

ENSURING INDEMNITY: WHY INSURERS SHOULD CEASE THE PRACTICE OF DEPRECIATING LABOR

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I. INTRODUCTION

Farmers across Iowa are accustomed to living with a certain degree of risk.¹ Part of living with risk includes a reliance on insurance coverage in order to protect a farmer when losses occur.² Depending on the type of coverage a farmer's policy provides, he may not be covered to the extent he initially believes he is.³ In an era where farmers are sitting on more assets than their forefathers, every penny is vital.

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1. JOHN FRASER HART, *THE CHANGING SCALE OF AMERICAN AGRICULTURE* 27 (2003); Mark Moore, *Are You Covered?*, *FARM INDUS. NEWS*, Apr. 2011, at 34.

2. Moore, *supra* note 1 (“Proper risk management means having insurance in place that properly covers the value of the farm’s assets.”).

3. *See id.*

4. *Id.*

One source for coverage lapse is a general confusion consumers have in understanding the different types of insurance being offered.⁵ The current insurance consumer environment is one where insureds do not read their policies thoroughly, and insurers do not write policies for the comprehension of their customers.⁶ This results in policy holders who lack a general sense of where lapses in coverage exist because their policy was not thoroughly explained to them.⁷ A specific source of confusion which consumers run into is “actual cash value” coverage (ACV coverage), a form of property and casualty coverage which is common due to its low premium cost and allows insurance companies to depreciate the policy holder’s claim.⁸ Seventy percent of insureds believe their ACV coverage provides for full replacement cost, not realizing their policy provides for the depreciation of their assets.⁹

There is no dispute within the industry that depreciation applies to the physical components of a loss.¹⁰ Amidst, or perhaps because of, the confusion insureds have regarding their policy coverage, insurance providers began to expand the scope of depreciation by including intangible aspects of an item—such as overhead and profit,¹¹ sales tax,¹² and labor¹³—in hybrid line items, items which include both tangible and intangible components.¹⁴ As for pure labor line items, some insurance providers will depreciate them while others do not.¹⁵ The practice of depreciating intangible components of a loss raises the question: are those

5. Michelle Boardman, *Insuring Understanding: The Tested Language Defense*, 95 IOWA L. REV. 1075, 1077 (2010).

6. *Id.*

7. *See id.* at 1081-82.

8. *Id.* at 1084 (“‘Actual cash value,’ which includes depreciation and is much lower than replacement cost, is the norm for destroyed personal belongings.”).

9. *Id.*

10. *See, e.g.*, *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *11 (E.D. Ky. Mar. 25, 2015) (“Nor do Plaintiffs disagree that it is proper for State Farm to depreciate the cost of the materials necessary to repair or replace Plaintiffs’ structures to determine ACV.”).

11. *Tolar v. Allstate Tex. Lloyd’s Co.*, 772 F. Supp. 2d 825, 828 (N.D. Tex. 2011); *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 436 (Fla. 2013).

12. *Tolar*, 772 F. Supp. 2d at 828.

13. *E.g.*, *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1019 (Okla. 2002).

14. *See* Plaintiffs’ Opposition to Defendant’s Motion to Dismiss and Their Suggestions Concerning Certification under Minn. Stat. § 480.065 at 6-10, *Wilcox v. State Farm Fire & Cas. Co.*, No. 14-CV-2798-RHK-FLN (D. Minn. Sept. 4, 2014), 2014 U.S. Dist. Ct. Pleadings LEXIS 10515 [hereinafter Plaintiff’s Opposition to Defendant’s Motion to Dismiss].

15. *Compare id.*, with Brief for Appellant at 6, *Graves v. Am. Family Mut. Ins. Co.*, No. 15-3187 (10th Cir. Nov. 5, 2015), 2015 WL 677651.

intangible components of a loss, which by definition lack physical traits, subject to depreciation in the same manner as tangible components are in ACV coverage? In fact this question, at least as it pertains to labor line items, has been subject to a wave of class action litigation.¹⁶ Litigation in this area of insurance law has yet to find its way to Iowa, however.¹⁷ Any litigation's possible effects, though, could have a major impact not only on Iowa's insured but on the state's farmers as well. This Note looks to discuss just how the Iowa judicial system should resolve this question if litigation were to arise and addresses why the state legislature or the proper administrative agencies should resolve this matter before it enters the courts in—order to prevent harm to Iowa's insureds and farmers.

In order to best grapple with this question, the necessary groundwork must be laid. First, in Part I, there will be a discussion as to the fundamental differences between ACV coverage and its close cousin, "replacement cost value" coverage (RCV coverage).¹⁸ Next, in Part II, there will be a discussion as to why farmers are a class uniquely vulnerable to injury from depreciation in ACV due to the sheer quantity of insurable assets they possess.¹⁹ This will include a discussion on the evolution of the agricultural industry and how this evolution affected a farmer's insurance needs. In Part III, there will be a breakdown of the principle arguments both sides of the issue have utilized throughout the course of class action litigation and problems which sit within those arguments. Finally, in Part IV, a recommendation that Iowa follow the *Adams* chain of cases and begin to weed out the practice of depreciating labor in all ACV coverage policies. This recommendation will be coupled with an explanation as to why regulatory or legislation may be the most prudent means of achieving this goal.

II. "ACTUAL CASH VALUE" AS A FORM OF COVERAGE

The insurance contract is the focal point behind any and all insurance disputes.²⁰ The amount an insured is able to recover from a loss ultimately depends

16. Wylan Ackerman, *The Next Big Wave of Insurance Class Actions*, LAW360 (Apr. 13, 2015, 10:57 AM), <http://www.law360.com/articles/641945/the-next-big-wave-of-insurance-class-actions>.

17. *See id.*

18. *See, e.g.*, ALLAN D. WINDT, *INSURANCE CLAIMS AND DISPUTES: REPRESENTATION OF INSURANCE COMPANIES AND INSURED* § 11:35 (6th ed. 2013).

19. *See* NAT'L AGRIC. STATISTICS SERV., USDA, 2012 CENSUS OF AGRICULTURE 308 (2014), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf [hereinafter 2012 CENSUS OF AGRICULTURE].

20. *See, e.g.*, *Amish Connection, Inc. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 236 (Iowa 2015).

upon the type of coverage he has.²¹ In property and casualty insurance, the two most prominent types of coverage are ACV and RCV coverage.²² Between these two types of coverage, rest important differences.²³ These differences are critical to grasping the heart of the ongoing debate over labor depreciation,²⁴ and thus, an understanding of both types of coverage will aid in better understanding the issue at hand.

