

Appraisal Case Law Update
Appraisal Roundtable Forum - March 22, 2014

The actions or inactions of the Appraisal Panel have a direct correlation to these cases.

Arkansas - Depreciation

Adams v. Cameron Mutual Insurance Company, 2013 Ark. 475 - Ark: Supreme Court 2013
http://scholar.google.com/scholar_case?case=5313071569135997535

The court concluded that "we hold that ***the costs of labor may not be depreciated*** when determining the actual cash value of a covered loss under an indemnity insurance policy that does not define the term 'actual cash value.'" [emphasis added]

See also: <http://www.insuranceclassactions.com/property-insurance/class-action-on-depreciation-of-labor-on-property-insurance-claims-new-arkansas-supreme-court-decision/>

California - Depreciation

California Code of Regulations Section 2695.9(f)(1)

". . . the expense of labor necessary to repair, rebuild or replace covered property is not a component of physical depreciation and shall not be subject to depreciation or betterment."

See Also: <http://www.propertyinsurancecoveragelaw.com/2013/12/articles/insurance/in-california-labor-costs-are-not-subject-to-depreciation-when-calculating-actual-cash-value/>

Florida - Depreciation

Goff v. State Farm Florida Ins. Co., 999 So. 2d 684 - Fla: Dist. Court of Appeals, 2nd Dist. 2008
http://scholar.google.com/scholar_case?case=16329246785937192105

Holding under Florida law that depreciation of overhead and profit is allowed in determining actual cash value.

See Also: <http://www.floridainsuranceblog.com/2009/02/articles/insurance-coverage-homeowners/2nd-dca-rules-that-it-is-appropriate-for-state-farm-to-depreciate-overhead-and-profit-on-homeowners-replacement-cost-policy/>

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Consult with an attorney for any specific legal advice.

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Texas – Depreciation of Labor

Tolar v. Allstate Texas Lloyd's Co., 772 F. Supp. 2d 825 - Dist. Court, ND Texas 2011

http://scholar.google.com/scholar_case?case=13998540911437256038

“. . . "replacement costs" is defined as a composite of all reasonably foreseeable repair or replacement costs, **including labor**, materials, and sales tax. If the TDI intended to separate GCOP and sales tax from repair costs and property value when calculating depreciation, the Policy would have expressly articulated which components of "replacement cost" were exempt from depreciation." [emphasis added]

See also: <http://www.propertyinsurancecoveragelaw.com/2012/11/articles/insurance/are-overhead-profit-and-sales-tax-subject-to-depreciation-in-texas/>

Alabama – Determination of Causation

Rogers v. State Farm Fire and Casualty Co., 984 So. 2d 382 - Ala: Supreme Court 2007

http://scholar.google.com/scholar_case?case=16367104542015168841

The insured suffered damage to his home as the result of a tornado. The insured and State Farm were unable to agree on an amount of damages and State Farm invoked an appraisal clause in the policy. As a matter of first impression, the Alabama Supreme Court held that ***an appraiser under a homeowners' insurance appraisal clause was not entitled to determine issues of causation.*** [emphasis added]

See also: <http://tmclawyers.com/desipapers/dvt%20bad%20faith.pdf>

Florida - Appraisal of Ordinance & Law

Jossfolk v. United Property & Casualty Insurance Company, Fla: Dist. Court of Appeals, 4th Dist. 2013

http://scholar.google.com/scholar_case?case=3386977802639537686

Following payment of an appraisal award which allowed for replacement of two squares of tile roof for hurricane damage, the insured applied for roofing repair permit but was denied because repair exceeded code percentage requiring replacement of entire roof. The court held the insured was entitled to appraisal for Law & Ordinance coverage. ***Ordinance and Law is not recoverable until it is incurred and thus could not have been appraised at the time of the original appraisal.*** [emphasis added]

See also: <http://www.floridainsurancelawattorney.com/2013/jossfolk-v-united-property-and-casualty-ins-co.html>

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Florida – Itemization of Appraisal Award / Enforcing and Modifying Appraisal Awards

First Protective Ins. Co. v. Hess, 81 So. 3d 482 - Fla: Dist. Court of Appeals, 1st Dist. 2011

http://scholar.google.com/scholar_case?case=3969770626095575931

Hess filed a claim with First Protective after her home was burglarized. The insurer demanded appraisal to resolve the disagreement over the amount of loss for the claim. The appraisal panel issued an award to Hess in the amount of \$130,011.53. The award was distributed as follows:

\$22,499.95 under Coverage "A" Building & \$107,311.58 under Coverage "C" Personal Property

The appraisal award did not include an itemization of the personal property and the corresponding values.

The insurer deducted prior payments and the policy deductible from the amount of the award and also applied policy limitations for jewelry, cash and other property when calculating the net payment. After those deductions, the insurer paid Hess \$28,994.36 for personal property. Hess filed a complaint requesting the trial court to confirm the original appraisal award. The trial court found in favor of Hess.

See also: <http://www.propertyinsurancecoveragelaw.com/2011/12/articles/insurance/florida-appellate-court-upholds-the-sanctity-of-the-appraisal-process/>

Florida – Overhead & Profit

Trinidad v. Florida Peninsula Ins. Co., 121 So. 3d 433 - Fla: Supreme Court 2013

http://scholar.google.com/scholar_case?case=16425288517897931578

An insurer's required payment under a replacement cost policy includes overhead and profit, where the insured is reasonably likely to need a contractor for the repairs, because the insured would be required to pay costs for a general contractor's overhead and profit for the completion of repairs in the same way the insured would have to pay other replacement costs he or she is reasonably likely to incur in repairing the property. Additionally, the policy was deemed not to require the insured to actually incur expenses for the repairs in order to be entitled to payment for costs of overhead and profit.

See also: <http://boehmbrown.com/?p=1089>

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Florida – Appraisal Award Form Lacked Clarity

Sunshine State Insurance Co. v. Davide, Fla: Dist. Court of Appeals, 3rd Dist. 2013
http://scholar.google.com/scholar_case?case=11891070160792757169

Issue: Attorney fees were awarded for enforcement of an appraisal award when an insurer unilaterally, and improperly, deducted depreciation. The resultant award for attorney fees of \$135,000.00 being almost three times the recovery for improperly withheld depreciation, in the amount of \$49,000.00

Underlying Facts: The case involves a claim for damage caused by Hurricane Katrina on August 25, 2005. The matter went to appraisal with an award being rendered on November 2, 2006, by the Umpire and the policyholder's appraiser. Sunshine was unclear as to whether depreciation should be deducted from this award. ***Having failed to get clarification from the Umpire***, Sunshine unilaterally decided to issue payment for the appraisal award after deducting depreciation. [emphasis added]

See also: <http://boehmbrown.com/?p=768>

Texas - Limits of Appraisal Panel Authority

TMM Investments Ltd. v. Ohio Casualty Insurance Co. Court of Appeals, 5th Circuit 2013
http://scholar.google.com/scholar_case?case=15291231394854718880

On appeal, the Fifth Circuit agreed with the district court's conclusion that the umpire had exceeded his authority in omitting the HVAC damages from the appraisal award. Citing several Texas appraisal cases, the court observed that "***unless there is a discrepancy between the findings of the two appraisers appointed by the parties, there is no duty for the umpire to perform.***" [emphasis added]

There was no dispute between the party appraisers with respect to the amount of damage the HVAC system had sustained. However, while the Fifth Circuit recognized that the umpire had overstepped the bounds of his authority, the court determined that this error did not justify "throwing out" the entire appraisal award.

See also: <http://www.zelle.com/news-publications-249.html>

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