RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 NOV 21 P 2: 18

BY RONALD R. CARPENTER
CLERK

No. 81487-2

SUPREME COURT
OF THE STATE OF WASHINGTON

LAURA HOLDEN, et al.,

Petitioner,

v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic insurer; FARMERS INSURANCE EXCHANGE, a foreign insurer; and all affiliated Farmers Insurance Companies and/or entities,

Respondents.

FARMERS' SUPPLEMENTAL BRIEF

Jeffrey A. Rosenfeld
(admitted *pro hac vice*)
Danielle S. Fitzpatrick
WSBA #37189
R. Omar Riojas
WSBA #35400
DLA Piper US LLP
701 Fifth Avenue, Suite 7000
Seattle, WA 98104
(206) 839-4800

Philip A. Talmadge
WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Attorneys for Respondents Farmers Insurance Company of Washington and Farmers Insurance Exchange

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

Page

Table of Authorities ..... ii-iv

A. INTRODUCTION 1

B. STATEMENT OF THE CASE 2

C. ARGUMENT 4

(1) Principles for Interpretation of an Insurance Policy 4

(2) Farmers' Policy Is Not Ambiguous and Holden Is Entitled to Compensation for Any Sales Taxes Only Upon Actual Replacement of the Damaged or Lost Personal Property 7

(a) ACV Means FMV under Washington Law 8

(b) FMV Does Not Include Sales Tax 9

(c) Farmers' Claims Practices in Calculating FMV of Lost or Damaged Property Do Not Create Ambiguity in the Definition of FMV in the Farmers Policy 12

(3) Holden's Analysis Confuses ACV and Replacement Cost as the Basis for Settling a Fire Loss 13

D. CONCLUSION 18

Appendix

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

AARO Medical Supplies, Inc. v. Dep't of Revenue,
132 Wn. App. 709, 132 P.3d 1143 (2006),
review denied, 159 Wn.2d 1013 (2007).....12
Am. Nat'l Fire Ins. Co. v. B & L Trucking & Constr. Co., Inc., 134 Wn.2d 413, 951 P.2d 250 (1998).....4
American Star Ins. Co. v. Grice, 121 Wn.2d 869,
854 P.2d 622 (1993).....4
Boeing Co. v. Aetna Cas. & Surety Co.,
113 Wn.2d 869, 784 P.2d 507 (1990).....4
Cascade Court Ltd. P'ship v. Noble, 105 Wn. App. 563,
20 P.3d 997 (2001).....9
Crystal Chalets Ass'n v. Pierce County, 93 Wn. App. 70,
966 P.2d 424 (1998).....9
DePhelps v. Safeco Ins. Co. of Am., 116 Wn. App. 441,
65 P.3d 1234 (2003).....6, 14
Dombrosky v. Farmers Ins. Co. of America, 84 Wn. App. 245,
928 P.2d 1127, *review denied,* 131 Wn.2d 1018 (1996).....4
Egerer v. CSR West, LLC, 116 Wn. App. 645,
67 P.3d 1128 (2003).....10
Eurick v. Pemco Ins. Co., 108 Wn.2d 338,
738 P.2d 251 (1987).....4
E-Z Loader Boat Trailers, Inc. v. Travelers Indemn. Co.,
106 Wn.2d 901, 726 P.2d 439 (1986).....4
Hess v. N. Pac. Ins. Co., 122 Wn.2d 180,
859 P.2d 586 (1993).....6, 9, 15
Inland Empire Diary Ass'n v. State,
14 Wn. App. 592, 544 P.2d 52,
review denied, 86 Wn.2d 1011 (1976).....11
Morrison-Knudsen Co. v. State,
6 Wn. App. 306, 493 P.2d 802 (1972).....12
National Fire Ins. v. Solomon, 96 Wn.2d 763,
638 P.2d 1259 (1982).....6, 8
Queen City Farms, Inc. v. Central Nat'l Ins. Co.,
126 Wn.2d 50, 882 P.2d 703 (1994).....5

State v. Rowley, 74 Wn.2d 328,
444 P.2d 695 (1968).....10
Wetmore v. Unigard Ins. Co., 125 Wn. App. 938,
107 P.3d 123 (2005).....13

