



“Roofing Week In Chicago – Weighing The Facts”



Presentation Overview

- Illinois Severe Weather Data
- Deny, Delay, & Underpay Claims: Why Do Insurance Companies Do It?
- Top 10 Insurance Company Wrongful Denials & Underpayments
- General Contractor's Overhead & Profit
- Direct Physical Damage: Defined by Courts, Not Policy
- Claim & Supplementing Process
- Top 10 Negotiating Tips to Efficiently Close Out the Claim File
- What is a Public Adjuster?
- Illinois Contractor & Public adjuster Hybrid

Illinois Severe Weather Data

Property Damage At A Glimpse

According to PropertyCasualty360.com,

- US total hail loss claims processed from 2013-2015 = 2,116,980
- Illinois total hail loss claim processed from 2013-2015 = 120,513
- The average claim severity during 2008-2013 was 65% higher than it was from 2000-2007
- Due to severe weather increasing in severity in recent years a growing sector of insurance restoration contractors are emerging.

Delay, Deny & Underpay:

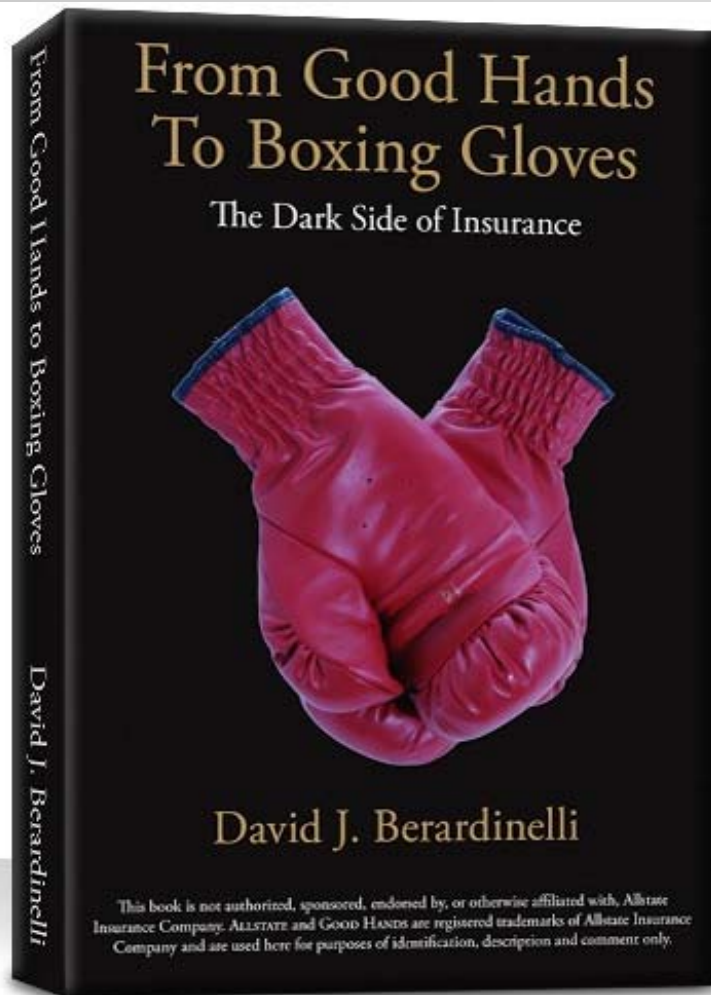
Why Do Insurance Companies Do It?

Is it important for you to know why?

YES. The property owner many times believes their insurance company without questioning their position. It is our job to educate the consumers on why the insurance company could potentially not pay what's contractually owed.

This will set you apart from your competitor's by having credible sources & information to educate your client's on why this is happening to them. Letting them know why they are not alone, & what they can do about it.

From Good Hands To Boxing Gloves: The Dark Side of Insurance by David Berardinelli



Allstate hired McKinsey & Co in 1992 to improve efficiency. The consulting firm developed methods for the company to become more profitable by paying out less in claims. These methods were implemented by Allstate & many other insurance companies.

