

District of Maryland Rejects ACV Standard for Property Damages in Fire Case

A recent decision from the U.S. District Court of Maryland should remind litigators and subrogation professionals the goal of awarding damages is to put the plaintiff back into the same position they were before the harm. When dealing with damage to real property, the question of whether a plaintiff is entitled to the full cost to repair that property or limited to something less is a constant battle faced in subrogation matters. In *Philadelphia Indemnity Ins. Co., et al. v. Apple, Inc.*, 2023 WL 4407582 (D. Md. July 7, 2023), the District of Maryland soundly recognized the measure of damages, under Maryland law, permits a subrogating plaintiff to recover the full cost of repair following fire damage even if it exceeds the fair market value of the property before the loss.

Generally, plaintiffs pursuing property damage in Maryland may decide to seek either the diminution in value of the damaged property or the cost of restoring that property to its pre-loss condition. However, if the cost of restoration exceeds the diminution in value, the plaintiff may recover those costs only if there was a “reason personal” for restoring the property. This concept is supported by Restatement (Second) of Torts, Sec. 929, and approved by multiple jurisdictions. Typically, if the damage involves a residence, there is a “reason personal” supporting the restoration of the home.

With this background in place, the District of Maryland considered the proper measure of damages for a fire at a condominium complex. The defendant, Apple, Inc. (Apple), disclosed an expert who offered only opinions of the actual cash value (ACV) damages to refute the restoration costs pursued by the plaintiffs. In other words, Apple attempted to depreciate the repair costs sought by the plaintiffs. However, ACV is not the proper measure of damages. Indeed, the Court recognized the concept of ACV is irrelevant, stating, “Thus, while ACV has import in the insurance context, it is not the appropriate measure of diminution in value for the purposes of restoring Plaintiffs to their pre-fire position.” Apple’s damages expert failed to offer any opinion on either the cost of actual restoration of the property or the diminution in value following the fire. His opinion was therefore excluded since it offered an inapplicable damages standard. The plaintiffs were free to pursue the full cost of repairs and were not limited to any depreciation sought by the defendant.

The court also considered a subrogating plaintiff’s ability to recover for code upgrades. Whether these costs are recoverable hinges on characterizing code upgrades as betterments to the property or necessary repairs due to the loss. The District of Maryland denied the defendant’s efforts to prohibit damages for code upgrades. Instead, the court found that the jury was to determine whether the recovery of code upgrades was appropriate. If Apple was found liable for the underlying fire, the jury was to decide if code upgrades should be included in the restoration costs of the property as a question of fact.

This decision should be considered when evaluating a subrogation case since applying the proper measure of damages and refuting arguments from defendants seeking to apply ACV will allow for the best possible recovery.



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