Federal Cases

Ghoman v. New Hampshire Ins. Co.,
159 F. Supp.2d 928 (N.D. Tex. 2001).....17
Kolls v. Aetna Cas. & Surety Co.,
503 F.2d 569 (8th Cir. 1974).....16
Lerer Realty Corp. v. MFB Mut. Ins. Co.,
474 F.2d 410 (5th Cir. 1973).....16
Snellen v. State Farm Fire & Cas. Co.,
675 F. Supp. 1064 (W.D. Ky. 1987).....16
*Snoqualmie Summit Inn, Inc. v. Travelers Prop. &
Cas. Co. of America*, 2007 WL 709297 (W.D. Wash. 2007).....14
Terra Indus., Inc. v. Commonwealth Ins. Co. of America,
981 F. Supp. 581 (N.D. Iowa 1997).....7

Other Cases

BSF Inc. v. Cason, 333 S.E.2d 154 (Ga. App. 1985).....15
Bratcher v. State Farm Fire & Cas. Co.,
961 P.2d 828 (Okla. 1998).....16
Burchett v. Kansas Mut. Ins. Co.,
48 P.3d 1290 (Kan. App. 2002).....15
Ferrara v. Ins. Co. of North America,
521 N.Y.S.2d 668 (N.Y. App. Div. 1987).....16
Higginbotham v. American Family Ins. Co.,
493 N.E.2d 373 (Ill. App. 1986).....15-16
Hilley v. Allstate Ins. Co., 562 So.2d 184 (Ala. 1990).....15
Kastendieck v. Millers Mut. Ins. Co.,
946 S.W.2d 35 (Mo. App. 1997).....16
Miller v. Farm Bureau Town & Country Ins. Co.,
6 S.W.3d 432 (Mo. App. 1999).....16
People v. Barbuto, 434 N.Y.S.2d 120 (1980).....11
People v. Medjdoubi, 661 N.Y.S.2d 502 (1997).....11
Russell v. State, 242 S.W.3d 265 (Ark. 2006).....11

State v. Kluge, 672 N.W.2d 506 (Iowa App. 2003) 11
State Farm Mutual Automobile Ins. Co.
v. Berthelot, 732 So.2d 1230 (La. 1999) 16, 17
Whitmer v. Graphic Arts Mut. Ins. Co.,
410 S.E.2d 642 (Va. 1992) 16

Statutes

RCW 48.18.120(1) 5
RCW 48.27.010(1) 15
RCW 48.27.020 15
RCW 82.04.040 11
RCW 82.08.010 11
RCW 82.08.010(6) 11
RCW 82.08.050 12

Rules and Regulations

WAC 284-20-010 6

Other Authorities

Allen D. Windt, *Insurance Claims & Disputes*,
§ 6:2 (5th ed. 2007) 7
Insurance Commissioner Bulletin 89-3 9
Restatement (Second) of Contracts § 206
comment b (1981) 7

A. INTRODUCTION

The present case involves a broad form renter's package policy issued through Farmers Insurance Company of Washington ("Farmers")[1] to Laura Holden. After Holden experienced a grease fire in her apartment kitchen, she submitted a claim to Farmers for personal property items damaged in the fire. Farmers paid the loss, valuing the items on the basis of their actual cash value ("ACV"), a concept defined as their fair market value ("FMV"). Farmers repeatedly advised Holden it would pay her for the Washington state sales tax on any items she actually replaced pursuant to her policy's replacement cost provision. Holden apparently never sought repair or replacement of the personal property items damaged or lost in the fire, as she never presented receipts to Farmers evidencing their repair or replacement.

The Court of Appeals below correctly ruled that the ACV provision in Farmers' policy was unambiguous. Its language defining ACV as FMV was derived from a decision of this Court and mandated by the Insurance Commissioner pursuant to statute. Farmers utilized that mandated definition of ACV in Holden's policy.

Washington law is clear that sales tax is not part of FMV. The sales tax is an excise that the state charges every purchaser at retail; the

seller collects that tax, but remits it to the state. The sales tax is not part of the price which the seller agrees to accept from the buyer. The amount paid to Holden by Farmers provided the economic value of Holden's loss, thus, indemnifying her against that loss. ACV is designed to indemnify the insured. Replacement cost coverage, which would have included sales tax, is entirely different, and Holden chose not to avail herself of that coverage.