From Good Hands To Boxing Gloves: The Dark Side of Insurance by David Berardinelli



"Good Hands & Boxing Gloves": Good hands for those policyholders who accept the low claim amount & boxing gloves for those who protest.

"Sit & Wait": By postponing payments, insurance companies can hold money longer and make more on their investments – and often wear down clients to the point of dropping a challenge.

Are These Methods Working?

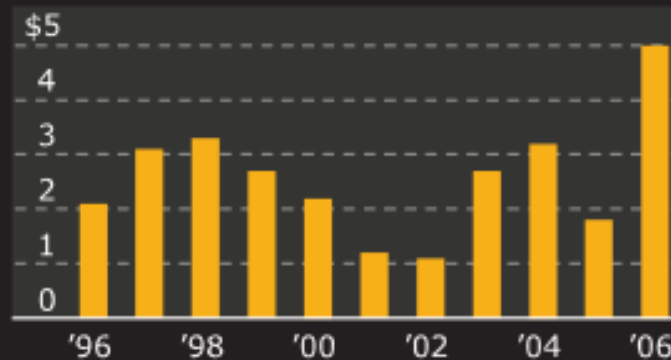
According to Bloomberg, more than half of the insurance companies use these methods today.

Insuring Profits

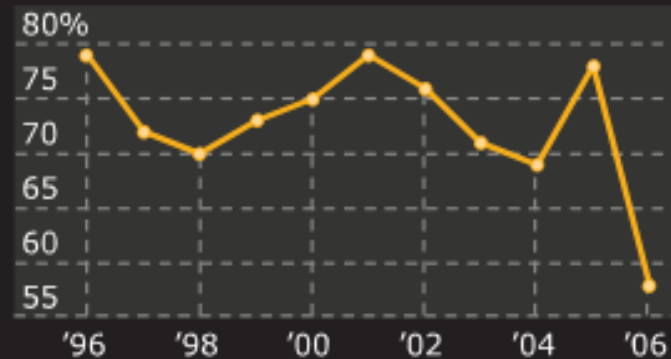
Bloomberg

Allstate raised net income by 140 percent from 1996 to 2006 as it paid out less in claims to customers, amid an increase in industry-wide insurance premiums.

