

## REPLACEMENT COST VALUE (RCV), ACTUAL CASH VALUE (ACV), HOLDBACKS, AND THE DEPRECIATION OF LABOR

There are two primary valuation methods for establishing the value of insured property for purposes of determining the amount a property insurer will pay in the event of loss under a homeowner's or commercial property policy:

1. *Replacement Cost Value (RCV)*: This method is usually defined in the policy as the cost to replace the damaged property with materials of like kind and quality, without any deduction for depreciation. It pays an insured for the value of replacing the damaged property without deduction for deterioration, obsolescence, or similar depreciation of the property's value. The carrier assumes the cost of paying the full cost of repairing or replacing the damaged property.
2. *Actual Cash Value (ACV)*: This method pays an insured for a similar item less depreciation. ACV is ordinarily determined in one of three ways:
  - (1) the cost to repair or replace the damaged property, minus depreciation;
  - (2) the damaged property's "fair market value" ("FMV"); or
  - (3) using the "broad evidence rule," which calls for considering all relevant evidence of the value of the damaged property.

The insured bears the difference between the depreciated value of the damaged property prior to loss and the higher cost of repairing or replacing it.

Replacement cost claims are usually paid in two parts: (1) actual cash value (holding back depreciation), then later, (2) recoverable depreciation. With RCV coverage, a 3-year-old sofa would cost \$1,500 to replace. First, the insurer deducts "depreciation" from the replacement cost. This is "holdback." It is based on the age and condition of the property. The insurer pays you ACV "replacement cost less depreciation" right away – this is ACV. You can recover the depreciation held back by the insurance company, but you have to make a claim for it. To do so, you must: (1) submit your claim for depreciation within two (2) years of the date of loss, and 2) provide receipts (or invoices) proving that you have replaced the damaged item. In the sofa example, the property

carrier pays the insured the RCV less 30% (\$450) and pays only \$1050. Later, after the insured has purchased a new couch and provides the insurance company with proof in the form of receipts, the hold back amount is paid to the insured. ACV coverage pays the insured what his property is worth today. ACV is calculated by taking what it would cost to buy property new today, and subtracting depreciation for factors such as age, condition, and obsolescence. In the sofa example above, the insured would be paid \$1,050.

### RCV Endorsement

RCV coverage is accomplished by an endorsement to the property insurance policy. A Replacement Cost Coverage Endorsement is an endorsement that provides Replacement Cost Coverage and describes the stipulations and conditions for application. As an example, the RCV Endorsement used in *Ballard v. Lee*, 671 So. 2d 1368 (Ala. 1995), overruled on other grounds by *State Farm Fire and Cas. Co. v. Owen*, 729 So. 2d 834 (Ala. 1998), the endorsement read as follows:

*It is understood that in the event of loss or damage settlement shall be based upon the cost of repairing, replacing or reinstating (whichever is the least) with material of like kind and quality without deduction for depreciation, subject to the following provisions:*

- (a) The repairs, replacement or reinstatement (all hereinafter referred to as 'replacement') must be executed with due diligence and dispatch;*
- (b) Until replacement has been effected the amount of liability under this policy in respect of loss shall be limited to the actual cash value at the time of loss;*

*The Underwriter liability for loss under this policy including this endorsement shall not exceed the smallest of the following amounts:*

- i. the amount of the Policy applicable to the destroyed or damaged property,*
- ii. the replacement cost of the property or any part thereof identical with such property and intended for the same occupancy and use,*
- iii. the amount actually and necessarily expended in replacing said property or any part thereof."*

The underlined term "actual cash value" is what was undefined in that policy. The policy terms not disclose that the definition of "actual cash value" as the replacement cost less depreciation, and did not disclose the method by which the company would calculate the ACV of the property in the event of a total loss (i.e., deduction of depreciated labor). In order to ensure that the property is actually repaired or replaced, after the insured has prepared, presented and negotiated a claim with the insurance company and a replacement cost loss has been determined for the building, a rate of depreciation must be established between the involved parties. The insurance company then deducts the agreed rate of depreciation from the agreed replacement cost loss and pays only the actual cash value loss, holding back the depreciated amount (aka "recoverable depreciation"). This is called a "holdback." Regardless of whether it is a building or an item of personal property that is damaged, if you have RCV coverage, the insurance carrier is permitted to issue payment on an ACV basis initially. Paying the claim as ACV enables the insured to receive partial payment to begin repairs with insurance funds rather than their own while the holdback is recoverable at a subsequent time. To obtain the balance of the Replacement Cost, the insured must document that they have repaired or replaced the damaged property. This is usually done by submission of replacement receipts or construction documents to the adjuster and sometimes by an inspection of the repaired property.

RCV insurance claims are split in this way because it discourages fraud and gives the insured an incentive to spend the money on repairing the damaged home as intended. Spending the first payment for unrelated purposes will cause the insured to forfeit the recoverable depreciation or hold back amount. This process ensures that the property is, in fact, repaired or replaced.

In *State Farm Fire and Cas. Co. v. Patrick*, 647 So. 2d 983 (Fla. App. 1994), the court ruled that the insured was not entitled to recover the difference between the carrier's estimate to repair or replace the damaged property and the insured's lower cost of completing the work himself. This is because the policy clearly stated that the carrier would not pay more than the amount actually spent to repair or replace the damaged property. The court noted that RCV insurance is designed to cover the difference between what property is actually worth and what it would cost to rebuild or repair that property. It is "insurance on a property's depreciation."

### **Repairs and the Depreciation of Labor**

If damaged property can be repaired, the same two-step process is followed. For example, suppose the insured purchased a new roof for \$10,000 and it has a life expectancy of twenty years. Each year, it would depreciate by 1/20<sup>th</sup> of its purchase price, or \$500. If it is completely destroyed in a tornado in year eight, and was covered under an RCV policy, it's ACV would be \$6,000. If there was a \$500 deductible, the initial ACV payment would be \$5,500 and the "recoverable depreciation" would be \$4,000. This would be the "hold back" and the second payment, upon completion of the roof repairs and submission of invoices to the insurance company, would be \$4,000. The insurance company issues a check for the ACV of the damaged roof, and only after the roof is repaired does the insured claim recoverable depreciation by providing invoices for the labor necessary to make the repairs. If, for any reason, the roof is not replaced or repaired, the insured would not be able to recover the holdback (recoverable depreciation).

Substantiating a claim for recoverable depreciation can be involved and complicated. There may be issues involving the identification of insurable costs. Code upgrades, additions and improvements and variable costs to the originally agreed figures may need analysis for purposes of determining recovery of withheld depreciation. When the insurance company depreciates more than they should, it is called "Excessive Depreciation." In addition to applying depreciation to the value of the damaged property due to wear and tear, deterioration, and obsolescence to physical material items, some insurance companies are also applying depreciation to the labor costs associated with the repair or replacement process. In the example above, the roof costs \$10,000 to repair/replace, and if the usual breakdown of roofing costs is 40% for materials and 60% for labor, \$6,000 of the \$10,000 cost of the roof is labor.

As another example, if repair costs to a damaged building would be \$100,000, less a 30% depreciate holdback (open to difference of opinion), then the ACV would be \$70,000. The insured would receive from his insurer, an ACV cash payment of \$70,000. The insured then decides if they are going to repair or replace the damaged property. If the costs exceed the ACV of \$70,000, the insured then provides invoices and documentation of the repairs/replacement to the insurance company, and he would then recover the withheld depreciation. After receiving the ACV, the insured may not collect more than the amount of withheld depreciation. In the above example, the insured would have to prove that the repair costs were \$100,000 or more in order to collect the full amount of the withheld depreciation. If for any reason, the property is not restored or the insured's expenditures are less than the \$70,000 ACV payment, the insured would not be able to recover the holdback. Paying the claim as ACV enables the insured to receive partial payment to begin repairs with insurance funds rather than their own while the holdback is recoverable at a subsequent time.

