

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2355

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BRUCE R. RAEMISCH,

Plaintiff-Appellant,

v.

LIBERTY GROVE MUTUAL INSURANCE COMPANY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J. and Dykman, J.

PER CURIAM. Bruce R. Raemisch appeals from a summary judgment dismissing his complaint against Liberty Grove Mutual Insurance Company ("Liberty Grove"). The issues are whether the policy limits coverage to \$100,000 and whether Liberty Grove is obliged to pay Raemisch's attorney's fees after paying him \$100,000. Our conclusion, that Liberty Grove's maximum exposure to cover Raemisch's loss is \$100,000, disposes of the attorney's fees issue. Therefore, we affirm.

Raemisch insured his vacation home with Liberty Grove. The policy provided replacement cost coverage in addition to the basic dwelling/residence coverage. It is undisputed that the home's value exceeded \$100,000¹ and that it was totally destroyed by fire. Liberty Grove paid Raemisch \$100,000, which it contends is its maximum exposure under the policy. Raemisch sued to recover the home's actual cash value under the express language of the replacement cost provision. Raemisch moved for summary judgment. Although the actual cash value of the damaged property exceeded \$100,000, the trial court concluded that this was a \$100,000 policy and granted summary judgment to Liberty Grove. Section 802.08(6), STATS. Raemisch appeals.

The relevant policy provisions are:

Our Limit of Liability - For loss to property, we pay the lesser of the following amounts:

- 1) the applicable limit of liability;
- 2) an amount not greater than **your** interest in the property;
- 3) the cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
- 4) the amount computed after applying the deductible or other limitation applicable to the loss;
- 5) the actual cash value of the property at the time of loss (except as provided under the Replacement Cost Provision, if applicable); or

¹ We recognize that the parties dispute the vacation home's value. However, even the 1993 appraised value offered by Liberty Grove exceeds \$100,000.

6)(applies to mobile homes only at **your** option) the amount equal to the difference between the actual cash value of the property immediately before the loss and its actual cash value immediately after the loss.

(Emphasis in original.) According to (1), Liberty Grove's limit of liability for a dwelling/residence is \$100,000. However, (5) refers to the Replacement Cost Provision. That provision "is subject to the **terms** of How Much We Pay for Loss or Claim in the General Policy Provisions." (Emphasis in original.) The Replacement Cost Provision continues, in pertinent part:

2.If the limit of liability on the damaged building is less than 80 percent of its replacement cost at the time of loss, **we** pay the larger of the following:

a.actual cash value of the damaged part of the building; or

b.that proportion of the replacement cost of the damaged part which **our** limit of liability on the building bears to 80 percent of the full current replacement cost of the building.

(Emphasis in original.)²

Raemisch contends that he is entitled to the home's actual cash value under the replacement cost provision. That provision requires Liberty

² We have deleted references to the deductible because it is irrelevant to this opinion.

Grove to pay over \$400,000, the actual cash value of the home, because the limit of liability (\$100,000) is less than 80 percent of its replacement cost.³

Raemisch contends that the policy's specific provision prevails over its general provision—that the replacement cost provision prevails over and expands coverage otherwise limited by the "How Much We Pay for Loss" provision. We would agree with Raemisch, were the specific provision to conflict with the general provision.⁴ But there is no conflict, because the plain language of the replacement cost provision expressly refers to the applicability of the "How Much We Pay for Loss" provision. Applying the latter provision, Liberty Grove must pay the lesser of: (1) the applicable limit of liability (\$100,000); or (2) the actual cash value of the home (\$400,000).

The replacement cost provision is triggered to determine whether the amount is less than the applicable limit of liability. Once it has been determined that the lesser amount is the limit of liability, the replacement cost provision no longer applies.⁵ Liberty Grove paid the lesser amount -- the limit of liability.

Raemisch wrongly contends that under our analysis his replacement coverage is illusory because he paid an additional premium for it, but obtained no additional coverage. He received value for his additional premium. The replacement cost provision benefits the insured when the cost of replacement is greater than the actual cash value but less than the limit of liability.

Because we conclude that Liberty Grove's liability under this policy is limited to \$100,000, we do not address its alternative theory under

³ We use Raemisch's valuation merely for illustrative purposes.

⁴ See, e.g., *Thomsen-Abbot Constr. Co. v. City of Wausau*, 9 Wis.2d 225, 234, 100 N.W.2d 921, 926 (1960).

⁵ Raemisch's analysis focuses exclusively on the Replacement Cost Provision, but ignores its express applicability to the "How Much We Pay for Loss" provision.

§ 632.05(2), STATS. Our conclusion also disposes of Raemisch's claim for attorney's fees.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.