

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

JAMES STUART and CAREDA)	
L. HOOD, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 14-cv-04001-SOH
)	
STATE FARM FIRE AND)	
CASUALTY COMPANY,)	
)	
Defendant.)	

**DEFENDANT STATE FARM’S SEPARATE SUBMISSION IN SUPPORT OF
PRELIMINARY APPROVAL OF PROPOSED CLASS SETTLEMENT**

Defendant State Farm Fire and Casualty Company (“State Farm”), by and through counsel, respectfully provides this separate submission in support of preliminary approval of the Proposed Settlement of this case as described in the Stipulation of Settlement entered into by State Farm and by Plaintiffs James Stuart (“Stuart”) and Careda Hood (“Hood”) as representatives of the asserted class (collectively, “Representative Plaintiffs”) (Dkt. 241-1).¹

INTRODUCTION

State Farm has vigorously defended this six-year old litigation from the outset and remains confident in its view that it would ultimately prevail in the litigation either at trial or following appeal. While State Farm recognizes the unique prevailing law in Arkansas during the Class Period regarding labor depreciation (which has now effectively been superseded by statute, *see* Ark. Code § 23-88-106(a)(2) (2017)), it nonetheless believes that Plaintiffs would not prevail on the merits of their claims at trial. State Farm believes the evidence would show the Representative

¹ Unless otherwise indicated, capitalized terms used herein shall have the same meaning as in the Stipulation of Settlement. The Representative Plaintiffs and Class Members are collectively referred to herein as “Plaintiffs.”

Plaintiffs were fully and appropriately compensated for their losses and that Plaintiffs would be unable to carry their burden to establish that the actual cash value payments State Farm made to class members were insufficient. Moreover, State Farm believes that it further would prevail in any post-trial appeal before the United States Court of Appeals for the Eighth Circuit, both on the merits and on the litigation class issue, for trial of this matter would make manifestly clear the unmanageable nature of a class trial given the wholly individualized nature of Plaintiffs' claims for breach of their respective insurance policies.

Why, then, in view of State Farm's confidence in the ultimate outcome would State Farm agree to settle this matter? As previously noted, the case has already gone on for more than six years and would likely span a few more years inclusive of trial and appeals. Moreover, the scope of this litigation is now much narrower than originally asserted. When the case was originally filed in Miller County, Arkansas, the class asserted spanned back to November 2003. Now, after six years of litigation, the class is confined to the period running only from May 1, 2010 through just December 6, 2013. And given the uncertainties in any litigation (and class litigation in particular), State Farm has determined that the Proposed Settlement is in the best interests of its current and former Arkansas policyholders. State Farm is pleased to resolve this case so that it can avoid further litigation expenses and uncertainty, and continue providing excellent service to its policyholders.

As set forth below, State Farm believes that the Proposed Settlement is fair, reasonable and adequate, especially in view of the strength of State Farm's defenses to the asserted claims and the difficulties Plaintiffs would face in establishing liability and proving damages. Accordingly, State Farm supports the Proposed Settlement and requests that it be preliminarily approved.

DISCUSSION

Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court must approve this class action settlement as fair, reasonable and adequate before it becomes effective. Those determinations depend on, among other things, “the costs, risks, and delay of trial and appeal.” Fed. R. Civ. P. 23(e)(2)(C)(i). In fact, the Eighth Circuit expressly requires district courts to consider the merits of the plaintiff’s case in the approval process. *In re Wireless Telephone Federal Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005). That is frequently done by “evaluating the strengths of the class claims against the strengths of [the] defense,” and the uncertainty of a litigated outcome. *Id.*

The following discussion briefly summarizes State Farm’s defenses and demonstrates why the proposed settlement is fair, reasonable and adequate in light of those defenses.

I. The Proposed Settlement is Fair, Reasonable and Adequate in View of the Strength of State Farm’s Liability Defenses to the Asserted Claims.

To prevail on the merits at trial on liability, Plaintiffs would need to prove that State Farm’s ACV payments did not sufficiently compensate them for the actual cash value of their damaged property. Contrary to Plaintiffs’ assertions, however, proving underpayment for ACV cannot be done solely based on State Farm’s *estimates* of replacement cost. The formula for calculating ACV uses “replacement cost” as an input, but at the time State Farm pays ACV, it only has an estimate of those costs. The *actual* replacement costs incurred by many Class Members will be different, and those differences directly impact the sufficiency of any ACV payments made by State Farm. Furthermore, Plaintiffs would need to prove at trial that State Farm’s ACV payments did not exceed the costs they incurred to complete repairs, given the express language in their policies capping State Farm’s ACV obligation at that amount. *See* Dkt. 87 at 4. Thus, notwithstanding the unique prevailing law in Arkansas during the Class Period regarding labor

depreciation, *see Adams v. Cameron Mut. Ins. Co.*, 2013 Ark. 475, 2, 430 S.W.3d 675, 679 (2013) and *Shelter Mut. Ins. Co. v. Goodner*, 2015 Ark. 460, 1, 477 S.W.3d 512, 516 (2015), superseded by statute, Ark. Code § 23-88-106(a)(2) (2017), Plaintiffs' proof of their breach of contract and other claims would be challenging.

