

Seber v. General Fire and Cas. Co. et al

Year: 2014

Court: Indiana Supreme Court

Case Number: Appeal from 53A01-1405-PL-00208

Policyholders pay higher premiums for replacement cost value policies in order to recoup additional insurance proceeds necessary to rebuild or purchase substitute property. Insurers should be prohibited from attempting to pay only actual cash value (i.e., depreciated value) based on semantic discussions of undefined or omitted policy terms. In a case of first impression, UP urged the Indiana Supreme Court to adopt a clear rule on what constitutes replacement property when an insured chooses to purchase substitute property rather than rebuilding. UP argued in its brief that if the policy does not specify otherwise, the insured should be able recoup replacement cost value and use it to purchase replacement property, so long as the insured first proves the hypothetical cost to rebuild the damaged or destroyed structure, not subject to a flawed “use and character” test or any additional post-hoc requirements. Numerous courts across the country have adopted such a rule. UP reminded the court that the purpose of insurance is to make an insured whole in the event of loss or damage and that this purpose is frustrated when insurers engage in semantic discussions at claim time about the meaning of ambiguous terms, or as here, the meaning of an omitted or undefined term. UP’s brief also stressed the broader public policy implications for Indiana insureds.

UP's brief was authored pro bono by Kevin M. Toner, Esq. of Faegre Baker Daniels, LLP with contributions from UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.