage they have wrongly been denied.

48. Typicality: Plaintiffs' claims are typical of the claims of the Members of the Class. Plaintiffs and all Class Members have been injured by the same wrongful practices in which Defendant has engaged. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class Members and are based on the same legal theories.

49. Adequacy: Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Class. Neither Plaintiffs nor their attorneys have any interests which are contrary to or conflicting with the Class. Plaintiffs have no conflict with Members of the putative class. Further, Plaintiffs have engaged experienced and competent counsel for this complex litigation, and will otherwise fairly and adequately protect the interests of the putative class.

50. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each Class Member resulting from Defendant's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of

individual Class Members prosecuting separate claims is remote, and even if every Class Member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual Members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect to the Class would be proper. Defendant has acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive relief or corresponding declaratory relief with regard to the Members of the Class as a whole is appropriate.

FIRST CAUSE OF ACTION
(Breach of Contract)

51. Plaintiffs incorporate and restate by reference all preceding allegations as if fully set forth herein.

52. Plaintiffs and the Class Members entered into written contracts for homeowner's insurance with State Farm.

53. Pursuant to the Policy's provisions, State Farm had a duty to provide Plaintiffs and the Class Members coverage for repairs due to covered losses on their homes.

54. Plaintiffs' and the Class Members' homes suffered damage as a result of covered losses, including but not limited to, wind and/or hail damage to their Wood Roofs.

55. Plaintiffs and the Class Members timely filed their claims for damages resulting from covered losses to their Wood Roofs under their homeowner's policies.

56. State Farm systematically denied Plaintiffs' and the Class Members' claims to the extent they sought coverage for damages exceeding the cost of replacing a predetermined number of individual wood shakes or wood shingles, and, instead, approved and recommended the replacement of individual wood shakes and shingles in violation of the IRC, thus denying Plaintiffs and the Class Members the benefit of the insurance provided under their homeowner's policies, and the additional Option-OL coverage, all in breach of the Policy's provisions.

57. As a direct and proximate result of State Farm's breach of contract, Plaintiffs and the Class Members have suffered damages, including but not limited to, the costs of replacing their Wood Roofs beyond their respective deductible amounts, delay in replacing their Wood Roofs caused by State Farm's conduct in denying their claims, harm to their homes caused by delay in having their Wood Roofs replaced due to State Farm's denial of their claims, and other damages as may be proven at trial.

SECOND CAUSE OF ACTION

(In the Alternative)

(Unjust Enrichment)

58. Plaintiffs incorporate and restate by reference all preceding allegations as if fully set forth herein.

59. State Farm has received a benefit from Plaintiffs and the Class Members in the form of premiums Plaintiffs and the Class Members paid State Farm for homeowner's insurance.

60. State Farm is aware that it received the above described benefit from Plaintiffs and the Class Members.

61. State Farm continues to retain the benefit conferred by Plaintiffs and the Class Members, to the detriment of Plaintiffs and the Class Members, in that State Farm has wrongly denied Plaintiffs and the Class Members the benefit of the coverage provided by their homeowner's policies.

62. Under the circumstances, it would be inequitable and unjust for State Farm to retain the benefit conferred by Plaintiffs and the Class Members.

63. As a result of their continuing retention of the above described benefit, State Farm has been unjustly enriched to the detriment of Plaintiffs and the Class Members.

64. Plaintiffs and the Class Members are entitled to restitution and seek full disgorgement of State Farm's enrichment, benefits, and ill gotten gains acquired as a result of State Farm's unlawful and wrongful conduct alleged herein.

WHEREFORE, Plaintiffs, individually and on behalf of the above defined Class, by and through undersigned counsel, pray the Court grant the following relief:

- a. An Order certifying the Class defined herein pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- b. An Order designating the O'Neals as the Class Representatives for the Class certified pursuant to Rule 23 of the Federal Rules of Civil Procedure and designating their counsel as Lead Counsel for the Class;
- c. An Order awarding Plaintiffs and the Class Members compensatory damages for State Farm's breach of contract in a total amount to be proven at trial;
- d. An Order awarding Plaintiffs and the Class Members damages in a total amount to be proven at trial for State Farm's unjust enrichment;
- e. An Order awarding Plaintiffs and the Class Members all pre and post judgment interest to which they are entitled in the maximum amount allowed by law;
- f. An Order awarding attorneys' fees and all costs associated with bringing this action; and
- g. For such further relief the Court deems just and proper.

Respectfully submitted,

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