



KD Insurance Law Alert: Can You Depreciate Labor? A Divided Arkansas Supreme Court Says No.

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The Arkansas Supreme Court in a 4-2 decision (with 3 justices not participating) 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 clear policy language to the contrary. *Shelter Mut. Ins. Co. v. Goodner*, 2015 Ark. 460 (December 10, 2015).

Previously, the Arkansas Supreme Court held that when a policy does not contain a definition of actual cash value, an insurer may not depreciate the costs of labor when calculating the actual cash value of a covered loss. Adams v. Cameron Mutual Insurance Co., 2013 Ark. 475. Unlike the policy considered in Adams, the Court in Shelter was confronted with a policy that did contain a precise definition of actual cash value (defined as "total restoration cost less depreciation") as well as definitions of the terms "restoration cost" and "depreciation." The insurer in Shelter argued unsuccessfully that the holding in Adams was limited to those cases involving policies where the term actual cash value was left undefined.

However, the majority of the Court interpreted Adams as articulating a broader statement of Arkansas law; to wit: that "depreciation of labor violates established principles of indemnity." Accordingly, clear policy language defining actual cash value to include depreciation of labor costs was voided as a matter of public policy.

In a well-reasoned dissent, the minority characterized the majority's opinion as "vague at best" and agreed with the insurer's argument that the holding in Adams was only applicable when an insurance policy failed to define actual cash value. The dissent also rejected the public policy argument relied upon by the majority to bypass clear policy language to the contrary, noting that this was not an area of paramount public concern where the court should create public policy independently of the legislature.