The claims of the Representative Plaintiffs demonstrate the difficulties that Plaintiffs would face in establishing liability on their claims. For example, the evidence at trial would establish that Stuart was paid full replacement cost benefits on both of his claims and in fact was able to complete repairs on one of his claims without even contributing his deductible. *See* Dkt. 87 at 13-18. Regardless of the sequence or timing of the payments State Farm made to Stuart, the evidence would show that he is not entitled to additional compensation for initially applied labor depreciation – because he has been overpaid under his policy. *See id.* With respect to Hood's claim, the evidence at trial would establish that State Farm's ACV payment to her was based upon a significantly over-inflated estimate of the work needed to replace the damaged portions of her home. *See id.* at 18-19. As a result, the ACV payment she received was greater than it would have been even if labor depreciation had not been applied. *See id.* Because Hood was not damaged by the application of labor depreciation to her ACV payment, she would not be able to establish a breach of contract. *See id.* In addition, State Farm has shown through discovery that there are also Class Members who were able to complete repairs in *full* using only their ACV payment. *See id.* at 23-24. They, too, would be unable to establish any breach of contract at trial.

All of these issues are necessarily specific to each individual claim. They demonstrate persuasively why a class-wide trial would be unmanageable. Although the Court previously granted class certification (a decision affirmed by the Eighth Circuit), *see* Dkt. Nos. 142, 159-1, the Court may well determine at, before, or after trial that the case should not be maintained as a

class action under Rule 23 of the Federal Rules of Civil Procedure, or that issue could well need to be addressed upon any post-trial appeal.

The Proposed Settlement will avoid the intractable litigation manageability issues presented by such individualized liability proofs.

II. The Proposed Settlement is Fair, Reasonable and Adequate in View of the Need for Individualized Proof to Establish Damages.

The Proposed Settlement is also fair, reasonable and adequate in light of the deficiencies in Plaintiffs' purported class-wide damages methodology. Even assuming *arguendo* that certain Plaintiffs could establish a viable breach of contract claim against State Farm based on its practice of applying depreciation to estimated labor costs in Arkansas during the Class Period, Plaintiffs would also need to prove damages as a result of the alleged breach for each claim. However, proving damages in this case would similarly require individualized analysis of each claim. Plaintiffs' proposed damages methodology ignores a variety of individualized issues to present a "rough" picture of damages, but that picture is inaccurate for many Class Members, as the evidence would show at trial.

More specifically, Plaintiffs' damages model would calculate damages for policyholders who (i) are not Class Members, either because they did not receive an ACV payment with labor depreciation applied or already received full payment of the applicable limits under their policy; (ii) received an ACV payment that was sufficient for the policyholder to complete repairs in full; (iii) received an ACV payment that was overstated by more than the amount of any labor depreciation applied in calculating the payment; or (iv) received replacement cost benefit payments shortly after receiving an ACV payment, thereby eliminating the basis for any alleged penalty for untimely payment. In addition to reducing significantly the damages figures presented

by Plaintiffs, these deficiencies would further show that a class action is not a superior method for adjudicating the claims in this case.

The Proposed Settlement would eliminate these individualized litigation issues as well, as it will provide agreed-upon relief to those Class Members who arguably experienced an economic impact as a result of an ACV payment that included labor depreciation and who submit a claim. While State Farm will have the right to review any claims submitted as part of the Proposed Settlement and submit any disputed claims for resolution to a neutral, the Settlement will avoid the litigation manageability challenges that would be presented in a class trial with such individualized proof on damages.

CONCLUSION

For all the foregoing reasons, State Farm respectfully requests that the Court preliminarily find that the Proposed Settlement is fair, reasonable and adequate, and preliminarily approve the Proposed Settlement in the form agreed to by the Parties, as attached to Plaintiffs' motion for preliminary approval.

Dated: December 10, 2019

/s/ Jacob L. Kahn

John E. Moore
Beverly A. Rowlett
MUNSON, ROWLETT, MOORE & BOONE, P.A.
Regions Center
400 West Capitol Avenue
Suite 1900
Little Rock, AR 72201
(501) 374-6535

Joseph Anthony Cancila, Jr. (*pro hac*)
Jacob L. Kahn (*pro hac*)
RILEY SAFER HOLMES & CANCILA LLP
70 West Madison Street, Suite 2900
Chicago, IL 60602
(312) 471-8700

*Attorneys for Defendant State Farm Fire
and Casualty Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that they caused the foregoing Defendant State Farm's Separate Submission in Support of Preliminary Approval of Proposed Class Settlement to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

Dated: December 10, 2019

/s/ Jacob L. Kahn