

Rebuild Reimbursement Endorsement Requires an Actual Rebuild

Insurance Law Update

April 2011

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California Court of Appeal

In *Minich v. Allstate Ins. Co.*, 193 Cal.App.4th 477 (March 11, 2011), the California Court of Appeal held that a homeowner's policy endorsement providing an additional payment for rebuilding a damaged house did not increase policy limits or require paying the endorsement amount before actual repair or replacement.

Allstate's policy provided that it would pay actual cash value (ACV) not exceeding the "limit of liability shown on the Policy Declarations" if the policyholders' house was damaged or destroyed. Under a "Building Structure Reimbursement Extended Limits" (BSREL) endorsement, Allstate agreed to "make additional payment... in excess of [ACV]" if the home was repaired, rebuilt or replaced within 180 days of the ACV payment, in an amount not exceeding "150% of the limit of liability." After a fire destroyed the policyholders' house, Allstate paid the policy limit stated on the declarations page but waited to pay the BSREL endorsement amount until the policyholders provided sufficient proof that they were rebuilding. The policyholders sued, contending that under the policy and applicable statutes, the policy limit included the BSREL endorsement amount, and that Allstate breached the policy and acted in bad faith by delaying payment of the additional amount.

The trial court granted summary judgment for Allstate and the Court of Appeal affirmed. The court concluded that the BSREL endorsement "unambiguously" provided for a potential payment *exceeding* the policy's liability limit, but the endorsement did not increase that limit. The policyholders' claims failed as a matter of law because neither the policy nor the applicable statutes (California Insurance Code §§ 2051 and 2051.5) required that the

BSREL endorsement amount be paid irrespective of repair or replacement. Consequently, the court ruled that Allstate acted properly in waiting to pay the additional BSREL endorsement funds until there was an actual rebuild.

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