

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JAMES SHEARER AND JOYCE
ANDREWS, individually, and on behalf of
all others similarly situated,

Named Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant,

DOCKET NO.:

CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND

Named Plaintiffs James Shearer and Joyce Andrews (“Named Plaintiffs”), individually and on behalf of all others similarly situated, by and through their counsel, Alan C. Milstein and Jeffrey P. Resnick of Sherman, Silverstein, Kohl, Rose & Podolsky, P.A., by way of Complaint against Defendant State Farm Fire and Casualty Company (“State Farm”), hereby say, state, and aver as follows:

THE PARTIES

1. Named Plaintiffs own a home at 182 Washington Road, Princeton, New Jersey.
2. Defendant State Farm is believed to be an Illinois corporation with a principal place of business in Bloomington, Illinois. It is a citizen of the State of Illinois.

PERSONAL JURISDICTION

3. This Court has personal jurisdiction over State Farm because it possesses the requisite minimum contacts with the state of New Jersey, and systematically and continuously transacts business within New Jersey.

SUBJECT MATTER JURISDICTION

4. This Court has subject matter jurisdiction over the Named Plaintiffs' claims pursuant to 28 U.S.C. § 1332, which provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between ... citizens of different States,” because said claims exceed \$75,000.00, exclusive of interest and costs, and are between citizens of different states.

5. To the extent that there are more than 100 class members (which is only known to State Farm at this time), and those class members' claims exceed \$5,000,000.00 in the aggregate (which is only known to State Farm at this time), this Court has subject matter jurisdiction over the claims of all class members from all states pursuant to the Class Action Fairness Act of 2005 (“CAFA”). See 28 U.S.C. §§ 1332(d), 1453, 1711-1714.

6. Regardless of whether CAFA applies, this Court has 28 U.S.C. § 1367 supplemental jurisdiction over the claims of all class members, because the Named Plaintiffs' claims exceed \$75,000.00, exclusive of interest and costs, and are between citizens of different states. See Exxon Mobil, Inc. v. Allapattah Services, Inc., 545 U.S. 546 (2005).

VENUE

7. Venue is proper in the United States District Court for the District of New Jersey because a substantial part of the events giving rise to this lawsuit occurred within the territory encompassed by this Court. See 28 U.S.C. § 1391(b)(2).

FACTS COMMON TO ALL COUNTS

8. This is a class action brought on behalf of the Named Plaintiffs and all State Farm policyholders and insureds that, following a property loss that did not require a total rebuild,

have had their loss adjusted by State Farm using the new construction formulas in the Xactimate software as opposed to repair/restoration formulas.

9. Named Plaintiffs are the owners of property located at 182 Washington Road, Princeton, New Jersey (“Subject Property” or “Property”).

10. On or around July 11, 2015, State Farm issued Policy No.30-B1-4317-0, an all-risk property policy (“Policy”), to Named Plaintiffs. A true and correct copy of the Policy is attached to this Complaint as **Exhibit “A.”**

11. The Policy provides for replacement cost coverage.

12. On July 11, 2015, the Subject Property suffered substantial damage by fire, a covered cause of loss under the Policy.

13. Named Plaintiffs notified State Farm of the loss in a timely and proper fashion, and State Farm identified the claim as Claim No. 30689R273 (“Claim”).

14. In its handling of the Claim, State Farm has breached the terms and conditions of the Policy and acted in bad faith.

15. Like other insurers and many public adjusters, State Farm uses a software program called Xactimate developed by Verisk Analytics.

16. The Xactimate software allows the user to estimate the costs to repair a structure either under a new construction formula, in the event of a total loss after a full demolition of the property, or under a repair formula in which the property remains intact but the damaged portion of the property is replaced.

17. Frequently, if not always, the replacement cost estimate for the damage to the property under the repair formula is higher than under the new construction formula though the damage is not a total loss and the estimate of damage to the structure is less than if the entire

structure had to be rebuilt. This is because the contractor incurs additional expense in working around an existing structure.

18. Insurers other than State Farm and public adjusters use the repair formula in such circumstances rather than the new construction formula because the former is a more accurate estimate of the actual cost to repair the property.

19. State Farm argues that the Policy allows it to determine the cost to replace the damaged portion of the property by using the replacement formulas in the Xactimate software though such estimates are not the actual cost to repair the damage.

20. State Farm determined that the replacement cost value of the Property under the replacement formula was less than the replacement cost value under the repair formula.

21. State Farm's interpretation of its Policy is arbitrary, capricious, unreasonable, contrary to the plain language of the Policy and the reasonable expectations of its insured, and in bad faith.

