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State Farm Escapes Class Action Over Depreciation Formula

By **Juan Carlos Rodriguez**

Law360, New York (September 24, 2013, 1:29 PM ET) -- A federal judge on Monday tossed a proposed class action alleging State Farm Fire & Casualty Co. improperly calculates depreciation when making initial claim payments for damaged personal property, finding the insurer's action was consistent with the terms of the policy.

Plaintiff Fred Gee, who submitted a claim to State Farm after a house fire, **alleged the insurer** breached its policies when calculating the amount owed on his and other claims by improperly including in the depreciation deduction a percentage of the applicable sales tax. Gee says the inclusion of sales tax as an element of depreciation improperly increased the amount of the depreciation deduction taken by State Farm.

U.S. District Judge Sharon Johnson Coleman said although neither party identified any Illinois precedent addressing the depreciation calculation, she noted that other jurisdictions defining "repair or replacement costs less depreciation" have interpreted the term to include sales tax within the permitted depreciation reduction when it is also included in the original "replacement cost" total.

"This interpretation is consistent with the aim of the policy in this case, which the parties agree is to place the property owner in a financial position equivalent to that he would have occupied had his loss not occurred," Judge Coleman said.

She said if the property owner elects to replace his property, compensation for sales tax paid in the acquisition ensures that he suffers no loss from the tax imposed on the transaction. If he does not replace the property, and is instead considered to be made whole by payment of a reduced amount, he does not need the sales tax he would have paid on a higher amount to offset his costs.

"Indeed, reimbursement of sales tax he would have paid on a higher full replacement value would give plaintiff more than the amount necessary to make him whole," she said.

Gee argued that sales tax does not decrease in value because of age and should be excluded from the depreciation calculation. But the judge said sales tax, since it is generally calculated on a percentage basis, does decrease along with a decrease in the value of the taxed transaction.

"The court finds that defendant's application of its depreciation reduction to sales tax along with the other components of the replacement cost calculation is consistent with the clear intent of the policy and with the established meaning evidenced by interpretations of similar terms," the judge said.

In Gee's complaint, he said State Farm's policy stated that if he replaced lost property at a higher cost, the company would pay a certain amount of the additional total he spent for replacement items. But Gee argued the insurer should have included in its initial payment full advance payment of the entire undepreciated future sales tax State Farm had estimated Gee would incur if he replaced all of his damaged property.

Gee said the way State Farm handles the sales tax damaged him and proposed class members by reducing the adjusted claim amount paid to each of them.

State Farm spokeswoman Missy Dundov said Tuesday the company is pleased with the decision.

Gee's counsel did not immediately respond to a request for comment Tuesday.

State Farm is represented by Joseph A. Cancila Jr., Heidi Dalenberg and Matthew G. Schiltz of Schiff Hardin LLP and Frederick J. Sudekum and John C. Cassidy of Sudekum Cassidy & Shulruff Chtd.

Gee is represented by Thomas J. Scannell of Scannell & Associates PC and Michael J. O'Rourke, Michael C. Moody, Andrew N. Levine, Robert E. Williams and Brian J. Stefanich of O'Rourke & Moody.

The case is Fred D. Gee v. State Farm Fire & Casualty Co., case number 1:11-cv-00250, in the U.S. District Court for the Northern District of Illinois.

--Editing by Jeremy Barker.

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