

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

PRUDENTIAL PROPERTY &)
CASUALTY COMPANY,)
)
PLAINTIFF)
)
v.)
)
BRUCE SHARP, ET AL.,)
)
DEFENDANTS)

Civil No. 95-274-P-H

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The issue here is whether paying an additional premium for personal property replacement cost coverage under a homeowners insurance policy operates to increase the total dollar limit of coverage. I conclude that it does not.

BACKGROUND

The insureds here, the Sharps, paid an extra premium of \$55 to obtain personal property replacement cost coverage under their homeowners policy with Prudential. In 1993, virtually all of their personal property was destroyed by fire. Prudential paid the Sharps \$156,800 for the loss of their personal property, the stated policy limit for personal property. The actual loss suffered by the Sharps substantially exceeds that amount. The Sharps maintain that by paying the additional

premium they purchased coverage for the replacement cost of all their personal property, regardless of the total amount. Prudential has brought this action seeking declaratory relief that its liability is limited to \$156,800.

LEGAL ANALYSIS

The declarations page of the policy states that the coverage limit for personal property is \$156,800. That page also shows that the Sharps purchased an optional endorsement for replacement cost coverage for a premium of \$55 and a so-called guaranteed replacement cost endorsement for another \$1. These endorsements supersede the policy provisions that otherwise limit recovery to the actual cash value of the property in question at the time of loss.

The endorsement for “Replacement Cost” coverage provides: “For an additional premium, covered property losses are settled at replacement cost without deduction for depreciation.” It then goes on to say that the carrier “will not pay more than the smallest of following amounts for loss of any one item or items covered under this endorsement: (1) 400% of the actual cash value at time of loss; (2) replacement cost at the time of loss; (3) the full cost of repair; or (4) any special limits of liability stated in the policy.” It is clear on its face that this provision does not change the overall dollar limits of liability. Instead, it is devoted to determining how “any one item or items” will be valued and paid for upon loss and it operates to remove the ordinary reduction for depreciation. This interpretation is confirmed by the contrasting language in the “Guaranteed Replacement Cost” endorsement where the replacement cost of buildings is explicitly covered “regardless of the limit of liability,” a phrase not found in the provision concerning replacement cost for personal property.

Accordingly, I find no ambiguity in the policy. Summary judgment shall be entered in favor of the plaintiff and against the defendants on the plaintiff's complaint. However, this order neither addresses nor resolves the counterclaims alleging negligence and negligent misrepresentation on the part of Prudential's agent. Pursuant to this court's order of November 15, 1995, the plaintiff must file a responsive pleading to the defendants' counterclaims within twenty-one (21) days.

SO ORDERED.

DATED AT PORTLAND, MAINE THIS 26TH DAY OF JANUARY, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE