

## **Executive Plaza, LLC v. Peerless Insurance Co.**

Year: 2013

Court: New York Court of Appeals

Case Number: CTQ-2013-00005/12-1470cv

Some insurers play fast and loose with the phrase “replacement cost” to their customers’ detriment. They advertise “replacement cost” (RC) coverage as being superior to “actual cash value” (ACV) coverage, and charge more for it as an enhancement. Consumers buy that enhanced protection and reasonably believe it will cover the cost of replacing their property after a loss. But low and behold, when a loss occurs, insurers apply depreciation/holdbacks – even under an RC policy, and pay less than full RC. Savvy consumers who submit proof that they’ve replaced items can collect depreciation amounts that were held back as soon as they prove they spent money and replaced the item. As we explain in this 2013 UP newsletter article (see p.10), circumstances can make it hard for a consumer to complete replacing their destroyed property for months and years after the loss. Those circumstances can include; structure is not repaired/replaced fast enough to hold replacement items, local building code/ordinance issues or other factors beyond the insured’s control cause delays in repairs/rebuilding. In this case, a policyholder had an RC policy and tried to collect their full RC. The insurer rejected their claim on the grounds they didn’t replace the items fast enough. The policy required replacement “as soon as possible.” No specific time limit. The policy did, however, have a specific time limit on a lawsuit. It required the insured to file suit within two years. When the insured requested RC benefits, the insurer refused, saying that two years had elapsed and it was too late. In other words, it was too late to sue them, thus too late to claim full RC. On appeal, New York’s highest court followed UP’s reasoning and disagreed. UP argued in its amicus brief that insureds who’ve paid for a policy advertised to provide superior “replacement cost” protection (above actual cash value protection) have the right to recoup the full cost of replaced property. We outlined for New York’s highest Court why an ambiguous contractual limitation that defeats the reasonable expectations of the insured and should not be enforced. UP also argued that ambiguities regarding lawsuit limitations should be construed in favor of the insured and in favor of coverage. The purpose of insurance is for insureds to recoup losses incurred, not to place reasonable insureds in a position where they must litigate the hidden meaning of policy provisions.



UP's brief was drafted pro bono by William G. Passannate of Anderson Kill, P.C. and UP Executive Director Amy Bach, Esq.

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