

Florida Policyholders Beware: Repair Estimates Insufficient To Support Claim Despite Insurer's Breach

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In *Universal Prop. & Cas. Ins. Co. v. Qureshi*, Florida's Fourth District Court of Appeals recently ruled that the lower court mistakenly allowed the jury to consider evidence of repair estimates in a claim for replacement cost value benefits where repairs were not actually completed. 2024 WL 3514542, at 1 (Fla. 4th DCA 2024).

In *Qureshi*, at the trial court level, a jury awarded policyholders damages on their claim that their insurer breached their homeowner's insurance policy by paying them only for damage caused by mold, without providing coverage for other damage caused by the water leak that resulted in the mold. While the property owner insureds had submitted a repair estimate to the insurer for reimbursement, the insureds sold the property before making repairs to the damaged items. Prior to trial, the insurer unsuccessfully sought to preclude the policyholders from introducing evidence concerning, among other things, the cost of repairs not performed before the sale of the property. The insurer based its argument on the policy's loss settlement terms and Fla. Stat. Ann. § 627.7011(3)(a), which provides that, in the event of a loss for which a dwelling is insured on a replacement cost basis, "the insurer must initially pay at least the actual cash value of the insured loss" and "shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred." Specifically, the insurer argued that the evidence it sought to exclude was irrelevant to calculating the policyholders' covered losses because the repairs had not been completed. Although the trial court initially agreed to exclude the evidence, on reconsideration, it ultimately allowed the policyholders to introduce repair estimates for work they had not performed. The jury's award to the policyholders was thus based on evidence of the property's replacement cost value.

On appeal, the court reversed the trial court's ruling that the policyholders could offer evidence of the replacement cost value of their unrepaired property. The decision does not affect policyholders' ability to introduce evidence of the actual cash value of damaged property, which is still recoverable even before any repairs are made. As explained by the dissent in *Qureshi*, actual cash value is generally defined as "'fair market value' or '[r]eplacement cost minus normal depreciation.'" Replacement cost value, on the other hand, represents the actual costs incurred by a policyholder as repairs to the property are made. In support of its decision to preclude evidence of replacement cost

value, the appellate court in *Qureshi* explained that “in similar insurance policy disputes, ‘[c]ourts have almost uniformly held that an insurance company’s liability for replacement cost does not arise until the repair or replacement has been completed.’” The court also cited general principles of contract construction, including that when “the language of an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with [its] plain meaning in order to give effect to the policy as written.” Applying that principle, the appellate court concluded that the policy clearly and unambiguously stated that the policyholders were not entitled to their repair costs unless the “work is performed and expenses are incurred.” Thus, the appellate court reversed the trial court’s decision and remanded the case for a new trial to determine the policyholders’ recoverable damages. The takeaway from *Qureshi* is that even if an insurer breaches a policy by not paying covered loss, the policyholder will not be entitled to recover replacement cost damages if the policyholder did not repair the property at issue. The policyholder’s recovery for unrepaired property will be limited to the actual cash value of the property.

The Fourth District Court of Appeals’ ruling in *Qureshi* is at odds with Florida’s Third District Court of Appeals’ decision in *Citizens Property Insurance Company v. Tio*, 304 So. 3d 1278 (Fla. 3d DCA 2020). In *Tio*, the insurer argued that the policyholder was not entitled to any consideration of replacement cost value damages because the policyholder had not repaired the property. The insurer sought to limit the evidence of damages to only evidence of actual cash value. The appellate court in *Tio* disagreed with the insurer, and affirmed the trial court’s decision to permit, in addition to actual cash value, evidence and the recovery of replacement cost value for unrepaired property because the insurer had breached the policy. *Tio* directly conflicts with the majority’s decision in *Qureshi*, which effectively limited recovery to actual cash value for unrepaired property by ruling that the jury should not have considered evidence of the replacement cost value of such property when determining the policyholders’ damages notwithstanding the insurer’s breach. In sum, the difference between the two opinions is that Florida’s Third District Court of Appeals is saying in *Tio* that policyholders are entitled to the full replacement cost value for their loss, even where they have not completed repairs, so long as the insurer breaches the policy. Meanwhile, Florida’s Fourth District Court of Appeals is saying in this recent opinion that notwithstanding the insurer’s breach of the policy and failure to pay the covered loss, policyholders are nonetheless limited to the actual cash value of their loss if they fail to make repairs. Notably, the dissenting judge in *Qureshi* stated that the court should have applied *Tio*. Recognizing the differing decisions, the court in *Qureshi* certified the conflict between *Qureshi* and *Tio* for review by the Florida Supreme Court.

Regardless of how this conflict is ultimately resolved, *Qureshi* is a reminder of the importance for policyholders to carefully examine and understand the intricacies of their insurance policies. This scenario also underscores the potential benefit to policyholders of evaluating their rights and responsibilities at the outset of insurance claims, such as whether they may actually need to repair to obtain the full policy benefits associated with replacement cost coverage (which is the typical rule). Indeed, having a detailed understanding of the relevant insurance policies is essential to ensuring that policyholders are adequately protecting their interests. Policyholders may avoid costly errors and be prepared to navigate the nuanced nature of insurance claims by contacting insurance counsel who can help them better understand their coverage.

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