No. 26559 -- The Estate of Hulda Davis, by its executrix, Jerold A. Casey v. Farmers Mutual Insurance Company, a corporation

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SUPREME COURT OF APPEALS
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Starcher, J., concurring:

It is a basic fact of life that when most people buy a home, they also buy homeowner's insurance to protect against certain types of losses. The policy usually says something to the effect that the insurance company will pay the policyholder the "actual cash value" of the loss. However, the policy usually also has a "cap" or a total value, a figure which is the maximum amount of money that the insurance company will pay on the policy.

Insurance companies are prone to mischief, particularly when it comes to paying the "actual cash value" of a loss, and this case is a perfect example. In yesteryear, a policyholder would pay actual cash for a house, and then buy an insurance policy with a value equal to the value of the house, and would use actual cash to pay the premiums. When the house burned to the ground, an insurance adjuster would look at the smoldering debris, calculate the "actual cash value" of the house that was destroyed, and scribble out a check -- usually for an amount far less than the value of the policy. The policyholder paid for coverage equal to the value of the house, only to learn after a catastrophe that most of the coverage was illusory through the use and abuse of the "actual cash value" concept.

The Legislature recognized this disreputable practice and fixed the problem with *W.Va. Code*, 33-17-9 [1957], the "valued policy law." This statute states that when real property is totally destroyed by fire or some other cause covered by the insurance policy, the insurance company must pay "the whole amount of insurance stated in the policy." This prevents the insurance company from overvaluing the insured structure for premium purposes, collecting an excess premium, and then later contesting the value of the structure when there is a loss. *See, e.g., Filiatreau v. Allstate Ins. Co.*, 178 W.Va. 268, 358 S.E.2d 829 (1987).

However, the Legislature afforded different treatment for farmers' mutual fire insurance companies. In *Yeager v. Farmers Mutual Insurance Co.*, 192 W.Va. 556, 453 S.E.2d 390 (1994), this Court acknowledged that the "valued policy law" does not apply to farmers' mutual fire insurance companies, because the Legislature specifically exempted farmers' mutual fire insurance companies from the operation of the valued policy law by enacting *W.Va. Code*, 33-22-7(c) [1957].[1]

Our holding in *Yeager*, however, did not mean that farmers' mutual fire insurance companies could revert to pre-valued-policy-law tactics of yesteryear. In *Yeager* we made clear that the farmers' mutual fire insurance company bears the burden of inspecting the policyholder's property before issuing a policy, and that the value of the policy should reflect the *actual* pre-loss value of the property. We also held in *Yeager* that the "agreement as to value as of the date of the policy . . . is an agreement with respect to the value of the property insured which will carry through the life of the contract[.]" 192 W.Va. at 560, 453 S.E.2d at 394, *quoting Davis v. Safe Insurance Co.*, 120 W.Va. 505, 510, 199 S.E. 364, 366 (1938).

[1]In today's world of insurance, I question the continued need for such a distinction between farmers' mutual fire insurance companies and all other insurance companies. Perhaps the Legislature should revisit this statute.

Furthermore, when an insured property is totally destroyed, the farmers' mutual fire insurance company must pay the value of the policy, or must introduce substantial proof to show that some intervening factor (besides time or cosmetic wear and tear) reduced the value of the property below the pre-loss agreed value of the property.[2]

In other words, an insurance adjuster for a farmers' mutual fire insurance company cannot come in, after a fire has destroyed the property, and place a different "actual cash value" on the house that is less than the amount agreed to in the policy. The farmers' mutual fire insurance company must either pay the value of the policy, or come up with some hard evidence to show how the property has significantly dropped below the value of the policy.

In the instant case, the plaintiffs and the farmers' mutual fire insurance company agreed in March 1995 that the house was worth $50,000. Ten months later the house burned, and an insurance adjuster said the house had an actual cash value of only $28,155, in complete and total disregard for our holding in *Yeager*. The farmers' mutual fire insurance company knew of our holding in *Yeager* because

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[2]By "substantial," I mean substantial, not nickel-and-dime cosmetic damage. Houses constantly sustain wear-and-tear damage: paint weathers, shingles wear, floorboards work loose and squeak. Bad neighbors move in and don't care for their own houses, hurting the value of the policyholder's home. No homeowner could possibly maintain their home or their neighbors' homes in perfect condition, and no insurance company could reasonably expect the same. Therefore, when the homeowner and farmers' mutual fire insurance company agree to the value of the home, the insurance company cannot after a loss occurs "depreciate" the value of the home for such routine wear-and-tear.

Furthermore, every few months or year, when the policyholder and farmers' mutual fire insurance company renew the policy, the insurance company has a new opportunity to examine the home and reassess the value of the policy and the value of the house. Hence, the insurance company cannot sell a policy today, and when the house burns down in 15 years, calculate how much the value of the home has decreased over 15 years. It can only make deductions from the value of the house agreed upon on the date the policy was last renewed -- usually only a few months prior to the loss. In the instant case, the loss occurred 10 months after the policy was renewed.

it was the defendant in *Yeager*, yet intentionally disregarded the holding and stiffed the policyholder for $20,000 in actual cash.

I am therefore in full agreement with the majority's application of *Yeager* to this case to rectify this injustice. I concur.