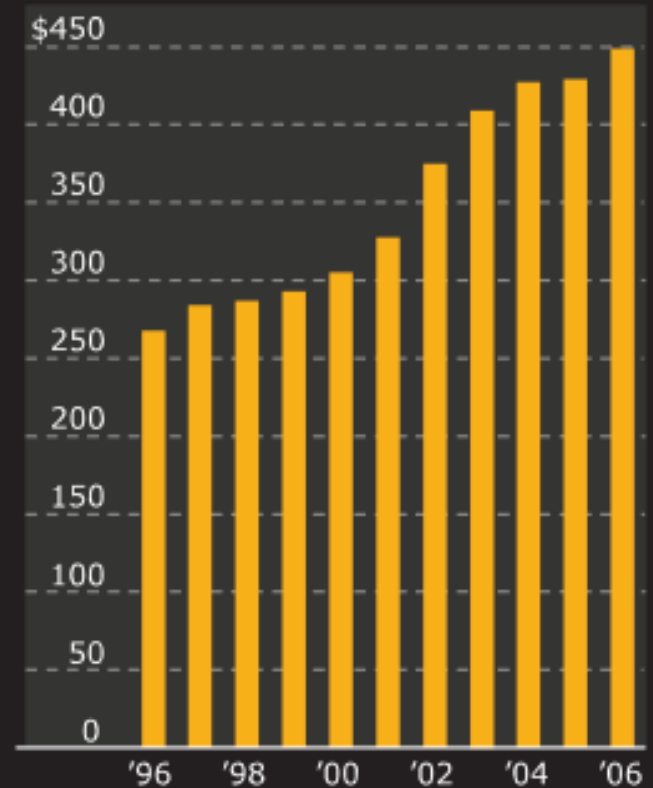
Allstate net income
in billions



Allstate's percent of premium income paid out in claims



Industry-wide property/casualty insurance premiums
in billions



Sources: Allstate, National Association of Insurance Commissioners

Top 10 Insurance Company Wrongful Denials & Underpayments

- No Direct Physical Damage: "No Visible Damage" "Unsealed Shingles Not Direct Physical Damage"
- Age & Condition: "Wear & Tear" "Old" "Lack of Maintenance" "Neglect" "Abandoned"
- Defect: "Manufacturer" "Workmanship" "Blisters" "Foot Traffic" "Adhesive"
- Cosmetic: "Granule Loss" "Oxidation Markings"
- Old/Prior Damage: "That they denied before & now using as an excuse not to pay"
- No Wind/Hail Created Openings: "No Covered Created Openings for Water to Enter" "Surface Water"
- Settlement/Earth Movement
- GCO&P: "Claim Not Complex" "Not Enough Trades"
- Enemy of The Roof: "Bird Poop Not Hail Damage"
- Roof Accessories: "It wasn't damaged"

General Contractor's Overhead & Profit

Background

Loss Settlement
Calculations: RCV &
ACV

Majority View vs
Minority View

Industry Custom &
Practice

General Contractor's Overhead & Profit

Background

- According to Black's Law Dictionary, a general contractor is "one who contracts for the completion of an entire project including purchasing all materials, hiring & paying subcontractors, and coordinating all the work."
- Generally in the insurance industry, general contractor's overhead (10%) & profit (10%) is calculated as a percentage on top of the estimated cost of repair or replacement.
- There is a heated debate centered around the contractor's profit & overhead issue & why it should be included in every insurance claim.

General Contractor's Overhead & Profit

Loss Settlement Calculations: RCV & ACV

Let's start with some basic definitions from Texas Property & Casualty Insurance Manual:

Replacement Cost Value: The actual cost of replacing property without a deduction for depreciation. The amount necessary to replace damaged property at today's cost - that is replacing lost or damaged property with like kind & quality.

Actual Cash Value: The replacement (current) cost of an item minus depreciation from wear & tear or obsolescence.

The ACV term is generally not defined in policies. So if that is the case the courts use one of three rules to determine ACV.

1. Market Value Rule
2. Replacement Cost less Depreciation Rule
3. Broad Evidence Rule

General Contractor's Overhead & Profit

Loss Settlement Calculations: RCV & ACV

According to Adjusting Today, "Overhead & Profit, It's Place in a Property Insurance Claim."

Determining ACV

Some courts apply a **"market value"** rule, which is the difference in a free and open market between the market value of the property before and after a loss.

Other courts apply a **"broad evidence"** rule, which considers every logical fact and circumstance in establishing a correct estimate of the property's value. These could include original cost, replacement cost, market value, age and condition.

A number of courts have rejected both of these rules and instead are applying a **"replacement cost less depreciation"** rule. Under this rule, depreciation is deducted from the estimated cost to repair or to replace damaged or destroyed property in order to determine its ACV.

General Contractor's Overhead & Profit

Loss Settlement Calculations: RCV & ACV

Loss Settlement. Covered property losses are settled as follows:

...

- b. We will pay the cost to repair or replace buildings under Coverage A subject to the following:
 - (1) Until actual repair or replacement is completed, we will pay the **actual cash value of the damage to the buildings, up to the policy limit**, not to exceed the replacement cost of the damaged part of the buildings for equivalent construction and use on the same premises;
 - (2) You must make claim within 180 days after the loss for any additional payment on a replacement cost basis.

Any additional payment is limited to the amount you actually and necessarily spend to repair or replace the damaged buildings with equivalent construction and for equivalent use on the same premises[.]³⁶

General Contractor's Overhead & Profit

Majority View vs Minority View

Now that we understand the way a loss is settled & the terms relating to the that calculation, let's discuss how GCO&P is viewed in different states.

Majority View: "Payment Required If Use Is Likely"

According to Adjusting Today, the majority of courts that have considered the issue have concluded that payment of GCO&P is required where the use of a general contractor is reasonably likely in repairing or replacing a covered loss, even if no general contractor is used or no repair or replacement is made.

