

Policy Language Or No, You Can't Depreciate Labor In Ark, *Law360*

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The Arkansas Supreme Court in a 4-2 decision^[1] became the first court in the nation to hold that, as a matter of public policy, labor cannot be depreciated when calculating the actual cash value of a property damage claim, despite policy language to the contrary. *Shelter Mutual Insurance Co. v. Goodner*, 2015 Ark. 460 (Dec. 10, 2015). What is particularly unusual about *Shelter* is the fact that the court did not cite to any legislative authority as the basis for its public policy rationale when it voided the policy language at issue.

In almost every jurisdiction in the United States, courts have opined upon the esoteric question of how to calculate the actual cash value of a covered loss. However, despite the plethora of court decisions, many questions remain unanswered. One of these open questions is whether or not labor costs should be depreciated along with material costs when calculating the actual cash value.

Oklahoma was the first state supreme court to address this issue in *Redcorn v. State Farm Fire & Casualty Co.*, 55 P.3d 1017 (OK 2002). One of the most widely cited opinions on both sides of this question, the certified question in *Redcorn* was framed as follows: “[i]n determining actual cash value, using the replacement costs less depreciation method, may labor costs be depreciated?” *Id.* at 1018. The *Redcorn* court noted at the outset that the policy at issue did not define the term actual cash value, and that the insurer arrived at the actual cash value of the covered loss by utilizing a replacement cost less depreciation methodology as permitted by Oklahoma law. *Id.* at 1019. The plaintiff insured argued that, “depreciation of labor costs is inconsistent with the principle of indemnity” and, therefore, only material costs may be depreciated but not labor costs. *Id.* at 1020.