

Insurer May Depreciate Labor Costs In Calculating Actual Cash Value, Rules Nebraska Supreme Court

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As discussed in our [January](#) and [February 2016 Alerts](#), courts disagree as to whether labor costs can be depreciated for the purposes of calculating actual cash value (“ACV”) under a property policy. The Arkansas Supreme Court has ruled that state law prohibits the depreciation of labor costs, even where the policy expressly allows for such depreciation, whereas the Minnesota Supreme Court has ruled that the question of depreciation should be left to the trier of fact. Last month, the Nebraska Supreme Court weighed in, ruling that where a policy is silent on the issue, an insurer may consider the depreciation of labor costs in determining the ACV of a covered loss. *Henn v. American Family Mutual Ins. Co.*, 295 Neb. 859 (Neb. Feb. 17, 2017).

Although Nebraska courts have used various approaches to calculate ACV, the Nebraska Supreme Court noted that all approaches are based on the principle that “actual cash value is the value of the property in its depreciated condition.” Therefore, the court concluded that:

The unambiguous definition of actual cash value is a depreciation of the whole. As such, the insured is not underindemnified by receiving the depreciated amount of both materials and labor. We agree with American Family that a payment of actual cash value that included the full costs of labor would amount to a prepayment of unearned benefits.

In so ruling, the court noted that allowing consideration of depreciated labor costs is consistent with Nebraska’s “broad evidence rule,” which allows “all relevant facts and circumstances to be considered.”

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