

Todd Noteboom, Bill Thomson Publish in ABA's *The Brief* on Labor Depreciation

In the News

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In an article titled "Belaboring Depreciation: The 'Labor Depreciation' Class Action Tidal Wave" in ABA's *The Brief*, Partners [Todd Noteboom](#) and [Bill Thomson](#) explore the recent surge of class action lawsuits claiming that insurers have underpaid homeowners on property loss claims. The lawsuits center on claims where the insureds do not seek replacement of the damaged items, but instead seek "actual cash value" payments. In these instances, the lawsuits assert that insurers underpay the claims by applying depreciation to the entire value of the item that was damaged, rather than limiting depreciation to the cost of the raw materials alone.

In the article, the authors describe how courts are split on whether applying depreciation to an entire damaged item, such as a roof or a deck, is permitted under traditional homeowners policies. Much of the division among courts stems from some basic misunderstandings about the nature of these so-called "labor depreciation" claims and the insurance policies on which they are based.

The authors explain that there are two different types of coverage offered by a typical homeowners policy: actual cash value (ACV) and replacement cost value (RCV) coverage.

"ACV and RCV work on different principles: whereas ACV attempts to put insureds in the same economic condition they were in before the loss, RCV puts insureds in the same physical condition they were in before the loss by allowing them to rebuild their damaged property. Both accomplish indemnity, but in different ways."

The authors also provide their thoughts on the future of labor depreciation and how the insurance landscape could reach better consistency.

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"The labor depreciation tidal wave looks likely to flood the legal landscape for years to come," the authors wrote. "Courts can achieve greater uniformity by paying closer attention to the manner in which ACV policies indemnify insureds: by returning them to their pre-loss economic condition, not their pre-loss physical condition. In the meantime, insurers should take what steps they can to reduce their exposure-and prepare to ride out the storm."

Noteboom is one of the most sought after litigators in Minnesota and throughout the country, and is regularly called on to defend clients in "bet the company" litigation. For nearly 30 years, he has defended major U.S. corporations and their senior executives in material litigation, enforcement proceedings and investigations, with an emphasis on matters for the financial services and insurance industries.

Thomson defends insurers and other businesses in complex, multistate class actions, corporate governance and shareholder disputes, and financial services matters. He has experience representing banks and other financial institutions in major lending litigation.

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