A. “Actual Cash Value” Compared with “Replacement Cost Value”

The primary objective of ACV is indemnity.²⁵ As professor Johnny Parker of the University of Tulsa College of Law once described, ACV coverage’s “purpose is to make the insured whole, but never to benefit him . . . [t]o indemnify means simply to put the insured back in the position she previously enjoyed prior to the loss.”²⁶ In order to put the insured back in the position he previously enjoyed, ACV coverage permits an insurer to depreciate the claimed loss.²⁷ The ability to depreciate is often why ACV coverage is defined, in some form or variation, as “the current cost to repair or replace covered property with new material of like-kind and quality, less a reduction for physical deterioration and depreciation, including obsolescence.”²⁸

Of course, the language in each policy varies and is what ultimately controls the claim,²⁹ but general limitations are accepted by the insurance industry.³⁰ These limitations are expressed in policy language such as the following:

This company shall not be liable beyond the actual cash value of the property at the time any loss or damages occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value,

21. Timothy P. Law & Jillian L. Starinovich, *What Is it Worth? A Critical Analysis of Insurance Appraisal*, 13 CONN. INS. L. J. 291, 295 (2007).

22. *E.g.*, WINDT, *supra* note 18, § 11:35.

23. *Id.*

24. *See* Wilcox v. State Farm Fire & Cas. Co., No. 14-2798, 2015 U.S. Dist. LEXIS 26924, at *7 (D. Minn. Jan. 16, 2015); *see also* Redcorn v. State Farm Fire & Cas. Co., 55 P.3d 1017, 1021 (Okla. 2002).

25. Johnny Parker, *Replacement Cost Coverage: A Legal Primer*, 34 WAKE FOREST L. REV. 295, 296 (1999).

26. *Id.*

27. *E.g.*, BARRY R. OSTRAGER & THOMAS R. NEWMAN, HANDBOOK ON INSURANCE COVERAGE DISPUTES 1707 (16th ed. 2013).

28. NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION 47-33, 47-34 (Jeffrey E. Thomas & Susan Lyons eds., 2014) [hereinafter APPLEMAN ON INSURANCE].

29. OSTRAGER & NEWMAN, *supra* note 27, at 1706.

30. *See* 33 AM. JUR. 2D *Insurance* § 1504, LEXIS (database updated Feb. 2016).

with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality.³¹

From these accepted limitations, many policies do not further define the methodology used for determining ACV coverage.³² This led the courts to develop three methodologies to measure ACV coverage: (1) market value; (2) replacement cost minus depreciation; and (3) the broad evidence rule.³³ A brief definition of all three will prove to be useful.

The sole consideration of the market value test “is what a willing buyer would give and what a willing seller would take for the property” in the open market.³⁴ Replacement cost less depreciation is as simple as it sounds. It provides full replacement cost subtracted by a calculation of depreciation.³⁵ Finally, the broad evidence rule provides that “any evidence logically tending to establish a correct estimate of the value of the damaged or destroyed property may be considered to determine actual cash value at the time of the loss.”³⁶

For the purposes of this Note, it is important to distinguish how Iowa determines the value for ACV coverage. The Iowa Insurance Division provides for two methodologies to determine the scope of ACV coverage.³⁷ The regulatory body has defined ACV coverage to mean “replacement cost of property at time of

31. *Id.*

32. *See* Adams v. Cameron Mut. Ins. Co., 430 S.W.3d 675, 676 (Ark. 2013) (“The policy did not define the term ‘actual cash value.’”); Bailey v. State Farm Fire & Cas. Co., No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *11 (E.D. Ky. Mar. 25, 2015) (“Actual Cash Value is not defined in either the Bailey Policy or the Hicks Policy.”); Redcorn v. State Farm Fire & Cas. Co., 55 P.3d 1017, 1019 (Okla. 2002) (“Redcorn’s policy does not define ‘actual cash value’ nor does it prescribe means for determining actual value.”); Zochert v. Nat’l Farmers Union Prop. & Cas. Co., 576 N.W.2d 531, 532 (S.D. 1998) (“Neither ‘actual cash value’ nor ‘replacement cost’ is defined under the definitions portion of the farmowner’s policy . . .”). *But see* Graves v. Am. Family Mut. Ins. Co., No. 14-2417-EFM-JPO, 2015 U.S. Dist. LEXIS 95127, at *2-3 (D. Kan. July 22, 2015) (“Grave’s policy defines ‘actual cash value’ as ‘[t]he amount which it would cost to repair or replace damaged property with property of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.’”).

33. *Zochert*, 576 N.W.2d at 533; Elberon Bathing Co. v. Ambassador Ins. Co., 389 A.2d 439, 443-44 (N.J. 1978); OSTRAGER & NEWMAN, *supra* note 27, § 21.06[a] (“Courts have utilized different methods to calculate the ACV of insured property.”).

34. APPLEMAN ON INSURANCE, *supra* note 28, § 47.04[1].

35. *Id.*

36. *Id.*

37. *See* IOWA ADMIN. CODE r. § 191-15.44 (2016); *see also* 26 Iowa Admin. Bull. 131, at 132 (July 23, 2003) (“Paragraph 15.44(2) ‘a’ was amended to allow use of market value in determining actual cash value.”).

loss, less depreciation if any. Alternatively, an insurer may use market value in calculating actual cash value.”³⁸ The administrative body’s inclusion of the latter terminology suggests a desire to provide courts with some flexibility in deciding whether it wishes to use market value or replacement cost minus depreciation to determine valuation for ACV, as well as an abandonment of the broad evidence rule.³⁹

In stark contrast to the complexities of ACV, RCV coverage appears simpler on the surface. “Unlike actual cash value coverage, replacement cost coverage goes ‘beyond the concept of indemnity and simply recognize[s] that even expected deterioration of property is a risk that may be insured against.’”⁴⁰ This type of coverage covers all costs an insured will be “reasonably likely to incur repairing or replacing a covered loss.”⁴¹ Depreciation is not calculated in RCV coverage.⁴² The industry also produced generally accepted limits to RCV coverage, with the insured only capable of recovering what he actually spent in his efforts to replace the property.⁴³ One way of exercising this limit is in policy provisions which permit the insured to only pay ACV coverage until actual repair or replacement is completed and an option for the insured to elect for ACV coverage.⁴⁴ Due to the potential increased costs that come with RCV coverage, this form of coverage generally has more expensive premiums than ACV coverage.⁴⁵

B. Depreciation in ACV Coverage

As previously mentioned, depreciation is an integral part in the calculation of ACV coverage⁴⁶ and what distinguishes it from its close cousin, RCV coverage.⁴⁷ Depreciation in the insurance context differs, though, from the type of depreciation some may be familiar with in the accounting context.⁴⁸ While a specific policy’s

38. IOWA ADMIN. CODE r. § 191-15.44.

39. 26 Iowa Admin. Bull. 131, at 137 (July 23, 2003).

40. Parker, *supra* note 25, at 298; Leo John Jordan, *What Price Rebuilding?: A Look at Replacement Cost Policies*, BRIEF, Spring 1990, at 17, 17.

41. *E.g.*, APPLEMAN ON INSURANCE, *supra* note 28, § 47.05[1].

42. *E.g.*, WINDT, *supra* note 18, § 11:35.

