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N.C. Supreme Court Gives Green Light for Insurers to Depreciate Labor Costs

NC Bar Association Blog

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Accardi v. Hartford Underwriters Ins. Co., ___ N.C. __ , No. 42A19 (Feb. 28, 2020)

The North Carolina Supreme Court nixed a putative class-action lawsuit against a property insurer and validated the insurer's untested practice of depreciating labor costs under actual cash value ("ACV") policies. A unanimous Court held that an insurance policy provision allowing a deduction for depreciation of labor costs for roof repairs applied to all repairs to the dwelling. Although the amount at issue for the individual plaintiff was only $169.30, the decision has far-reaching implications for the adjustment of first-party property damage claims.

Accardi v. Hartford Underwriting Insurance Company arose out of a hailstorm claim in which plaintiff-homeowner Thomas Accardi sustained damage to his roof, siding and garage. Accardi had a homeowner's policy with Hartford that required Hartford to pay plaintiff the ACV of the damaged property until repairs were completed. If the property were repaired and the repairs cost more than the ACV, then Hartford was required to reimburse Plaintiff for the full amount of the repair costs, minus the deductible.

Hartford estimated plaintiff's repair cost at $10,287.28. Hartford reduced that amount by $3,043.92 for depreciation of materials and labor. Of that amount, $169.30 was specifically attributed to depreciation for labor. Hartford then subtracted Plaintiff's deductible of $500, leaving a payout of $6,743.36. Plaintiff disputed Hartford's deduction for depreciation of labor costs. Purporting to represent a class, Plaintiff sued for breach of contract based on the depreciation of labor costs. The case was heard before Judge McGuire of the North Carolina Business Court. 2018 NCBC 109 (Oct. 22, 2018).

Hartford moved to dismiss the complaint, arguing that the policy allowed depreciation of labor costs. However, neither "ACV" nor "depreciation" was defined in the "Definitions" section of the policy. Plaintiff argued that the policy was ambiguous. However, the trial court looked to an Addendum to the policy titled "Important Information About Your Roof Coverage" to resolve the issue.

> You will note that your policy includes Actual Cash Value (ACV) Loss Settlement for covered windstorm or hail losses to your Roof. This means if there is a covered windstorm or hail loss to your roof, [Hartford] will deduct depreciation from the cost to repair or replace the damaged roof. In other words, [Hartford] will reimburse for the [ACV] of the damaged roof surfacing less any applicable policy deductible.

Relying on this language, Judge McGuire held that the policy was not ambiguous and that this ACV formula applied

to the entire claim, not just roof repairs. The court dismissed the case, and plaintiff appealed directly to the North Carolina Supreme Court under N.C. Gen. Stat. § 7A-27(a)(2).

The Supreme Court affirmed. Writing for the unanimous Court, Chief Justice Beasley expressly rejected Plaintiff's argument that the policy was ambiguous because the clause about depreciation of labor appeared only in an Addendum addressing roof repairs. The Court found that this definition "sufficed" and that it should be "read in harmony with the use" of ACV in other sections of the policy.

The Court also looked at the practical effect of distinguishing between depreciation for materials and depreciation for labor. "The value of a house is determined by considering it as a fully assembled whole, not as the simple sum of its material components. To conclude that labor is not depreciable in this case would 'impose a liability upon the company which it did not assume' and provide a benefit to plaintiff for which he did not pay."

Although the Court's opinion settled a significant (and potentially expensive) issue regarding proper adjustment of property claims, the decision comes up short on analysis. The opinion is only 8 pages long and adopts in full the reasoning of the Business Court with no new scrutiny of the either party's arguments. The Court did acknowledge that courts in other jurisdictions were split on whether depreciation encompassed both labor and materials, but quickly discarded those other cases, stating that they "provide little guidance to this Court because the policy language in each case differs meaningfully, as do the insurance laws of each state."

To me, the result seems driven by a pragmatic concern more than anything else. The policy gave an example of how ACV applies to roof repairs, so it's logical to allow the insurer to use the same method to calculate the value of other repairs to the home in determining how much to pay on a loss. If insurers were able to deduct depreciation for materials, but not for labor, it would complicate the process. It's much easier to apply an across-the-board deduction for depreciation on the entire claim.

On the other hand, it's hard not be bothered by the fact that this ACV language appeared only in an Addendum to the policy specifically addressing roof repairs. The purpose of the Addendum was to provide an illustration of how a payout on roof repairs would be determined. In my view, it's not truly a definition. However, both the trial court and the Supreme Court adopted it as a definition and then applied it to all damages that the plaintiff had claimed. The depreciation formula not only reduced the amount the plaintiff could recover for his roof repairs, but it also decreased the total amount he could receive to repair other portions of the house. If the insurer had intended for depreciation of labor costs to be applied to all elements of a property claim, then it could have included a specific definition of ACV in the "Definitions" section of the policy and made clear that it applied to all elements of a property claim. Instead, the insurer just provided an example of how ACV would be calculated in the section of the policy addressing roof repairs. The Court then took this example and extrapolated it to other portions of the loss to hold that depreciation of labor costs generally was permitted.

Does this case represent a unique ruling, based on the wording of this particular policy? Or will it be cited more widely as precedent to argue that a calculation that reduces an insurer's payout on a loss in one part of an insurance policy should be imported to another part of the policy that is silent on the issue? Only time will tell.

Plaintiff was represented by Daniel Bryson, J. Hunter Bryson, and Gary E. Mason of Whitfield Bryson & Mason, LLP

(Raleigh, NC and Washington, D.C.) and Gary Klinger of Kozonis & Klinger (Chicago, IL).

Defendant was represented by Stephen Feldman of Ellis & Winters LLP (Raleigh, NC) and Kim E. Rinehart and David R. Roth of Wiggin & Dana LLP (New Haven, CT).

Amicus briefs were filed on behalf of United Policyholders by Mark R. Sigmon and Amy Bach of Sigmon Law; and on behalf of American Property Casualty Insurance Association by Roger A. Peters II of Robinson & Cole LLP.

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