22. On information and belief, State Farm has interpreted its policies in this manner with regard to hundreds, if not thousands, of insureds throughout the country.

CLASS ACTION ALLEGATIONS

23. This action is being brought as a class action under Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), on behalf of a class ("Class") consisting of the following:

All State Farm policyholders and insureds that, following a property loss that did not require a total rebuild, have had their loss adjusted by State Farm using the new construction formulas in the Xactimate software as opposed to recovery and the restoration formulas.

24. The Class is so numerous that joinder of all members is impracticable. See Federal Rule of Civil Procedure 23(a)(1).

25. The exact size of the Class and the members thereof are ascertainable through State Farm's business records.

26. Common questions of law and fact exist as to all members of the Class and predominate over any questions effecting solely individual members of the Class. See Federal Rule of Civil Procedure 23(a)(2).

27. The claims of the Named Plaintiffs and the class arise from the same wrongful conduct, and are based upon the same legal theories.

28. The Named Plaintiffs' claims are typical of the claims of the other members of the Class, as the Named Plaintiffs and all other members of the Class were damaged in the same way. See Federal Rule of Civil Procedure 23(a)(3).

29. The Named Plaintiffs will fairly and adequately represent the interests of the Class, and has retained counsel competent and experienced in class action litigation. See Federal Rule of Civil Procedure 23(a)(4).

30. The Named Plaintiffs and their counsel are committed to vigorously pursuing this matter, and have the financial resources to do so.

31. The Named Plaintiffs have no interests that are contrary to or in conflict with those of the Class.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. See Federal Rule of Civil Procedure 23(b)(3).

33. Since the damage suffered by individual class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the unlawful conduct alleged.

34. Moreover, as set forth above, common questions of law and fact exist as to all members of the Class and predominate over any questions that solely effect individual members

of the Class. These common questions include the question of whether State Farm's method of calculating replacement cost is wrongful.

35. The Named Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude their maintenance as a class action.

COUNT ONE – BREACH OF CONTRACT

36. The Named Plaintiffs repeat each of the foregoing allegations as if fully set forth herein.

37. The Policy is a valid and enforceable contract between Named Plaintiffs, on the one hand, and State Farm, on the other hand.

38. The members of the Class also possess (and/or possessed) valid and enforceable contracts with State Farm.

39. Named Plaintiffs complied with all of the applicable terms and conditions of the Policy.

40. The members of the Class also complied with all of the applicable terms and conditions of their contracts with State Farm.

41. State Farm has breached the Policy (and the policies it issued to members of the Class) by, among other things, using the wrong formula in the Xactimate software to estimate replacement damage of a property.

42. The aforesaid breach has directly and proximately caused Named Plaintiffs and the members of the Class to sustain damages.

COUNT TWO – INSURANCE BAD FAITH

43. The Named Plaintiffs repeat each of the foregoing allegations as if fully set forth herein.

44. State Farm has no actual basis for using the wrong formula in estimating the replacement damage to the property of Named Plaintiffs and the members of the Class.

45. State Farm has acted in bad faith by knowingly taking actions that lacked a reasonable basis, and frivolously and unfoundedly refusing to pay policy proceeds due and owing to policyholders, including Named Plaintiffs and the members of the Class.

46. State Farm's actions run contrary to statutory and common law governing first-party bad faith.

47. Interest, punitive damages, and attorney's fees should be awarded in favor of the Named Plaintiffs and the Class, and against State Farm, in order to deter it from acting in this manner now and in the future.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs, individually and on behalf of the Class, respectfully demands the following relief:

a. An order certifying the Class, appointing the Named Plaintiffs as the representative of the Class, and appointing counsel for the Named Plaintiffs as lead counsel for the Class;

b. A judgment for and award of compensatory damages to the Named Plaintiffs and the Class;

c. A judgment for and award of punitive damages to the Named Plaintiffs and the Class;

d. A judgment for and award of attorney's fees, court costs, and litigation expenses to the Named Plaintiffs and the Class; and

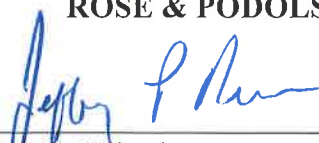
e. Such other and further relief as this Honorable Court deems proper.

Dated:

Respectfully submitted,

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

By:



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JURY TRIAL DEMAND

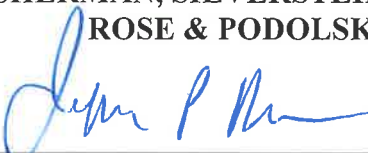
The Named Plaintiffs and the Class demand a jury trial as to all counts so triable.

Dated:

Respectfully submitted,

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

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