B. STATEMENT OF THE CASE

Farmers relies on the statements of the case it provided in its Court of Appeals briefs, br. of appellant at 3-11, and the discussion of the facts in the Court of Appeals opinion. Op. at 2-3. However, several points bear emphasis.

It is undisputed here that Farmers issued a policy to Holden that provided for the payment of losses on an ACV basis:

> Covered loss to property will be settled at *actual cash value*. Payments will not exceed the amount necessary to repair or replace the damaged property, or the limit of insurance applying to the property, whichever is less.

(emphasis added). CP 99. The policy defined ACV as "fair market value of the property at the time of the loss." *Id.* at 93.

---

[1] Farmers Insurance Exchange is a named defendant in this action, but it did not issue a policy to Holden.

Holden also purchased a separate replacement cost coverage endorsement, paid for by a separate premium, that conditioned such coverage on actual repair or replacement:

> CONTENTS REPLACEMENT COST COVERAGE PERSONAL PROPERTY
>
> For an additional premium, insurance . . . is extended to include the full cost of repair or replacement without deduction for depreciation:
>
> * * *
>
> *The Company will not be liable for any loss under this endorsement unless and until actual repair or replacement is completed.* The named insured may elect to disregard replacement cost in making claim hereunder but such election shall not prejudice the named insured's right to make further claim under this replacement cost provision within 180 days after the loss.

CP 118 (emphasis added).[2]

It is further undisputed that Farmers initially paid for Holden's fire loss of personal property in the amount of $1174.41 on the basis of ACV; she was specifically advised by Farmers in two letters that if she replaced the personal property items, she was to submit receipts to Farmers and any additional sums required for replacement, including sales taxes, would be

[2] The policy defined "replacement cost" as: "the cost, at the time of loss, of a new article identical to the one damaged, destroyed or stolen. When the identical article is no longer manufactured or is not available, replacement cost shall mean the cost of a new article similar to that damaged or destroyed and which is of comparable quality and usefulness." CP 118.

paid to her. CP 370, 392-96, 398-406. *See* Appendix. She never submitted such receipts. *Id.*[3]

C. ARGUMENT

(1) Principles for Interpretation of an Insurance Policy

The traditional principles for the interpretation of an insurance policy in Washington are well-recognized in the case law. Insurance policies are contracts. *Eurick v. Pemco Ins. Co.*, 108 Wn.2d 338, 340-41, 738 P.2d 251 (1987). Courts look to the *whole insurance contract* in interpreting it, giving the contract a "fair, reasonable, and sensible construction." *Am. Nat'l Fire Ins. Co. v. B & L Trucking & Constr. Co., Inc.*, 134 Wn.2d 413, 427, 951 P.2d 250 (1998); *Boeing Co. v. Aetna Cas. & Surety Co.*, 113 Wn.2d 869, 883, 784 P.2d 507 (1990). A court must give meaning to each facet of an insurance contract so that each will have its intended force and effect. *American Star Ins. Co. v. Grice*, 121 Wn.2d 869, 877-78, 854 P.2d 622 (1993). In *E-Z Loader Boat Trailers, Inc. v. Travelers Indemn. Co.*, 106 Wn.2d 901, 907, 726 P.2d 439 (1986), for example, this Court explained: "The contract should be given a practical and reasonable rather than a literal interpretation; it should not be given a

[3] Farmers' approach to fire loss, paying the insured the ACV on property and then reimbursing the insured for additional amounts incurred upon the actual replacement of the items is discussed in *Dombrosky v. Farmers Ins. Co. of America*, 84 Wn. App. 245, 928 P.2d 1127, *review denied,* 131 Wn.2d 1018 (1996), and found to be consistent with *Hess. Id.* at 254.

strained or forced construction . . . which would lead to an extension or restriction of the policy beyond what is fairly within its terms, or which would lead to an absurd conclusion, or render the policy nonsensical or ineffective." *Id.* (citation omitted).

Where policy language is ambiguous, it is usually construed against the insurer because the insurer selected the language. The insured cannot negotiate the language and does not participate in its drafting. *Queen City Farms, Inc. v. Central Nat'l Ins. Co.*, 126 Wn.2d 50, 82, 882 P.2d 703 (1994).

In this case, Holden attempts to import ambiguity into the Farmers policy when there is none. FMV is a well-understood term in Washington law that is unambiguous. Farmers' practice was equally unambiguous. It did not pay the sales tax on an item lost or damaged unless the insured replaced it.

