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PERSPECTIVES

Defining Indemnity in the Context of Actual Cash Value Calculations

2nd Edition

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

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> "The basic premise of traditional property insurance is the concept of indemnity. The insured who suffers a covered loss is entitled to receive full, but not more than full, value for the loss suffered, to be made whole but not be put in a better position than before the loss."

In re: State Farm Fire & Cas. Co., 872 F.3d 567, 573 (8th Cir. 2017).

The concept of indemnification for loss is at the core of property insurance reimbursement. Insurance policies are designed to put the policyholder in the same position he or she would have been in had no loss occurred.

In the modern era, however, insurers have created property policies that not only indemnify, but go beyond making a policyholder "whole," to allowing betterment. These insurance products allow policyholders to not only collect "new for old," but also offer protection against the additional costs required to comply with local building codes and ordinances. The ability to collect the difference between indemnity dollars and betterment dollars is typically subject to certain policy requirements, the most common of which is that the replacement must actually be completed, typically within a prescribed amount of time, and proof of costs must be presented.

Under such "Replacement Cost Policies," the insurer is often obligated to make an upfront payment, prior to replacement, based on the estimated Actual Cash Value (ACV) loss. At its core, ACV is intended to be a monetary calculation of an amount which will result in indemnification of a policyholder. But, there is no one rule or law which is consistently applied for the calculation of ACV. In fact, in recent years, certain states have attempted to limit the ACV calculation by disallowing depreciation of labor costs used to install building materials, resulting in ACV calculations that bear little resemblance to indemnification.

This paper will review the various methods by which Replacement Cost Value (RCV) and ACV losses are calculated, discuss issues that arise in application to certain types of losses, and provide a state-by-state review of relevant case law effecting the calculation of ACV.

ACV, THE PRINCIPLE OF INDEMNITY, AND METHODS OF CALCULATION

Fundamental to the concept of insurance is the principle of indemnity, the idea that a policyholder should be made whole after a loss. Indemnity comes from the Latin word "*Indemnus*," which is defined as "security against hurt, loss or damage."[2] The concept of indemnity as it relates to insurance is to be unharmed or put back in the position that a policyholder would have been in had no loss occurred.

ACV is a valuation principle that typically seeks to determine the correct amount of monetary indemnification needed to return a policyholder to the condition he or she was in prior to the insured property being damaged – no better, no worse. Accurate determination of indemnity generally (but not always) requires:

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[2] Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/indemnity (last visited October 15, 2017).

1. That the scope of loss and cost to repair or replace the damaged property are correctly calculated, and

2. That the extent to which age, wear, tear, deterioration, obsolescence, and other factors, which effect the value of the damaged property prior to the loss, are appropriately accounted for.

REPLACEMENT COST AND LIKE KIND AND QUALITY IN REAL PROPERTY LOSSES

It is generally accepted that in the valuation of most property insurance losses, Replacement Cost (RCV) is defined as the cost to repair or replace property, at the date and time of loss, with materials of like kind and quality. Property insurance policies rarely, if ever, define the term "like kind and quality."

Typically, the scope of loss under a RCV policy assumes that replacement of damaged building materials, which existed at the time of loss, will be replaced with the same material, assuming that the material is available. In older structures, or where building materials may be either obsolete or not legally available due to local laws and ordinances, or because materials have been deemed unsafe, it can often be difficult to find material which duplicates that which was damaged or destroyed in a loss.

Some insurance policies have "functional replacement cost" language, which calculates a loss based on the amount it would cost to repair or replace a building or its components using materials that are functionally equivalent to obsolete, antique, or custom methods and materials.[3]

When determining whether substitute building materials represent like kind and quality, and are functionally equivalent, the following simple four step test can and should be used to determine the appropriateness of the functional replacement, and whether betterment results:

1. Will substitute material likely be used in the repair or replacement of damaged material? If yes, then

2. Will the substitute material result in equivalent functional utility as the damaged material? If yes, then

3. Will the substitute material result in a decrease in the remaining useful life of the building or its components? If no, then

4. Will the substitute material result in a decrease in the property's market value or rental value? If no, then the substitute material meets the test of like kind and quality.

DEPRECIATION

In the property valuation world, including insured property losses, depreciation is nothing more than a loss in value. The loss in a property's value can be realized 3 ways:

1. Physical deterioration;

2. Functional obsolescence; or

3. External or economic obsolescence.

During the lifespan of a property, depreciation can be curable[4] or it may be incurable.[5] Physical depreciation typically accounts for the effect of age and deterioration of a building or its components. Depreciation studies are undertaken using several different methods, but the most common method in insurance losses uses the following calculation regardless of whether the deterioration is curable or not:

- Determine whether the scope of loss and cost to repair or replace results in betterment.

- Determine the effective age and expected useful (or remaining useful life) of the damaged component.

[3] Some policies define "functional replacement cost" as the cost to repair or replace a damaged building with less costly common construction materials and methods which are functionally equivalent to obsolete, antique or custom construction materials and methods used in the original construction of the building. In such policies, functional replacement cost is not limited to obsolete, antique, or custom construction materials. Rather, the functional replacement applies to any construction materials or methods used in the original construction, and the insurer can consider any less costly construction materials and methods, so long as they are functionally equivalent to the materials repaired or replaced. See *Matchniff v. Great Northwest Ins. Co.,* 224 F. Supp.3d 1119, 1128-29 (D. Or. 2016).

[4] For example, an old worn out roof can be replaced with a new roof.

[5] Incurable depreciation is typically the effect of age and deterioration on building components that are not typically replaced during the life of the structure.

- Develop a ratio of effective age to expected useful life (or remaining useful life).

- Calculate the percentage of depreciation (or dollar value of betterment) for the item and deduct it from the RCV loss value.

The vast majority of insurance losses use this "RCV loss minus physical deterioration/depreciation" method to determine ACV, particularly in partial losses.

Functional obsolescence is the effect of a flaw in the structure, materials or design of the building. This type of depreciation is calculated using several methods, but the measurement of functional obsolescence is most commonly used in a market value calculation where the deduction is taken for the purposes of determining value using the so called "Cost Approach" where the land value and depreciated value of the building and site improvements are added together to determine the market value of a structure. Functional obsolescence in an insurance loss can be measured several ways, but typically the following methods are considered.

1. Deduction for obsolete building materials and methods. For example, assume a loss is sustained to a 75-year-old warehouse which was constructed of solid brick bearing walls. The modern method of constructing an equivalent warehouse might be to construct the walls with brick and concrete block at a substantially lower cost. The difference in cost would be one of the measures of obsolescence. Of course, if the RCV loss were calculated using the functional (and likely) replacement of the obsolete material/ building method instead of the duplicate material (even it is available) there would be no need to take the deduction. The virtue in this case of determining the RCV loss with substitute material, is that the resultant loss calculation is often the best indicator of the amount likely to be expended to make repairs to a structure.

2. Now assume that in our warehouse building above, the insulation factor of the brick and block wall results in a building which is more energy efficient and results in a lower cost to heat. In a market value calculation, the appraiser would look at the cost of energy savings by using the legally permissible (and likely to be used) building materials/methods, and "capitalize" the expense savings into an indication of the market value differential. This method is most likely to be used in the depreciation of an insurance loss where market value is considered in the ACV determination.

