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NC Business Court Weighs In On 'Actual Cash Value'

NCBarBlog

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Accardi v. Hartford Underwriters Ins. Co., 2018 NCBC 109 (Oct. 22, 2018)

A storm damage claim with only $169.30 in controversy has set the stage for a battle over actual cash value calculations. In a win for insurance carriers, Business Court Judge Gregory McGuire dismissed a putative class-action lawsuit against Hartford, holding that its practice of depreciating labor costs when determining actual cash value on a first-party property loss claim was consistent with the policy's language and North Carolina public policy.

The dispute began after a hail storm damaged Plaintiff Thomas Accardi's home in Fuquay-Varina on September 1, 2017. Specifically, the roof, siding and garage sustained damage that required repairs. Accardi had a homeowners insurance policy with Hartford that provided coverage for the damage. The policy was a fairly common hybrid ACV/replacement cost policy 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 amount paid for the ACV, then Hartford was required to reimburse Plaintiff for the full amount of the repair costs, minus the deductible. Hartford did not have to make any additional payments to the Plaintiff if no repairs were performed. After assessing Plaintiff's house, Hartford estimated that the total repair or replacement cost for the damage was $10,287.28. Hartford reduced that amount by $3,043.92 for depreciation, which included depreciation not only for the building materials, but also for labor and sales tax on the materials. Of that amount, $169.30 was specifically attributed to depreciation for the labor required to repair the home. Hartford then subtracted Plaintiff's deductible of $500, leaving a payout of $6,743.36. Plaintiff did not make repairs to the home (and therefore was not entitled to recover additional repair costs), but he took issue with Hartford's deduction of $169.30 for depreciation of labor costs. Plaintiff contended that Hartford breached its indemnity obligation by improperly depreciating the labor costs when calculating ACV because labor does not depreciate in value over time.

On February 20, 2018, Plaintiff filed suit in Wake County Superior Court, claiming damages “in an amount greater than $100.00.” Plaintiff also sought class-action certification on the basis that this was a “prototypical case” in which Hartford used “systemic adjusting practices … to understate, and under-pay, the actual cash value of property damage suffered by its insured.” The case was designated as a mandatory complex business case and assigned to Judge Gregory P. McGuire of the North Carolina Business Court.

Hartford moved to dismiss the Plaintiff's complaint, arguing that depreciation of labor costs on an ACV claim was

allowed by the insurance policy. Surprisingly, neither ACV nor depreciation was defined in the "Definitions" section of the policy, which prompted Plaintiff to argue that the policy was ambiguous and required the Court to deny the Motion. However, the Court took a closer look at the policy and found that ACV was actually defined in an Addendum to the policy titled, "Important Information About Your Roof Coverage."

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 damages roof surfacing less any applicable policy deductible.*

The Court relied heavily on this Addendum to hold that the policy was not ambiguous and that it allowed Hartford to depreciate labor costs when determining the ACV of Plaintiff's loss. The Court expressly rejected Plaintiff's argument that "labor does not depreciate in value over time" and therefore could not be depreciated in valuing Plaintiff's claim. Acknowledging that there were cases going both ways from other states, the Court found that Hartford's policy clearly allowed depreciation for an ACV claim and that the policy did not differentiate between depreciation for materials versus labor costs: "In this Court's view, it does not make logical sense to separate the cost of labor from that of physical materials when evaluating the depreciation of a house or its component parts. The labor costs must be considered in determining the current value." To adopt Plaintiff's position, the Court reasoned, would effectively convert an ACV policy into a replacement value policy, even though Plaintiff did not make any repairs. The Plaintiff would "receive a windfall" and Hartford would be required to provide increased coverage without receiving additional premiums. As a result, the Court held that Hartford had not breached its contract with the Plaintiff and dismissed the case with prejudice.

The opinion was issued on October 22, 2018, so Plaintiff still has plenty of time to appeal. Under N.C. Gen. Stat. § 7A-27(a)(2), Plaintiff has an automatic right of appeal to the state Supreme Court. I'm betting that we'll see this one on the Supreme Court's docket in 2019.

Plaintiff is represented by Daniel Bryson, Hunter Bryson, Gary Mason, and Jennifer Goldstein of Whitfield Bryson & Mason, LLP (Raleigh, NC and Washington, D.C.); Gary Klinger of Kozonis & Klinger (Chicago, IL); and Daniel Johnson of Waskowski Johnson Yohalem LLP (Chicago, IL).

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

Related People





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