

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**KEARY BURGER and  
PHYLLIS BURGER**

**PLAINTIFFS**

vs.

**CASE NO: 1:09cv264 LG-RHW**

**USAA CASUALTY INSURANCE COMPANY;  
And JOHN DOES 1-10,**

**DEFENDANTS**

**AFFIDAVIT OF STEPHEN L. STRZELEC**

STATE OF WASHINGTON

COUNTY OF KING

Stephen L. Strzelec, being first duly sworn, deposed and states as follows:

1. My name is Stephen L. Strzelec. I am an adult resident citizen of King County, Washington. I am over twenty-one years of age, am of sound mind, and am competent to testify about all matters set out in this Affidavit.

2. My formal education consists of the following:

a. Bachelor of Science degree in Business Administration, awarded in 1987 from Seattle City University in Washington State.

b. Chartered Property and Casualty Underwriter (CPCU) in 1993 from the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America. This is an advanced designation in property/casualty insurance and risk management.

c. Chartered Life Underwriter (CLU) in 2000 from The American College. This is a professional designation for persons involved in the protection, accumulation, preservation, and distribution of the economic values of human life.

3. From January 14, 1985, until July 25, 2002, I was employed in the following capacities by State Farm, including State Farm Fire and Casualty Insurance Company and State Farm Mutual Automobile Insurance Company.

a. Fire and Casualty Claim Representative, Tukwila, WA 01/1985 – 05/1986. I became proficient handling all types of claims, including commercial, personal, excess, first party, and third party.

b. Fire and Casualty Reinspector/Trainer, Redmond, WA 05/1986 -- 10/1987. I trained new claim handlers and I provided continued training for adjusters who were then employed by State Farm in the State of Washington. This training included handling and adjusting catastrophes. Whenever State Farm initiated new procedures, such as new insurance policy language, I was responsible for learning those procedures and training State Farm personnel in the State of Washington regarding those new procedures. I also reinspected claim files, and I provided State Farm upper management with the results of my reinspections.

c. Fire and Casualty Claim Superintendent, Tacoma, WA 10/1987 – 10/1990. I hired, trained, and managed a unit of 8 claim handlers, 1 supervisor, 1 estimator, and 3 support personnel. I also supervised first and third party claims, including personal and commercial lines.

d. Auto Claim Representative, Redmond, WA 10/1990 – 05/1991. I handled all types of auto claims involving all coverages.

e. Auto Property Superintendent, Tacoma, WA 05/1991 -- 01/1992. I set specific standards for the handling of property claims in South Puget Sound, consistent with State Farm practices, such as response time to contact insureds. I also supervised a State Farm

pilot program involving the inspection of damaged, non-drivable motor vehicles by State Farm adjusters.

f. Auto Claim Superintendent, Vancouver, WA 01/1992 – 03/1994. My responsibilities include supervising a bodily injury and property damage unit. I also functioned as State Farm's Property Superintendent for Southwestern and Eastern Washington.

g. Auto Divisional Claim Superintendent, Anchorage, AK 03/1994 – 11/1995. I was responsible for all State Farm auto claims in Alaska. I established specific claim handling standards in accordance with State Farm guidelines, such as response time to contact insureds.

h. Auto/Fire and Casualty Section Manager, Anchorage AK 11/1995 – 07/2002. I was responsible for all State Farm claims in the State of Alaska including auto, homeowners, commercial, excess policies, and catastrophes. I supervised up to 130 management, claim handlers, and staff personnel. My responsibilities also included catastrophe preparedness for the State of Alaska, including maintaining a catastrophe manual for use in handling and adjusting catastrophes and supervising State Farm's Alaska catastrophe coordinator.

4. During my employment with State Farm I handled or supervised thousands of insurance claims, including between 6 and 12 catastrophe claims. These claims arose under various types of State Farm insurance policies, and I took part in claims investigation, evaluation, negotiation, litigation, and settlement.

5. As State Farm's Fire Reinspector/Trainer for Washington State, I was responsible for the training of all property claim handlers. This included the use of proper estimating

techniques and the proper application of overhead and profit on structural losses, as well as depreciation on both structural and personal property losses.

6. As a State Farm Superintendent, I was responsible for decision-making on coverage, liability, amounts owed, and implementation of State Farm procedures. I directly supervised claim supervisors, claim representatives, estimators, and support staff, handling both first and third party claims. I was also responsible for hiring, training, and developing new employees, as well as the continued training of existing employees.

7. As State Farm's Section Manager for the State of Alaska, I was responsible for all State Farm Insurance claim operations in the State of Alaska. I was the liaison between the State of Alaska and State Farm's home office with respect to claim operations. I was responsible for the setting and maintaining of specific claim handling standards in accordance with State Farm's practices, making certain our claim handling standards met or exceeded industry standards and the obligations of good faith and fair dealing. I was also responsible for ensuring that State Farm's corporate policies, practices, and procedures were followed by every State Farm employee in Alaska. I prepared and reviewed numerous management reports addressing a variety of issues within the claims operation. I was responsible for the supervision of all litigation within the State of Alaska, including the defense of suits against State Farm involving claims for bad faith or extra-contractual damages. I worked closely with State Farm's outside counsel, State Farm's in-house counsel, and with State Farm's General Claims Unit, Extra-Contractual Unit, and Litigation Support Unit, which operate out of State Farm's home office.

8. I also served in a non-paid capacity as the Claim Manager for the Alaska Insurance Guarantee Association from 1996 to 2002. I was responsible for overseeing the

handling and authority of all claims presented to the Alaska Guarantee Association, an organization that paid the claims of defunct insurers.