External or economic obsolescence reflect the effect on value caused by factors external (outside) of the subject building. External obsolescence is related to locational and economic factors in the marketplace, and thus its calculation typically requires a real estate appraisal, which looks at locational, economic and other factors which have a bearing on overall depreciation.

THE THREE METHODS TO DETERMINE ACV

The determination of ACV is jurisdiction specific, however, there are three methods:

1. Replacement (or Repair) cost minus depreciation.

2. Fair Market Value, in which the pre-loss and post loss market value of the structure (without considering the site) is determined, and the difference (loss in value) is considered the ACV. The cost of debris removal is typically added back in the overall ACV determination.

3. The Broad Evidence Rule, in which all factors having a bearing on indemnity can be considered but are not given equal weight. The most widely used factors in broad evidence calculations are replacement cost minus depreciation and market value. The cost of debris removal is typically added back in the overall ACV determination.

REPLACEMENT COST MINUS DEPRECIATION

While it is the minority approach in terms of judicial application,[6] the method most commonly used by insurers and adjusters in determining ACV for partial, and many total, losses is replacement cost minus depreciation. Depreciation is generally "defined as a 'decline in an asset's value because of use, wear, obsolescence, or age.'"[7] Typically, a percentage deduction is taken from replacement cost to account for physical deterioration. In certain circumstances, functional obsolescence is considered in this type of calculation, but can be moot if the RCV loss is calculated using modern materials, means and methods, as described above in the like kind and quality test.

With respect to physical deterioration, the most accurate method to calculate depreciation is to consider the cost to cure, which determines the cost of making replaceable building components "as new." For example, assume that a roof has a 25-year life expectancy. If a loss occurs 20 years after installation, the roof may be considered to have a remaining useful life of 5 years before it would otherwise have required replacement. A calculation that is typically applied to determine the ACV of the roof might be as follows:

Cost to Replace roof	$100,000
Expected Life (years)	25
Age (years)	20
Percent	80%
Amount of Depreciation	$80,000
ACV	$20,000

Notice in the above example that the 5 years of remaining useful life resulted in an "age to life" ratio of 20/25. A ratio of age to life results in the depreciation of the building component being on a straight line and assumes that the rate of deterioration is the same in each year of life. Some theories of physical depreciation use "curves" which are established and presented in tables that reflect the notion that depreciation of a building or its components does not deteriorate at an even and constant rate over its life.[8] Actual age and expected life are typically used in these calculations.

The preferential method of determining physical depreciation is utilizing "effective" age as opposed to "actual age". From the perspective of this building consultant, effective age is a far more accurate method, in that it allows the professional who is determining depreciation to make an informed judgment based on the maintenance of a component, or lack thereof. For instance, certain building components can survive well beyond estimates of expected life, or if they are poorly maintained, can cease to have value prior to their expected life. In any ACV calculation the purpose is to objectively determine the "amount to indemnify" a policyholder for a loss.

FAIR MARKET VALUE

Only a minority of states adopt a strict Fair Market Value approach to ACV, but this is perhaps the most straightforward method. In the event a property suffers a loss, it is assumed that indemnity can be established by determining the effect that the loss had on the market value of the property. "Thus when the policy provides for 'actual cash value' it means 'fair market value,' which appraisal term is uniformly defined as 'the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied.'"[9]

"In case of a partial loss, the market value approach looks to determination of the difference between the respective market values of the structure before and after the [loss]."[10] If a building sustains a total loss, the market value of the property pre-loss, plus the cost to clear debris, less the remaining land value is a measurement which can simply determine indemnity. In a partial loss, in most cases, the diminution of value pre-loss versus post-loss can typically be determined by the cost to repair or replace the building

[6] See Appendix for a state-by-state review of valuation rules.
[7] Trinidad v. Florida Peninsula Ins. Co., 121 So. 3d 433, 438 (Fla. 2013) (quoting Black's Law Dictionary 506, 1690 (9th ed. 2009).
[8] The Marshall Value Service, a well-known publication used to determine replacement cost of structures uses curves to recommend depreciation in its publication. Marshall Valuation Service. Marshall & Swift/Boeckh, LLC, Published Quarterly.
[9] American Reliance Ins. Co. v. Perez, 689 So. 2d 290, 291 (Fla. 3d DCA 1997) (quoting City of Tampa v. Colgan, 163 So. 577, 582 (Fla. 1935)).
[10] Elberon Bathing Co., Inc. v. Ambassador Ins. Co., 389 A.2d 439,443 (N.J. 1978).

components which are damaged, less a deduction for depreciation.

In certain cases, even a partial loss will exceed market value. In such cases, although the cost to repair the building may need to be determined to establish a maximum payment under the RCV provision, the starting point for ACV determination will be simply to look at the market value of the entire property.

THE BROAD EVIDENCE RULE

The Broad Evidence Rule is the majority rule; it is the rule for judicial application in nearly half of the states. The Broad Evidence Rule is, however, perhaps the most difficult of the rules to apply because it generally requires that the determination of ACV consider "every fact and circumstance which would logically tend to the formation of a correct estimate of the loss."[11]

The Broad Evidence Rule bases ACV on an analysis of different factors, typically including, but not limited to:

- RCV minus depreciation;
- Market value of the structure;
- Measurement of pre-loss vs. post-loss market value of the property; and
- Value in use to the insured, where the value to the insured or its business is different than the result from the above measurements.

The broad evidence determination does not require that equal weight be given to any one factor, but instead requires that ACV be determined taking into consideration all of the factors, with the ultimate determination being based on the facts and circumstances unique to any given property loss. One of the best explanations of the broad evidence rule can be found in the New Jersey Supreme Court's decision in *Elberon Bathing Co. v. Ambassador Insurance Company:*

> We find the rationale of the broad evidence rule to be compelling. It requires the fact-finder to consider all evidence an expert would consider relevant to an evaluation, and particularly both fair market value and replacement cost less depreciation. If the appraiser finds it appropriate under the particular circumstances he may, after weighing both factors, settle on either alone.[12]

Thus, "the broad evidence rule concerns not only the type of evidence that a fact-finder may consider, but also the fact-finder's discretion in assigning importance to the evidence. Under the broad evidence rule, fact-finders may place 'such weight as they deem proper' on any factor relevant to the value of the destroyed property."[13]

APPLICATION OF ACV CALCULATIONS TO PARTICULAR LOSSES

Following is a discussion of the calculation of ACV in certain loss scenarios.

The "California Conundrum"

California, a market value state, has created what can best be described as a conundrum as regards the determination of ACV. Cal. Ins. Code § 2051 defines actual cash value as:

> (a) Under an open policy, the measure of indemnity in fire insurance is the expense to the insured of replacing the thing lost or injured in its condition at the time of the injury, the expense being computed as of the time of the commencement of the fire.

