

**INSURANCE LAW UPDATE:
December 29, 2017**

**CONTENTS INVENTORIES:
WHEN THE CONTENTS INVENTORY IS INADMISSIBLE.**

Jerry Morgan v. Valley Property and Casualty, 289 Or.App. 454 (Dec. 28, 2017)

A contents inventory may be stricken, in its entirety, if it is not based upon reliable information. Where a property inventory is not prepared by the insured but instead prepared by public adjusters based upon price information obtained from 3rd parties it may be inadmissible hearsay.

When an insured presents a property inventory, consider the source. Did the insured prepare the inventory? Did a public adjuster prepare the inventory then tell the insured to sign it? Did the public adjuster have accurate information when preparing the inventory?

The *Morgan v. Valley* case examines one of the most important yet least understood rules of evidence: Hearsay. In its simple form, the hearsay rule prevents one person from testifying under oath as to what they heard another person say when not under oath.

The Oregon Court of Appeals ruled that a contents inventory prepared by the insureds' public adjusters was inadmissible hearsay because information about dollar values of items destroyed by fire at the insureds' warehouse originated from outside sources.

Facts

The Morgans' meat processing warehouse was destroyed by fire. The business was severely underinsured for business personal property. The commercial insurer paid the business personal property limits.

The Morgans then submitted a claim to their homeowner's insurer, Valley, seeking coverage for the remaining \$1,000,000 in commercial equipment. Valley paid the \$250 limit for business property. The Valley policy covered the Morgans' personal property located "anywhere in the world." The Morgans represented to Valley that this commercial equipment was actually personal property being "stored" at their business. Mr. Morgan testified he bought and restored this equipment in his spare time as a hobby.

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This Case Update is intended as a general overview of the case presented and certain aspects of the law. It should be used as a starting point for understanding the legal principles discussed.

The jury awarded the Morgans their full \$832,000 personal policy limits based upon the commercial replacement value of this equipment. This business v. personal property issue was resolved by the jury as a question of fact, not law, and was thus not addressed upon appeal.

Preparation of the Inventory

The Morgans hired Adjusters International to prepare an inventory of the equipment. Adjusters International, in turn, hired three separate independent contractors (Gower, Connell and Ritchie) to create the inventory. The resulting inventory listed nearly 1,300 items, detailed by replacement cost and actual cash value (after subtraction of depreciation). The total inventory value exceeded \$1,000,000, but the claim was limited to the policy limit of \$832,000.

Ritchie inventoried 567 of the 1295 items listed on the spreadsheet. He had no knowledge as to who added the latter 728 additional items. Connell's job was to take the inventory produced by Ritchie and work with Mr. Morgan to compile the remaining 728 items, mostly from memory, and create one master list incorporating Ritchie's inventory. Connell then worked with Mr. Morgan to develop the replacement cost for all 1295 items on the master list.

Gower then worked with Mr. Morgan to subtract depreciation from each item to arrive at the actual cash value. Mr. Morgan testified he knew the actual age of only two of the nearly 1300 items but assigned the rest of the ages to "the best of his knowledge."

Critically, third parties—Mr. Morgan and unidentified outside sources—provided the valuation information used by Ritchie, Connell and Gower to determine replacement costs included in the inventory. Therefore, the values listed on the inventory were not based upon the actual knowledge any of the three adjusters – it came from third parties who did not testify as to the accuracy of the information or from Mr. Morgan who merely adopted the third-party valuations.

The Inventory is "Hearsay"

There are dozens of logical exceptions to the hearsay rule. These exceptions have a common theme: The out of court statement must come from a document or source that is unusually reliable and accurate. For example, a Death Certificate is sufficient to prove an individual is deceased. There is no need to call the doctor or undertaker.

Certain records kept in regular business activity carry such a presumption of "unusual reliability" if the business records are incidental to carrying out the business's needs and obligations. One example of such business records are corporate balance sheets. A contents inventory prepared by a public adjuster may be another such business record.

However, a statement or information contained in a business record that comes from outside the business is not afforded the same presumption of reliability. For a business record to be admissible, not only must the entrant be under a business duty to record the event, but the information in the record must come from a source under the same business duty to record the

event. For example, if a public adjuster writes in their claim notes that the insured said the insurer “wants to find a way to deny this claim,” this is inadmissible. The information is the opinion of a third party. On the other hand, the public adjuster’s dictation of damaged items is a business record, as it was created for the purpose of adjusting the claim.

Garbage in...

Connell’s sources of replacement cost values were from outside sources, ranging from the internet to telephone conversations with third party vendors. Connell and her assistant obtained prices from internet websites and from unidentified vendors on the telephone. Connell and her assistant entered those values into the inventory to show the replacement values of nearly 1300 items which had been previously identified by Mr. Ritchie and Mr. Morgan. The third-party suppliers of such replacement cost information were volunteering price information when prompted by Connell and they were under no business or corporate duty to do so accurately.

The Court of Appeals noted that Connell could not testify as to the accuracy of prices on the Morgans’ inventory. She could not even testify that she ever observed the items held for sale or that the prices given to her by third parties were accurate or for comparable equipment. Yet Connell imported their prices as the equivalent values of the Morgans’ equipment without actual knowledge of their accuracy. Those values were based on information drawn from sources that were under no duty to accurately report the information on the inventory. Importing these values onto a business record does not make them any more reliable.

...Garbage out

When asked whether he checked the inventory for accuracy, Mr. Morgan said that he “scanned the item, scanned the cost and depreciation.” He adopted and verified, at most, “90 percent of the replacement [cost] values.” Even if Mr. Morgan wholly concurred with 100 percent of the adjusters’ values for the nearly 1,300 items of property, the inventory was presented as the work of Ritchie, Connell, and Gower. In reality, the inventory was based upon out of court statements as to value from non-testifying third parties. To the extent the inventory represents the work of those adjusters, and not the work of the Morgans, the inventory itself was inadmissible hearsay.

In sum, the inventory should not have been admitted into evidence at trial. The judgment in favor of the Morgans was reversed and remanded for new trial.

Claim Tips:

When reviewing a contents inventory, always consider:

- Who prepared the inventory?
- What information did the preparer had about the items and did the preparer actually see the items?
- Where did depreciation and replacement cost information come from?
- How was the inventory prepared, and what was the insured’s involvement in that

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process? and

- Why were items depreciated or valued (condition, use, obsolescence or age)?

Public adjusters often prepare contents inventories with little or no involvement of the insured. Public adjusters are paid a percentage of the claim recovery. Therefore, always consider whether the inventory accurately reflects the *insured's statement* as to age, condition and quality of the items claimed.