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The value of property under terms of an insurance policy

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Casualty insurance policies are legal contracts describing the terms of the insurance company's wager as to what is covered and whether a claim will be paid. There are ambiguous words in the contract that can limit the insurance company's liability. One such term is actual cash value, usually undefined in the contract. It once simply meant depreciated replacement value. Today actual cash value can mean different types of market value and more. Many courts have adopted the 'broad evidence rule' wherein any relevant evidence of market value is allowed.

A case that demonstrates the troublesome ambiguous wording in an insurance contract is *Interstate Gourmet Coffee Roasters, Inc. v. Seaco Insurance Company*, 59 Mass. App. Ct. 78 (2003). The coffee company was insured by Seaco Insurance when an employee caught his fingers in a coffee grinding machine severing parts of his hand which entered the machinery, resulting in the contamination and consequent destruction of 16,000 pounds of blended coffee beans. The plaintiff (Interstate) claimed damages and cleanup costs of \$70K. The insurance company balked. Interstate sued and won in a 1998 Superior Court trial. Seaco appealed. The issue on appeal was the calculation of damages at 'actual cash value.' The Massachusetts Appeals Court affirmed the trial court's decision in favor of Interstate.

The coffee company had argued that the insurance contract provided coverage for actual cash value of the beans sold but not delivered at the selling price less discounts and expenses paid as well as costs of "debris removal." Seaco argued that the actual cash value of the destroyed coffee was Interstate's cost of buying the raw beans plus roasting and grinding. Seaco also argued that debris removal did not mean removing the body parts and sanitizing the equipment. The Appeals Court found Seaco's distinction between debris removal and cleanup costs unpersuasive.

The appeals court's analysis started with the principle that exclusions from insurance coverage and ambiguities in an insurance policy are to be strictly construed against an insurer. Neither the term 'actual cash value' or 'debris removal' are defined in the policy. The court construed the meanings against the contract writer. The court said, "it is well settled that the principle on which damages are assessed in insurance cases is that of indemnity for the loss actually sustained." *Kingsley v. Spofford*, 298 Mass. 469, 474-475 (1937), quoting from *Wall v. Platt*, 169 Mass. 398, 405 (1897).

In applying and interpreting an actual cash value provision in an insurance contract, courts have adopted several rules or tests including, market value, replacement cost, and the broad evidence rule. Under this rule, the court may consider any evidence logically tending to the formation of a correct estimate of the value of the insured property at the time of loss. In *Agoos Leather Cos. v. American & Foreign Ins. Co.*, 342 Mass. at 607 (1961), the SJC stated: "The words 'actual value' are to be interpreted in the light of the nature of the insurance contract as a contract of indemnity. They import that recovery for loss cannot be based upon a value dependent upon fanciful considerations. But the words 'actual value' do not import that recovery is limited to market value.

Market value does not in all cases afford a correct measure of indemnity. In some cases there is no market value, properly speaking, and in others, if there is, it plainly would not of itself afford full indemnity. Even where market value will not afford the indemnity for which the insurance provides, the cost of replacement, less depreciation, is not conclusive as to the actual value. But it is important evidence of such value to be considered with other evidence. Both fair market value and replacement cost are permissible standards for determining losses but they are standards not shackles."

Insurance can be likened to a wager wherein one side is betting there will be no payout and the other side believes there is security for a casualty loss. The insurance policies rest on the wording in the insurance contract therefore the insured should read it carefully and or have it reviewed by an attorney.

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