43. *E.g.*, APPLEMAN ON INSURANCE, *supra* note 28, § 47.05[1].

44. *E.g.*, LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE § 176:56 (3d ed. 2005).

45. Marie Antoinette Moore, *Windstorms, Tornadoes, and Floods, Oh My! Property Insurance Basics That Every Lawyer Should Know*, 26 PROB. & PROP. 10, 13 (2012); Parker, *supra* note 25, at 298.

46. *E.g.*, WINDT, *supra* note 18, § 11:35.

47. *E.g.*, RUSS & SEGALLA, *supra* note 44, § 176:56.

48. *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1020 (Okla. 2002)

definition could vary, *Black's Law Dictionary* defines "depreciation" as "a decline in an assets value because of use, wear, obsolescence, or age."⁴⁹ This definition and understanding of physical wear and tear is consistent with the definition used by the many courts who have looked at deterioration in the insurance law context.⁵⁰

The best way to grasp depreciation within an ACV coverage policy is through visual representation. Professor Johnny Parker uses a visual representation in his article, *Replacement Cost Coverage: A Legal Primer*, which illustrates the practice of depreciation in action:

Assume a house has a 100-year life expectancy and is twenty-five years old when it is destroyed by fire. The house was purchased for \$100,000 when originally built twenty-five years ago and would cost \$200,000 to replace today. One-fourth of the house's useful life has expired. As a result, the replacement cost new less depreciation equals actual cash value formula entitles the insurer to take a depreciation deduction of \$50,000, or 25% of the cost to replace the structure. Thus, the actual cash value of the house and the amount the insured would be entitled to receive is \$150,000, replacement cost new (\$200,000) less depreciation (\$50,000).⁵¹

It is through Parker's illustration that the (literal) price of ACV coverage is evident, as it can potentially leave insureds with a significant economic deficit they must absorb themselves.⁵²

Due to this economic deficit, every additional line item an insurer deducts depreciation from can possibly be detrimental to an insured. As this Note is about to explore, farmers find themselves in a unique and unfortunate situation to be harmed because of the growth in costs,⁵³ implemented in the name of economic efficiency, and the shifting landscape within the agricultural industry as a whole.⁵⁴

("Depreciation in insurance law is not the type that is charged off the books of a business establishment, but rather it is the actual deterioration of a structure by reason of age, and physical wear and tear, computed at the time of the loss.").

49. *Depreciation*, BLACK'S LAW DICTIONARY (10th ed. 2014).

50. See *Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 678 (Ark. 2013); *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *14-15 (E.D. Ky. Mar. 25, 2015); *Redcorn*, 55 P.3d at 1020; APPLEMAN ON INSURANCE, *supra* note 28, § 47.04[2][a]; *Wilcox v. State Farm Fire & Cas. Co.*, No. 14-2798, 2015 U.S. Dist. LEXIS 26924, at *13 (D. Minn. Jan. 16, 2015).

51. Parker, *supra* note 25, at 297-98.

52. See *id.*

53. See 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 308.

54. See JOHN E. IKERD, *CRISIS & OPPORTUNITY: SUSTAINABILITY IN AMERICAN AGRICULTURE* 3-5 (2008); MICHAEL MAYERFELD BELL, *FARMING FOR US ALL: PRACTICAL*

III. FARMERS AS A UNIQUE CLASS OF INSURED

Unlike the average insured, farmers represent a unique class of insureds who are prone to greater economic deficits from the cost of depreciation in their ACV coverage. A combination of the high costs associated with operating a farm,⁵⁵ coupled with the modern state of agriculture as a whole,⁵⁶ puts a farmer into the position where every penny counts towards his bottom line. Being forced to spend more money, because the depreciation of labor is a covered loss, leaves an insured with an additional financial burden, forcing the farmer to more likely quit farming than try to rebuild. In order to see the described reality, one only has to take a look at the financial situation of the agricultural industry as a whole.⁵⁷

A. *The State of Modern Agriculture*

The face of American agriculture is changing, as farms continue to grow in size,⁵⁸ and operators continue to skew older.⁵⁹ Professor John Ikerd of the University of Missouri's College of Agriculture, Food and Natural Resources has described the current state of the industry as in crisis.⁶⁰ As farmers continue to adopt new technologies to create more efficient farming operations, production increases while prices fall—therefore, decreasing the size of profits.⁶¹ Couple this with the fact farmers must now compete in a global economy in order to survive,⁶² farming operations are not as straightforward as they were in the mid-twentieth century.⁶³

According to the 2012 Census of Agriculture, only 18.4 percent of farms have a sale value of over \$100,000 per year.⁶⁴ In order to supplement a farmer's income, farming has transformed into what can best be described as a hobby rather

AGRICULTURE & THE CULTIVATION OF SUSTAINABILITY 35 (2004); HART, *supra* note 1, at 16-27.

55. See 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 308.

56. See IKERD, *supra* note 54, at 3-5; HART, *supra* note 1, at 16-27; Kevin Hardy & Donnelle Eller, *Is Iowa Heading for a Recession?*, DES MOINES REG. (Feb. 10, 2016, 10:23 AM), <http://www.desmoinesregister.com/story/money/business/2016/02/09/cracks-start-show-iowas-economy/80030754/>.

57. See 2012 CENSUS OF AGRICULTURE, *supra* note 19, at vii.

58. See *id.* at 2; BELL, *supra* note 54, at 48.

59. 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 7.

60. IKERD, *supra* note 54, at 1.

61. *Id.*; HART, *supra* note 54, at 4-9.

62. HART, *supra* note 54, at 27.

63. See *id.*

64. 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 7 tbl.1 (depicting 2,109,303 farms and, of those, 232,955 have a sales value between \$100,000 and \$499,999, while 155,178 have a sales value greater than \$500,000).

than a career option.⁶⁵ Meanwhile, the cost of doing business in the agricultural sector continues to grow.⁶⁶ In 2007, the average total expense for farms cost \$109,359.⁶⁷ Five years later, this figure jumped to \$155,947.⁶⁸ The average amount spent on machinery and equipment alone increased from \$88,357 to \$115,706 over the five-year span,⁶⁹ which is an average increase of approximately \$5,470 per year in expenses.

These numbers are staggering when one considers how sales for a significant portion of farms remain under \$100,000 a year.⁷⁰ Admittedly, those making under \$100,000 a year are unlikely to be spending the national average of \$115,706 on machinery and equipment; however, this does not change the fact that machinery and equipment comes at a high price for those interested in maintaining their farms⁷¹—and does not begin to include a farmer’s daily household expenses or any employees he may have on his payroll.

