

Jim's Perspective...

Valued Policy Law

States enacted valued policy laws to curb the perceived practice of insurance companies deliberately overestimating the value of insured property to boost premiums they could collect. The overvaluing, which was also thought to encourage arson for profit, resulted in litigation over the value of the insured property that was destroyed because the insurer would argue that the destroyed property was really not as valuable as the insured amount stated in the policy. The prospect of this profit for the insured was also thought to encourage the insured to try to promote a loss event or not take sufficient steps to prevent it. This phenomenon, known as a “moral hazard,” was viewed as undesirable from a social perspective, and it was thought the valued policy law would reduce this moral hazard in addition to discouraging insurers from overestimating the value of insured property. Valued policy laws were created to fix in advance the value of property being insured and to place upon the insurer the burden of inspecting the property to assure its proper valuation.

Nineteen states have laws that require the insurer, in the event of a total loss, often a home, to pay the insured the entire face value of the policy. Wisconsin passed the first valued policy law in 1874. Nebraska’s valued policy law, which was enacted in 1913, provides:

Whenever any policy of insurance is written to insure any real property in this state against loss by fire, tornado, windstorm, lightning, or explosion and the property insured is wholly destroyed without criminal fault on the part of the insured, . . . the amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages.

Nebraska’s valued policy law applies to any real property in this state, so it extends far beyond a homeowners policy, but as I recall, the valued policy law comes into play most often in instances of total loss to a home. Recently, the Nebraska Supreme Court issued an opinion that involves application of the valued policy law to a total loss of a home. The Nebraska Supreme Court case is styled, Callahan v. Brant and Shelter Insurance Company, 314 Neb. 219 (2023). The Callahans, husband and wife, in 2012, bought a homeowners policy from a Shelter Insurance Company agent, Mr. Brant. The policy insured the house in the amount of \$250,481. By 2018, the policy limit had increased to \$260,600. In anticipation of the policy’s 2019 renewal the Callahans met with Brant to discuss the details of the policy. As you can imagine, the parties dispute what was said at this meeting. After the meeting, the homeowners policy was renewed with a new policy limit of \$267,400 on the house. In May of 2019, the house was totally destroyed by an electrical fire. Although not a part of the court record, the Court opinion noted that the cost to rebuild the home was substantially in excess of the limit of coverage.

The Callahans sued their agent, Brant, and Shelter Insurance Company. Their first theory of recovery was that Brant “explicitly and impliedly undertook to advise the Callahans that the amount of coverage they had would be sufficient to rebuild their home in the event of a total

loss.” The Callahans contend that these representations were false, that they reasonably relied upon them, and that they “suffered financial harm” as a result. So their claim against Brant was one of “negligent misrepresentation” by Brant.

The Court, in Callahan, discussed the public policy rationale behind the valued policy statute by citing its discussion of this statute in an earlier case, Heady v. Farmers Mut. Ins. Co., 217 Neb. 172, 349 N.W.2d 366 (1984). [I remember this case. It was actually Farmers Mutual Insurance Company of Nebraska] The Court said:

It is a well-known fact that it has been the practice of some fire insurance companies to insure property at any value the insured cared to put thereon without any investigation as to such value. The natural impulse of the insured was toward amply sufficient or even over valuation. The higher the valuation, the greater the premium. If there was no loss, the insurance company profited through the high valuation. If a loss occurred, the insurer would contest the value or amount of recovery and the insured might recover less than the value stipulated in the policy. . . . This situation produced dissatisfaction and litigation. It was to correct this condition, that the valued policy statute was enacted.

So the purpose of the valued policy law was to remove arguments about the value of the insured property and set forth in the policy, the value of the insured property and the amount that would be recovered in the case of a total loss.

The Callahans argued the valued policy statute was enacted to address the evils of overinsurance and their claim involves “the perils of being underinsured,” and therefore their suit against Brant and Shelter Insurance Company can go forward and does not violate the valued policy statute. The Court disagreed with this analysis, stating:

Neither the language of the valued policy statute, nor the public policy objectives underpinning that statute, provide a principled basis to restrict application of the conclusive determination of true value only to circumstances when an insurer seeks to pay less than policy limits because of a misrepresentation, and not to circumstances when an insured seeks to recover more than the policy limits. . . . Consequently, in actions between the insurer and insured to determine amounts owed by the insurer after a total loss to real property . . . we hold that both the insurer and the insured are bound by the conclusive determination of true value established by the valued policy statute, and neither can contend the value of the total loss is something different than what was written in the policy.

Finally, the Callahans argued that the valued policy statute does not apply because of the nature of their cause of action. The Callahans describe the nature of their action as a common law “action for negligent misrepresentation” against their agent and insurer and they suggest the valued policy statute only applies to actions claiming breach of contract under the insurance policy.

Here again, the Court disagreed stating:

Construing the valued policy statute in a way that restricts its application exclusively to breach of contract actions would require us to read language into the statute that is not there, would undermine the statutory objectives, and would not place on the statute a reasonable construction that best achieves its recognized purpose.

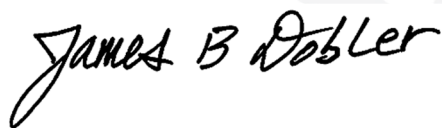
The District Court decision of granting summary judgment in favor of Shelter Insurance Company and Brant was affirmed.

While the Court found for Shelter Insurance Company and Brant based on the two issues discussed above, I want to finish with another point of insurance law that the Court described in its opinion.

The parties focus much of their argument on whether Brant owed the Callahans a legal duty to advise them on the value of their property and the sufficiency of the policy limit insuring their home. Nebraska law on this issue is well settled. When an insured asks an insurance agent to procure insurance, it is the duty of the insured to advise the insurance agent as to the desired insurance, including the limits of the policy to be issued. An insurance agent has no duty to anticipate what coverage an insured should have.

The Callahans argued that the above legal rule did not apply in this case because Brant voluntarily undertook the task of advising the Callahans that the amount of coverage they had would be sufficient to rebuild their home. Evidence of whether Brant undertook the task of advising the Callahans of the amount of coverage they should have on their house, and whether Brant supplied them false information was simply not relevant in this case since the Court determined that the valued policy statute conclusively establishes the true value of the home, and it precludes the offering of evidence that the true value was something other than the amount for which the home was insured.

Obviously, this case provides an important outcome that does not expand the scope of the professional duty that an agent owes to his or her client.



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