However, whether or not the cost of labor can be depreciated in arriving at the ACV depends on the state and specific policy language involved. Beginning in the early 2000s, insureds began to question whether depreciation of labor costs in ACV policies was acceptable under policy language that defined depreciation costs ambiguously. *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017 (Okla. 2002). Some states allow it, and some do not. Courts around the country are split in their approaches to this labor depreciation issue. As you will see below, some courts have taken the position that labor costs cannot be depreciated when considering actual cash value while others have found that labor costs may be depreciated. Because neither ACV nor depreciation are defined in any ISO property policy, the “same” loss in two or several different states can result in different valuations and ACV payments based on (1) which of the four rules or guidelines for determining ACV the state uses; and (2) whether labor can or cannot be depreciated in that state.

### **Depreciation of General Contractor Overhead and Profit (GCOP)**

Even though the terms “repair cost” and “replacement cost” are not clearly defined in most property policies, when repair or replacement of a home or other structure is required, labor and materials are clearly elements that should be included in the claim payment (whether they are depreciated as part of the initial holdback or not). A property should pay for the cost of an experienced contractor to perform the required work to repair or replace the building and put it back to its pre-loss condition. Insurance companies use guideline pricing and “Xactimate” (computerized home replacement cost estimating software) to predict how much materials and labor should cost. However, the estimate prepared by a qualified local, licensed, and bonded contractor who has visited the loss site and reviewed information about the pre-loss structure is generally the most accurate cost for a claim settlement. General contractors routinely charge overhead and profit (GCOP), usually at a rate of 10% for each. This is how they get paid. An insurer that holds back GCOP until repairs are completed puts the property owner in an impossible financial position. With a RCV policy, the insurer should not hold back GCOP until the structure is completely repaired. With an ACV policy, however, the standard in most states is that ACV of the damage should be determined by taking the full RCV and then deducting any applicable depreciation. Therefore, the two questions that must be answered in connection with the payment of GCOP in an ACV claim are:

1. Should GCOP be paid, even if it is not incurred?
2. Should GCOP be depreciated?

The RCV from which depreciation is deducted in order to arrive at ACV, usually includes any cost that an insured is “reasonably likely to incur” in repairing or replacing the structure. *Ghoman v. New Hampshire Ins. Co.*, 159 F.Supp.2d 928 (N.D. Tex. 2001). The Texas federal court said that this includes GCOP and taxes, and both should be included in any RC or ACV claim payment. However, it must first be determined that the services of a general contractor are necessary given the scope of the repairs and construction that will be required. When calculating ACV, some insurers have used RC as the starting point, deducted depreciation, and then deducted another 20% for GCOP. A Pennsylvania court has held that the price of anything—from a new roof to a new car—includes profit for the craftsman or retailer. *Gilderman and Gilderman v. State Farm*, 649 A.2d 941 (Pa. Super. 1994). The carrier should not be able to deduct overhead and profit any more than somebody who buys a new car can. Therefore, the two ways to deal with GCOP in ACV claims (depending on whether GCOP is depreciated) are as follows:

RC of Damaged Property (no GCOP):	\$100,000	RC of Damaged Property (no GCOP):	\$100,000
<u>Plus GCOP:</u>	<u>+\$20,000</u>	<b>Less Depreciation (30%):</b>	<b>-\$30,000</b>
Full RC of Damaged Property:	\$120,000	Depreciated ACV Payment	\$70,000
<u>Less Depreciation (30%):</u>	<u>-\$36,000</u>	<u>Plus GCOP</u>	<u>+ \$20,000</u>
ACV Payment (RC-Depreciation):	\$84,000	ACV (RC – Depreciation + GCOP)	\$90,000

As you can see, the insured comes out better in the second example where GCOP is not depreciated. When, whether, and in what amount homeowner and property insurers must include a GCOP line item on first-party repair or rebuild estimates, when the insured does not engage a general contractor, remain challenging issues in most jurisdictions.

A CHART explaining the laws in all 50 states with regard to how payment and/or depreciation of General Contractor Overhead and Profit (GCOP) should be handled in adjusting RCV claims or calculating ACV can be found [HERE](#).

### States Prohibiting Depreciation of Labor

In **Illinois**, for example, in the case of *Sproull v. State Farm Fire and Cas. Co.*, 184 N.E.3d 203 (Ill. 2021), a class action was brought against State Farm for depreciating labor costs, and the court, in a matter of first impression in that state, the court noted that when the terms of the policy are ambiguous, they must be construed against the insurer. The court ruled that when calculating “actual cash value” of a covered loss, property structure and materials were subject to a reasonable deduction for depreciation, but depreciation could not be applied to the intangible component of labor. It gave two reasons for this ruling: (1) the Illinois’s insurance regulations provided that the “actual cash value” of an insured damaged structure was determined as replacement cost of property at time of loss less depreciation, if any, and (2) the policy did not define the term actual cash value. Where there are conflicting interpretations of the terms of the policy, the court must rule in favor of the insured’s interpretation that actual cash value only included depreciation of materials, not labor.

Other states, such as **Tennessee**, base their refusal to allow depreciation of labor because labor cannot logically depreciate. *Lammert v. Auto-Owners (Mut.) Ins. Co.*, 572 S.W.3d 170, 171 (Tenn. 2019). That court noted that Black’s Law Dictionary defines “depreciation” as “a reduction in the value of price of something; specifically, a decline in an asset’s value because of use, wear, obsolescence, or age.” The court said that “depreciation” in insurance law is not the type that is charged off the books of a business establishment, but rather, is the actual deterioration of a structure by reason of age, and physical wear and tear, computed at the time of the loss.

The difference when depreciating labor is significant. Suppose that laminate flooring with half of its useful life remaining is damaged by a sewer backup and that the homeowner has an insurance policy providing that the insurance company will cover the actual cash value of damaged property, calculated by deducting depreciation from the replacement cost. Further suppose that it would cost \$ 10,000 to replace the floor, with \$ 5,000 in labor costs and \$ 5,000 in material costs. If depreciation is deducted from material costs alone, then the actual cash value for the floor is \$ 7,500. If depreciation is deducted from the total replacement cost, then the actual cash value of the floor is \$ 5,000. The court noted that depreciating labor was unfair:

*Before the damage the insured had on his house a roof with sixteen-year-old shingles. After the damage the insured is contractually entitled to have on his house sixteen-year-old shingles, or their value in money. He should not bear any of the cost of installing them, because that would deprive him of that for which he contracted-being made whole as if the damage had not occurred.*

The court in *Lammert* also found the language in the policy regarding depreciation to be ambiguous and held that the insured's interpretation should therefore apply. It concluded by ruling that labor could not be depreciated when an insurance company calculates the ACV of the properties using the replacement cost less depreciation method.

### States Allowing Depreciation of Labor

Other states, including **Alabama**, **Kentucky**, and **Ohio**, have held that when the term "Actual Cash Value" is not defined or ambiguously defined in the policy, the insured's interpretation is controlling, and depreciation should not include labor. *Arnold v. State Farm Fire & Cas. Co.*, 268 F.Supp.3d 1297 (S.D. Ala. 2017) (holding that defendant had not shown that the term "ACV," which was undefined, could only be interpreted to include depreciation of labor costs); *Hicks v. State Farm Fire & Cas. Co.*, 2018 U.S. App. LEXIS 28894 (6th Cir. 2018) (holding that even though Kentucky law defines ACV as replacement cost minus depreciation, the policy is ambiguous because it does not specifically address what can be depreciated); *Cranfield v. State Farm Fire & Casualty Co.*, 798 Fed.Appx. 929 (6th Cir. Mar. 23, 2020) (interpreting Ohio law). And still other states, such as **Illinois**, have said that if BOTH "actual cash value" and "depreciation" are not defined in the terms of the insurance policy, the carrier cannot depreciate labor when calculating ACV. *Sproull v. State Farm Fire and Cas. Co.*, 184 N.E.3d 203 (Ill. 2021).