What these numbers do not reflect, is the inherently risky nature of agriculture that extends far beyond a farmer’s own pocketbooks.⁷² In University of Wisconsin professor Michael Mayerfeld Bell’s *Farming For Us All*, he describes a farmer who, in order to pay his rent and his loans, has to plant 6 thousand acres in what is often Iowa’s rainiest eight weeks.⁷³ Failure to do so, if the farmer were to go bankrupt, results in bad news not just for the farmer, but also his bankers and landlord.⁷⁴ It results in bad news for the employees of the farmer too.⁷⁵ The financial ramifications are far-reaching because, as Bell puts it, “a lot of people’s fortunes funnel at least in part through [the farmer’s].”⁷⁶

The risk Bell describes⁷⁷ coexists in an environment where the total number of farmers in America continue to dwindle, its base continues to grow older, and

65. IKERD, *supra* note 54, at 23-24.

66. See 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 308.

67. *Id.* at 11.

68. *Id.*

69. *Id.* at 7.

70. See *id.*; see also HART, *supra* note 54, at 23 (“Only 11 percent of the farmers in the Corn Belt sold farm products worth \$250,00 or more in 1997 . . .”).

71. See 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 7.

72. See BELL, *supra* note 54, at 93-94.

73. *Id.* at 92.

74. *Id.* at 93.

75. *Id.*

76. *Id.*

77. *Id.* at 92-93.

the cost of operation continues to increase.⁷⁸ When all of these ingredients mix, the result is a justification for a farmer to sell off what assets he has left if a major loss does occur. In order to better illustrate this, a more narrowed focus on the effect that depreciation has on farmers is necessary.

B. Effect of Depreciation on Farmers

A tornado sweeps through and results in damage to an office building.⁷⁹ The insurance company estimates the cost of removing and replacing part of the office at \$4,099.60.⁸⁰ From this, the insurer depreciates the task by 12.7 percent, or \$520.86, leaving the insured with an ACV coverage payment of \$3,578.74.⁸¹ Before the insured receives his payment, the insurer continues depreciation. The insured had to replace his carpet, a hybrid-line item which required the purchase of carpet materials and somebody to come in and glue the carpet down. A pure labor component that costs \$288.79 is depreciated at 46.7 percent to leave the insured a gap in coverage of \$134.83.⁸²

Transition this hypothetical to an agricultural scenario. A tornado sweeps through the plains, resulting in severe damage to a farmer's equipment and buildings. The total replacement cost of his damaged equipment is \$100,000, and the replacement cost value of his damaged buildings are \$1,000,000. The farmer has ACV coverage, and the insurance company decides—based upon the equipment and property's useable life—to depreciate both his equipment and buildings at 12.7 percent.⁸³ When the farmer's assets replacement cost value is subject to a 12.7 percent depreciation, the farmer is paid \$101,011 for his machinery and \$938,903.64 for his buildings. Similar to the office hypothetical, though, part of indemnifying the insured requires new shingles to be installed—a hybrid-line item that requires both physical materials and the labor required to install them. In this rough hypothetical, the total cost of installing shingles is the same as gluing the carpet was.⁸⁴ What was once a significant financial gap from materials alone has improperly become more expensive because of the insurance company's decision to depreciate labor as a separate line item.

78. 2012 CENSUS OF AGRICULTURE, *supra* note 19, at 7.

79. *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *4 (E.D. Ky. Mar. 25, 2015).

80. *Id.*

81. *Id.* at *4-5.

82. *Id.* at *5.

83. *See id.* at *4.

84. *See id.*

IV. THE EVOLUTION OF THE ARGUMENTS

What is an insured to do when the depreciated cost of labor places him with insufficient funds after a covered incident? The answer will likely vary depending on where you live.⁸⁵ In 2002, for instance, the Oklahoma Supreme Court ruled in *Redcorn v. State Farm Fire and Casualty Company* that the insured received payment for the policy he paid for, and had he wanted full labor costs he should have gotten RCV coverage.⁸⁶ Awarding him such costs would otherwise unjustly enrich him.⁸⁷

However, just eleven years later, the Arkansas Supreme Court ruled in *Adams v. Cameron Mutual Insurance Company* that the term “actual cash value” is, in fact, ambiguous.⁸⁸ Additionally, the *Adams* court relied on Oklahoma Supreme Court Justice Daniel J. Boudreau’s dissent when he said:

The shingles are of course logically depreciable. As they age, they certainly lose value due to wear and tear Labor, on the other hand, is not logically depreciable. Does labor lose value due to wear and tear? Does labor lose value over time? What is the typical depreciable life of labor? Is there a statistical table that delineates how labor loses value over time? I think the logical answers are no, no, it is not depreciable, and no. The very idea of depreciating the value of labor is illogical.⁸⁹

With Justice Boudreau’s reasoning and the court’s holding that the term “actual cash value” was ambiguous, the *Adams* court held the costs of labor could not be depreciated.⁹⁰

Redcorn and *Adams* present a split on the issue. Although each case serves as the groundwork for the plaintiffs’ and defendants’ side of the litigation which came to follow, both parties had to build on their cases in order to persuade the court. What has developed are four distinct arguments from insureds: (1) the term actual case value is inherently ambiguous;⁹¹ (2) granting an insured the full costs of

85. See *Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 679 (Ark. 2013); *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1021 (Okla. 2002).

86. *Redcorn*, 55 P.3d at 1021.

87. *Id.*

88. *Adams*, 430 S.W.3d at 678.

89. *Id.*; *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting).

90. *Adams*, 430 S.W.3d at 679.

91. See *id.*; Appellants’ Reply Brief at 2-5, *Wilcox v. State Farm Fire & Cas. Co.*, No. A15-0724 (Minn. Aug. 10, 2015), 2015 WL 5472062; Plaintiffs’ Opposition to Defendant’s Motion to Dismiss, *supra* note 14, at 10-15.

labor does not grant him an economic windfall;⁹² (3) an insurance policy covers a property as two separate units—labor and materials—and thus depreciation of one unit is plausible;⁹³ and (4) the simplest, since labor cannot physically wear and tear it is illogical to depreciate the cost of labor under an ACV coverage policy.⁹⁴ All four possess a corresponding counterpoint,⁹⁵ and it is through these arguments that the current litigation will be decided upon—as well as how a challenge to the depreciation of labor costs would be ruled on in Iowa.

A. ‘Actual Cash Value’ as an Ambiguous Phrase

Many jurisdictions, including Iowa, possess a general guiding principle when asked to interpret an insurance policy: if a policy is ambiguous, the court construes it favorably to the insured.⁹⁶ Hence, it is logical why an insured would challenge the policy as being ambiguous first. In many of the policies under scrutiny, the term actual cash value is left undefined.⁹⁷ To argue ambiguity, an insured must successfully prove to the court how the defined language is “susceptible to two reasonable interpretations when the contract is read as a whole.”⁹⁸

Since the term actual cash value typically possesses judicial construction,⁹⁹ insurance companies argue the term is *not* in fact ambiguous.¹⁰⁰ Defense counsel, Todd A. Noteboom articulated this best in oral argument before the Minnesota

92. See *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *15-16 (E.D. Ky. Mar. 25, 2015); Oral Argument at 16:06-16:57, *Wilcox v. State Farm Fire & Cas. Co.*, No. A150724 (Oct. 12, 2015) [hereinafter *Wilcox Oral Argument*].