General Contractor's Overhead & Profit

Majority View vs Minority View

Majority View: "Payment Required If Use Is Likely"

Case law stating that GCO&P must be paid in the ACV payment if a GC is reasonably likely in repairing or replacing a covered loss.

- Mills v. Foremost Ins Co, FLORIDA
- Mazzocki v. State Farm Fire & Cas. Corp., NEW YORK
- Tolar v. Allstate Texas Lloyd's Co., TEXAS
- Ghoman v. New Hampshire Ins. Co., TEXAS
- Mee v. Safeco Ins. Co., PENNSYLVANIA
- Bond v. Am. Family Mut. Ins. Co., ARIZONA
- Tritschler v. Allstate Ins. Co., ARIZONA
- Salesin v. State Farm Fire & Cas. Co., MICHIGAN
- Gonzales v. State Farm, CALIFORNIA
- Morris v. Liberty Mutual Fire Ins. Co., OKLAHOMA
- Gilderman v. State Farm Ins. Co., PENNSYLVANIA
- Trinidad v. Florida Peninsula Ins. Co., FLORIDA
- Press v. Louisiana Citizens Fair Plan Prop. Ins. Co, LOUISIANA
- Parkway Associates LLC v. Harleysville Mut. Ins. Co. TENNESSEE

General Contractor's Overhead & Profit

Majority View vs Minority View

Minority View: "Payment Not Required Unless Incurred"

According to Adjusting Today, a minority of courts have rationalized that overhead & profit are "non-damage" factors that have no relation to the value of the damage. In their dim view, these represent only the cost or expense that would be incurred if repair or replacement were involved.

In the review from "Overhead & Underpaid" by Brett Baulsir states, "In the minority of jurisdictions, GCOP are not properly included as ACV unless 'actually incurred'..... Instead, GCOP, represent only a cost that would be incurred if repair or replacement took place."

Case law that supports "Not Required Unless Incurred"

- Snellen v. State Farm Fire & Cas. Co., KENTUCKY
- Hess v. North Pacific Ins. Co., WASHINGTON
- Karl v. State Farm Fire & Cas. Co, COLORADO

General Contractor's Overhead & Profit

Industry Custom & Practice

According to Adjusting Today:

The textbook Property Loss Adjusting for property claims adjusters published by the Insurance Institute of America for use in its industry-wide insurance designation and certification programs. It lists the following elements as comprising repair or replacement cost:

- Materials
- Labor and employers' burden
- Tools and equipment
- Overhead and profit
- Miscellaneous direct costs such as permits and taxes

General Contractor's Overhead & Profit

Industry Custom & Practice

Widely-recognized construction estimating publications used in the insurance industry define replacement cost to include labor, materials, and contractor's overhead and profit.



Property Loss Adjusting
Swift/Boeckh
RS Means
Sweets
Property Loss Research Bureau
The Fire, Casualty & Surety

& many more.

B

Direct Physical Damage: Defined by Courts, Not Policy

What is Direct Physical Damage?

- Policies do not define “direct physical damage.” So courts are often forced to consider what an objectively reasonable insured, reading the relevant policy language, would expect to be covered. When the language of an insurance contract is ambiguous, most courts will interpret the language in the way most favorable to the insured (DRI Today).
- The loss from an insured peril must be a physical loss to the property insured by the peril or perils insured against without any intervening cause (Texas Property & Casualty Manual).
- Damage as loss or harm resulting from injury to property, person, or reputation (Merriam Webster Online).

Direct Physical Damage

What is Direct Physical Damage?

In order to claim direct physical damage & get coverage under an insurance policy it must sustain a functional and/or cosmetic loss from a covered peril.

- Functional: shorten the life cycle of the material, affect the function of product
Examples: roof=water shedding capability/life cycle/warranty/manufacture specs, drywall= fire rating/manufacture specs, insulation=energy efficiency
- Cosmetic: alterations of physical appearance (beware of making this argument)
- Note: Economic loss or loss in value has had several case laws support that this does not meet the definition of direct physical loss because Physical=Material. Intangibles does not meet that definition. (Crestview Country Club v St Paul Guardian Insurance Company, Leafland Group II v Insurance Co of North America).