Whether or not a state allows depreciation of labor in determining ACV can be quite nuanced. **Pennsylvania**, for example, allows depreciation of labor *only* if depreciation is otherwise authorized in the policy *and* ACV is defined as "the cost to repair or replace the damaged property less deduction for physical deterioration. *Kane v. State Farm Fire & Cas. Co.*, 841 A.2d 1038, 1047 (Pa. Super. 2003); *London v. Insurance Placement Facility*, 703 A.2d 45, 49-50 (Pa. Super. 1997).

### States with Legislation and Insurance Regulations

Some states have approached this issue through the legislative route and passed insurance regulations (**California**; 10 C.C.R. § 2695.9(f)(1), stating that "the expense of labor necessary to repair, rebuild or replace covered property is not a component of physical depreciation and shall not be subject to depreciation or betterment."), statutes (**Montana**; Mont. Code Ann. § 33-24-101, stating that labor may not be depreciated in property claims if there is no valuation stated in the policy and there is not a basis more favorable to the insured in the policy), or insurance department rulings (**Vermont**: Insurance Bulletin No. 184), found [HERE](#), declaring that labor cannot be depreciated when calculating ACV. In **Arkansas**, a recently-passed statute (Ark. Stat. § 23-88-106) states that labor costs may be depreciated in the determination of actual cash value for new and renewed policies, but only when a particular Insurance Commissioner-approved form is included in the insurance policy explaining that labor cost depreciation may be deducted.

## States Leaving It Up To A Jury

A few states, including **Minnesota**, leave the decision up to a jury; holding that a factfinder may consider depreciated labor costs in determining actual cash value, but only if such evidence “logically tends to establish” actual cash value. *Wilcox v. State Farm Fire and Cas. Co.*, 874 N.W.2d 780 (Minn. 2016).

## States Which Allow Depreciation of Labor

Notwithstanding the above, there are many states which have taken the position that labor costs can be depreciated. Courts in **Colorado** have held that labor costs may be depreciated based on the policy defining actual cash value as “the amount it would cost to repair or replace covered property subject to a deduction for depreciation.” *Basham v. United Services Automobile Assn.*, 2017 WL 3217768 (D. Colo. 2017). The judge in *Basham* also noted that the policy in question did not explicitly limit depreciation to “physical deterioration and obsolescence” and therefore concluded that labor costs could be depreciated. The **North Carolina** Supreme Court has recently ruled that when calculating ACV under the particular policy construed, depreciation included the cost of labor. *Accardi v. Hartford Underwriters Ins. Co.*, 838 S.E.2d 454 (N.C. 2020). **Florida, Indiana, Kansas, Nebraska, and Oklahoma**, as well as others, have also joined the ranks of states allowing for the depreciation of labor either by statute or under the facts presented in cases decided in those states. (see chart below).

## Undecided States

There are also states in which the issue has not yet definitively been decided, like **Texas**. Two Texas federal district courts have reached opposite conclusions on the issue. In *Tolar v. Allstate Tex. Lloyd’s Co.*, 772 F. Supp.2d 825 (N.D. Tex. 2011), the court suggested that labor costs may be depreciated in the determination of actual cash value. Yet, as recently as January 11, 2023, a federal district court applying Texas law held that the undefined term “actual cash value” was ambiguous and was interpreted as not including depreciation of labor. *Sims v. Allstate Fire*, 2023 WL 175006 (W.D. Tex. Jan. 11, 2023).

## The Debate

Whether to allow the depreciation of labor in determining ACV remains a hotly contested issue across the country. Insurance companies and insurance industry associations are in favor of allowing insurers to depreciate labor costs when arriving at an ACV amount. Their reasons include:

- Ensuring that coverage is provided based on reasonably anticipated costs allows insurers to provide consumers with lower cost options when buying insurance.
- The value of the damaged home must be calculated as a unit, and it would be impractical to include the depreciation of materials and not labor.
- When the labor cost associated with an item of property is embedded, the value of the item is necessarily calculated as to the unit, not as to the individual parts.

- The term “ACV” is not ambiguous because the term already incorporates the concept of depreciation from the cost of repairs, which includes both materials and labor.

Trial lawyers, consumer advocates, and other opponents argue that labor should not be depreciated when insurance companies calculate ACV. Their reasons include:

- There is a common-sense distinction between materials and labor; after all, how does one depreciate an intangible service such a labor?
- Labor does not lose value due to wear and tear and does not lose value over time. There is no statistical table that delineates how labor loses value over time. There is no typical depreciable life of labor. The very concept of depreciating the value of labor is illogical.
- Labor should not be depreciated where the insurance policy itself is ambiguous and should therefore be construed against the party which drafted the contract—the insurer—and in favor of the party which did not—the insured.
- Quite often, a handy insured may want to repair or replace a damaged home or other property and the carrier shouldn’t deny payment for any labor expenses if that takes place. The policyholder is entitled to payment for services the insured rendered to themselves.
- Allowing insurance carriers to withhold depreciation will only delay and possibly prevent repairs.

However, this issue continues to provide fodder for bad faith claims and class action lawsuits filed by trial lawyers across the country. This divisive issue presents itself as a minefield through which property carriers must carefully navigate.

For insurance companies who want to be able to depreciate labor in its ACV and RCV calculations, the die appears to be cast—make sure that the terms “actual cash value” and “depreciation” are clearly and unambiguously defined in your policy, such that there can be no question as to your intent to depreciate labor. This policy language change—assuming it is allowed in a particular state—should work well in those states who have indicated a willingness to accept such depreciation. In the handful of states which declare that depreciation of labor in ACV calculations will not be tolerated under any conditions (even when the policy is not ambiguous and will not be construed against the insurer), and/or is against that state’s public policy, you will not be able to depreciate labor unless or until lobbyists are effective in convincing lawmakers that allowing same will help hold down insurance fraud, reduce premiums, and provide consumers with more and cheaper options when buying insurance.

The following chart is an overview of the law in all 50 states with regard to the depreciation of labor and its role in determining ACV. The specific issue is the proper calculation of the “actual cash value” (“ACV”) of property insured under “replacement cost” (RCV) policies. It is a relatively young issue, with new class action suits filed routinely and a paucity of growing case or statutory law to guide us.

While this issue is not directly related to subrogating insurance claims, explaining claim payments to judges, juries, and third-party liability carriers’ claims adjusters surely is; and understanding this nuanced issue within the insurance industry is simply another weapon in the arsenal of claims professional or subrogation lawyer. For questions relating to aggressive insurance subrogation in all 50 states, please contact Lee Wickert at [leewickert@mw-law.com](mailto:leewickert@mw-law.com).



STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
ALABAMA	<p>Yes.</p> <p>Only if the policy specifically provides for deduction of the cost of labor depreciation from ACV.</p>	<p>Depreciation of labor is allowed, but only if the policy defines ACV as RCV less an allowance for physical deterioration and depreciation, including obsolescence. <i>Ware v. Metropolitan Prop. &amp; Cas. Ins. Co.</i>, 220 F.Supp.3d 1288 (M.D. Ala. 2016).</p> <p>If the policy does not define ACV unambiguously, the depreciation of labor will not be allowed. <i>Arnold v. State Farm Fire &amp; Cas. Co.</i>, 268 F.Supp.3d 1297 (S.D. Ala. 2017) (holding that carrier had not shown that the term “ACV,” which was undefined, could only be interpreted to include depreciation of labor costs). Policy in <i>Arnold</i> provided for RCV, with the initial payment limited to an undefined “actual cash value” at the time of loss.</p> <p>Same language was in <i>Ballard v. Lee</i>, 671 So.2d 1368 (Ala. 1995), overruled in part on other grounds, <i>State Farm Fire and Casualty Co. v. Owen</i>, 729 So.2d 834 (1998).</p>	<p><b>Fair Market Value.</b></p> <p>ACV is equivalent of “market value” and is determined as RCV less depreciation. Ala. Admin. Code § 482-1-125-.09(2); <i>Sussex Fire Ins. Co. v. Barton</i>, 225 Ala. 570 (1932).</p> <p>(2) <i>When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as replacement cost of property at time of loss less depreciation. Upon the insured’s request, the insurer shall provide a copy of the claim file worksheets detailing any and all deductions for depreciation.</i></p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
ALASKA	No case or statute on point.	<p>No case law on point. When you have an RCV policy and turn in a claim for a covered loss, the insurer at first may pay only the ACV for the damage to your home or personal property. But, when you present evidence that the damaged property has been repaired or replaced, the insurer will pay the difference (this is referred to as “recoverable depreciation”) up to the replacement cost. Recoverable depreciation is calculated as the difference between an item’s replacement cost and ACV. Alaska Div. of Ins., “Post-Disaster Claims Guide” See <a href="#">HERE</a>.</p>	<p><b>Replacement Cost Less Depreciation</b></p> <p><i>ACV is the actual cost to purchase a comparable item, including all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership.</i></p> <p>State of Alaska Department of Commerce and Economic Development, Bulletin 93-08 Re: Adjusters and Appraisers; Nonresident Adjusters; ACV and Salvage 2 (May 10, 1993).</p>
ARIZONA	No.	<p>Where ACV and “depreciation” are not defined in the policy, the carrier may not depreciate labor costs in determining ACV value. <i>Walker v. Auto-Owners Ins. Co.</i>, 517 P.3d 617 (Ariz. 2022). If a policy is ambiguous or silent regarding whether depreciation includes labor, then the carrier is unlikely to be able to depreciate labor while issuing an ACV payment.</p>	<p><b>Undecided.</b></p> <p>Where ACV or the methodology used to determine it is not defined in the policy, the <i>Didyoung</i> court failed to define ACV. It did decide that ACV does not “include the cost of repairs to upgrade damaged property to comply with building codes that were not at place at the time that the property was damaged.”</p> <p><i>Didyoung v. Allstate Ins. Co.</i>, 2013 WL 2896847 (D. Ariz. 2013).</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
ARKANSAS	Yes.	<p>Previously, the Arkansas Supreme Court had ruled in 2015 that a policy term which allowed for depreciation of labor violated established principles of indemnity and was contrary to Arkansas law. <i>Shelter Mut. Ins. Co. v. Goodner</i>, 477 S.W.3d 512 (Ark. 2015).</p> <p>However, effective August 1, 2017, a state statute now allows “expense depreciation” in determining ACV for new and renewed policies, but only when the policy contains notice of same in the form of a particular Insurance Commissioner-approved form explaining that labor cost depreciation may be deducted.” “Expense depreciation” includes “depreciation, including but not limited to the cost of goods, materials, labor, and services necessary to replace, repair, or rebuild damaged property.” Ark. Stat. § 23-88-106.</p>	<p><b>Replacement Cost Less Depreciation.</b></p> <p>ACV determined by “RCV minus normal depreciation.” <i>Adams v. Cameron Mut. Ins. Co.</i>, 430 S.W.3d 675, 678 (Ark. 2013).</p>
CALIFORNIA	No.	<p>“The expense of labor necessary to repair, rebuild or replace covered property is not a component of physical depreciation and shall not be subject to depreciation or betterment.” 10 C.C.R. § 2695.9(f)(1),</p> <p>California Court of Appeals has rejected a suit under the state Unfair Competition Law charging scores of insurers with improperly calculating property losses by replacement cost less depreciation. The court held the measure of damage was not inherently unfair and, in any event, that the proper forum for resolving such disputes is appraisal, not litigation. <i>Community Assisting Recovery, Inc. v. Aegis Security Ins. Co.</i>, Cal.App.4<sup>th</sup>, 112 Cal.Rptr.2d 304 (Cal. App. 2001).</p>	<p><b>Fair Market Value.</b></p> <p><i>...the measure of the actual cash value recovery, in whole or partial settlement of the claim, * * * for either a total or partial loss to the structure * * * or * * * its contents, shall be the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation.</i></p> <p>Cal. Ins. Code § 2051(b).</p> <p>A deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during the useful life of that structure.”</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
COLORADO	Yes.	<p>Labor costs may be depreciated based on the policy defining ACV as “the amount it would cost to repair or replace covered property subject to a deduction for depreciation.”</p> <p><i>Basham v. United Services Automobile Assn.</i>, 2017 WL 3217768 (D. Colo. 2017).</p> <p>The judge in <i>Basham</i> also noted that the policy in question did not explicitly limit depreciation to “physical deterioration and obsolescence” and therefore concluded that labor costs could be depreciated.</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>Nebraska Drillers v. Westchester Fire Ins. Co. of New York</i>, 123 F. Supp. 678, 681 (D. Colo. 1954).</p>
CONNECTICUT	No case or statute on point.	<p>A new class action suit was filed in federal court in Connecticut on February 8, 2023, by two Trumbull Insurance customers who claim that “hundreds of thousands” of claimants in 15 states have been underpaid more than \$5 million because of unlawful depreciation of labor in making ACV payments. <i>Grawe, et al. v. Trumbull Insurance Company</i>, No. 3:2023cv00160 (D. Conn. 2023). The complaint notes that 15 states by court decision, statute or regulatory order preclude property insurers from depreciating labor in calculating ACV when using the replacement cost value methodology, unless the property insurance forms expressly state that labor is to be depreciated. <b>The states are Arizona, California, Connecticut, , Illinois, Kentucky, Maryland, Mississippi, Missouri, Ohio, Tennessee, Texas, Utah, Vermont, Washington and Wisconsin, according to the lawsuit.</b></p>	<p><b>Replacement Cost Value Less Depreciation.</b></p> <p>Senate Bill 6238 nullified Broad Evidence Rule. In 2014, Connecticut amended §38a-307 to provide that ACV is the amount it would cost to repair or replace property with material of like kind and quality, minus reasonable depreciation. “Depreciation” means a decrease in value of real property over a period of time due to wear and tear.” Conn. Gen. Stat. Ann. § 38a-307.</p>
DELAWARE	No case or statute on point.	n/a	<p><b>Fair Market Value.</b></p> <p><i>Metro. Mut. Fire Ins. Co. v. Carmen Holding Co.</i>, 220 A.2d 778 (Del. 1966).</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
FLORIDA	<p>Yes.</p> <p>Florida law makes no distinction between labor and materials.</p>	<p>No doubt as a result of sinkhole damage and the destruction of homes in the wake of so many hurricanes, Florida has been a testing ground for the issue of depreciation of labor in ACV calculations. And it has been nothing less than schizophrenic on this issue.</p> <p>In 2007, Florida enacted a law that prevented insurers from holding back any portion of an RCV claim payment, resulting in large payments to insureds, much of which was spent on other things.</p> <p>In 2011, following Hurricanes Charley, Frances, Jeanne and Ivan, the Florida legislature passed HB 408, overhauling the replacement cost methodology and restoring a holdback on structural claims. The bill revised § 627.7011, modifying how carriers must calculate and pay RCV claims. That statute provides, in part:</p> <p><i>(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:</i></p> <p><i>(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred.</i></p> <p>Carriers must pay a down payment for structural damage, and once a contractor is hired the carrier must pay the contractor for the remaining work. Carriers are allowed to offer a holdback policy on dwelling contents at a lower rate than policy without a holdback. If the damage was to contents/personal property, the same procedures apply to the recovery of depreciation on contents coverage. The bill also allows insurers to offer a holdback policy on dwelling contents at a lower rate than a policy without a holdback.</p> <p>In 2013, the Florida Supreme Court held that overhead and profit are like all other costs of a repair, such as <u>labor</u> and materials. They can be depreciated in an ACV policy. <i>Trinidad v. Florida Peninsula Ins. Co.</i>, 121 So. 3d 433 (Fla. 2013); <i>Goff v. State Farm Fla. Ins. Co.</i>, 999 So. 2d 684 (Fla. App. 2008).</p>	<p><b>Florida courts are split on how ACV is calculated.</b></p> <p>Actual cash value (ACV) is typically calculated in one of three ways:</p> <ol style="list-style-type: none"> <li>1. The cost to repair or replace the damaged property, minus depreciation;</li> <li>2. The damaged property’s “Fair Market Value”; or</li> <li>3. The “Broad Evidence Rule.” –</li> </ol> <p>Some courts follow the <b>Broad Evidence Rule</b> in determining the ACV of destroyed property. <i>Barrett v. Prudential Prop. &amp; Cas. Ins. Co.</i>, 790 F.2d 842 (11<sup>th</sup> Cir. 1986).</p> <p>If the policy language is silent regarding ACV calculation, some courts have noted that ACV is synonymous with <b>Fair Market Value</b>. <i>Goff v. State Farm Fla. Ins. Co.</i>, 999 So. 2d 684 (Fla. App. 2008).</p> <p>The Florida Supreme Court has held that costs such as overhead, profit and labor are depreciable under ACV policies. <i>Trinidad v. Fla. Peninsula Ins. Co.</i>, 121 So. 3d 433 (Fla. 2008).</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
GEORGIA	No case or statute on point.	n/a	<p><b>Fair Market Value.</b></p> <p><i>It follows therefore that the basic measure of loss under this policy is not original cost or replacement value as contended by the defendant insurer, but is actual value which has been defined as fair market value of the property at the time of loss.</i></p> <p><i>Am. Cas. Co. of Reading, Pa. v. Parks-Chambers, Inc., 142 S.E.2d 275 (Ga. App. 1965).</i></p>
HAWAII	No case or statute on point.	n/a	<p><b>Undecided.</b></p> <p>Hawaii mandates at least as much coverage as that provided by the standard form fire insurance policy as authorized and in effect in the State of New York on December 31, 1943. References to a “proper deduction for depreciation” was eliminated in the 1943 policy.</p> <p>Haw. St. § 431:10-210(a).</p>
IDAHO	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Boise Ass'n of Credit Men v. U.S. Fire Ins. Co., 256 P. 523, 528 (Idaho 1927); Manduca Datsun, Inc. v. Universal Underwriters, Ins. Co., 676 P.2d 1274 (Idaho App. 1984).</i></p>

