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**DO THE RIGHT THING**

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# JURY GIVES STATE FARM A QUARTER MILLION REASONS TO DO THE RIGHT THING

A Rusk County District Court jury recently gave State Farm a quarter million reasons to be a better neighbor to its policyholders when 12 Texans found the insurance giant had knowingly or intentionally engaged in unfair and deceptive acts or practices in *Joseph Wayne Collins v. State Farm Mutual Automobile Insurance Company*, awarding the plaintiff \$248,517.59!

Collins' journey to this decision began over three years ago when he took his 2009 Toyota Tacoma pickup truck to Burl's Collision Center (Henderson) to repair hail damage. Although the vehicle owner wanted the truck repaired, State Farm declared it a total loss and initially offered \$13,450 for the truck, until Collins invoked the Appraisal Clause and hired Robert McDorman (Auto Claim Specialists) who determined the vehicle had been undervalued, causing the insurer to increase the actual cash value to \$16,100.

"State Farm was taking advantage of our mutual client, their insured," noted Burl Richards, owner of Burl's Collision Center. When the insurer retrieved the Toyota Tacoma from the shop, they reimbursed Burl's in the amount of \$1,751.96 for a number

of charges, including blueprint fees – an amount that was later "wrongfully deducted from the proceeds due and payable under the policy," according to a court document.

The insurer paid Collins \$15,398.05 for the totaled vehicle, refusing to compensate the vehicle owner for the deducted amount. After Collins' attempts to reason with State Farm proved unfruitful, he decided to take civil action and retained attorney Rusty Phenix (Phenix & Crump, PLLC).

"The vehicle was repairable, but when the cost of repairs started increasing, State Farm totaled the truck," Phenix recalled. "State Farm routinely uses an algorithm that undervalues these vehicles, and then the insurer uses a constructive total loss formula to declare vehicles a total loss when the repairs reach 70 percent of what State Farm claims to be the actual cash value. The total loss formula is not in the language of the insurance policy.

"After the Appraisal Clause was invoked, the ratio of repairs to actual cash value decreased to 62.29 percent, but State Farm still refused to repair the vehicle," he added. "A month after it arrived at Burl's, the insurer retrieved it and compensated the shop for the



with court fees and the original under-indemnification, resulted in a total jury verdict of \$248,517.59.

“The jury determined that State Farm had unfairly withheld money owed from their policyholder’s settlement and knowingly engaged in wrongdoing,” Richards stressed. “Those jurors made a statement through their jury verdict: insurance companies need to take care of their policyholders.”

Richards believes the jury verdict is a “big deal to us and our customer, but it’s not about the money; it’s about making change and hoping insurers will start treating people right. Mr. Collins felt like this was something he needed to pursue from a moral standpoint. It means a lot to have customers who are so passionate about doing the right thing and standing up against bullies like State Farm.”

“Joe didn’t do this for the money,” Phenix agreed. “He did not want to see this happen to other people, so he did his part to put a stop to it. Joe Collins is a hero. The problem is that the insurer’s computer systems which control all these claims are set up to ensure the insured loses at every phase of the claims process. The insured is under-indemnified, while the insurance company retains their profit. And it will keep happening unless more good people stand up, object to this wrongdoing and refuse to stand for it. This turns into a game that consumers cannot win unless we’re willing to change the system.”

Phenix believes change will happen case by case in the court “with 12 citizens rendering a verdict. That’s where the power lies unless legislators or the Texas Department of Insurance decide to take action. Until these unfair practices become less profitable than doing the right thing, they’re going to continue.

“When the insurer makes \$3,000 to \$5,000 per claim using these tactics, a \$100,000 case here and there may not change anything. But if we have a whole bunch of those – or perhaps something much larger – we might see some change,” he added, promising that there are more cases to come. “This is not the last one. We’re not finished yet; I’m passionate about consumers being treated fairly and plan to keep championing this cause. And the people on the jury were certainly interested in seeing some change.”

Richards believes this case is a step in the right direction: “We constantly file complaints with the Texas Department of Insurance (TDI) and tell them that insurance companies shouldn’t be making these types of deductions, but this issue has been going on for years. Each complaint yields the same generic letter that TDI doesn’t make these decisions; it’s up to a finder of fact to determine what’s fair and reasonable. Well, that’s exactly what happened here. A district judge and the jury – finders of fact – felt like this award was warranted. I feel really vindicated by their finding.”

And Phenix intends to keep fighting the good fight. “The more we dig and the deeper we go, the more problems we see...the more cancer we expose. The insurance industry implements so many schemes, but we’re finding different ways to utilize their systems against them each time we dive deeper into these cases. It’d be nice to go back to the days when insurance companies dealt in good faith, but as long as filing a claim remains an adversarial process, we’ll fight to protect consumers from these egregious actions.”

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repair fees associated with the claim.”

Learning of this, Collins and McDorman reached out to a State Farm adjuster who promised that the amount paid to Burl’s Collision would not be deducted from the insured’s settlement. “State Farm said they weren’t going to make any deductions, but they did it anyway,” Richards noted. “The insurer elected to do the wrong thing every step of the way. They took \$1,750 out of the client’s settlement, but the bigger error was that the vehicle should have been repaired as evidenced by the fact that the truck was sold at auction with a clear title. This whole thing could have been avoided if the vehicle had just been repaired in the first place like it should have been.”

When *Joseph Wayne Collins v. State Farm Mutual Automobile Insurance Company* was heard in the Fourth Judicial District Court of Rusk County, 10 of 12 jurors found that State Farm had failed to comply with its policy agreement and that State Farm knowingly and intentionally engaged in unfair and deceptive practices. The jury awarded over \$175,000 in additional damages against State Farm for its knowing and intentional conduct. When combined