

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM A.D., 2004

MARIA C. RODRIGUEZ,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-846
AMSTAR INSURANCE COMPANY,	**	LOWER
Appellee.	**	TRIBUNAL NO. 02-24062

Opinion filed December 22, 2004.

An Appeal from the Circuit Court for Miami-Dade County,
Maxine Cohen Lando, Judge.

Beckham & Beckham and Robert J. Beckham, Jr., for
appellant.

Akerman Senterfitt and Marcy Levine Aldrich, Nancy A.
Copperthwaite and Merrick L. Gross, for appellee.

Before GODERICH, SHEVIN and SHEPHERD, JJ.

PER CURIAM.

We affirm the dismissal of the class action lawsuit against
Amstar Insurance Company. The order states, in pertinent part,

that "[t]he language of Amstar's insurance policy issued to Rodriguez, a copy of which is attached to Rodriguez's Complaint, allows for the "betterment" deductions taken by Amstar, because the policy limits Amstar's liability to either cash value or 'the amount necessary to repair or replace the property with other of like kind and quality, with deduction for depreciation and minus your deductible.'" (Emphasis added). We affirm holding that the unambiguous terms of the policy permit Amstar to deduct from its payment to the insured the depreciation of the repaired or replaced parts. Cf. Great Tex. County Mut. Ins. Co. v. Lewis, 979 S.W.2d 72, 73 (Tex. Ct. App. 1998) (deduction for depreciation or betterment not authorized where policy requires insurer to "repair or replace the property with other of like kind and quality."); Foultz v. Erie Ins. Exch., No. 3053-071970, 2002 WL 452115 (Pa. Com. Pl. March 13, 2002) (unpublished) (same).

Affirmed.