

# Valuation in Property Loss Claims

**Joe Antifaev**

**Guild Yule Spring BC  
Briefing 2017**

---

Strong reputation, fresh approach.



---

**Guild Yule** LLP  
BARRISTERS AND SOLICITORS

# Topics

- Damages in tort vs. breach of contract
- ACV vs. RCV
- First party vs. third party claims
  - Chattels vs. real property
  - Repair or replace, depreciation and betterment
- Limits on subrogation



# *Damages: Tort vs. Contract*

- Tort: put the wronged party back in the position he or she would have been in but for the loss
- Contract: put the wronged party in the position he or she would have been in but for the breach





---

**Guild Yule** LLP  
BARRISTERS AND SOLICITORS

Strong reputation, fresh approach.



# *ACV vs. RCV*

- Actual cash value
  - RCV - depreciation
  - Market value
  - Returns insured to pre-loss position
- Replacement cost value
  - New for old
  - Moral hazard: profit from loss



# *ACV or RCV?*

## First party claims:

- Usually neither if property is repairable
- Depends on the policy wordings

## Third party claims:

- Replacement cost is starting point, but deductions may be made for depreciation
- Full replacement cost if contractual obligation, no depreciation or otherwise reasonable



# *First Party Claims*

- Entitlement to RCV depends on policy wordings
- “Like kind and quality”
- ACV is “pure indemnity” = cannot profit from loss
- moral hazard
- Statutory resolution processes



# Third Party Claims

- Entitlement to damages depends on cause of action
  - Tort: starting point is repair cost
    - Depreciation often deducted
  - Contract: depends on terms of contract
    - Indemnity, releases, covenants to insure, etc.
    - Liquidated damages clauses
    - Cargo loss claims



# *Tort: Chattels*

- Starting point is replacement cost
- Market value approach
  - The amount a reasonable person would be prepared to pay for the property at the time of the loss
- Other factors include:
  - Retail value
  - Depreciation
  - Amount originally paid





---

**Guild Yule** LLP  
BARRISTERS AND SOLICITORS

Strong reputation, fresh approach.



# *Tort: Real Property*

- Starting point is repair cost
- Intended to address a cash shortfall for rebuilding
- Other factors include:
  - Betterment
  - Diminution in value
  - Failure to mitigate



# *Betterment*

- Put the plaintiff in the same position she would have been in but for the loss
- Damages not intended to be windfall
- Building code requirements



# *Limits on Recovery*

- Limits on subrogation
  - Insurer cannot be in a better position than the insured
  - Contributory negligence, failure to mitigate, ACV vs. RCV, pure economic loss, etc.



# Conclusion

- Valuation depends on:
  - Cause of action
  - 1<sup>st</sup> party vs. 3<sup>rd</sup> party claims
  - Type of property
  - Circumstances of loss (betterment, failure to mitigate, etc.)
- Questions?
- [jantifaev@guildyule.com](mailto:jantifaev@guildyule.com) - 604-844-5563