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ILLINOIS	No.	<p>In the case of <i>Sproull v. State Farm Fire and Cas. Co.</i>, 184 N.E.3d 203 (Ill. 2021), a class action was brought against State Farm for depreciating labor costs, and the court, in a matter of first impression in that state, noted that when the terms of the policy are ambiguous, they must be construed against the insurer. The court ruled that when calculating ACV of a covered loss, property structure and materials were subject to a reasonable deduction for depreciation, but depreciation could not be applied to the intangible component of labor. It gave two reasons for this ruling: (1) the Illinois’s insurance regulations provided that the “actual cash value” of an insured damaged structure was determined as replacement cost of property at time of loss less depreciation, if any, and (2) the policy did not define the term actual cash value. Where there are conflicting interpretations of the terms of the policy, the court must rule in favor of the insured’s interpretation that actual cash value only included depreciation of materials, not labor.</p> <p>If BOTH “actual cash value” and “depreciation” are not defined in the terms of the insurance policy, the carrier cannot depreciate labor when calculating ACV.</p> <p><i>Sproull v. State Farm Fire and Cas. Co.</i>, 184 N.E.3d 203 (Ill. 2021).</p>	<p><b>Replacement Cost Less Depreciation.</b></p> <p><i>Carey v. Am. Family Brokerage, Inc.</i>, 909 N.E.2d 255 (Ill. App. 2009).</p>
INDIANA	No case or statute directly on point.	<p>An Indiana Supreme Court decision appears to authorize the application of an “across-the-board” depreciation deduction, reversing a lower court’s determination that labor costs could not be depreciated in the determination of actual cash value. Most pundits feel that this case does not rise to the level of authorizing the depreciation of labor in the calculation of ACV, however.</p> <p><i>Travelers Indem. Co. v. Armstrong</i>, 442 N.E.2d 349 (Ind. 1982).</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>Atlas Construction Co. Inc. v. Indiana Insurance Company, supra.</i> <i>Travelers Indem. Co. v. Armstrong</i>, 442 N.E.2d 349 (Ind. 1982); <i>Thorne v. Member Select Ins. Co.</i>, 882 F.3d 642 (7th Cir. 2018).</p>
IOWA	No case or statute on point	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Britven v. Occidental Ins. Co.</i>, 13 N.W.2d 791 (Iowa 1944).</p>

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KANSAS	Yes. If policy provides for depreciation.	<i>Graves v. Am. Fam. Mut. Ins. Co.</i> , 2015 WL 4478468 (D. Kan. 2015), <i>aff'd</i> , 686 Fed. Appx. 536 (10th Cir. 2017).	<b>Replacement Cost Without Deduction for Depreciation</b> (for partial losses only). <i>Thomas v. Am. Family Mut. Ins. Co.</i> , 666 P.2d 676 (Kan. 1983).



A Kentucky regulation provides for ACV to be calculated as replacement cost less depreciation but does not address how depreciation should be calculated. 806 K.A.R. § 12:095 Sec. 9(2)(a):

*(a) If the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. If provided for in the policy, depreciation may include the costs of goods, materials, labor, equipment, overhead and profit, taxes, fees, and services necessary to replace, repair, or rebuild the damaged property. If requested by the insured, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.*

When the term “Actual Cash Value” is not defined or is ambiguously defined in the policy, the insured’s interpretation is controlling, and depreciation should not include labor.

In another class action suit, *Bailey v. State Farm Fire and Cas. Co.*, 2015 WL 1401640 (E.D.Ky. Mar. 25, 2015), the carrier depreciated both materials and labor. Both parties agreed that under Kentucky law, ACV meant replacement cost of the property at the time of loss, less depreciation. It said that “*the very idea of depreciating the value of labor defies good common society.*” A Kentucky federal district court denied State Farm’s motion to dismiss. ACV was not defined in the policy. The court noted the following fundamental tenets/purposes of insurance:

- To put insured back in same position as before loss;
- The insured receives the value of the damaged property as it existed prior to the loss;
- Policy language construed against carrier;

Taking the above into consideration, the judge in *Bailey* said that “*the depreciation of labor in calculating ACV is improper.*”

See also *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703 (6<sup>th</sup> Cir. 2018)(unpublished)(holding that even though Kentucky law defines ACV as replacement cost minus depreciation, the policy is ambiguous because it does not specifically address what can be depreciated).