[11] McAnarney v. Newark Fire Ins. Co., 159 N.E. 902, 905 (N.Y. 1928).
[12] Elberon, 389 A.2d at 444.
[13] SR Intern. Bus. Ins. Co. Ltd. v. World Trade Ctr. Properties, LLC, 445 F. Supp. 2d 320, 342 (S.D.N.Y. 2006) (quoting Sebring v. Firemen's Ins. Co. of Newark, N.J., 227 A.D. 103, 104 (N.Y. App. Div. 1929).

(b) Under an open policy that requires payment of actual cash value, the measure of the actual cash value recovery, in whole or partial settlement of the claim, shall be determined as follows:

1. In case of total loss to the structure, the policy limit or the fair market value of the structure, whichever is less.

2. In case of a partial loss to the structure, or loss to its contents, the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation based upon its condition at the time of the injury or the policy limit, whichever is less. In case of a partial loss to the structure, a deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during the useful life of that structure.

Further, as set forth in Title 10 § 2695.9 of the California Insurance Code of Regulations, depreciation is required to be itemized and in the event of a partial loss, the labor cost implicit in the RCV loss calculation is not subject to depreciation:

(f) When the amount claimed is adjusted because of betterment, depreciation, or salvage, all justification for the adjustment shall be contained in the claim file. Any adjustments shall be discernable, measurable, itemized, and specified as to dollar amount, and shall accurately reflect the value of the betterment, depreciation, or salvage. Any adjustment for betterment or depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property and apply only to property normally subject to repair and replacement during the useful life of the property. The basis for any adjustment shall be fully explained to the claimant in writing.

1. Under a policy, subject to California Insurance Code Section 2071, where the insurer is required to pay the expense of repairing, rebuilding or replacing the property destroyed or damaged with other of like kind and quality, the measure of recovery is determined by the actual cash value of the damaged or destroyed property, as set forth in California Insurance Code Section 2051. Except for the intrinsic labor costs that are included in the cost of manufactured materials or goods, 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.

The "California Conundrum," in the opinion of the authors, makes no practical sense under an indemnity theory. On the one hand, if a building is a total loss, then the ACV is determined using the market value method. Few could argue that this is not the textbook definition of indemnity. On the other hand, if the building is a partial loss, the regulation governing how to determine ACV results in betterment in almost all instances.

For example, assume a residential structure that is 40 years old, has a 25-year-old roof and 15-year-old air conditioning compressors, virtually at the end of their useful lives, that are damaged in a lightning strike. The market value determination[14] of the property prior to the loss would consider the cost to cure the defects (in other words, the cost to install a new roof and new compressors). Any prudent purchaser of real estate would consider necessary replacements or deferred maintenance that would be required in the determination of how much to pay for a property. Those costs, when incurred, will include not only the material necessary to make repairs, but also labor, equipment, delivery costs, contractor markup and any other costs necessary to effectuate the replacement. Therefore, by limiting the extent to which ACV is fairly calculated by eliminating the depreciation of labor, California, a market value state, has arguably created a system where betterment will result if an insured experiences a partial loss. In sum, in California a partial loss calculation does not necessarily bear a direct relationship to the insured's economic loss and the insured may be more than indemnified for his loss.

California is not alone in applying different rules to partial losses. For example, in *Thomas v. Am. Family Mut. Ins. Co.*,[15] the Supreme Court of Kansas held that the term actual cash value, when applied to a partial loss from windstorm

[14] In a "cost approach" determination used by a real estate appraiser, in which the depreciated replacement cost of the improvements is added to land value.
[15] 666 P.2d 676, 679 (Kan. 1983).
[16] 281 So.2d 297 (Fla. 1973).

under a homeowners policy, "means the cost to repair without any reduction for depreciation." In reaching its decision, it found guidance in *Sperling v. Liberty Mut. Ins. Co.,*[16] in which the Florida Supreme Court was determining the meaning of actual cash value of a partial loss under the Florida valued policy statutes.[17] Similarly, Pennsylvania law holds that an insurance company may not deduct for depreciation in the event of a partial loss that does not exceed the depreciated value of the whole property.[18] Thus, under Pennsylvania law, "in partial loss situations, in the absence of clear language to the contrary, an insurer may not deduct depreciation from the replacement cost of a policy and . . . the phrase 'actual cash value' may not be interpreted as including a depreciation deduction, where such deduction would thwart the insured's expectation to be made whole."[19]

DEPRECIATION OF LABOR

In recent years, an issue has arisen regarding whether an insurer can properly depreciate labor when calculating actual cash value. Several putative class actions have been filed, and courts have come down on both sides of the issue. In most instances, it appears that courts will allow depreciation of labor to be considered, but depending on the jurisdiction and policy language, a court may not allow it.

In *Papurello v. State Farm Fire & Cas. Co.,*[20] the insureds filed a putative class action alleging that the insurer violated Pennsylvania law in the way in which it calculated actual cash value. The court held that the policy clearly provided for actual cash value, with full replacement cost coverage only being provided if the insured repaired or replaced the partial damage at issue. The court then considered whether taxes and labor can be depreciated in calculating ACV. The court acknowledged a split in authority on whether labor can be depreciated, but concluded that the insureds' claim that the insurer breached the policy by depreciating taxes and labor was without merit as a matter of law. The court determined that covered property, like a roof, refers to a finished product, which is "the result or physical manifestation of combining knowhow, labor, physical materials . . . and anything else required to produce the final, finished roof itself."[21] The court found the insureds' view that property equates to only the physical materials strained reason.

In *Labrier v. State Farm Fire & Cas. Co.,*[22] the district court had held the term "actual cash value" to be inherently ambiguous because it was not defined in the policy. The district court went on to rule in favor of class certification on the issue of whether the insurer "may withhold labor depreciation from ACV payments under Missouri law."[23] This ruling was reversed by the Eighth Circuit in *In re: State Farm Fire and Cas. Co.*[24] The Eighth Circuit held that "'actual cash value' has an unambiguous meaning under Missouri law – the difference in the fair market value of the damaged property immediately before and after the loss."[25] This is an amount that must be estimated, and the insurer's method of depreciating replacement cost is a practical and reasonable method for estimating the fair market value of the property, or ACV, at the time of loss. The court further found that while the insurer's use of Xactimate estimating methodology could produce an unreasonable estimate of ACV, that would have to be determined on a case by case basis, precluding common facts that would warrant class certification.

The Nebraska Supreme Court similarly rejected an insured's argument, in favor of a purported class action, asserting labor had been wrongfully depreciated when calculating ACV. In *Henn v. American Family Mut. Ins. Co.,*[26] the court held that ACV "is not a substantive measure of damages, but, rather, a representation of the depreciated value of the property immediately prior to damages."[27] Because the unambiguous definition of

[16] 281 So.2d 297 (Fla. 1973).
[17] Fla. Stat. § 627.702(2) provides that in the event of a partial loss by fire or lightning of any building, structure, mobile home, or manufactured home, "the insurer's liability, if any, under the policy shall be for the actual amount of such loss but shall not exceed the amount of insurance specified in the policy as to such property and such peril."
[18] See Farber v. Perkiomen Mut. Ins. Co., 88 A.2d 776, 779 (Pa. 1952).
[19] Kane v. State Farm Fire & Cas. Co., 841 A.2d 1038, 1047 (Pa. Super. 2003).
[20] 144 F. Supp.3d 746 (W.D. Penn. 2015).
[21] Id. at 770 (emphasis original).
[22] 147 F. Supp.3d 839 (W.D. Mo. 2015)
[23] Labrier v. State Farm Fire & Cas. Co., 315 F.R.D. 503, 522 (W.D. Mo. 2016).
[24] 872 F.3d 567 (8th Cir. 2017).
[25] Id. at 574.
[26] 894 N.W.2d 179 (Neb. 2017).
[27] Id. at 186 (citation omitted).
[28] Id. at 190.