Moreover, this case presents an unusual situation. The normal rule of ambiguity in a policy being construed against Farmers *does not apply* where the policy language at issue was imposed upon Farmers by the Insurance Commissioner.

Washington strictly regulates the terms of fire insurance policies. RCW 48.18.120(1) authorizes the Insurance Commissioner to promulgate regulations "to define and effect reasonable uniformity in all basic

contracts of fire insurance." The Commissioner promulgated WAC 284-20-010 requiring the use of the 1943 New York Standard Fire Insurance Policy, to be known as the "standard fire policy." The standard fire policy provides coverage for the ACV of the insured property. It provides only indemnity for the actual amount of the insured's loss. *DePhelps v. Safeco Ins. Co. of Am.*, 116 Wn. App. 441, 454, 65 P.3d 1234 (2003). Replacement cost coverage is an optional extra cost coverage invoked when the insured actually replaces a lost or damaged item. *Hess v. N. Pac. Ins. Co.*, 122 Wn.2d 180, 189-90, 859 P.2d 586 (1993).

ACV was specifically defined by this Court as FMV in *National Fire Ins. v. Solomon*, 96 Wn.2d 763, 770, 638 P.2d 1259 (1982). Given this Court's definition, Farmers abandoned its former definition of ACV as "replacement cost of the property at the time of loss, less depreciation," CP 368, and applied this Court's definition of ACV by endorsement. *Id.* Around 1985, the Commissioner demanded that Farmers incorporate portions of an endorsement defining ACV as FMV, as required by *Solomon,* into its policies themselves. CP 368. Farmers did so, issuing Washington-specific homeowner-type policies that define ACV as "fair market value at the time of loss" directly in the affected policies. CP 368. Holden's policy contains this language. *Id.*

Because the policy language at issue here was not selected by Farmers, this Court's usual rule on ambiguity is inapplicable. As the *Restatement (Second) of Contracts* recognizes, "[t]he rule that language is interpreted against the party who chose it has no direct application to cases where the language is prescribed by law, as is sometimes true with respect to insurance policies, ..." *Restatement (Second) of Contracts* § 206, comment b (1981).

Courts in other jurisdictions overwhelmingly apply this exception to the traditional rule of ambiguity in an insurance policy. *Terra Indus., Inc. v. Commonwealth Ins. Co. of America*, 981 F. Supp. 581, 590 (N.D. Iowa 1997) (emphasis added) (and cases collected there and in Allen D. Windt, *Insurance Claims & Disputes*, § 6:2 at 6-80 n.75 (5th ed. 2007)). As one court has explained:

> One might say that in such circumstances, the policy is one of "adhesion" as to *both* the insurer and the insured. Consequently, it makes little sense to indulge in the fiction that the insurer offered the insured a contract of adhesion, and therefore the insurer should bear the burden of unfavorable interpretation when a provision is ambiguous.

Id. at 591.

(2) <u>Farmers' Policy Is Not Ambiguous and Holden Is Entitled to Compensation for Any Sales Taxes Only Upon Actual Replacement of the Damaged or Lost Personal Property</u>

Holden's basic contention in this case is that Farmers' definition of ACV as FMV, although *mandated* by *Solomon* and the Washington Insurance Commissioner, is somehow ambiguous and she is entitled to payment of sales taxes as part of FMV of the personal property she lost in the fire, even though she never actually incurred those taxes by paying for the repair or replacement of damaged or lost personal property from the fire. She asks this Court to find ambiguity in the well-recognized, mandated definition of ACV as FMV by drilling down even deeper into the concept of FMV, examining Farmers' claims practices in determining the FMV of property.[4] This Court should reject Holden's approach. Inclusion of the sales tax as part of the FMV of personal property is inconsistent with the nature of a sales tax, and the fact that Farmers *never* paid the sales tax on the ACV of property damages or lost *unless the item was actually repaired or replaced.* Reply br. at 8-9.

(a) ACV Means FMV under Washington Law

In *Solomon,* this Court adopted FMV as the definition of ACV. *Solomon*, 96 Wn.2d at 770. Although *Hess* called some aspects of the *Solomon* decision into question, it did not overrule *Solomon* on this point.