#### Replacement Cost Less Depreciation.

ACV is determined as: “replacement cost of property at the time of the loss less depreciation, if any.” 806 K.A.R. § 12:095 Sec. 9(2)(a).

*Snellen v. State Farm Fire & Cas. Co.*, 675 F. Supp. 1064 (W.D. Ky. 1987).

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LOUISIANA	Yes.	<p>In RCV policy case, with no ambiguity, ACV was calculated by taking the repair/replacement which included both material and labor, and then deducting for depreciation. If no repairs or replacements were made, the insured was paid the ACV. If repairs or replacement was done, Allstate reimbursed the insured for the depreciation deduction. The insured challenged Allstate’s refusal to pay 100% of the future labor costs, without any depreciation, even if the insured did not replace or repair the damaged property. The policy here could not be interpreted to pay the insured for all future labor costs, which have not yet, nor may they ever be, incurred. Depreciation was the actual value of the damaged property reduced by a time factor depending upon the life expectancy of the property. ACV was the replacement of that property, less the depreciation, including depreciation of labor costs.</p> <p><i>Shahan v. Allstate Vehicle &amp; Prop. Ins. Co.</i>, 2022 WL 3022057 (W.D. La. July 29, 2022).</p>	<p><b>Replacement Cost Less Depreciation.</b></p> <p>ACV is calculated by taking the repair/replacement which includes both material and labor and then deducting for depreciation.</p> <p><i>Hackman v. EMC Ins. Co.</i>, 984 So. 2d 139 (La. App. 2008); <i>Shahan v. Allstate Vehicle &amp; Prop. Ins. Co.</i>, 2022 WL 3022057 (W.D. La. July 29, 2022).</p>
MAINE	No case or statute on point.	n/a	<p><b>Replacement Cost Less Depreciation.</b></p> <p>24-A A.M.R.S.A. § 3004-A.</p> <p><i>Gendron v. Pawtucket Mut. Ins. Co.</i>, 384 A.2d 694 (Me. 1978) (old rule was “Fair Market Value”).</p>
MARYLAND	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Schreiber v. Pac. Coast Fire Ins. Co.</i>, 75 A.2d 108 (Md. 1950).</p>
MASSACHUSETTS	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>O’Connor v. Merrimack Mut. Fire Ins. Co.</i>, 897 N.E.2d 593 (Mass. App. 2008).</p>

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MICHIGAN	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Davis v. Nat'l American Ins. Co.</i>, 259 NW2d 433 (Mich. App. 1977); <i>Haley v. Farm Bur. Ins. Co.</i>, 302158, 2013 WL 4525924 (Mich. App. 2013).</p>
MINNESOTA	Yes. Where policy does not define ACV.	<p>leave the decision up to a jury; holding that a factfinder may consider depreciated labor costs in determining actual cash value, but only if such evidence “logically tends to establish” actual cash value.</p> <p><i>Wilcox v. State Farm Fire and Cas. Co.</i>, 874 N.W.2d 780 (Minn. 2016).</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>Brooks Realty, Inc. v. Aetna Ins. Co.</i>, 149 N.W.2d 494 (Minn. 1967); <i>Wilcox v. State Farm Fire &amp; Cas. Co.</i>, 874 N.W.2d 780 (Minn. 2016).</p>
MISSISSIPPI	Yes.	<p>No law prohibits the depreciation of labor expenses in ACV calculations. However, if such a practice is used, it should be provided for in the policy and clearly explained in the carrier’s claim estimate. Mississippi Insurance Department Bulletin 2017-8 (August 4, 2017). See <a href="#">HERE</a>. Definition of “Actual Cash Value” in policy must be unambiguous. <i>Titan Exteriors, Inc. v. Certain Underwriters at Lloyd’s, London</i>, 297 F. Supp.3d 628, 634 (N.D. Miss. 2018).</p> <p>On February 5, 2021, the Middle District of Tennessee granted final class certification of labor depreciation settlement classes involving Mississippi, Tennessee and Ohio policyholders and final approval of settlement in two separate, but related cases captioned, <i>Holmes v. LM Ins. Corp.</i>, No. 19-00466 and <i>Northside Church of Christ v. Ohio Security Ins. Co.</i>, No. 20-00184 (M.D. Tenn. Feb. 5, 2020).</p> <p>Similarly, on September 21, 2020, the Western District of Tennessee granted final class certification of Mississippi and Tennessee labor depreciation settlement classes and final approval of settlement in the case captioned <i>Koester v. USAA Gen. Indem. Co.</i>, No. 19- 02283 (W.D. Tenn. Sept. 4, 2020) (Koester Dkt. 69).</p>	<p><b>Replacement Cost.</b></p> <p><i>Lititz Mut. Ins. Co. v. Buckley</i>, 261 So. 2d 492 (Miss. 1972) (furnishings).</p>

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MISSOURI	Yes.	<p>In <i>LaBrier v. State Farm Fire &amp; Casualty Company</i>, 147 F. Supp. 3d 839 (W.D. Mo. 2015), the policy was held ambiguous and was construed in favor of the insured—therefore, labor could not be depreciated.</p> <p>In <i>In re State Farm Fire and Casualty Co.</i>, 872 F.3d 567 (8<sup>th</sup> Cir. 2017), the <b>8<sup>th</sup> Circuit</b> (ND, SD, MN, IA, NE, MO, AR) put an end to most of the handful of Missouri-based labor depreciation class action lawsuits. The court said that “<i>Embedded-labor-cost depreciation is one factor that a trier of fact may consider in determining actual cash value.</i>”</p> <p>The one exception to the above is <i>McLaughlin v. Fire Insurance Exchange</i>, No. 1316-CV11140, Jackson Cty. Cir. Ct., where despite the 8<sup>th</sup> Circuit’s decision, a Missouri state court certified a class and directed issuance of class notice.</p> <p>Although Missouri law provides that “depreciation may legitimately be considered in order to determine the actual cash value of the insured property at the time of loss,” <i>Wells v. Mo. Prop. Ins. Placement Facility</i>, 653 S.W.2d 207, 214 (Mo. banc 1983), nowhere in Missouri law is depreciation defined to include labor as a component to be independently valued nor is it expressly excluded.</p> <p>Class actions previously filed: <i>Riggins v. Am. Fam. Mut. Ins. Co.</i>, Case No.: 2:14-cv-04171-NKL (W.D. Mo.); <i>McLaughlin v. Fire Ins. Exch.</i>, No. 1316-CV11140 (Mo. Cir. Ct., Jackson Cty.); <i>Bellamy v. Nationwide Affinity Ins. Co.</i>, No. 1516-CV06346 (Mo. Circ. Ct., Jackson Cty.).</p>	<p><b>Fair Market Value.</b></p> <p>The definition of ACV could be the fair market value of the property immediately before and after the loss, but it could also be RCV less depreciation <i>LaBrier, supra</i>.</p> <p><i>Warren Davis Properties V, L.L.C. v. United Fire &amp; Cas. Co.</i>, 4 S.W.3d 167 (Mo. App. 1999) (Fair Market Value).</p>
MONTANA	No.	<p>Labor may not be depreciated in property claims if there is no valuation stated in the policy and there is not a basis more favorable to the insured in the policy. Mont. Code Ann. § 33-24-101.</p> <p><i>McIntosh v. Hartford Fire Ins. Co.</i>, 78 P.2d 82 (Mont. 1938).</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>CQI, Inc. v. Mountain W. Farm Bureau Ins. Co.</i>, 2010 WL 2943143 (D. Mont. 2010).</p> <p><b>Replacement Cost (if no valuation in policy).</b> Mont. Code Ann. § 33-24-101.</p>