ACV is "depreciation of the whole," the court held that "the insured is not underindemnified by receiving the depreciated amount of both materials and labor."[28]

In *Wilcox v. State Farm Fire & Cas. Co.,*[29] the Supreme Court of Minnesota held that under the broad evidence rule, the jury can consider depreciation of labor. The broad evidence rule does not dictate whether labor is depreciable or not, so the jury is able to consider evidence related to the determination of actual cash value, including "embedded-labor-depreciation." The district court followed the *Wilcox* reasoning in *Matchniff v. Great Northwest Ins. Co*.[30] There, the court held that "when calculating ACV, the labor necessary for replacement of certain parts of the structure may be depreciable; it depends on the nature of damage being replaced and other factors related to ACV."[31] Thus, the court found depreciation of labor to be a case-by-case inquiry.

While deprecation of the whole – both materials and labor – arguably makes sense in the context of an indemnification policy, not all courts have allowed labor to be depreciated.[32] However, after the Supreme Court of Arkansas held that labor may not be depreciated notwithstanding policy language that specifically allowed for it,[33] the Arkansas legislature passed a law allowing insurance policies to provide for depreciation of "the cost of goods, materials, labor, and services necessary to replace, repair, or rebuild damaged property."[34] Thus, the trend appears to be in favor of allowing depreciation of labor, particularly if the insurance policies specifically allow for it.

DEPRECIATION OF OVERHEAD AND PROFIT AND SALES TAX

As part of the calculation of actual cash value, in addition to depreciation of labor, some courts also allow depreciation of overhead and profit. Courts holding that overhead and profit can be depreciated recognize that ACV "includes overhead and profit where the insured is reasonably likely to need a general contractor for repairs," so overhead and profit can be depreciated.[35] For example in *Tolar v. Allstate Texas Lloyd's Co.,*[36] the court held that "[b]ecause [general contractor overhead and profit ("GCOP")], sales tax, repair costs, and property value together represent the total replacement cost value, it follows naturally that GCOP, sales tax, repair costs, and property value ought to be depreciated together to reach the ACV payment." Similarly, in *Trinidad v. Florida Peninsula Ins. Co.,*[37] the Florida Supreme Court agreed that "overhead and profit are like all other costs of a repair, such as labor and materials, the insured is reasonably likely to incur …. [and] like a portion of all other costs, [it] could be depreciated in an actual cash value policy."

From the perspective of this building consultant, depreciation of overhead and profit is not logical per se. Rather, the appropriate method is to apply overhead and profit in the same percentages as was calculated in determining the RCV loss. Because overhead and profit does not represent physical assets that can deteriorate, it cannot be depreciated. Overhead and profit, however, are added to the cost to repair or replace a structure, as such, logically, the amount of overhead and profit which applies to the depreciated loss would be less than the amount added to the RCV value. This is not a depreciation of overhead and profit, but rather an application of a consistent percentage.

[28] Id. at 190.
[29] 874 N.W.2d 780 (Minn. 2016).
[30] 224 F. Supp.2d 1119 (D. Or. 2016).
[31] Id. at 1130.
[32] See e.g., Lains v. American Family Mut. Ins. Co., No. C14-1982-JCC, 2016 WL 4533075, at *2 (W.D. Wash. Feb. 2, 2016) (finding policy language ambiguous and ruling that an insurer improperly depreciated labor costs where the policy defined actual cash value as "the amount it costs to repair or replace property with like king and quality less depreciation for physical deterioration and obsolescence").
[33] Shelter Mut. Ins. Co. v. Goodner, 477 S.W.3d 512 (Ark. 2015).
[34] Ark. Stat. § 23-88-106.
[35] See e.g., Goff v. State Farm Florida Ins. Co., 999 So.2d 684, 689 (Fla. 2d DCA 2008).
[36] 772 F. Supp. 2d 825, 831 (N.D. Tex. 2011).
[37] 121 So. 3d 433, 438 (Fla. 2013).

Applicable sales taxes are calculated in the same manner as overhead and profit. If the value of the material is depreciated, the percentage for sales tax is applied to the depreciated amount. These calculations have the virtue of putting the policyholder back in the same position as prior to the loss - no better, no worse, or, in other words, effectuating indemnity.

DEPRECIATION OF REPAIRS

The question of whether "repairs" are depreciable can be controversial. The argument that "repairing" something does not result in betterment requires a case by case analysis depending on the circumstances of each individual loss.

Partial losses often involve replacement of old worn out materials with equivalent materials which are new, resulting in longer useful life, and potentially increased value. If betterment results, repairs can and should be depreciated. By contrast, many "repairs" do not involve betterment. For example, does replacement of a pump or motor on a 30-year-old home heating boiler result in betterment? Perhaps the answer is no.

When considering depreciation of partial losses, the items of loss need to be looked at objectively to determine whether applying depreciation results in betterment. If the "repaired" building component result in any of the following: a longer useful life; lower operating expenses; increased market value; or better functional utility, then the insured may be in a position that is better than prior to a loss. Where the converse is true, then depreciation of a "repaired" component may not be appropriate. In any event, care should always be taken to determine whether repairs result in betterment.

DEPRECIATION OF LOSSES CALCULATED USING SUBSTITUTE MATERIALS

Whether losses which are calculated on a repair or replacement cost using substitute of functionally equivalent materials can be depreciated can be controversial.

Policyholders and their advocates may argue that when functional replacement cost is used in calculating the cost to repair or replace, then the ACV loss is equivalent to the functional RCV. However, this is often not the case. Where existing material is obsolete or too expensive to install, and substitute materials are available and likely to be used in the repair process, betterment may result.

For example, assume that lightning strikes an air conditioning compressor that is 20 years old and is nearing the end of its useful life. A duplicate compressor is unlikely to be available, and the replacement would involve installation of a modern, code compliant, more energy efficient equivalent model. There is little legitimate argument that the replacement of a modern functional equivalent unit in this example results in betterment. Upon installation, the replacement material will have an increased remaining useful life, result in lower energy costs to the owner, and will likely have a positive impact on the market value of the property.

CONCLUSION

The calculation of actual cash value is both an individual loss and jurisdiction specific exercise, requiring knowledge of not only the legal limitations in certain states, but also a firm grasp on the elements which result in depreciation and indemnity. The Appendix provides a state-by-state review of valuation rules that affect the calculation of ACV.

ACKNOWLEDGMENTS

We would like to thank Jonathan C. Held and Heidi Hudson Raschke for providing insight and expertise that greatly assisted this research.