93. See *Adams*, 430 S.W.3d at 678; *Wilcox Oral Argument*, *supra* note 92, at 5:59-6:34.

94. See *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *14-20; *Adams*, 430 S.W.3d at 678-79.

95. See *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1021 (Okla. 2002); Defendant-Respondent’s Brief and Addendum at 13-14; *Papurello v. State Farm Fire & Cas. Co.*, No. 15-1005, 2015 U.S. Dist. LEXIS 154536, at *46 (W.D. Pa. Nov. 16, 2015); *Wilcox v. State Farm Fire & Cas. Co.*, No. A15-0724 (Minn. July 15, 2015), 2015 WL 5472065; The Am. Ins. Ass’n Amicus Curiae Brief at 6, 12, *Wilcox v. State Farm Fire & Cas. Co.*, No. A15-0724 (Minn. July 24, 2015), 2015 WL 5472064; State Farm Fire & Cas. Co. Reply Memorandum in Support of Motion to Dismiss at 7, *Wilcox v. State Farm Fire & Cas. Co.*, No. 14-2798 (D. Minn. Sept. 11, 2014), 2014 U.S. Dist. Ct. Pleadings LEXIS 10514 [hereinafter *State Farm Reply Memo in Support of Motion to Dismiss*]; *Wilcox Oral Argument*, *supra* note 92, at 27:00-27:09.

96. *Amish Connection, Inc. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 236 (Iowa 2015).

97. See, e.g., *Adams*, 430 S.W.3d at 676.

98. *Amish Connection, Inc.*, 861 N.W.2d at 236.

99. *Redcorn*, 55 P.3d at 1020; see *supra* text accompany notes 33-36.

100. State Farm Fire Reply Memo in Support of Motion to Dismiss, *supra* note 95, at 7.

Supreme Court in *Wilcox v. State Farm Fire and Casualty Company* when he stated:

There is simply no need to go and [define the term actual cash value]. What State Farm does [by leaving the term undefined in the policy] . . . provides clarity and detail in its estimate when a loss is being adjusted, so the policyholder knows exactly what it is we're doing and where we're applying depreciation.¹⁰¹

In other words, there is no need to define actual cash value in the policy because case law provides us with a definition, and therefore an insured (or at least the courts) would know what the term means because of the judicial definition.¹⁰²

The flaw with such an argument is it requires a knowledge of insurance law the average customer likely does not possess. Much like it would be assumed a typical person would not understand the intricacies of tort or contract law without the guidance of her attorney, it is illogical to assume the average person would be able to infer that labor would depreciate from an ACV coverage policy when the term actual cash value possess no definition.¹⁰³ Especially when pure labor line items, such as the removal of debris, are commonly not depreciated.¹⁰⁴ Without this knowledge, when the policy is silent on the definition of the term actual cash value a dispute on the proper formulation of ACV coverage arises.¹⁰⁵ Consider *Adams*, where actual cash value was undefined.¹⁰⁶ The insured contended that, although materials can be depreciated, “depreciation is limited to the effect of the passage of time in the decline in value of physical assets and is conceptually and practically inapplicable to labor.”¹⁰⁷ This definition was, of course, not the one the insurer had in mind when it issued the policy.¹⁰⁸ The dispute between insured and insurer in *Adams* led the court to hold the term actual cash value ambiguous.¹⁰⁹

Holding in favor of the insurer in such an instance would place a burden on an insured which unjustly benefits the insurance company. By allowing an insurance company to leave terms undefined, simply because those terms have judicial definitions, would require an insured to either independently remain up-

101. Wilcox Oral Argument, *supra* note 92, at 45:00-45:15.

102. *See id.* at 45:00-45:15.

103. *See Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 677 (Ark. 2013).

104. Plaintiffs' Opposition to Defendant's Motion to Dismiss, *supra* note 14, at 6-7.

105. *Id.* at 18.

106. *Adams*, 430 S.W.3d at 676.

107. *Id.* at 677.

108. *See id.*

109. *See id.* at 678.

to-date on judicial case law or periodically retain a lawyer to determine what the current state of his coverage is. Such an outcome is unprecedented in the context of a consumer-based industry, and would greatly overcomplicate the insurance industry. To protect consumers the burden on clarifying the policy is best left with the insurance company, the entity who writes the policy.¹¹⁰

B. Labor Depreciation Prevents an Economic Windfall

One common critique of allowing an insured to recover the full cost of labor under an ACV coverage policy is that it would yield to the insured a windfall.¹¹¹ The principle of indemnity requires the insured to be placed as nearly as practicable to the condition he was in just prior to the loss.¹¹² In other words, indemnity is meant to bring an insured to the point where he was, and nothing more.¹¹³ To give him actual cash value for materials and replacement costs for labor, an insurance company contends, would result in the policy holder to become unjustly enriched.¹¹⁴ This understanding, however, confuses ACV coverage with RCV coverage,¹¹⁵ and if an insured wants to be fully reimbursed he should purchase RCV coverage.

ACV coverage can equal RCV coverage, however, it simply should not exceed it.¹¹⁶ This is indicated in many policies.¹¹⁷ Thus, it is possible to interpret such language to narrow the scope of depreciation under the policy to materials, excluding labor.¹¹⁸ As T. Joseph Snodgrass, Plaintiff's counsel in *Wilcox*, put it in oral argument, "the difference between replacement cost and ACV, is in a replacement cost situation [the insured is] entitled to brand new materials."¹¹⁹ In clearer terms, the insured is entitled to a better situation than he previously was in.¹²⁰

An insured who lives in a home that suffered hail damage with replacement costs of \$1,000 in materials and \$100 in labor would not yield a windfall if the

110. *See id.* at 677.

111. *E.g.*, *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1021 (Okla. 2002).

112. *E.g.*, *id.*

113. *E.g.*, *id.* at 1021.

114. *E.g.*, *id.*

115. *Papurello v. State Farm Cas. Co.*, No. 15-1005, 2015 U.S. Dist. LEXIS 154536, at *46 (W.D. Pa. Nov. 16, 2015).

116. *Wilcox Oral Argument*, *supra* note 92, at 19:03-19:23.

117. *E.g.*, *Redcorn*, 55 P.3d at 1019 ("We will not pay an amount exceeding that which you actually and necessarily spend to repair or replace the damaged roof.").

118. *Wilcox Oral Argument*, *supra* note 92, at 19:03-19:34.

119. *Id.* at 12:12-12:21.