[4] As noted in Farmers' Court of Appeals brief, Farmers has a process for calculating FMV that is fair to the insureds. Br. of Appellant at 10 n.34. *See also,* op. at 2 ("Farmers uses a variety of means to determine FMV including, surveying online markets, hiring an appraiser, agreeing with the insured on the value, and depreciating the cost of a new item to reflect age, obsolescence, and wear and tear.").

Moreover, the *Hess* court held that (under policy language so providing) that replacement cost coverage is not recoverable until the insured repairs or replaces an item of personal property. *Hess,* 122 Wn.2d at 186-92. *Hess* does not say anything about what ACV means. *Hess* merely noted that *Solomon* "[r]elying on a *California* case held that actual cash value meant fair market value *without* depreciation," and commented that "[a]nother state's statutory definition should not control our interpretation."

The definition of ACV as FMV remains the law in Washington after *Hess*. The Insurance Commissioner since *Hess* has never chosen to depart from that well-recognized definition.[5]

(b) FMV Does Not Include Sales Tax

FMV is a well-recognized concept in Washington law defined as the amount of money which a purchaser willing but not obliged to buy would pay a seller willing but not obliged to sell. *Cascade Court Ltd. P'ship v. Noble,* 105 Wn. App. 563, 567, 20 P.3d 997 (2001); *Crystal Chalets Ass'n v. Pierce County*, 93 Wn. App. 70, 77, 966 P.2d 424 (1998);

[5] Holden has made such of Insurance Commissioner Bulletin 89-3, but nothing in Bulletin 89-3 alters the proper meaning of the term "FMV." A Seattle law firm asserted to the Insurance Commissioner that the "sales tax should not be paid in an ACV loss except with respect to the settlement of first-party automobile total losses." CP 224. The Bulletin made clear that the Commissioner did not support that view, but also refrained from adopting the opposite view (the one Holden now espouses). The Commissioner simply declared that "[a]n insurer must deal with taxes . . . in good faith."

State v. Rowley, 74 Wn.2d 328, 334, 444 P.2d 695 (1968). There is no ambiguity in what FMV means under Washington law.

Given the definition of FMV as what a willing buyer would pay a willing seller, the sales tax has nothing to do with such a definition. A sales tax is subsequently imposed upon the FMV of the item of personal property, once that FMV is revealed by the sale of the item.

In other settings, Washington law has determined that the FMV of property does not include the sales tax on that item. For example, in *Egerer v. CSR West, LLC,* 116 Wn. App. 645, 656-57, 67 P.3d 1128 (2003), a UCC case, a seller failed to deliver goods, and the buyer, who had not covered by purchasing elsewhere, was permitted to recover the market price of such goods. The buyer sought to recover the sales tax, it would have paid had it purchased those goods, but the court denied any claim for the never-paid sales tax:

> An award of damages may include an amount for sales tax actually incurred by the injured party. But Egerer did not actually incur any obligation to pay sales tax .... *The sales tax is not an inherent part of the "market price."*

Id. (emphasis added).

In the criminal context of theft statutes where dollar thresholds affect the seriousness of the crime, courts exclude the sales tax from the

---

Id. When Holden complained to the Insurance Commissioner about Farmers' refusal to pay sales tax on her claim, the Commissioner took *no action* on her complaint. CP 306.

FMV of the property. *See, e.g., Russell v. State,* 242 S.W.3d 265 (Ark. 2006); *State v. Kluge,* 672 N.W.2d 506 (Iowa App. 2003); *People v. Medjdoubi*, 661 N.Y.S.2d 502 (1997); *People v. Barbuto*, 434 N.Y.S.2d 120 (1980).

Logically, the FMV of personal property does not include the transactional taxes associated with that property. Such an approach, as Holden advocates, is inconsistent with the very concept of a sales tax. There is *nothing* intrinsic to FMV that requires the inclusion of Washington's sales tax in that valuation. Quite to the contrary, the sales tax in Washington is imposed *only* upon the sale of the personal property at its sales price, its actual FMV. RCW 82.08.010 defines with great precision the selling or sale price of personal property. It is the "total consideration" for such property. It is noteworthy that when such price for tangible personal property cannot be calculated, the price "shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. . ." A "sale" for purposes of the sales tax occurs when ownership is transferred for consideration. RCW 82.04.040; RCW 82.08.010(6). Thus, a sale is a necessary predicate to the imposition of Washington's sales tax. *Inland Empire Diary Ass'n v. State,* 14 Wn. App. 592, 544 P.2d 52, *review denied*, 86 Wn.2d 1011 (1976).

