



[Georgia Valued Policy Law - Episode #138](#)

Posted: Thur. Mar. 29, 2018



Hosted by: John Czuba, Managing Editor

Guest Attorney: Eric Mull of [Drew Eckl & Farnham, LLP](#)

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John Czuba: Welcome to *The Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorney Eric Mull from the firm of [Drew Eckl & Farnham](#) with offices in Atlanta and Brunswick, Georgia. Eric is a partner with the firm and has been practicing insurance defense litigation for 11 years with a focus in the areas of construction defect, professional malpractice, and first party insurance matters.

He represents his clients in their investigation and adjustment of large scale property claims, and in defending his clients in coverage, bad faith litigation, and arson, fraud and property damage cases in state and federal courts in Georgia and the southeastern United States.

His practice includes handling all aspects of litigation, including conducting examinations under oath, taking and defending depositions, including those of expert witnesses, engaging in motions practice, trying cases, and appellate work.

Eric also has considerable experience in subrogation for various insurers, including large scale property loss, casualty, and workers' compensation lien recovery.

Eric, we're very pleased to have you with us this morning.

Eric Mull: Glad to be here.

John: Today, we'll be discussing Georgia's valued policy law. Eric, for our first question today, can you tell us about the Georgia valued policy law, including any recent changes?

Eric: Absolutely. Georgia has a long history with having a valued policy law. As far back as September of 1885, *The New York Times* first noted that the Georgia legislature would be addressing the issue of whether to actually establish valued policy law in Georgia.

Back then, back in September of '85, the *Times* noted that, "Under the present system, losses by fire were adjusted after the fire with the full amount of coverage being rarely paid."

Georgia appellate courts' stated interpretation of the reason that we have a valued policy law is to serve as a liquidated damages provision because after a loss, a homeowner's burden of proving the value of property loss is overwhelming. By 1900, Georgia was one of 16 states with some form of valued policy law, and today is one of 24 states, or over 24 states, that has or has had a valued policy law.

Our current law is codified OCGA § 33 32 5. It has traditionally provided coverage when there's a complete loss by fire of a one or two family residential building. The amount of insurance set forth in the policy relative to the building or structure is taken conclusively to be the value of the property. That's the way that most valued policy laws work between the different states.

As you mentioned, there have recently been a couple of changes in Georgia. These changes are important because there have rarely been significant changes with the valued policy law over the last hundred plus years.

Recently with the Senate Bill 137, the application of the law changed. Prior to Bill 137, the valued policy law applied to any insurance policy that was issued to a natural person or persons. Now, the valued policy law applies to "any legal entity wholly owned by a natural person or persons."

In application, the law applies to corporations and other legal entities that are owned by one or more individuals. That's the background of our law, and an overview of the recent changes.

John: Can you tell us how Georgia claims adjusters and the claims industry are impacted by these changes?

Eric: Sure. As I said, in application now any business, whether incorporated or not, which is "wholly owned by a natural person" is now afforded coverage under Georgia's valued policy law if the loss otherwise qualifies under the statute.

From the claims industry's perspective, it is now no longer sufficient to eliminate the statute's application when a policy holder is anything other than an individual. The analysis must now be conducted to determine if the legal entity is wholly owned by a natural person or persons.

To do this, the claims professional must determine all owners of a legal entity, which raises many concerns, such as when an entity has multiple partnerships, or it has multiple limited liability companies. The required analysis will include an evaluation of each owner, each layer, which can be voluminous and time consuming.

Trust me, I've done this before. It can seem never ending, especially with multiple layers of ownership. Inevitably, questions arise such as how many layers of an insured's ownership structure an insurer must investigate in order to determine the ultimate ownership.

For now, what I recommend is that insurers develop a standard list of questions to discover and understand the ultimate ownership of an insured entity. These questions should be addressed as early on in the claims handling process as possible once a determination has been made that there is a total loss.

That's what I recommend. I also note that insurers should understand the recent changes do not otherwise affect application of the law. Georgia valued policy law only applies when the insured premises are, for example, insured for specific limits. By expanding the ownership criteria from natural persons does not void the limitation that the insured property cannot be insured under a blanket form covering multiple properties.

That's important, because traditionally or typically, a corporation that owns multiple pieces of property will insure that property under a blanket form of coverage. Now, the valued policy law affords coverage to those corporations, but it doesn't necessarily mean that when they insure under a blanket form that there will application of the valued policy law.

John: There was also a recent West Virginia case addressing valued policy law. Can you explain that case?

Eric: Sure. The recent case that you're referring to in West Virginia is *Ashraf vs. State Auto, Property, and Casualty Insurance Company*. That was a case decided back last year by the West Virginia Appellate Court.

In that case, there was a fire that completely destroyed the insured's property. The property and the policy were both covered under West Virginia's valued policy law. At the time of the loss, the property was vacant and the policy had a vacancy provision that allowed the insurer to reduce the stated amount of coverage by 15 percent, which the insurer did.

The insurer adjusted the claim, reduced the amount of coverage by 15 percent, and paid the balance to the insured. When that happened, the insured was not happy and they filed a lawsuit asserting that the West Virginia valued policy law prevented the insurer from enforcing the vacancy provision when there was complete loss caused by fire.

The issue presented to the appellate court was when a policy allows you to reduce coverage but there is complete loss and valued policy law applies, are you allowed to reduce the face value of the policy? The West Virginia court found that the vacancy provision was enforceable.

The court noted that the provision was favorable to the insured in comparison to standard fire provisions allowing complete denial of liability. The 15 percent reduction did not subject the parties to a factual dispute over valuation, but rather resulted in an anticipatory limitation regarding risk to a structure from an extended vacancy.

John: Overall, what states and jurisdictions will be impacted by this?

Eric: Certainly West Virginia. This was a case in West Virginia. It's controlling law in that state. It is also very good persuasive authority in any state with a valued policy law, especially those states where the valued policy law is similar to that of West Virginia's.

John: Finally, Eric, what should defense attorneys be aware of regarding this law?

Eric: Prior to this case, there was a big reluctance to reduce coverage using an exclusion such as the vacancy exclusion in the West Virginia case, because valued policy law effectively establishes the amount of loss as the amount reflected in the policy.

With the West Virginia case, we now have, as I said, strong persuasive authority establishing that it may be possible to reduce the amount of coverage when there's been a complete loss and not violate your state's valued policy law.



Again, this is controlling authority in West Virginia. Attorneys practicing in this area should be aware of it, but they should also view it as a very good source of persuasive authority if you practice in a state with a valued policy law similar to that of West Virginia.

John: Eric, thank you very much for joining us today.

Eric: Thank you.

John: That was Eric Mull from the law firm of [Drew Eckl & Farnham](#) with offices in Atlanta and Brunswick, Georgia.

Special thanks to today's producer, Frank Vowinkel. Thank you all for joining us for *the Insurance Law Podcast*. To subscribe to this audio program, go to our web page at www.ambest.com/claimsresource.

If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com. I'm John Czuba, and now this message.

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