9. While working for State Farm I attended various State Farm training classes and seminars, including management and advanced management training. These included: Fire and Casualty Claim Training Series, Evaluating Structural Losses, Fire Basic Claim School, Fire Intermediate Claim School, Fire Estimating School, Training for Trainers, Management Orientation, Management I-IV, Management Overview, Supervisory Skills, SST Goal Setting, Performance Management Skills, Managing the PP&R Process, Fire Claim Management Course, Situational Leadership, Strategic Planning, Presentation Excellence, BCC I-IV, Auto Claim School, Bodily Injury Claim Management Course, Physical Damage Claim Supervision, Auto Claim Management Course, Auto Divisional Claim Supt. Workshop, Fire Divisional Claim Supt. Seminar, Field Claim Management, Leadership Principles, XACTIMATE Software Training, First Party Seminar, CAT/CMR Redesign Training, TEACH, Auto Section Manager Forum, and the Fire and Casualty Section Manager Forum. In many cases I not only attended the class as a student but also as an instructor.

10. While I was employed by State Farm I also attended training given other than by State Farm. This included: VALE National Building Loss Evaluation School, ICAR (6 parts), ITTI Advanced Auto I.

11. Some of my accomplishments while at State Farm include:

- a. Selected to be part of committee to reorganize State Farm's Fire and Casualty Claim School.
- b. Received special recognition for the supervision of Alaska wildfires.

c. Selected to be member of Steering Committee for State Farm's Section Manager Forum, a pilot program to train new State Farm Section managers.

12. I have been working as a claims practices expert since November 2002 after approximately eighteen years in the insurance industry. I have been retained in numerous states, including: Alaska, Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin. I have provided affidavits, declarations, and testimony in numerous cases and have been qualified as an expert in both State and Federal Courts.

13. These opinions are based on my experience and training in the insurance industry, my knowledge of statutory and regulatory standards applicable to property and casualty claim handling, my review and knowledge of claim files, claim handling requirements, the many documents I have reviewed in this and other cases, and my review and knowledge of texts, literature, and articles discussing claim handling. I am qualified by training and experience to provide the opinions I am expressing herein.

14. Property and Casualty insurance policies, such as the homeowners insurance policy issued by USAA Casualty Insurance Company covering the Burgers' home at 608 Lewis Ave., Long Beach, Mississippi at the time of Hurricane Katrina, require the carrier to pay the insured for covered losses to the insured structures.

15. It is a well known fact within the insurance industry as well as the adjusting community that if repairs to a dwelling require the services of three or more different "trades"

(such as roofers, drywall, electricians, painters, and carpenters), then the labor involved in the hiring and coordinating of the work of the different trades during the repair process must be completed by someone. The insured can deal with this problem in two ways: the insured can hire a general contractor and pay this person the customary fee (usually 20% of the entire job), or do it himself/herself. Requiring the insured to perform these necessary tasks without compensation does not comply with the insurer's policy obligations. This is why for decades it has been the standard practice in the insurance industry to include general contractor's overhead and profit (O&P) of 20% (10% overhead + 10% profit) with the total cost listed on the estimate.

16. On occasion an insurance company as a general policy will decline to pay this O&P for repair work regardless of the number of trades required to make repairs. Other companies have attempted to leave the question of including O&P in a repair estimate up to the discretion of the adjuster. If, based on the adjuster's subjective opinion, the administrative efforts of a general contractor would be necessary during the repairs, O&P would be included. Under either of these circumstances, however, when there are three or more trades involved in the repair process, failure to include O&P constitutes a breach of the insurer's obligations to the insured and violates industry adjusting practices.

17. I have reviewed the USAA estimate completed by Claim Rep. Kevin Hromas on February 6, 2006, for claim number 152-66-82(W) on the Burger's home. This is a good example of why proper claims practice requires the payment of O&P on repairs involving three or more trades. The Burger home was substantially destroyed by Hurricane Katrina. The insureds claim that most if not all of the damage was caused by wind, a covered peril, but even USAA agreed that the home sustained covered actual cash value damages totaling \$17,963.67.

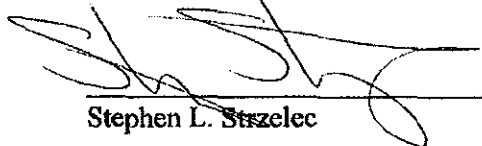
The USAA estimate shows a minimum of 6 trades are required to complete the repairs. Clearly, these repairs require someone to coordinate the work of these different trades. Mr. Burger, if the insurance policy is to be followed, should not be required to provide this labor himself anymore than he should have to apply the roofing or paint without compensation. An insurer should never be allowed to profit from the insured's labor on a covered loss, or reap a bargain at the insured's expense. Doing so is an example of an insurer holding their own financial interests above that of their insured.

18. In my opinion, overhead and profit of twenty percent is a standard expense when estimating the actual cash value or replacement cost value of damages to a structure necessitating repairs that would require three or more trades. As such, remuneration for overhead and profit of twenty percent should be included with an insurer's actual cash value payment to an insured when three or more trades are involved.

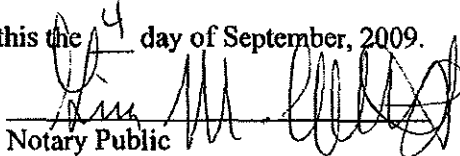
Further your affiant sayeth not.

This the 4<sup>th</sup> day of September, 2009.

Respectfully submitted,

  
Stephen L. Strzelec

Sworn to and subscribed before me, this the 4 day of September, 2009.

  
Notary Public

My Commission Expires:

05/26/13