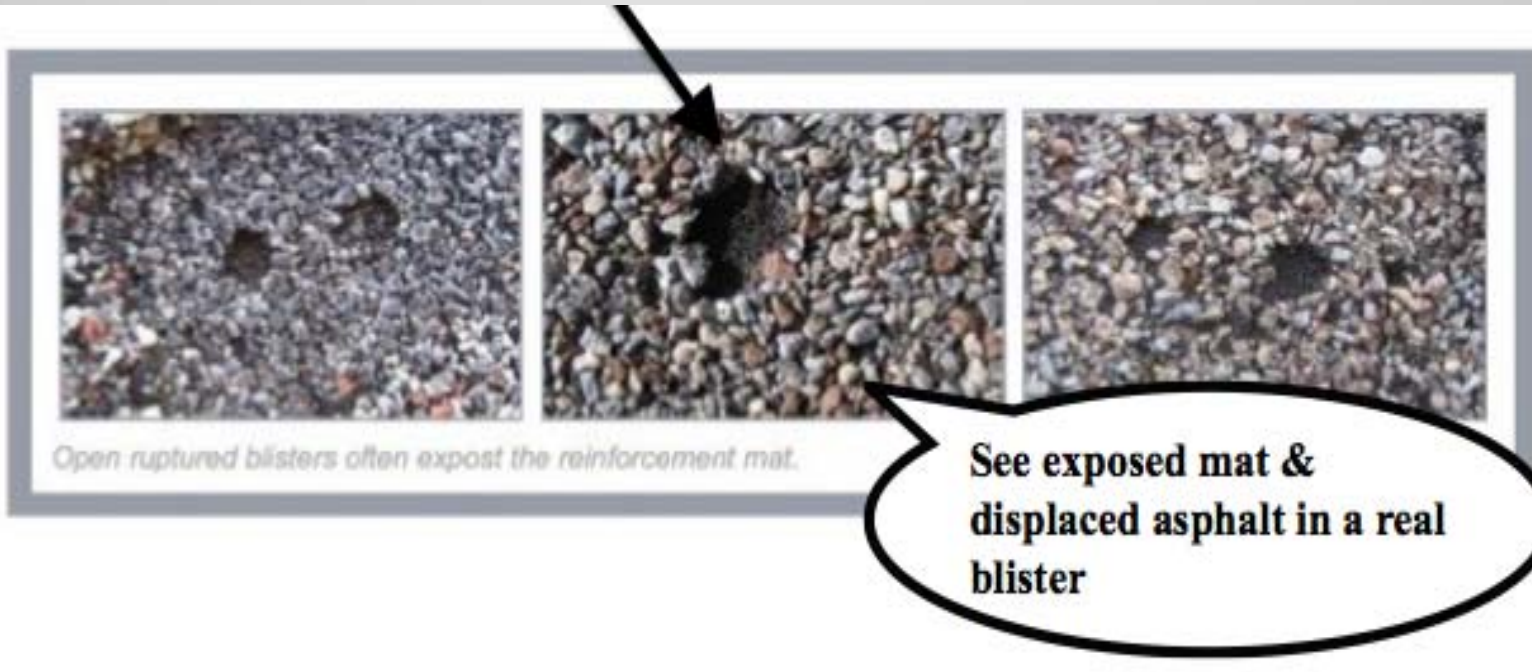
Direct Physical Damage

Unsealed Shingles



Direct Physical Damage vs Defect

Hail Damage vs Blistering



Direct Physical Damage vs Defect

Hail Damage vs Blistering



blister up close

Date Taken: 7/23/2013

Taken By: Christian
Bourguignon

not hail, contractor said these were hail -
not hail evidenced by size and sharp
granules at perimeter of blister erosion

**Not a blister, adjuster
incorrect. Mat not
exposed & asphalt not
displaced**

Claim Process

- Write an estimate & picture report for every claim. It is your job to tell the insurance company how much to pay for the claim.
- Submit the Letter of Outstanding Items (LOI), the estimate & photo report with all supporting documentation.
- Schedule & attend the re-inspection within the deadline in LOI.
- Submit any required information that is reasonably requested by the insurance company within the deadline in LOI.
- Follow up to ensure all information has been received.
- Let deadline pass without further follow up.
- If no fair resolution is made by deadline period or insurance company doesn't request an extension of time, proceed to dispute resolution process.

