

Advance Cable, Inc. v. Cincinnati Ins. Co.

Year: 2014

Court: U.S. Court of Appeals, 7th Circuit

Case Number: 14-02620

Insurance contracts are to be construed in accordance with the plain meaning of terms and the reasonable expectations of the policyholder. Doing so not only ensures that parties to a contract of insurance receive the benefit of the bargain, but is also good public policy. Insurers may not read meaning into terms that are not defined in the contract, in this case, whether purely cosmetic damage from hail constitutes direct physical loss. UP pointed out in its brief that an insured need only show the damage is real (i.e., not imaginary) in order for the claim to be valid. The inquiry should end there. Instead, as here, insurers often engage in a semantic argument about the meaning of words in order to escape their responsibility to pay. UP reminded the court that it is well-accepted in insurance law that a “direct physical loss” is a “distinct, demonstrable, physical alteration of the property” and may be merely cosmetic or otherwise, a view confirmed by industry sources, commentators, and courts. UPDATE 6/11/15: The U.S. Court of Appeals for the 7th Circuit ruled that purely cosmetic damage is a covered direct physical loss. In dismissing the insurer’s arguments, Chief Judge Diane Wood said the following: “[The insurer] urges us to define “loss or damage” to mean “harm.” It then makes the assumption that the dents caused by the hail did not harm the roof enough to diminish its function or value. No harm, no foul, it says: if this is the case, then it believes that the policy does not require it to pay to replace the roof. The problem with this analysis is that it bears no relation to the language of the policy. There is no exception to the definition of “loss” for cosmetic damage, or any other kind of particular damage. Had [the insurer] wished to exclude cosmetic damage from coverage, it should have written the policy that way.” The opinion is attached below and a full analysis of the case and related information is available on the Property Insurance Coverage Law Blog.

UP's brief was authored pro bono by William F. Merlin, Jr., Esq. of the Merlin Law Group