



January 16, 2004

PENNSYLVANIA SUPERIOR COURT UPHOLDS DEPRECIATION OF PARTIAL LOSSES

BACKGROUND

The Superior Court of Pennsylvania recently ruled, in *Kane v. State Farm, et al.*, 2003 PA. Super. 502, that in partial loss claims, depreciation may be withheld in two circumstances:

- If the policy defines “actual cash value”, or
- When the policy does not explicitly define “actual cash value”, if the policy conditions the replacement cost payment upon the actual repair or replacement of the damaged property (the “until repair or replacement is completed” wording).

This case was a class action suit in which the court reviewed various insurers’ policies. The court found that the policies that defined “actual cash value” to include deduction for depreciation allowed the insurer to deduct depreciation until repair or replacement was completed.

For those policies that did not include a specific definition, the court reached the same conclusion, for all but one policy, when the policy clearly provided that the claim is settled on an actual cash value basis “until” or “unless” the repair or replacement is completed.

The one exception was a policy endorsed with a “guaranteed replacement cost endorsement” that did not, in the endorsement itself, include the “until” or “unless” stipulation. The court concluded that this created an ambiguity with the underlying policy wording.

MSO® POLICIES

MSO property policies include both provisions that the court found favorable.

The replacement cost provisions in both the personal and commercial policies’ Loss Settlement Conditions include a clear “hold back” provision that conditions the payment upon the completion of repair or replacement.

The MSO personal and commercial policies have historically contained a definition of “actual cash value” which allows for depreciation. MSO policies are, in fact, the only bureau forms that include such a definition. This allows companies to apply depreciation as well as other considerations when settling claims on ACV.

FUTURE ACTION

As this is a Superior Court decision, it is still subject to appeal.

QUESTIONS

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