



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**WALKER v. AUTO-OWNERS INSURANCE COMPANY  
CV-21-0236-CQ**

**PARTIES:**

*Plaintiffs:* Gerald Walker, III and Ada Walker, on behalf of themselves and similarly situated class members

*Defendants:* Auto-Owners Insurance Company

**FACTS:**

This case was certified to this Court by the United States District Court for the District of Arizona.

Auto-Owners issued a homeowner’s insurance policy (“Policy”) to the Walkers insuring their home in Tucson. For this loss, the Policy provided, “we will pay the full cost to repair or replace the damaged part of such covered property. No deduction will be made for depreciation.” The Policy also provided, “If you do not repair or replace the damaged covered property, we shall pay the actual cash value of the property at the time of loss. Actual cash value includes a deduction for depreciation.” However, the Policy did not include a definition of either actual cash value (“ACV”) or depreciation.

On May 28, 2019, an accidental water discharge from an appliance caused extensive damage to the insured property. Water flowed throughout the house damaging the walls and floors in several rooms. The Walkers submitted a claim of loss to Auto-Owners, which accepted coverage for the loss. In calculating the ACV of the Walkers’ loss, Auto-Owners used the Xactimate program, which, the Walkers maintain, has various settings that determine how a claim is adjusted. For instance, they claim that the program can be set to apply depreciation to material costs only or it can be set to apply depreciation to both labor and materials. The Walkers filed a federal district court complaint on behalf of themselves and similarly situated Class members alleging breach of contract and seeking declaratory and injunctive relief. The Walkers alleged Auto-Owners improperly required Xactimate be set to depreciate both labor and materials when used to adjust property damage claims in Arizona.

Auto-Owners filed a motion to dismiss the complaint asserting the Policy permits Auto-Owners to deduct “depreciation when estimating the value of the property, and never distinguishes between materials and labor.” Auto-Owners also asserted that the court should adopt the “broad evidence rule” for determining ACV, which would allow an insurer to “consider every fact and circumstance which would logically tend to the formation of a correct estimate of the loss”—including the depreciation of labor.

Auto-Owners requested, if the district court was disinclined to grant the motion to dismiss, the court certify the question to the Supreme Court of Arizona, and it did so.

**CERTIFIED QUESTIONS:**

A. When a homeowner's insurance policy does not define the terms "actual cash value" or "depreciation" may an insurer depreciate both the costs of materials and labor in determining the actual cash value of a covered loss?

B. Is the broad evidence rule applicable in Arizona such that an insurer and/or fact finder may consider labor depreciation as a pertinent factor in determining actual cash value?

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