120. *Id.* at 12:03-12:37.

materials were depreciated by 50 percent, as the insured would still have to pay the \$500 material costs left by not having RCV coverage. An insured, in that instance, is not bettered by having full labor costs, betterment would be if the insured demanded any penny more than the \$500 his materials were valued at, at the time of the loss.¹²¹ In fact, failure to pay full labor costs results in an economic windfall for the insurance company, as insured must take a “significant out-of-pocket loss” in order to return to “as good a condition, as far as practicable, as he would have been in if the loss had not occurred.”¹²² Such a result “is inconsistent with the principle of indemnity.”¹²³

C. What Exactly Does the Policy Cover?

Courts which have ruled in favor of insurance companies who utilized the argument that “insured’s are confusing RCV coverage with ACV,” is because they, themselves, are confusing what these policies cover.¹²⁴ Therefore, in some sense, the previous sections must work in conjunction with this section in order to grasp the courts’ understanding. However, when segmented as done here, it becomes clear the analysis is flawed.

In regards to courts ruling in favor of an insurance company, property under an insurance policy is construed as an indivisible output.¹²⁵ As the court in *Papurello v. State Farm Fire and Casualty Co.* noted, a “property owner exercises the right to possess, use, and enjoy the *outcome* of combining labor, tax costs, and materials—*i.e.*, the property itself in its finished form.”¹²⁶ Both materials and labor construct a piece of property, and the damaged property itself “does not have a separate market value from the building” covered under the policy.¹²⁷

121. See *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *20 (E.D. Ky. Mar. 25, 2015) (“To adequately indemnify its insureds, State Farm should pay the cost of materials, depreciated for wear and tear, plus the cost of their installation.”); *Redcorn*, 55 P.3d at 1023 (Boudreau, J., dissenting) (“To properly indemnify Redcorn, State Farm should pay him the actual cash value of the shingles, depreciated for wear and tear, plus the cost of their installation.”).

122. *Redcorn*, 55 P.3d at 1023 (Boudreau, J., dissenting).

123. *Id.*

124. See *Graves v. Am. Family Mut. Ins. Co.*, No. 14-2417-EFM-JPO, 2015 U.S. Dist. LEXIS 95127, at *13 (D. Kan. July 22, 2015); *Papurello v. State Farm Fire & Cas. Co.*, No. 15-1005, 2015 U.S. Dist. LEXIS 154536, at *66 (W.D. Pa. Nov. 16, 2015); *Redcorn*, 55 P.3d at 1021; Brief of Appellee at 9-10, *Graves v. Am. Family Mut. Ins.*, No. 15-3187 (10th Cir. Dec. 10, 2015), 2015 WL 8592592.

125. *Graves*, 2015 U.S. Dist. LEXIS 95127, at *10-13; *Papurello*, 2015 U.S. Dist. LEXIS 154536, at *57-58; *Redcorn*, 55 P.3d at 1020.

126. *Papurello*, 2015 U.S. Dist. LEXIS 154536, at *58.

127. *Redcorn*, 55 P.3d at 1020.

Yet insurance companies have been able to determine the separate market value for the damaged value of the property.¹²⁸ In fact, in order to depreciate labor and materials, insurance companies have to calculate both individually in order to determine a combined valuation: a common practice in the insurance industry.¹²⁹ Insurance companies also do not always depreciate from every line item.¹³⁰ The insured's in *Wilcox* claimed State Farm treated different line items in different ways.¹³¹ For pure material line items, such as a metal roof vent, depreciation was applied; whereas with pure labor line items, such as detaching a light fixture, no depreciation was applied.¹³² Additionally, in combined line items consisting of both labor and materials, such as staining and finishing a deck, depreciation was applied.¹³³

What this indicates is an error in the rationale of decisions favorable to insurance companies. Courts which have ruled in favor of the insurance companies felt it was improper to provide full labor costs to an insured because the labor and materials required to cover the loss are integrated under the policy, and thus depreciation should be applied to both components.¹³⁴ However, those courts neglect the separate valuation insurance companies perform to generate those replacement cost.¹³⁵

The district court in *Graves v. American Family Mutual Insurance Company* tries to reconcile this through analogizing depreciation to a new car. As the court writes:

When a consumer purchases a brand new car only to find that the car

128. *Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 676 (Ark. 2013); *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *4-5, 7 (E.D. Ky. Mar. 25, 2015); *Graves*, 2015 U.S. Dist. LEXIS 95127, at *4; *Papurello*, 2015 U.S. Dist. 154536, at *27; *Redcorn*, 55 P.3d at 1019.

129. *Adams*, 430 S.W.3d at 676; *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *4-5, 7; *Graves*, 2015 U.S. Dist. LEXIS 95127, at *4; *Papurello*, 2015 U.S. Dist. LEXIS 154536, at *27; *Redcorn*, 55 P.3d at 1019.

130. Plaintiffs' Opposition to Defendant's Motion to Dismiss, *supra* note 14, at 6-10. *But see* Brief for Appellant, *supra* note 15, at 6 ("Both work that was purely labor . . . and work requiring both labor and materials, were depreciated.")

131. Plaintiffs' Opposition to Defendant's Motion to Dismiss, *supra* note 14, at 6-10.

132. *Id.* at 7-8.

133. *Id.* at 8.

134. *Graves*, 2015 U.S. Dist. LEXIS 95127, at *10-13; *Papurello*, 2015 U.S. Dist. LEXIS 154536, at *1, 27-28; *Redcorn*, 55 P.3d at 1020.

135. *Adams v. Cameron Mut. Ins.*, 430 S.W.3d 675, 676; *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *1, 4; *Graves*, 2015 U.S. Dist. LEXIS 95127, at *4; *Papurello*, 2015 U.S. Dist. LEXIS 154536, at *1, 27-28; *Redcorn*, 55 P.3d at 1019.

lost its purchase value the moment that the consumer drove it off the lot, do we say that only the material cost of the car has been depreciated? No. As that car is driven further from its ancestral lot, do we say that its material-value is diminished but its labor-value remains undiminished? Again, no. We merely say that the car's value depreciated, without distinction.¹³⁶

Again, this analogy ignores that the final product does not simply, spontaneously appear as a final product.¹³⁷ It ignores the "economic reality by treating the separate components of a property loss as 'products'" in a way that even the insurance companies do not.¹³⁸ Reexamining the *Graves* court's analogy: when a car is damaged, used parts can be used to replace their damaged counterparts; a cost which is considerably less than a new part would be.¹³⁹ The value of the labor needed to repair the vehicle using those used parts remains the same.¹⁴⁰ Neither the car, nor a roof, become a final product until the separate components combine.¹⁴¹ While the car might leave the lot as one integrated product, labor and materials, it is constructed as separate components which are subject to separate costs.¹⁴² Treating an insured loss in this manner undermines what the policy holder paid for, "the amount which it would cost to repair or replace the damaged property with property of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence."¹⁴³

D. The Wear and Tear of Labor

What no insurance company has been able to grapple directly with is the heart of Justice Boudreau's dissent in *Redcorn*: that labor cannot be depreciated because it is not logically depreciable.¹⁴⁴ This viewpoint was the driving force

136. *Graves*, 2015 U.S. Dist. LEXIS 95127, at *11.