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Jonathon C. Held is CEO of J.S. Held. Mr. Held has had experience in evaluating many of the largest building losses in history, and has completed assignments on projects running into the Billions. He has testified in numerous matters as an expert witness, and has acted as appraiser, umpire, arbitration panelist, and sole arbitrator in numerous disputed matters. Mr. Held is a frequent lecturer and has authored a number of published articles and papers on subjects including valuation, appraisal, and builders risk.

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APPENDIX

STATE-BY-STATE REVIEW OF VALUATION RULES

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Alabama	**Fair Market Value** "We are also referred to our own case of *Glens Falls Ins. Co. of New York v. Garner*, 229 Ala. 39, 155 So. 533 (1934) for the statement contained in that opinion, that actual cash value 'means, and can only mean, what the thing is worth in money, allowing for depreciation.' An earlier case, *Sussex Fire Ins. Co. v. Barton*, 225 Ala. 570, 574, 144 So. 439 (1932), contains a dictum recognizing market value as the measure of recovery." *Commercial Union Ins. Co. v. Ryals*, 355 So. 2d 684, 685 (Ala. 1978)	No case directly on point
Alaska	**Replacement Cost Less Depreciation** "The correct calculation for a total loss on the basis of actual cash value is based upon the actual cost to purchase a comparable item, including all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership." State of Alaska Department of Commerce and Economic Development, Bulletin 93-08 Re: Adjusters and Appraisers; Nonresident Adjusters; ACV and Salvage 2 (May 10, 1993), State of Alaska Department of Commerce and Economic Development	No case directly on point
Arizona	**Replacement Cost Less Depreciation** "Actual Cash Value equals the replacement cost less depreciation." Arizona Department of Insurance, Commonly Used Insurance Terms, https://insurance.az.gov/commonly-used-insurance-terms (last visited Jan. 31, 2018)	No case directly on point
Arkansas	**Replacement Cost Less Depreciation Implied** "The policy at issue fails to define the term 'actual cash value;' however, both parties seem to agree that in determining 'actual cash value,' some form of depreciation is allowed. Indeed, Black's Law Dictionary defines 'actual cash value' as '[r]eplacement cost minus normal depreciation.' B*lack's Law Dictionary* 1690 (9th ed.2009)." *Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 678 (Ark. 2013)	**Yes** Insurance policies may allow for expense depreciation which means "depreciation, including but not limited to the cost of goods, materials, labor, and services necessary to replace, repair, or rebuild damaged property. Ark. Stat. § 23-88-106

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
California	**Fair Market Value** "'Actual cash value,' as used in section 2071 of the Insurance Code, is synonymous with 'fair market value.'" *Jefferson Ins. Co. v. Superior Court*, 475 P.2d 880, 882 (Cal. 1970)	**No** "Except for the intrinsic labor costs that are included in the cost of manufactured materials or goods, 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." CAL. CODE REGS. tit. 10, § 2695.9(f)(1) (2016).
Colorado	**Broad Evidence Rule** "To ascertain a fire loss, not only is the express evidence concerning original cost, replacement value and depreciation to be looked to, but the trier of the facts should call to his aid every other fact and circumstance which logically would tend to the formation of a correct estimate of the loss, including original cost, the cost of replacement, depreciation, the opinions of witnesses, declarations against interest and the uses to which the property might have been put." *Nebraska Drillers v. Westchester Fire Ins. Co. of New York*, 123 F. Supp. 678, 681 (D. Colo. 1954)	No case directly on point
Connecticut	**Broad Evidence Rule** "In determining the actual cash value of the property, the jury could consider, 'under the socalled [sic] broad evidence rule, any evidence logically tending to the formation of a correct estimate of the value' of the insured property." *Giulietti v. Connecticut Ins. Placement Facility*, 534 A.2d 213, 216 (Conn. 1987)	No case directly on point
Delaware	**Fair Market Value** "It is obvious that the trial Judge meant 'fair market value', as defined in Fitzsimmons, supra, when he used the expressions 'true value' or 'market value' or 'actual cash value', and that he correctly applied that definition in reaching his conclusion." *Metro. Mut. Fire Ins. Co. v. Carmen Holding Co.*, 220 A.2d 778, 780 (Del. 1966)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Florida	**Broad Evidence Rule** "In *New York Central Mutual Fire Ins. Co. v. Diaks*, Fla.1954, 69 So.2d 786, the Supreme Court indicates that in these matters Florida will adhere to the so-called 'Broad Evidence Rule.' Under this rule, any evidence logically tending to establish a correct estimate of the value of the damaged or destroyed property may be considered by the trier of facts to determine 'actual cash value' at the time of loss." *Worcester Mut. Fire Ins. Co. v. Eisenberg*, 147 So. 2d 575, 576 (Fla. 3d DCA 1962)	**Yes** "The Second District [in *Goff*] correctly determined, in essence, that overhead and profit are like all other costs of a repair, such as labor and materials, the insured is reasonably likely to incur …. The Second District therefore held that a portion of overhead and profit, like a portion of all other costs, was included but could be depreciated in an actual cash value policy." *Trinidad v. Florida Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013)
Georgia	**Fair Market Value** "It follows therefore that the basic measure of loss under this policy is not original cost or replacement value as contended by the defendant insurer, but is actual value which has been defined as fair market value of the property at the time of loss." *Am. Cas. Co. of Reading, Pa. v. Parks-Chambers, Inc*., 142 S.E.2d 275, 277 (Ga. Ct. App. 1965)	No case directly on point
Hawaii	No First Party Property Case	No case directly on point
Idaho	**Broad Evidence Rule** "It is apparent the jury did not consider the cost of replacing these goods as the basis for their valuation, but rather followed another instruction which told them to determine the actual cash value from a consideration of all the conditions and circumstances appearing by the evidence." *Boise Ass'n of Credit Men v. U.S. Fire Ins. Co.*, 256 P. 523, 528 (Idaho 1927)	No case directly on point
Illinois	**Replacement Cost Less Depreciation** "Illinois courts have rejected both the 'market value' and the 'broad evidence' tests, instead applying the aforementioned 'replacement cost less depreciation' test in determining the actual cash value of damaged property." *Carey v. Am. Family Brokerage, Inc.*, 909 N.E.2d 255, 263 (Ill. App. Ct. 2009)	**Uncertain – Possibly Yes** "Other percentage-based elements included in the cost total for purposes of insurance policy 'replacement costs less depreciation' provisions have been held to be properly included in the depreciation reduction as well. *See Goff v. State Farm Florida Insurance Co.*, 999 So.2d 684, 689–90 (Fla.App.2008)." *Gee v. State Farm Fire & Cas. Co*., No. 11-CV-250, 2013 WL 8284483, at *2 (N.D. Ill. Sept. 23, 2013)

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Indiana	**Broad Evidence Rule** "*The Broad Evidence Rule* has now become the majority rule, having been adopted in at least twenty-three states …. This is a sound rule of law and was given tacit approval by our Court of Appeals in *Atlas Construction Co. Inc. v. Indiana Insurance Company, supra.*" *Travelers Indem. Co. v. Armstrong*, 442 N.E.2d 349, 356-57 (Ind. 1982)	No case directly on point
Iowa	**Broad Evidence Rule** "No hard and fast rule can be laid down by which the amount of such indemnity can be determined in all cases. 25 C.J.S., Damages, p. 608, § 85; Annotation L.R.A.1917A, 367. Where insured property that is destroyed is bought and sold in the market in the ordinary course of dealing, its market value is usually taken to be its "actual cash value" at the time of the loss, for which recovery may be had …. Where, however, the property has no recognized market value that is fairly indicative of its real value, the 'actual cash value' of the property must be determined without resort to market value." *Britven v. Occidental Ins. Co.*, 13 N.W.2d 791, 793 (Iowa 1944) (citation omitted)	No case directly on point
Kansas	**Cost to Repair – Partial Loss Only** "We hold that the term 'actual cash value,' when applied to a partial loss under the insurance policy and facts in this case, means the cost to repair without any reduction for depreciation." *Thomas v. Am. Family Mut. Ins. Co.*, 666 P.2d 676, 679 (Kan. 1983)	**Yes, If the Policy Allows for Depreciation** "Under the rules of construction for insurance contracts, this Court believes that a reasonable person in Graves's position would expect American Family to depreciate all costs necessary to (re)creating the insured 'property'—including the costs associated with labor—when calculating actual cash value." *Graves v. Am. Family Mut. Ins. Co.*, No. 14-2417-EFM-JPO, 2015 WL 4478468, at *3 (D. Kan. July 22, 2015)

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Kentucky	**Broad Evidence Rule** "The same rule is discussed in Couch on Insurance 2d, Section 54:137, in which it is referred to as the 'broad evidence rule' …. It is clear, we think, that there was evidence warranting submission of the issue to the jury as to what the actual cash value of the property was at the time of the loss. It is plain that the jury recognized that the cost of restoration was not the conclusive measure and that the jury took into consideration the theory advanced by the appellant and supported somewhat by its witnesses." *Am. States Ins. Co. v. Mo-Lex, Inc.*, 427 S.W.2d 236, 238 (Ky. 1968)	**Uncertain – Possibly No** "The very idea of depreciating the value of labor defies good common society." *Bailey v. State Farm Fire & Cas. Co.*, No. CIV.A. 14-53-HRW, 2015 WL 1401640, at *8 (E.D. Ky. Mar. 25, 2015)
Louisiana	**Replacement Cost Less Depreciation** "Under Louisiana law, 'actual cash value' is defined as the reproduction cost less depreciation." *Hackman v. EMC Ins. Co.*, 984 So. 2d 139, 143 (La. Ct. App. 2008)	No case directly on point
Maine	**Fair Market Value** "We take as settled principles of law in Maine … the term 'actual cash value' in the fire insurance policy signifies the fair market value of the insured property, as measured by the usual test of what a willing buyer would offer and a willing seller accept in a cash sale on an open and free market." *Gendron v. Pawtucket Mut. Ins. Co.*, 384 A.2d 694, 697 (Me. 1978)	No case directly on point
Maryland	**Broad Evidence Rule** "Some courts have held that 'actual cash value' is equivalent to cost of reproduction less depreciation, but we think the best considered cases hold that cost of reproduction is not the measure of 'actual cash value', but is very important evidence of value." *Schreiber v. Pac. Coast Fire Ins. Co.*, 75 A.2d 108, 111 (Md. 1950)	No case directly on point
Massachusetts	**Broad Evidence Rule** "Massachusetts employs the 'broad evidence rule.'" *O'Connor v. Merrimack Mut. Fire Ins. Co.*, 897 N.E.2d 593, 598 (Mass. App. Ct. 2008)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Michigan	**Broad Evidence Rule** "In determining what constitutes the 'actual cash value' of an item at the time of loss, a trier of fact may consider 'any evidence logically tending to the formation of a correct estimate of the value of the destroyed or damaged property[.]' *Davis v. Nat'l American Ins. Co.*, 78 Mich.App 225, 233; 259 NW2d 433 (1977) (quotation marks and citation omitted). Under this so-called 'broad evidence rule, the courts have not abandoned consideration of either market or reproduction or replacement values in arriving at 'actual cash value,' but view them merely as guides in making that determination, rather than shackles compelling strict adherence thereto.'" *Haley v. Farm Bur. Ins. Co.*, 302158, 2013 WL 4525924, at *9 (Mich. Ct. App. 2013)	No case directly on point
Minnesota	**Broad Evidence Rule** "In *Brooks Realty*, we adopted the broad evidence rule, concluding that the breadth of discretion provided to the trier of fact under the broad evidence rule would best 'effectuate complete indemnity' of the insured." *Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 784 (Minn. 2016)	**Trier of Fact Can Consider It** "When a homeowner's insurance policy does not define the term "actual cash value" or otherwise state whether embedded labor costs are depreciable for the purpose of calculating actual cash value, the trier of fact may consider embedded-labor-cost depreciation when such evidence logically tends to establish the actual cash value of a covered loss." *Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 785 (Minn. 2016)
Mississippi	**Replacement Cost** "We hereby construe the policy to mean that 'actual cash value' means replacement cost of household furniture and furnishings insured by the policy in question." *Lititz Mut. Ins. Co. v. Buckley*, 261 So. 2d 492, 494 (Miss. 1972)	No case directly on point
Missouri	**Fair Market Value** "Both parties acknowledge that the phrase 'actual cash value' is not defined in the insurance contract, but the parties agree that the phrase has been treated by case law as meaning 'fair market value.'" *Warren Davis Properties V, L.L.C. v. United Fire & Cas. Co*, 4 S.W.3d 167, 173 (Mo. Ct. App. 1999)	**Yes** "Embedded-labor-cost depreciation is one factor that a trier of fact may consider in determining actual cash value." *In re: State Farm Fire and Cas. Co.*, 872 F.3d 567, 576-77 (8th Cir. 2017) (emphasis omitted)

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Montana	**Broad Evidence Rule** "[A] jury may consider all relevant evidence when determining the actual cash value of the property damaged or destroyed. Under the 'broad evidence rule', the trier of fact 'may consider any evidence logically tending to the formation of a correct estimate of the value of the insured property at the time of the loss.'" *CQI, Inc. v. Mountain W. Farm Bureau Ins. Co.*, No. CV 08-134-BLG-CSO, 2010 WL 2943143, at *2 (D. Mont. July 21, 2010) (citation omitted); *but see* MONT. CODE ANN. § 33-24-101	**Possibly No** "If there is no valuation in the policy and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury…." MONT. CODE ANN. § 33-24-101 *McIntosh v. Hartford Fire Ins. Co.*, 78 P.2d 82, 84-85 (Mont. 1938),construed this statute as not allowing depreciation. It only allowed replacement cost.
Nebraska	**Fair Market Value** "However, we believe that actual cash value must still be measured as an economic unit, i.e., related to what, in terms of value, one could receive for his or her property. Fair market value is a term which has been used and is generally understood by experts and lay people alike, and which may be found by employing, if you will, the broad evidence rule …. We continue to approve that definition [Fair Market Value] for 'actual cash value' wherever it is used in a policy of property damage insurance." *Erin Rancho Motels, Inc. v. U.S. Fid. & Guar. Co.*, 352 N.W.2d 561, 565 (Neb. 1984)	**Yes** Because the unambiguous definition of ACV is "depreciation of the whole," "the insured is not underindemnified by receiving the depreciated amount of both materials and labor." *Henn v. American Family Mut. Ins. Co.*, 894 N.W.2d 179 (Neb. 2017)
Nevada	No case directly on point	No case directly on point
New Hampshire	**Broad Evidence Rule** "In this state the court has had no occasion to commit itself to either the fairmarket-value [sic] test or the test of replacement cost in determining the actual cash value of the insured's property …. However, we are impressed with what might be denominated a third rule which has received support in New York, Massachusetts and South Dakota …. In these jurisdictions neither market value nor replacement cost is an exclusive test. Evidence of both market value and replacement cost with depreciation may be introduced as evidence of actual cash value." *Pinet v. New Hampshire Fire Ins. Co.*, 126 A.2d 262, 265 (N.H. 1956) (citations omitted)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
New Jersey	**Broad Evidence Rule** "We thus hold that the proper standard for evaluating 'actual cash value' under the New Jersey Standard Form Policy is the broad evidence rule." *Elberon Bathing Co., Inc. v. Ambassador Ins. Co., Inc.,* 389 A.2d 439, 445 (N.J. 1978)	No case directly on point
New Mexico	**Fair Market Value** "'Actual cash value' of the insured property under the terms of insurance policies such as the one before us is regularly defined as the fair market value of the property." *Roswell Trailers, Inc. v. Potomac Ins. Co.*, 576 P.2d 1133, 1135 (N.M. 1978)	No case directly on point
New York	**Broad Evidence Rule** "The 'broad evidence rule' favored by the Insurers was formulated by the New York Court of Appeals in *McAnarney v. Newark Fire Insurance Co.*, 247 N.Y. 176, 159 N.E. 902 (1928), as a default rule when a policy contains no definition whatsoever of the term 'actual cash value.'" *SR Intern. Bus. Ins. Co. Ltd. v. World Trade Ctr. Properties, LLC*, 445 F. Supp. 2d 320, 342 (S.D.N.Y. 2006)	No case directly on point
North Carolina	**Broad Evidence Rule** "'The proper test of actual cash value in a particular case depends upon the nature of the property insured, its condition, and other circumstances existing at the time of the loss.' *Surratt v. Grain Dealers Mutual Ins. Co.*, 74 N.C.App. 288, 293, 328 S.E.2d 16, 20 (1985). 'The tests generally used to determine actual cash value are the market value of the property, the reproduction or replacement cost of the property, and the broad evidence rule. Under the broad evidence rule, any evidence logically tending to the formation of a correct estimate of the value of the insured property at the time of the loss, including evidence of the fair market value and the replacement cost of the property, may be considered.'" *Kinlaw v. N. Carolina Farm Bureau Mut. Ins. Co.*, 389 S.E.2d 840, 844 (N.C. Ct. App. 1990)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
North Dakota	**Fair Market Value** "Ordinarily 'actual cash value,' 'fair market price, and 'market value are synonymous terms." When estimating market value, "that value may be deemed to be the sum which, considering all the circumstances, could have been obtained for it; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy." *Butler v. Aetna Ins. Co. of Hartford, Conn.*, 256 N.W. 214, 219 (N.D. 1934)	No case directly on point
Ohio	**Uncertain** "Actual cash value is established by one of two methods in Ohio: market value of the property at the time of loss, or the cost of repairs minus depreciation, if any." *Asmaro v. Jefferson Ins. Co. of New York*, 574 N.E.2d 1118, 1122 (Ohio Ct. App. 1989) "In Ohio, in the absence of any special limiting contractual term such as 'actual cash value,' apparently either measure of damages is acceptable in computing the amount of the loss …. As to the precise issue before us, Ohio Courts have not, so far as we are aware, expressed a preference between these alternatives in defining the meaning to be given the contractual terms 'actual cash value.'" *Florea v. Nationwide Mut. Fire Ins. Co.*, No. 7908, 1983 WL 5030, at *3 (Ohio Ct. App. Jan. 28, 1983) "In determining actual cash value, we agree with the majority of courts that have adopted the 'broad evidence' rule described in 15 Couch on Insurance (2d) (1966), § 54:249." *Sudvary v. Ohio Farmers Ins. Co.*, No. 48174, 1984 WL 6351, at *6 (Ohio Ct. App. Dec. 6, 1984)	**Uncertain** "In order to be consistent with the industry practice of not depreciating labor, the examiners considered the depreciation of labor to be an exception." Ohio Department of Insurance, Market Conduct Examination of Sandy & Beaver Valley Farms Mutual Insurance Company 4 (June 30, 2011) Ohio Department of Insurance

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Oklahoma	**Broad Evidence Rule** "In summary, actual cash value is determined by the broad evidence rule." *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1021 (Okla. 2002)	**Yes** "Redcorn chose an 'actual cash value' policy, and paid premiums based on his choice. He insured a roof surface, not two components, material and labor. He did not pay for a hybrid policy of actual cash value for roofing materials and replacement costs for labor. To construe the policy in such a manner would unjustly enrich the policy holder." *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1021 (Okla. 2002)
Oregon	**Uncertain – Depends on the Facts of the Case** "Moreover, to hold that there is only one standard for determining actual cash value would be contrary to Oregon law. Because the purpose of fire insurance is to indemnify-that is, to award compensation for loss without enrichment, there can be no universal test for determining the value of property injured or destroyed. *Ore. Mutual Fire Ins. Co. v. Mathis*, 215 Or. 218, 334 P.2d 186 (1959). It is for the appraisers and the umpire, under the facts of each case, to determine the appropriate indemnification when the parties cannot agree." *Schnitzer v. S. Carolina Ins. Co.*, 661 P.2d 550, 552 n.5 (Or. Ct. App. 1983)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Pennsylvania	**Cost of Repair or Replacement Less Depreciation** "'Actual cash value' is the actual cost of repair or replacement less depreciation." *Canulli v. Allstate Ins. Co.*, 462 A.2d 286, 287 (Pa. Super. Ct. 1983)	**Yes, Uncertain When There's Only a Partial Loss** Allowing depreciation of labor and holding that covered property, like a roof, refers to a finished product, which is "the *result* or physical manifestation of combining knowhow, labor, physical materials . . . and anything else required to produce the final, finished roof itself." *Papurello v. State Farm Fire & Cas. Co.*, 144 F. Supp.3d 746 (W.D. Penn. 2015) "The sole question in the case is whether the loss as determined by the reproduction cost new of the restoration should be depreciated by the percentage of depreciation applicable to the building as a whole in determining its actual cash value immediately prior to the fire. Under the decisions of this court, that question must be answered in the negative." *Farber v. Perkiomen Mut. Ins. Co.*, 88 A.2d 776, 778 (Pa. 1952) "[W]e conclude that in partial loss situations, in the absence of clear language to the contrary, an insurer may not deduct depreciation from the replacement cost of a policy and that the phrase 'actual cash value' may not be interpreted as including a depreciation deduction, where such deduction would thwart the insured's expectation to be made whole." *Kane v. State Farm Fire & Cas. Co.*, 841 A.2d 1038, 1047 (Pa. Super. Ct. 2003)

