

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [The Recorder](#)

Hartford Insurance Must Face Calif. 'Lowballing' Class Action

Greg Land, The Recorder

May 24, 2017

The federal judge overseeing a putative [class action](#) against insurer [The Hartford](#) has [certified](#) a class of about 19,500 California policyholders in a case claiming the insurer routinely underpays claims for damaged property by depreciating items not subject to such reductions under their policies or state law.

The complaint also accuses Hartford of decreasing the sales tax paid on replacement items. Both practices, it said, violate California's insurance code and constitute breach of contract and related claims.

The lead plaintiff's suit concerns a renovated 1900-vintage building in San Francisco that was damaged by a fire in 2013.

Using an "actual cost value" method for paying the claim, The Hartford estimated it would cost \$731,000 to repair the building, which it paid Johnson. He spent \$644,000 on repairs but did not repair or renovate the third floor.

In 2015, he sued Hartford in state court in San Francisco; the suit was removed to U.S. District Court in California's Northern District.

Johnson's complaint said that Hartford depreciated the cost of numerous items not subject to depreciation, including baseboards, cement, drywall, insulation, marble, lath and plaster, plumbing and ornamental iron among others, often by sizable amounts. The replacement cost for plumbing, for instance, was reduced by more than 42 percent, while the replacement cost for marble was written down by 80 percent.

The suit also noted that Hartford reduced the sales tax component by the same amount as the depreciation on the items themselves.

Hartford's methodology resulted in "lowballing" claims to its insureds, it said.

[orrick-william-Square-201702211339.jpg]

Hartford moved to deny class certification and also sought summary judgment, but in a May 22 order Judge William Orrick shot down both requests.

Hartford had argued that it paid Johnson more than he actually spent on repairs, but Orrick wrote that the policy language indicated that "the total amount recoverable under the policy is not limited to the amount actually spent on repairs."

In any case, he noted, Hartford's insureds "may decide, for a variety of reasons, to take the [actual replacement value] to which they are entitled and not rebuild all of the structure, as Johnson has apparently done in not rebuilding the third floor."

"The measure of damages is not the difference between the amount of money spent on repairs and what was paid out, but rather the difference between what Hartford paid out and what it should have paid out," Orrick wrote.

Regarding the sales tax, he wrote, such a tax "constitutes a non-tangible item not subject to deduction at all" under the policy or under California's insurance code.

Hartford's arguments that the potential class members lack commonality under federal rules also failed, he said, since all of their cases turn on the issue of whether Hartford is prohibited from depreciating certain structural items and the sales tax on them.

Attorney Ivo Labar of San Francisco's [Kerr & Wagstaffe](#), who represents Johnson with colleague Michael von Loewenfeldt, said that while the instant litigation only concerns Hartford clients in California, many other states' insurance laws mirror the California code and that litigation could be filed elsewhere.

"The big takeaway is that national insurance companies need to pay attention to the laws that are in effect in their states and not try to save money at the expense of their insureds," said Labar.

Labar said that some similar cases in California against other insurers, including Farmers, State Farm and AAA, have settled within the past few years.

Hartford's attorneys, Christopher Frost and Michael Mulvany of Birmingham, Alabama's [Maynard, Cooper & Gale](#), referred queries to the insurer's media representatives, who did not immediately respond to messages.

Copyright [The Recorder](#). All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

Contact Greg Land at gland@alm.com. On Twitter: @GregLand1

Copyright 2017. ALM Media Properties, LLC. All rights reserved.