137. *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting) ("Redcorn cannot go [to] the lumber yard or the retail store and buy a roof. A roof does not exist until the shingles are transported to the site and installed on top of the house."); Brief for Appellant, *supra* note 15, at 29 ("[T]he roof of a home is not a 'product' capable of being purchased and reinstalled as such.").

138. Brief for Appellant, *supra* note 15, at 29; *Adams*, 430 S.W.3d at 676; *Redcorn*, 55 P.3d at 1019; *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *4-5; *Graves*, 2015 U.S. Dist. LEXIS 95127, at *4.

139. Brief for Appellant, *supra* note 15, at 29.

140. *Id.*

141. See *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting).

142. Brief for Appellant, *supra* note 15, at 28-29.

143. *Id.* at 29-30 (internal quotations omitted).

144. *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting).

behind decisions which ruled favorably on behalf of the insured¹⁴⁵ and often goes ignored in decisions which rule on behalf of the insurer.¹⁴⁶ Unlike materials, labor is not subject to wear, tear, condition, or obsolescence.¹⁴⁷ Labor is a constant cost, one that is present for a property loss no matter how much the replacement cost of the physical materials are.¹⁴⁸ While one can envision the decay of the shingle of a roof, the image that comes to mind when envisioning decaying labor is similar to the image thought up by Justice Boudreau: “a very old roofer with debilitating arthritis who can barely climb a ladder or hammer a nail.”¹⁴⁹ One could argue the work of a laborer may decay over time, thus resulting in a depreciation of his labor. However, this confuses the depreciation of the materials with the labor. It is the materials—the boards and nails—which physically deteriorate with time, not the labor.¹⁵⁰ “Labor . . . is not logically depreciable.”¹⁵¹

V. HOW IOWA SHOULD RESPOND

When all four arguments are viewed in conjunction, it is clear that Iowa courts should follow Arkansas and rule that labor is not a depreciable component of actual cash value under ACV coverage.¹⁵² Such an outcome not only protects Iowa’s insureds from being subject to valuation formulas which are inconsistent with the fundamental idea of indemnity inherent to ACV coverage,¹⁵³ but it also shifts the burden of clarifying policy language onto the insurance company.¹⁵⁴ This will ease the burden on Iowa farmers, who already face a variety of other economic challenges¹⁵⁵ and risks;¹⁵⁶ making them the less desirable stakeholders to apply the kind of economic gap that depreciating the cost of labor creates.¹⁵⁷ By protecting

145. *Adams v. Cameron Mut. Ins.*, 430 S.W.3d 675, 678-79 (Ark. 2013); *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *19-20 (E.D. Ky. Mar. 25, 2015); *Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 785 (Minn. 2015).

146. *See Graves v. Am. Family Mut. Ins. Co.*, No. 14-2417-EFM-JPO, 2015 U.S. Dist. LEXIS 95127, at *13-14 (D. Kan. July 22, 2015). *See generally Papurello v. State Farm Fire & Cas. Co.*, No. 15-1005, 2015 U.S. Dist. LEXIS 154536, *45-52 (W.D. Pa. Nov. 16, 2015).

147. Brief for Appellant, *supra* note 15, at 29.

148. *Id.*

149. *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting).

150. Brief for Appellant, *supra* note 15, at 29.

151. *Redcorn*, 55 P.3d at 1022 (Boudreau, J., dissenting).

152. *See Adams v. Cameron Mut. Ins.*, 430 S.W.3d 675, 678-79 (Ark. 2013).

153. *See Redcorn*, 55 P.3d at 1023 (Boudreau, J., dissenting).

154. *See Adams*, 430 S.W.3d at 677.

155. *See BELL*, *supra* note 54, at 92-94; *HART*, *supra* note 1, at 4, 6, 23.

156. *See BELL*, *supra* note 54, at 93-94.

157. *See Redcorn*, 55 P.3d at 1023 (Boudreau, J., dissenting); *BELL*, *supra* note 54, at 92-

Iowa farmers, such a decision will also protect the Iowa economy, which has long relied on its agricultural producers.¹⁵⁸ It is a sound policy determination, in light of the arguments outlined, that keeps Iowa in line with the kind of “good common society” which depreciating the value of labor defies.¹⁵⁹

VI. WHY ADMINISTRATIVE STEPS ARE NECESSARY FOR CHANGE

Even with a judicial determination permitting insureds to receive the full cost of labor under an ACV coverage policy, such a holding may be insufficient to fully protect Iowa’s insureds and farmers or stop insurance companies from attempting to circumvent such a decision.¹⁶⁰ Barring an express bar by an Iowa court against the depreciation of labor, a vague judicial decision could lead to an insurance company attempting to draft a policy that would allow depreciation of labor.¹⁶¹ In *Shelter Mutual Insurance Company v. Goodner*, Appellant appealed a circuit court order granting summary judgment in favor of the insured and finding that depreciation of labor in the calculation of actual cash value is against public policy.¹⁶² Its principal argument was its policy unambiguously provided for depreciation of labor.¹⁶³ Specifically, its policy defined actual cash value to mean “total restoration cost less depreciation,” and further defined depreciation as:

Depreciation means the amount by which any part of the covered property which must be replaced has decreased in value since it was new. The condition, age, extent of use, and obsolescence of the property will be considered in determining depreciation. When calculating depreciation, we will include the depreciation of the materials, the labor, and the tax attributable to each part that must be replaced to allow for replacement of the damaged part, whether or not that part is damaged.¹⁶⁴

While the Arkansas Supreme Court in *Goodner* ultimately rejected Shelter Mutual Insurance’s challenge, reaffirming its previous decision in *Adams*,¹⁶⁵ an

94; HART, *supra* note 1, at 4, 6, 23.

158. See BELL, *supra* note 54, at 35; Hardy & Eller, *supra* note 56.

159. Bailey v. State Farm Fire & Cas. Co., No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *20 (E.D. Ky. Mar. 25, 2015).

160. See generally Shelter Mut. Ins. Co. v. Goodner, 477 S.W.3d 512 (Ark. 2015).

161. See *id.* at 513-14.

162. *Id.* at 514.

163. *Id.* at 513.

164. *Id.*

165. *Id.* at 516.

Iowa court could find itself facing a similar attempt by insurance companies to circumvent a previous holding by utilizing policy language similar to the language used in *Goodner*.¹⁶⁶ This is because, if an Iowa court failed to explicitly bar the practice of depreciating labor in ACV coverage, current Iowa law would welcome such a challenge.¹⁶⁷

Under Iowa law, a policy must be interpreted using “the intent of the parties at the time the policy was sold must control.”¹⁶⁸ The intent of the parties is ascertained, except in cases of ambiguity, by looking at the policy’s language.¹⁶⁹ “[A] policy is ambiguous if the language is susceptible to two reasonable interpretations’ when the contract is read as a whole.”¹⁷⁰ The test for ambiguity is an objective test and cannot be found simply because the parties disagree to the meaning of the policy’s terms or because a particular provision could be worded better.¹⁷¹ If a policy is not ambiguous, interpreting the policy “requires us to give meaning to contractual words.”¹⁷²

Put simply, the intent the insured and insurer had is evident by the policy language, and the policy language is clear unless two reasonable interpretations can be seen.¹⁷³ If two reasonable interpretations are present, the court has to give definition to the policy.¹⁷⁴ Thus, if an Iowa court were to interpret a clear and unambiguous policy, such as the one in *Goodner*, the policy interpretation is clear: depreciation for labor would be permissible.¹⁷⁵

Hence, why the best avenue for full protection for consumers would be to take a regulatory stance through the Iowa Insurance Division. Whether this stance be through an administrative bulletin, like in Vermont or Arkansas,¹⁷⁶ or through

166. *See generally id.*

167. *See Amish Connection, Inc. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 236 (Iowa 2015).