Letter of Outstanding Items (LOI)

This letter needs to be from the client to avoid “acting as a public adjuster.”

Date:

Insurance Company:

Insured:

Policy Number:

Claim Number:

Date of Loss:

To Claims Dept:

I am writing this letter to discuss the outstanding items known at this time. This letter does not include items that may be discovered at a later date. The following listed items to be paid on the above referenced claim:

1. Roof Replacement, \$15,000
2. Interior Leak in Master Bedroom, \$850
3. General Contractor Profit 10% & Overhead 10%, \$3170

Total Amount Owed At This Time: \$19,020

Please see attached estimate & pictures of direct physical damage covered under policy. I expect a response to this letter in writing confirming that you have received it. I also need a written response letting me know if there are any documents/information you need to complete the processing of this claim. I expect the full payment by XX/XX/XXXX.

Thanks,

Policyholder Name, Phone #, & Signature

Letter for Final Request of Payment

This letter needs to be from the client to avoid “acting as a public adjuster.”

Date:

Insurance Company:

Insured:

Policy Number:

Claim Number:

Date of Loss:

To Claims Dept:

I am writing this letter to give your claim department a final chance to handle my claim in good faith according to the terms in my policy. I had submitted a letter of outstanding items on XX/XX/XXXX to inform you of the amount of loss needing to be paid. I have submitted all reasonable documentation that you requested & if you did not request then you missed the timeline to do so per the previous letter of outstanding items. That letter does not include damages that may discovered at a later date. The following listed items to be paid on the above referenced claim are listed again for your reference:

1. Roof Replacement, \$15,000
2. Interior Leak in Master Bedroom, \$850
3. General Contractor Profit 10% & Overhead 10%, \$3170

Total Amount Owed At This Time: \$19,020

I am giving a final deadline to allow your claim department to do the right thing & pay my claim. If I do not receive the full payment by XX/XX/XXXX then I will assume that you do not want to honor the promises you made in my policy & handle my claim in good faith.

I look forward to resolving this issue.

Thanks,

Policyholder Name, Phone #, & Signature

Top 10 Negotiating Tips to Efficiently Close Out the Claim File

- Two Option Solutions
- Don't Be Afraid To Ask For What You Want
- Ask, Then Shut Up & Listen “He Who Speaks First Loses”
- Do Your Homework
- Always Be Willing To Walk Away & Go Above That Adjuster To The Supervisor. Don't Agree On Lessor Scope Unless It's Right
- Don't Be In A Hurry, Patience = Increased Revenue
- Aim High & Expect The Best Outcome
- Focus On The Other Side's Exposure/Pressure Points
- Show The Other Side You Are Not Going Away With A No. Squeaky Wheel Get's The Oil
- Don't Give Anything Away Without Getting Something In Return

Dispute Resolution Process

- There are a few options to consider when an insurance company will not approve a claim:
 - Utilize a public adjuster
 - Utilize the appraisal process
 - Illinois Appraisal Language Unique
 - Utilize an attorney to file a lawsuit against the insurance company

What Is A Public Adjuster?

A public insurance adjuster is licensed by the Department of Insurance to represent policyholders to negotiate insurance claim settlements.

We are required to be bonded, fingerprinted, pass state exam & submit applications for license approval by Department of Insurance.

I represent policyholders only, do not work for insurance companies.

The fee charged is regulated by Insurance Code

Our fee is contingent upon success of settlement

No recovery, no fee.

Contractor & Public Adjuster Hybrid

- Illinois has a hybrid unlike any other state
- With the proper licensing, disclosures and contracts a contractor can be both the public adjuster and contractor on the same claim
- In most states this is illegal and by regulation not allowed



Thank you !