

## [Mitchell v. State Farm and Casualty Company](#)

Year: 2019

Court: UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Case Number: 3:17-cv-00170-MPM-RP

In this amicus brief, UP argues that labor should not be depreciated by insurance companies in their determination of actual cash value. Many insurers do not engage in the practice of depreciating labor. For the insurance carriers who do depreciate labor, most use coverage forms that authorize and notify the policyholder that this method is used to calculate actual cash value. Here, State Farm depreciated labor without any authorization in its policy form. In its brief, UP contends (1) depreciation of labor is directly contrary to the concept of indemnity, (2) the question of whether labor should be depreciated is a matter of contract interpretation and should be decided as a matter of law by the court (3) a reasonable construction of the subject insurance policy is that labor should not be depreciated (4) to the extent the policy terms “actual cash value” and “depreciation” are subject to more than one reasonable interpretation, the policies must be interpreted in favor of the policyholder, and (5) labor should not be depreciated no matter what method is used to calculate actual cash value by the court. UP further reminds the Court that allowing insurers to depreciate labor would result in policyholders not receiving the coverage they reasonably believed they purchased and creates a windfall for insurers.

Drafted pro bono by Gerald M. Abdalla, Jr.