Hicks v. State Farm Fire & Casualty Co.

Year: 2020
Court: United States Court of Appeals for the Sixth Circuit
Case Number: 19-5719

This lawsuit concerns deficient actual cash value (ACV) payments. Plaintiffs challenge State Farm's method of calculating ACV and, in large part, challenge State Farm's depreciation of labor. In its brief, UP first argues that the "costs of repair or replacement" language in the ACV loss settlement provisions of the policy refers only to estimated costs of repair under either a "common construction" or "similar construction" theoretical standard – not the actual cost of repairs. The brief distinguishes that ACV payments are prospective based, and before actual repairs, while replacement cost value (RC) is retrospective based. UP argues against State Farm's tortured "actual cost of repair" interpretation that would willfully delay and underpay claims. Next UP argues that property estimating software programs allow insurers to depreciation labor, or recalculate depreciation without depreciating labor, by a simple click of a button without altering any of the claims adjuster's determination and conclusions. Since State Farm breached its contracts of insurance by withholding depreciation on labor, State Farm is contractually obligated to pay for the cost to recalculate ACV. On July 10, 2020 the 6th Circuit Court affirmed the District Court's ruling allowing the extent of State Farm's improper depreciation of labor to be determined in a class proceeding. Claims Journal covered the ruling and policyholder win: https://www.claimsjournal.com/news/southeast/2020/07/14/298171.htm

This brief was drafted pro bono by J. Brandon McWherter of McWherter Scott Bobbitt PLC