



Board of Contributors: Insurance Settlement A Victory For Florida Homeowners

By Valorie S. Chavin

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In a landmark class-action settlement reached recently in *Romero v. Florida Peninsula Insurance*, the Florida homeowners' insurance carrier has agreed to refund 50 percent of the deductible that it previously required its insureds to pay when Florida Peninsula invokes the "option to repair" provision in its insurance policies. This resolution represents a significant victory that will affect countless Florida homeowners.

The option-to-repair provision is an obscure but common provision in homeowners' insurance policies. Essentially, the provision does exactly what it says: It gives insurance carriers the option, upon confirming covered losses, to repair policyholders' damaged properties rather than paying the insureds for their losses.

Although the concept might seem relatively straightforward in theory, it's quite the opposite in practice. When invoking the option-to-repair provision, insurance carriers such as Florida Peninsula have imposed onerous conditions on their policyholders. One problematic condition, for example, is that insurance carriers require their insureds to hire general contractors chosen by the insurance carriers, without considering whether the insureds are comfortable with the contractors' intended methods of repair or professional qualifications. More alarming, however, is the insurance carriers' practice of charging their insureds with out-of-pocket deductibles when the insurance carriers invoke the option to repair.

Before Romero, Florida Peninsula required its insureds to pay out-of-pocket deductibles directly to the general contractors of Florida Peninsula's choosing before Florida Peninsula would begin repairing damages that were undisputedly covered. In addition to forcing insureds, who are often already financially vulnerable given the damage to their homes, to come up with significant sums of money to pay these deductibles, the Romeros' attorneys argued that this practice was contrary to the express terms of Florida Peninsula's insurance policies as well as Florida statutes. Specifically, the attorneys maintained that the unambiguous terms and conditions of the policy demonstrate that a deductible is an amount that the insurance carrier may deduct from its total payment to its insureds — not an amount that Florida Peninsula could require its insureds to pay out-of-pocket.

Recognizing that they were not alone, and that Florida Peninsula had a widespread practice of charging its insureds out-of-pocket deductibles when it invoked the option to repair, the Romeros amended their lawsuit to assert class action claims on behalf of all similarly situated insureds who Florida Peninsula was oppressing with its dubious option-to-repair practice. The Romeros thus sought declaration from the trial court in Broward County as to whether Florida Peninsula's insurance policies permit it to mandate that its insureds pay deductibles when the option to repair is invoked rather than making direct payment to insureds for their losses.

The strategic decision to litigate what arose as an individual dispute on a class-wide basis was an instrumental step in protecting Florida homeowners. Class representation enabled a mechanism to resolve this controversy in a manner that would protect potentially thousands of other consumers who may not have been able to seek adequate legal representation on their own. Through class representation, the Romeros and other similarly situated insureds could rest assured that the dispute as to Florida Peninsula's option-to-repair practice would be resolved consistently on a class-wide basis, thus avoiding potentially differing standards of review and inconsistent judicial determinations.

After lengthy litigation, the parties reached a settlement agreement that marks a victory for homeowners throughout Florida. Among other terms, Florida Peninsula agreed it would reimburse its insureds 50 percent of the out-of-pocket deductibles charged where its insureds had already paid the deductibles to Florida Peninsula's contractor, and it would contribute 50 percent of the deductible payment to its contractor where its insureds had not yet paid the out-of-pocket deductibles and there were claims by the contractors against the insureds.

At a time when insurance carriers are exercising option-to-repair provisions with more frequency, the Romero settlement serves as a testament to the protection available to insureds when they enlist the services of effective legal counsel to advise insureds of their rights under their insurance policies. Ultimately, because an insurance policy is, above all else, a contract, the specific terms and conditions of the particular insurance policy at issue will dictate an insured's obligations when an insurance carrier exercises its option to repair. It is important, however, that insureds seek professional guidance when they become concerned that their insurance carriers are overreaching or misrepresenting the terms and conditions of their policies.