While the buyer pays a sales tax, the buyer does not truly pay that tax to the seller. The buyer is primarily liable to the state for that tax. *AARO Medical Supplies, Inc. v. Dep't of Revenue*, 132 Wn. App. 709, 716, 132 P.3d 1143 (2006), *review denied*, 159 Wn.2d 1013 (2007) ("The buyer remains 'primarily liable for payment of the tax,'" *quoting Morrison-Knudsen Co. v. Dep't of Revenue*, 6 Wn. App. 306, 312, 493 P.2d 802 (1972)). The seller acts as the state's "collector" and must pay the state, whether the buyer actually pays the tax or not. RCW 82.08.050. The sales tax is simply not part of the amount a willing buyer pays *to* a willing seller and is not part of the FMV. That tax is imposed after FMV of the item is determined in its sale.

(c) Farmers' Claims Practices in Calculating FMV of Lost or Damaged Property Do Not Create Ambiguity in the Definition of FMV in the Farmers Policy

Holden relies heavily on testimony and documents concerning Farmers' claims practices in calculating the FMV of lost or damaged items in an effort to create an ambiguity not found in the policy language. The record demonstrates that Farmers does issue policies, unlike Holden's policy, providing only ACV coverage (and not replacement cost coverage). Under such policies, Farmers does pay a fraction of the sales

tax (reflecting the depreciation percentage) when the insured actually replaces and provides copies of the receipts to FICW. CP 129.

But it is critical to note that Farmers treated loss paid on the basis of ACV and loss paid on the basis of replacement cost alike in a critical regard.[6] It *never* paid anything toward the sales tax unless the insured actually repaired or replaced the item that was damaged or lost. All insureds were treated alike as to the sales tax until replacement occurred.

Holden's evidence shows only what Farmers pays when its insured has incurred a loss by actually paying sales tax, something Holden never did. And it may be that Farmers has overpaid insureds with ACV policies who actually repair or replace damaged or lost property. Even so, that does not require Farmers to overpay Holden, an insured with replacement cost policy who did not replace her lost or damaged property.

(3) Holden's Analysis Confuses ACV and Replacement Cost as the Basis for Settling a Fire Loss

Holden confuses the measure of recovery under ACV coverage as the basis for settling a fire loss with that due under replacement cost coverage. Insurance coverage for the ACV of the insured property provides only indemnity for the actual amount of the insured's loss.

---

[6] As noted in *Wetmore v. Unigard Ins. Co.*, 125 Wn. App. 938, 107 P.3d 123 (2005), "an insured has two claims options – actual cash value **instead of** replacement cost or actual cash value **in addition** to replacement cost." *Id.* at 946. Holden chose the latter.

DePhelps, 116 Wn. App. at 454. The value protected is the economic loss to the insured. Because sales tax was not part of the value of the property before the fire, it was not part of the loss for which Holden was required to be indemnified.

By contrast, replacement cost coverage is more extensive, exceeding the concept of indemnity. As this Court stated in *Hess*, "[r]eplacement cost coverages . . . go beyond the concept of indemnity and simply recognize that even expected deterioration of property is a risk which may be insured against. . ." 122 Wn.2d at 182-83. *Accord*, *DePhelps*, 116 Wn. App. at 452-53. Such coverage provides for the replacement of old property that has been damaged or destroyed with new property of a like kind *and* covers the transactional costs of doing so.[7] Under such a replacement provision, the insured could actually be better off than before the loss, receiving the benefit of more modern

[7] Under ACV, an insured cannot recover for the theoretical cost of rebuilding an old building to a higher standard required by a modern building code. *DePhelps,* 116 Wn. App. at 453 (" . . . the cash value applies to the property as it stood at the time of loss. Replacement costs, including code upgrades, are not included."). *See also, Snoqualmie Summit Inn, Inc. v. Travelers Prop. & Cas. Co. of America*, 2007 WL 709297, *3-4 (W.D. Wash. 2007) (insured could not recover the theoretical cost of replacing a damaged building to a higher building code standard unless the insured actually repaired or replaced the building).

replacements for older goods or real property.[8] This is not true under ACV coverage.

