

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

FINAL ORDER

Effective: 08-14-07

In the Matter of)
American Family Mutual)
Insurance Company)

Docket No. 3673-SO

SUMMARY ORDER

(Pursuant to K.S.A. 77-501 *et seq.* and K.S.A. 40-2,125)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-2,125 and in accordance with K.S.A. 77-537, the Commissioner hereby admonishes and assesses penalty against American Family Mutual Insurance Company for engaging in unfair claim settlement practices and violating applicable provisions of the Kansas Statutes Annotated and the Kansas Administrative Code.

Findings of Fact

The Commissioner has been shown the following facts:

1. American Family Mutual Insurance Company (“American Family”) located at 6000 American Parkway, P.O. Box 7430, Madison, WI 53783, has been authorized to transact and continuously engaged in transacting insurance business in the State of Kansas since September 4, 1941.
2. On July 20, 2006, the Kansas Insurance Department (“KID”) received a consumer complaint from Mr. Pat Egan (“Mr. Egan”) regarding American Family’s handling of an insurance claim submitted by Mr. Egan.
3. According to Mr. Egan’s complaint, American Family sought to depreciate the labor associated with the removal of a roof on his property which was damaged in a storm.

4. On two separate occasions, American Family depreciated labor for “Remove Tear off, haul and dispose of comp. shingles 20-25 year” in the amounts of \$317.07 and \$23.20, respectively.
5. Mr. Egan held a Dwelling Property 1, Basic Form policy (“Policy”) with American Family which provided “named peril” coverage on an actual cash value basis.
6. The Policy states, “Covered property losses are settled at actual cash value at the time of loss but not more than the amount required to repair or replace the damaged property.”
7. The Policy’s Debris Removal clause provides, “We will pay reasonable expenses you incur to remove debris of covered property following a covered loss from a peril we insure against.” The Policy’s Debris Removal clause does not provide for depreciation for debris removal.
8. On January 16, 2007, KID Staff Attorney Zachary Anshutz sent a letter to American Family requesting American Family’s position and response on several issues associated with Mr. Egan’s claim.
9. American Family responded to Mr. Anshutz’s letter on February 14, 2007 and stated the company was reviewing the information outlined in Mr. Anshutz’s letter.
10. On March 17, 2007, American Family responded to Mr. Anshutz’s January 16, 2007 letter but failed to address any of the inquiries in Mr. Anshutz’s letter.
11. As of March 17, 2007, American Family maintained the position that depreciation of labor was appropriate and Mr. Egan’s claim was settled correctly.

Applicable Law

K.S.A. 40-2,125 provides, in pertinent part

- (b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

K.S.A. 40-2404 provides, in pertinent part:

- (9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are (A) Committed flagrantly and in conscious disregard of such provisions
 - (f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

K.S.A. 40-2407 provides, in pertinent part:

- (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:
 - (1) Payment of a monetary penalty of not more than \$1000 for each and every act or violation, but not to exceed an aggregate of \$10,000, unless the person know or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation...

K.A.R. 40-1-34, Sec. 6(B)

- B. Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.

Thomas v. American Family Mutual Insurance Company, 233 Kan. 775, 666 P.2d 676 (1983).

Branch v. Farmers Insurance Company, Inc., 311 F.3d 1241 (10th Cir. 2002).

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #11 and the Applicable Law above:

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:

1. *Thomas v. American Family* establishes the term “actual cash value” in an insurance policy means the cost of repair or replace property without reduction for depreciation. *Thomas*, 233 Kan. 775 at 778.
2. Mr. Egan’s Policy, the Dwelling Property 1, Basic Form Policy was an actual cash value policy.
3. Accordingly, American Family could not depreciate the cost of labor for tear-off of the damaged roof under the actual cash value policy.
4. The damaged roof on Mr. Egan’s requiring replacement constituted debris and pursuant to the Policy, American Family was required to pay Mr. Egan’s reasonable expense for the removal of debris of covered property if a Peril Insured Against caused the loss.
5. The debris removal provision of the Policy did not allow depreciation of labor costs for removal of the damaged roof.
6. American Family’s depreciation of labor costs for tear-off of the damaged roof in light of Mr. Egan’s actual cash value policy in clear contradiction of the precedent established in *Thomas v. American Family* constitutes a violation of K.S.A. 40-2404(9)(f).
7. American Family’s failure to respond to Mr. Anshutz’s January 16, 2007 letter until February 14, 2007 constitutes a violation of K.A.R. 40-1-34, Section 6B.

8. Pursuant to K.S.A. 40-2407(b), American Family shall pay a monetary penalty, due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order, in the amount of ONE THOUSAND DOLLARS AND 00/100 for its above-stated violation of K.S.A. 40-2404(9)(f).
9. Pursuant to K.S.A. 40-2,125(b), American Family shall pay a monetary penalty, due and payable to the Kansas Insurance Commissioner on or before the 14th day from the date of this Order, in the amount of FIVE HUNDRED DOLLARS AND 00/100 for its above-stated violation of K.A.R. 40-1-34 Section 6B.

NOTICE OF RIGHTS

American Family Mutual Insurance Company (“American Family”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedures Act. If American Family desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If American Family requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event that American Family files a petition for judicial review, pursuant

to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance

Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 15th DAY OF JUNE, 2007, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS**



/s/ Sandy Praeger _____
Sandy Praeger
Commissioner of Insurance

By:

/s/ John W. Campbell _____
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this ___15th ___ day of ___June___, 2007 by causing the same to be deposited in the United States Mail, first-class mail postage prepaid, addressed to the following:

Mr. Alan Collision
Centralized Catastrophe Adjusting Manager
Catastrophe Claim Service Center
PO Box 9436
Minneapolis, MN 55440-9436

_ /s/ Zachary J.C. Anshutz _____
Zachary J.C. Anshutz
Staff Attorney