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NEBRASKA	Yes.	<p>In <i>Henn v. American Family</i>, 295 Neb. 859, Supreme Court Of Nebraska (February 17, 2017) a class action/bad faith action suit was filed after the carrier depreciated the value of labor as well as materials in reaching an ACV. Court said that ACV was not ambiguous in the policy. ACV equals the depreciated value of the property prior to the loss, which includes materials and labor.</p> <p>Under an ACV policy or where the ACV, as repaired, does not exceed its actual cash value at the time of the loss, depreciation of labor is only permitted if it is expressly provided for in the Policy. <i>Olson v. Le Mars Mut. Ins. Co.</i>, 696 N.W.2d 453 (Neb. 2005).</p>	<p><b>Fair Market Value.</b></p> <p><i>Erin Rancho Motels, Inc. v. U.S. Fid. &amp; Guar. Co.</i>, 352 N.W.2d 561 (Neb. 1984).</p>
NEVADA	Yes.	<p>ACV is the amount it would cost to repair or replace covered property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Depreciation is applicable to the cost of labor unless specifically prohibited by law. Homeowners' Endorsement HA 01 27 NV 04 15 "Special Provisions."</p>	<p><b>Replacement Cost Less Depreciation.</b></p> <p><i>Sierra P. Power Co. v. Hartford Steam Boiler Inspection and Ins. Co.</i>, 2007 WL 2407037 (D. Nev. 2007); <i>Richfield Oil Corp. v. Harbor Ins. Co.</i>, 452 P.2d 462 (Nev. 1969).</p>
NEW HAMPSHIRE	No case or statute on point.	n/a	<p><b>"Less Than Rigid" Broad Evidence Rule</b></p> <p>Because no single test is proper for valuating all property losses.</p> <p><i>Pinet v. New Hampshire Fire Ins. Co.</i>, 126 A.2d 262 (N.H. 1956).</p>
NEW JERSEY	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Messing v. Reliance Ins. Co.</i>, 187 A. 2d 49 (N.J. Super. 1962).</p>

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NEW MEXICO	No case or statute on point.	n/a	<b>Fair Market Value.</b> <i>Roswell Trailers, Inc. v. Potomac Ins. Co.</i> , 576 P.2d 1133 (N.M. 1978).
NEW YORK	Undecided.	Courts have allowed General Contractor Overhead and Profit (GCOP) to be included in RCV calculations, and <i>Mazzocki</i> states that carrier did not dispute ACV being defined as “Replacement Cost Less Depreciation.” If carrier must include GCOP in replacement cost calculation, it suggests that contractor profit (i.e., labor) may be depreciated.  <i>Mazzocki v. State Farm Fire &amp; Cas. Corp.</i> , 766 N.Y.S.2d 719 (N.Y. App. Div. 2003).	<b>Broad Evidence Rule.</b> <i>Incardona v. Home Indemnity Co.</i> , 400 N.Y.S.2d 944 (1977).
NORTH CAROLINA	Yes.	When calculating ACV under the particular policy construed, depreciation included the cost of labor. The court held that the term ACV was not ambiguous in the policy, <i>Accardi v. Hartford Underwriters Ins. Co.</i> , 838 S.E.2d 454 (N.C. 2020); <i>Wachovia Bank &amp; Trust Co. v. Westchester Fire Ins. Co.</i> , 172 S.E.3d 518 (N.C. 1970).	<b>Broad Evidence Rule.</b> <i>Balestrieri v. Am. Home Assur. Co.</i> , 2010 WL 1533375 (W.D.N.C. 2010); <i>Surratt v. Grain Dealers Mut. Ins. Co.</i> , 328 S.E.2d 16, 19–20 (1985); <i>Kinlaw v. North Carolina Farm Bureau Mut. Ins. Co.</i> , 389 S.E.2d 840 (1990).
NORTH DAKOTA	No case or statute directly on point.	n/a	<b>Fair Market Value.</b> <i>Butler v. Etna Ins. Co.</i> , 256 N.W. 214 (N.D. 1934).

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
OHIO	<p>No.</p> <p>Not unless the policy specifically provides for deduction of the cost of labor depreciation from ACV.</p>	<p><b>Two 6<sup>th</sup> Circuit decisions interpreting Ohio law</b> have held that when the term “Actual Cash Value” is not defined or ambiguously defined in the policy, the insured’s interpretation is controlling, and depreciation should not include labor. <i>Cranfield v. State Farm Fire &amp; Casualty Co.</i>, 798 Fed.Appx. 929 (6<sup>th</sup> Cir. Mar. 23, 2020) (interpreting Ohio law). <i>Cranfield</i> was decided 6 days after <i>Perry</i>.</p> <p>In <i>Perry v. Allstate Indem. Co.</i>, 953 F.3d 417 (6<sup>th</sup> Cir. 2020), the property policy simply said, “...if you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation.” Noting the ambiguity and construing the policy in favor of the insured (who didn’t draft the policy), the court ruled for the insured after the carrier tried deducting both material and labor as part of the depreciation cost when calculating the claim payment. An Ohio insurer may not deduct the cost of labor depreciation pursuant to an ACV policy that does not expressly provide for such deductions.</p>	<p><b>Three acceptable methods:</b></p> <ol style="list-style-type: none"> <li><b>1. Market Value.</b> <i>Asmaro v. Jefferson Ins. Co. of New York</i>, 574 N.E.2d 1118 (Ohio Ct. App. 1989).</li> <li><b>2. Cost of Repairs Less Depreciation.</b> <i>Florea v. Nationwide Mut. Fire Ins. Co.</i>, 1983 WL 5030 (Ohio App. 1983).</li> <li><b>3. Broad Evidence Rule.</b> <i>Sudvary v. Ohio Farmers Ins. Co.</i>, 1984 WL 6351 (Ohio App. 1984).</li> </ol>
OKLAHOMA	<p>Yes.</p>	<p>Oklahoma Supreme Court cited to Indiana Supreme Court when the Oklahoma court explicitly decided that labor may be depreciated.</p> <p><i>Branch v. Farmers Ins. Co.</i>, 55 P. 3d 1023, 1027 (Okla. 2002); <i>Redcorn v. State Farm Fire &amp; Cas. Co.</i>, 55 P.3d 1017 (Okla. 2002).</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>Redcorn v. State Farm Fire &amp; Cas. Co.</i>, 55 P.3d 1017 (Okla. 2002).</p>

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OREGON	No case or statute on point.	n/a	<p><b>Market Value.</b></p> <p><i>Growers Refrigerating Co. v. American Motorists Ins. Co.</i>, 488 P.2d 1358 (Or. 1971).</p> <p><b>Other Methods Acceptable.</b></p> <p>There is no universal standard for ACV. The purpose of insurance is to indemnify and compensate without enrichment.</p> <p><i>Ore. Mutual Fire Ins. Co. v. Mathis</i>, 334 P.2d 186 (Or. 1959); <i>Schnitzer v. S. Carolina Ins. Co.</i>, 661 P.2d 550 (Or. App. 1983).</p>
PENNSYLVANIA	Yes. Unless partial loss.	<p>Property is “the result or physical manifestation of combining knowhow, labor, and physical materials. <i>Papurello v. State Farm Fire &amp; Cas. Co.</i>, 144 F. Supp.3d 746 (W.D. Penn. 2015).</p> <p>If partial loss only, depreciation of labor allowed <i>only</i> if authorized in the policy <i>and</i> ACV is defined as “the cost to repair or replace the damaged property less deduction for physical deterioration. <i>Kane v. State Farm Fire &amp; Cas. Co.</i>, 841 A.2d 1038 (Pa. Super. 2003); <i>London v. Insurance Placement Facility</i>, 703 A.2d 45 (Pa. Super. 1997).</p>	<p><b>Replacement Cost Less Depreciation.</b></p> <p><i>Canulli v. Allstate Ins. Co.</i>, 462 A.2d 286 (Pa. Super. 1983).</p>
RHODE ISLAND	No case or statute directly on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Vogt v. Rhode Island Joint Reinsurance Ass'n</i>, 1999 WL 1062207 (R.I. Super. 1999).</p>



STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
SOUTH CAROLINA	Yes.	<p>The South Carolina Supreme Court recently ruled that an insurer can depreciate the cost of labor in determining ACV when the estimated cost to repair or replace the damaged property includes both material and embedded labor components. The court noted the value of the damaged home must be calculated as a unit and it would be impractical to include the depreciation of materials and not labor. “When the labor cost associated with an item of property is embedded, the value of the item is necessarily calculated as to the unit, not as to the individual parts.” Similarly, the fact the labor cost is embedded makes it impractical, if not impossible, to include depreciation for materials and not for labor to determine ACV of the damaged property. The court said it makes no sense for an insurer to include depreciation for materials and not for embedded labor.</p> <p><i>Butler v. Travelers Home &amp; Marine Ins. Co.</i>, 858 S.E.2d 407 (S.C. 2021).</p>	<p><b>Replacement Cost Value Less Depreciation.</b></p> <p>However, court in <i>Butler v. Travelers</i> noted that “ACV does not have a common application due to a number of factors, including but not limited to, the type of property damage, changes in technology since original construction of the property, zoning and market conditions.”</p> <p>Previously, <b>Broad Evidence Rule</b> implied. <i>S. Carolina Elec. &amp; Gas Co. v. Aetna Ins. Co.</i>, 120 S.E.2d 111 (S.C. 1961).</p>
SOUTH DAKOTA	No case or statute directly on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Lampe Market Co. v. Alliance Ins. Co.</i>, 22 N.W.2d 427 (S.D. 1946).</p>
TENNESSEE	No.	<p>Depreciation of labor not allowed because labor cannot logically depreciate. Black’s Law Dictionary defines “depreciation” as “a reduction in the value of price of something; specifically, a decline in an asset’s value because of use, wear, obsolescence, or age.” The court in <i>Lammert</i> said that “depreciation” in insurance law is not the type that is charged off the books of a business establishment, but rather, is the actual deterioration of a structure by reason of age, and physical wear and tear, computed at the time of the loss. It also noted that the policy was ambiguous as to whether labor could be depreciated, and the insured’s interpretation must win.</p> <p><i>Lammert v. Auto-Owners (Mut.) Ins. Co.</i>, 572 S.W.3d 170 (Tenn. 2019).</p>	<p><b>Broad Evidence Rule</b></p> <p>Or</p> <p><b>Replacement Cost Less Depreciation.</b></p> <p><i>Braddock v. Memphis Fire Ins. Corp.</i>, 493 S.W.2d 453 (Tenn. 1973).</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
TEXAS	Conflicting Case Law.	<p>Two Texas federal district courts have reached opposite conclusions on the issue. In <i>Tolar v. Allstate Tex. Lloyd's Co.</i>, 772 F. Supp.2d 825 (N.D. Tex. 2011), the court suggested that labor costs may be depreciated in the determination of actual cash value.</p> <p>Yet, as recently as January 11, 2023, a federal district court applying Texas law held that the undefined term “actual cash value” was ambiguous and was interpreted as not including depreciation of labor. <i>Sims v. Allstate Fire</i>, 2023 WL 175006 (W.D. Tex. Jan. 11, 2023).</p>	<p><b>Fair Market Value.</b></p> <p><i>U. S. Fire Ins. Co. v. Stricklin</i>, 556 S.W.2d 575 (Tex. Civ. App. 1977).</p>
UTAH	No case or statute directly on point.	n/a	<p><b>Replacement Cost Less Depreciation.</b></p> <p>Utah Insurance Department, Glossary of Homeowner Insurance Terms (July 19, 2017). See <a href="#">HERE</a>.</p>
VERMONT	No.	<p>Labor, unlike physical materials, does not break down or lose value over time. Depreciation of labor costs is prohibited by 8 V.S.A. § 4724(9)(F).</p> <p>Vt. Dept. of Fin. Regulation, Div. of Ins., Ins. Bulletin No. 184 (May 1, 2015). See <a href="#">HERE</a>.</p> <p>Section 4724(9)(F) - Unfair Claims Settlement Practices – “Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.”</p>	<p><b>Broad Evidence Rule.</b></p> <p><i>Eagle Square Mfg. Co. v. Vermont Mut. Fire Ins. Co.</i>, 212 A.2d 636 (Vt. 1965).</p> <p><b>Other Methods Acceptable.</b></p> <p>“Both market value and replacement cost are permissible standards for determining loss by fire—“but they are standards and not shackles.” <i>Eagle. Square Mfg., supra</i>.</p>
VIRGINIA	No case or statute on point.	n/a	<p><b>Broad Evidence Rule.</b></p> <p><i>Filter Products Co., Inc. v. Travelers Indemn. Co. of Am.</i>, 1987 WL 488731 (Va. Cir. Ct. 1987).</p>

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WASHINGTON	No.	<p><i>Lains v. American Family Mut. Ins. Co.</i>, 2016 WL 4533075 (W.D. Wash. 2016). Policy language was ambiguous. May not depreciate labor costs where policy defines ACV as ““the amount it costs to repair or replace property with like kind and quality less depreciation for physical deterioration and obsolescence.”</p> <p>Effective January 1, 2022: “Except for the intrinsic labor costs that are included in the cost of manufactured materials or goods, the expense of labor necessary to repair, rebuild, or replace covered property is not a component of physical depreciation and <u>may not be subject to depreciation or betterment.</u>” W.A.C. § 284-20-010.</p>	<p><b>Fair Market Value.</b></p> <p><i>National Fire Ins. Co. of Hartford v. Solomon</i>, 638 P.2d 1259, 1263 (Wash. 1982); <i>Holden v. Farmers Ins. Co. of Washington</i>, 239 P.3d 344 (Wash. 2010).</p>
WEST VIRGINIA	No case or statute on point.	n/a	<p><b>Undecided. Possibly Replacement Cost Less Depreciation.</b></p> <p>“If you have Actual Cash Value (ACV) coverage, your policy will pay the depreciated cost to repair or replace your damaged property.”</p> <p>West Virginia Offices of the Insurance Commissioner, July 26, 2021. See <a href="#">HERE</a>.</p>

STATE	CAN CARRIER DEPRECIATE LABOR?	STATUTE OR CASE LAW	ACV CALCULATIONS
WISCONSIN	No case or statute directly on point.	n/a	<p><b>Replacement Cost Less Depreciation.</b></p> <p><i>Coppins v. Allstate Indem. Co.</i>, 857 N.W.2d 896 (Wis. App. 2014).</p> <p><b>Broad Evidence Rule</b> applies when policy is silent on definition of ACV. <i>Wickman v. State Farm Fire &amp; Cas. Co.</i>, 616 F. Supp. 2d 909 (E.D. Wis. 2009); <i>Doelger &amp; Kirsten, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.</i>, 167 N.W.2d 198 (Wis. 1969) (supporting Broad Evidence Rule historically).</p>
WYOMING	No case or statute directly on point.	n/a	<b>Undecided.</b>

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