

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

**JOHN THOMPSON and LEIGH ANN
THOMPSON, Individually and on
Behalf of All Others Similarly Situated,**)
)
)
Plaintiffs,)
)
v.)
)
**STATE FARM FIRE AND CASUALTY
COMPANY,**)
)
Defendant.)

CIVIL ACTION NO. 5:14-CV-32 (MTT)

**ORDER GRANTING PARTIES’ AMENDED JOINT PROPOSAL
FOR PROVIDING NOTICE (AS MODIFIED)**

The Court has certified a Rule 23(b)(3) class in this case,¹ and must now accordingly “direct to class members the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B);² *see also* 23(d)(1)(B). The Court accordingly directed the parties to submit a joint motion for providing notice to the class.

¹ The class is defined as:

All former or current homeowners insurance policyholders of State Farm who, within the period beginning six years prior to the commencement of the instant civil action and ending January 24, 2017, presented first-party claims arising from direct physical losses to their properties as a result of water damage to their homes, which are events covered by the policy, wherein diminished value was not paid in connection with said claims.

Doc. 103 at 3. This class was certified with respect to: “A breach of contract claim against State Farm based on its failure to assess for diminished value.” *Id.* at 1 n.1; *see also* Doc. 78 at 27-28.

² Rule 23(c)(2)(B) also dictates that:

The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

See Doc. 92 at 2. Because the parties' first proposed form notice was not presented in one document, but rather separate proposals (see Docs. 98; 98-1; 98-2; 98-3), the Court directed the parties to submit one version, redlined where they disagreed. See Docs. 101; 103 at 3-4. The parties complied, filing their Amended Joint Proposal for Providing Notice (Doc. 104) and redlined form notice (Doc. 104-1).³

The Court, after reviewing the parties' proposed form notice and their points of disagreement, drafted its own notice and instructed the parties to inform the Court of any objections to the notice by March 22, 2017. Docs. 106; 106-1. The parties have not objected. Accordingly, the Court **GRANTS** the parties' Amended Joint Proposal for Providing Notice (Doc. 104), except that the parties shall use the form notice prepared by the Court (attached hereto as **Exhibit A**). The Court accordingly **ORDERS** the following:

1. Within 14 days of the entry of this Order, Plaintiffs' counsel will file a proposal for a third-party administrator ("Administrator") to be appointed by the Court. Prior to filing the proposal for the Administrator, Plaintiffs will attempt to obtain Defendant's consent to the proposed administrator. In the event the parties cannot agree on the proposed administrator, Plaintiffs will file a proposal that contains up to 2 administrators chosen by Plaintiffs and up to 2 administrators chosen by Defendant from which the Court can select the Administrator. The proposal will outline the means by which each proposed administrator will perform the services and an estimate of the costs for providing the services.

2. Within 21 days of the appointment of the Administrator, State Farm will identify Georgia homeowners claims submitted on or after January 22, 2008, and coded as Code 17 (flood), 37 (water damage), and 47 (sewer and drain loss) and will submit to the Administrator and counsel for the class the names of the insureds and most current

³ Also in response to the Court's Order (Doc. 103 at 3-4), the parties conferred and agreed that no postcard notice should be sent, and that no opt-out form should be included. Doc. 104 at 2.

mailing addresses for the insureds in State Farm's records for the policyholders for each of those claims.

3. Following receipt of the list of potential class members from State Farm, the Administrator will attempt to verify and/or update using the NCOA database the address of each relevant policyholder. Within 30 days of receiving the identity and addresses of the potential class members, the Administrator will send notice by first class mail to each potential class member in form prepared by the Court (attached hereto as **Exhibit A**). The notice will contain the name, address, and telephone number of the Administrator and counsel for the class, as well as the address for a website established by the Administrator to provide additional information to potential class members. Plaintiffs will pay the costs of administering the notice program, including the mailing of notice to potential class members and other costs of the Administrator, including but not limited to setting up and maintaining any toll-free telephone number, website, and e-mail address. The parties will attempt to reach agreement as to the name of the website, which will be included in the proposal for the Administrator. In the event the parties cannot reach agreement, they will submit competing proposals as part of the proposal for the Administrator.

4. If any notice mailed to any potential class member is returned to the Administrator as undeliverable, then the Administrator shall perform a reasonable skip trace search using a third party address database such as LexisNexis, or similarly effective search, for a more current address for the potential class member and re-send the returned notice to the potential class member by first class mail. The Administrator will keep a record of all re-mailed notices as well as changes to any potential class members' addresses.

5. Any potential class member who wants to be excluded from the class must submit a written request for exclusion as described in the form notice prepared by the Court (attached hereto as **Exhibit A**). To be effective, the request must be mailed

to the Administrator at the address provided in the notice and must be postmarked by the date specified in the notice, which will be 45 days after the original mailing date of the notice. The request must include: (a) the class member's name and address; (b) a clear and unequivocal statement that the class member wishes to be excluded from the class; and (c) the signature of the class member or the legally authorized representative of the class member.

6. The Administrator shall log each request for exclusion that it receives and provide updated copies of the log and all such requests for exclusion to counsel for the parties on a weekly basis.

SO ORDERED, this 24th day of March, 2017.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT