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FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT: INSURERS CONTINUE TO SCRUTINIZE ACV/RCV PROVISIONS

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If you attended our recent Continuing Education Courses, then you are aware that insurance companies are increasingly scrutinizing the valuation provisions of policies and strictly applying policy requirements for recovery on a Replacement Cost Value (RCV) basis.

An example of this growing trend can be found in a recent appeal from the United States District Court for the Northern District of Florida. In Metal Products Company LLC. V. Ohio Security Insurance Company, the Eleventh U.S. Circuit Court of Appeals confirmed summary judgment entered by the district court in favor of an insurance company where the insured submitted an estimate based on RCV but had not repaired or replaced the damaged building. The subject policy contained language that no payment for RCV would occur unless the repairs or replacement were made as soon as reasonably possible after the loss or damage and until the loss or damaged property was actually repaired or replaced. The appeals court agreed there could be no breach of the policy for failing to pay RCV because no repairs had occurred. Likewise, because the insured had not presented a claim for Actual Cash Value (ACV), the insurance company could not be in breach for the failure to pay ACV amounts. Most notably, the appeals court was not persuaded by the inclusion of a column titled ACV in the insured's estimate because the amounts listed for ACV in the estimate did not apply any amounts for depreciation.

When presenting a claim, it is important to preserve all rights to recover both ACV and RCV. If the policy requires certain conditions be met for payment to be issued, special attention should be given to the preparation and presentation of the estimate. Based on the decision above, presenting an estimate that does not properly distinguish RCV from ACV, may not be sufficient for an insured to recover on an ACV basis.

Please click here to read the decision.

If you have any questions about this decision or valuation provisions, please contact Michael J. Higer of Berger Singerman's Insurance Team.

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