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Rhode Island	**Broad Evidence Rule** "In this case, the court has been asked to determine which test should be applied in determining the actual cash value of the Vogt's cottage. This question is one of law and seems to be a matter of first impression in this state. Having reviewed the law in other states and compared the various alternative tests, this Court has decided to adopt the broad evidence rule." *Vogt v. Rhode Island Joint Reinsurance Ass'n,* No. C.A. NC 98-439, 1999 WL 1062207, at *3 (R.I. Super. Oct. 15, 1999)	No case directly on point
South Carolina	**Broad Evidence Rule Implied** "'I charge you further, as to the measure of damages, the fire insurance policies provide that the fire insurers will pay 'the actual cash value of the property at the time of the loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality'; and in connection therewith I charge you that cost of the replacement and repairs is not conclusive as to this actual value but it is evidence of the value and may be considered by you along with the other evidence in determining the amount of damages, if any; and you may consider the evidence of both the actual cash value of the damaged property which has been offered in this case and also the evidence of the cost of repairs to aid you in arriving at the proper amount of damages …. 'I charge you further that the property which was destroyed or damaged on June 27, 1950, had been in use since 1930. Therefore, in determining the actual value in 1950, you may consider the new value or cost thereof and take into consideration any depreciation of the property between 1930 and 1950 to be deducted from the new value or cost. In other words, Mr. Foreman and gentlemen, I charge you that that is one thing that you may consider in arriving at damages. It's not the only rule, it's nothing final or conclusive, but it's one rule that you may follow, if you find that the plaintiffs are entitled to recover.'" *S. Carolina Elec. & Gas Co. v. Aetna Ins. Co,* 120 S.E.2d 111, 117 (S.C. 1961)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
South Dakota	**Broad Evidence Rule** "In L*ampe Market Co. v. Alliance Ins. Co.*, 71 S.D. 120, 22 N.W.2d 427, 428 (1946), we adopted the 'broad evidence rule' which permits consideration of all evidence an expert would find relevant to a determination of value." *Zochert v. Nat'l Farmers Union Prop. & Cas. Co.*, 576 N.W.2d 531, 533 (S.D. 1998)	No case directly on point
Tennessee	**Broad Evidence Rule or Replacement Costs Less Depreciation** "The replacement-less-depreciation rule and the broad evidence rule operate to accomplish indemnity." *Braddock v. Memphis Fire Ins. Corp.*, 493 S.W.2d 453, 460 (Tenn. 1973)	No case directly on point
Texas	**Fair Market Value** "Where the contract provides that the measure of damages is the actual cash value of the damaged or destroyed property, it is equivalent to a market value measure of damages." *U. S. Fire Ins. Co. v. Stricklin*, 556 S.W.2d 575, 582 (Tex. Civ. App. 1977)	**Likely Yes** "Because GCOP, sales tax, repair costs, and property value together represent the total replacement cost value, it follows naturally that GCOP, sales tax, repair costs, and property value ought to be depreciated together to reach the ACV payment." *Tolar v. Allstate Texas Lloyd's Co.*, 772 F. Supp. 2d 825, 831 (N.D. Tex. 2011)
Utah	**Replacement Costs Less Depreciation** "Actual Cash Value (ACV): Replacement cost less depreciation, considering the age and condition of your property." Utah Insurance Department, Glossary of Homeowner Insurance Terms (July 19, 2017), https://insurance.utah.gov/consumer/auto-home/home-insurance/home-glossary (last visited Jan. 31, 2018)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Vermont	**Broad Evidence Rule** "The search for the true value of insured property destroyed by fire is not confined to any single formula. Both the insured and his insurer are at liberty to resort to any evidence which logically aids in the formation of a correct estimate of the value of the property as it was before the damage occurred …. Both market value and replacement cost are permissible standards for determining loss by fire-'but they are standards and not shackles.'" *Eagle Square Mfg. Co. v. Vermont Mut. Fire Ins. Co.*, 212 A.2d 636, 638 (Vt. 1965)	**No** "It is the Department's position that depreciation of labor costs is prohibited by 8 V.S.A. § 4724(9)(F) and therefore is an unfair claim settlement practice in violation of 8 V.S.A. § 4723 (the Vermont Insurance Trade Practices Act) when committed or performed with such frequency as to indicate a business practice." Bulletin 184, 2015 WL 1975918 (VT INS BUL)
Virginia	**Broad Evidence Rule** "In determining actual cash value, the court should consider the market value of the property, the replacement or reproduction cost of the property, and any evidence logically tending to the formation of a correct estimate of the value of the destroyed property." *Filter Products Co., Inc. v. Travelers Indemn. Co. of Am.*, No. LK-1277-3., 1987 WL 488731, at *2 (Va. Cir. Ct. Oct. 5, 1987)	No case directly on point

State	Calculation of Actual Cash Value Rule	Are Labor Costs Depreciable?
Washington	**Uncertain** "We adopt the holding and rationale of the California Supreme Court in Jefferson, that 'actual cash value' within statutory language of fire policy is synonymous with 'fair market value' and does not mean replacement cost less depreciation." *National Fire Ins. Co. of Hartford v. Solomon*, 638 P.2d 1259, 1263 (Wash. 1982) "The facts in *National Fire Ins. Co. v. Solomon*, 96 Wash.2d 763, 638 P.2d 1259 (1982), mandate limiting whatever its holdings may be to those facts and the policy involved. The case arose from the trial court's denial of the insurer's motion to enforce the appraisal provisions in the policy. Yet the court considered the merits. Relying on a *California statute*, the court held that actual cash value meant fair market value without depreciation. Another state's statutory definition should not control our interpretation." *Hess v. N. Pac. Ins. Co.*, 859 P.2d 586, 592 (Wash. 1993) (emphasis original) "In states, such as Washington, which follow the so-called 'broad evidence rule,' courts will receive any evidence logically tending to establish actual cash value." Bulletin 89-3, 1989 WL 1594517 (WA INS BUL)	**No** Court held that policy language was ambiguous and an insurer improperly depreciated labor costs where the policy defined actual cash value as "the amount it costs to repair or replace property with like king and quality less depreciation for physical deterioration and obsolescence." *Lains v. American Family Mut. Ins. Co.*, No. C14-1982-JCC, 2016 WL 4533075, at *2 (W.D. Wash. Feb. 2, 2016)
West Virginia	No case directly on point	No case directly on point
Wisconsin	**Broad Evidence Rule** "[T]his court has consistently followed what has been termed the 'broad evidence rule' giving considerable leeway and latitude to the trier of facts." *Doelger & Kirsten, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 167 N.W.2d 198, 199-200 (Wis. 1969) *But see, Coppins v. Allstate Indem. Co.*, 857 N.W.2d 896, 906-07 (Wis. Ct. App. 2014) (criticizing the broad evidence rule as applied to the facts of the case and applying the replacement cost less depreciation rule)	
Wyoming	No case directly on point	No case directly on point