168. *Id.* (internal quotation marks omitted); *LeMars Mut. Ins. v. Joffer*, 574 N.W.2d 303, 307 (Iowa 1998).

169. *Amish Connection, Inc.*, 861 N.W.2d at 236.

170. *Id.*; *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 501 (Iowa 2013).

171. *Amish Connection, Inc.*, 861 N.W.2d at 236 (internal quotations omitted); *Boelman*, 826 N.W.2d at 501.

172. *Osmic v. Nationwide Agribusiness Ins. Co.*, 841 N.W.2d 853, 858 (Iowa 2014).

173. *See Amish Connection, Inc.*, 861 N.W.2d at 236; *Boelman*, 826 N.W.2d at 501; *Farm Bureau Life Ins. Co. v. Holmes Murphy & Assocs.*, 831 N.W.2d 129, 134 (Iowa 2013).

174. *See Osmic*, 841 N.W.2d at 858.

175. *See Shelter Mut. Ins. Co. v. Goodner*, 477 S.W.3d 512, 513 (Ark. 2015); *Amish Connection, Inc.*, 861 N.W.2d at 236; *Osmic*, 841 N.W.2d at 858; *Boelman*, 826 N.W.2d at 502.

176. *See DIV. OF INS., VT. DEP’T OF FIN. REG., BULL. NO. 184, PROPERTY LOSS CLAIMS:*

more explicit means like regulations in California,¹⁷⁷ a regulatory push would put insurance companies on notice that the practice of depreciating labor is prohibited in Iowa.

The best avenue is a regulation similar to California Code of Regulations title 10, section 2695.9, subsection (f), subsection (1), which provides that, “[e]xcept for the intrinsic labor costs that are included in the cost of manufactured materials or goods, the expenses 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.”¹⁷⁸ Such a regulation would allow insurance companies the ability to depreciate the labor required to create an item like a shingle but does not permit it from depreciating the labor necessary to place that shingle on the roof.¹⁷⁹ It also achieves the desired goal of protecting insureds from the economic deficits which can be created when depreciating the second type of labor that occurs,¹⁸⁰ regardless of what their individual policy states. The Iowa Insurance Division also has the benefit of being able to move faster than the Iowa legislature, allowing it to put a regulation into action much quicker than a statute could be put into place.

VII. CONCLUSION

Iowa farmers are currently living with a certain degree of risk in their daily lives.¹⁸¹ It is within this risk, and the economic challenges unique to farmers,¹⁸² that thorough coverage under an insurance policy is necessary. Farmers who have ACV coverage may not be receiving the thorough coverage that they think they are,¹⁸³ due to the common insurance practice of depreciating labor when calculating actual cash value.¹⁸⁴ The practice has been subject to much debate, leading to the evolution of four principal classes of argument: (1) the term actual cash value is inherently ambiguous;¹⁸⁵ (2) granting an insured the full costs of labor does not grant

NO LABOR DEPRECIATION (2015); ARK. INS. DEP’T, BULL. NO. 13B-2013, DEPRECIATION OF LABOR PROHIBITED (2014).

177. See CAL. CODE REGS. tit. 10, § 2695.9(f)(1) (2016).

178. *Id.*

179. See *id.*

180. See *Redcorn v. State Farm Fire & Cas. Co.*, 55 P.3d 1017, 1023 (Okla. 2002) (Boudreau, J., dissenting).

181. See HART, *supra* note 1, at 27; Moore, *supra* note 1, at 34.

182. See BELL, *supra* note 54, at 92-94; HART, *supra* note 1, at 4, 6, 23.

183. See Moore, *supra* note 1, at 34.

184. See *Plaintiffs’ Opposition to Defendant’s Motion to Dismiss*, *supra* note 14, at 6-10.

185. *Adams v. Cameron Mut. Ins. Co.*, 430 S.W.3d 675, 679 (Ark. 2013); *Appellants’ Reply Brief*, *supra* note 91, at 2-5; *Plaintiffs’ Opposition to Defendant’s Motion to Dismiss*,

him an economic windfall;¹⁸⁶ (3) an insurance policy covers a property as two separate units—labor and materials—and thus depreciation of one unit is plausible;¹⁸⁷ and, finally, (4) since labor cannot physically wear and tear it is illogical to depreciate the cost of labor under an ACV coverage policy.¹⁸⁸

When viewing either of the four in isolation, an argument could be construed that labor should be depreciated in an ACV coverage policy. However, when the arguments are viewed as whole, it is clear depreciating labor is illogical.¹⁸⁹ With this viewpoint established, an Iowa court should follow the precedent established in *Adams* and prohibit the practice of depreciation.

Based upon current Iowa law, though, action from the courts may not be enough. In order to thoroughly protect Iowa's farmers, and by extension its insureds, the Iowa Insurance Division should take administrative steps to make it clear to companies selling insurance in the state that the practice of depreciating labor is prohibited. The best means to do so would be to adopt a regulation similar to the one found in the California Code of Regulations.¹⁹⁰ Such a regulation would allow certain, more logical forms of depreciating, while forbidding the type of labor depreciation addressed in this Note. Such a regulation would be the most thorough means of protecting Iowa farmers, a class of insured's who are in a unique situation to be harmed by the depreciation of labor in ACV coverage, because it forces compliance from insurance companies who would draft hyper-specific ACV coverage policies while moving faster than the Iowa legislature.

supra note 14, at 10-15.

186. See *Bailey v. State Farm Fire & Cas. Co.*, No. 14-53-HRW, 2015 U.S. Dist. LEXIS 37568, at *15-16 (E.D. Ky. Mar. 25, 2015); Wilcox Oral Argument, *supra* note 92, at 16:06-16:57.

187. See *Adams*, 430 S.W.3d at 678; Wilcox Oral Argument, *supra* note 92, at 5:59-6:34.

188. See *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *14-15; *Adams*, 430 S.W.3d at 678-79.

189. See *Bailey*, 2015 U.S. Dist. LEXIS 37568, at *14-20; *Adams*, 430 S.W.3d at 678.

190. See CAL. CODE REGS. tit. 10, § 2695.9(f)(1) (2016).