The *Hess* court also made clear that before replacement cost may be recovered, the insured must actually repair or replace the personal property that is damaged or lost. *Hess*, 122 Wn.2d at 191-92. If the insured does not repair or replace the personal property only the ACV of the property may be recovered. *Id.* at 182-84. Plainly, to the extent that replacement cost coverage applies to a loss, its emphasis on *actual* replacement of the lost item is central.

The requirement that the personal property actually be repaired or replaced before replacement cost may be recovered, approved in *Hess* and applied in Farmers' policy, is virtually the unanimous rule in America. *See, e.g., Burchett v. Kansas Mut. Ins. Co.*, 48 P.3d 1290 (Kan. App. 2002); *Hilley v. Allstate Ins. Co.*, 562 So.2d 184, 189 (Ala. 1990); *BSF Inc. v. Cason*, 333 S.E.2d 154, 157-58 (Ga. App. 1985); *Higginbotham v.*

---

[8] Washington law specifically recognizes the validity of replacement cost coverage separate from the traditional settlement of loss based on the ACV of the damaged or lost property:

> [T]he insurer may in connection with a special provision or endorsement made a part of the policy insure the cost of repair or replacement of such property, if damaged or destroyed by a hazard insured against, and without deduction of depreciation. . .

RCW 48.27.020. Such coverage is an exception to Washington's public policy against overinsurance, that is, coverage in excess of the FMV (of the property or the insured's interest in such property). RCW 48.27.010(1).

American Family Ins. Co., 493 N.E.2d 373, 375 (Ill. App. 1986); *Ferrara v. Ins. Co. of North America*, 521 N.Y.S.2d 668, 670 (N.Y. App. Div. 1987); *Miller v. Farm Bureau Town & Country Ins. Co.*, 6 S.W.3d 432, 438 (Mo. App. 1999); *Kastendieck v. Millers Mut. Ins. Co.*, 946 S.W.2d 35, 39-40 (Mo. App. 1997); *Bratcher v. State Farm Fire & Cas. Co.*, 961 P.2d 828, 831 (Okla. 1998); *Snellen v. State Farm Fire & Cas. Co.*, 675 F. Supp. 1064, 1067 (W.D. Ky. 1987) (applying Kentucky law); *Lerer Realty Corp. v. MFB Mut. Ins. Co.*, 474 F.2d 410, 413 (5th Cir. 1973) (applying Texas law); *Kolls v. Aetna Cas. & Surety Co.*, 503 F.2d 569, 570 (8th Cir. 1974) (applying Iowa law); *Whitmer v. Graphic Arts Mut. Ins. Co.*, 410 S.E.2d 642, 645-46 (Va. 1992).

Washington courts have not addressed the issue of the sales tax and settlement of a loss based on property's ACV, where ACV is defined as FMV. Indeed, there appears to be only one case in the whole country that has done so where ACV was defined as FMV. Under that definition, the Louisiana Supreme Court held in *State Farm Mutual Automobile Ins. Co. v. Berthelot*, 732 So.2d 1230, 1235-37 (La. 1999), that a sales tax is not included in the computation of ACV for a loss where ACV is defined as FMV. The *Berthelot* court ruled that the sales tax is not a part of the value of the damaged property, but is "a distinct and separate charge which the retail seller is required to collect as a pass-through for the

benefit of the state or locality." *Id.* at 1234-35. It does not increase the value of property that is later damaged:

> [W]hile it may be said that sales tax may increase the cost to the buyer in the retail market, it is equally clear that it does not increase the value of the property purchased. Simply stated, [...] a sales tax is a mandatory cost which state and local governments have added to the sale transaction, over and above the value of the purchased property. Accordingly, *the inescapable conclusion is that Franklin's vehicle did not have a higher value when it was totaled simply because a sales tax was paid when it was originally purchased, nine years earlier.*

Id. at 1235 (emphasis added).[9]

The Louisiana's court's analysis of ACV as FMV is correct and h this Court should adopt it. Like the *Berthelot* court, the Court of Appeals recognized and honored the fundamental difference between replacement cost coverage, which covers the sales tax, but requires actual replacement of items damaged or lost, and ACV coverage, which provides only indemnity against loss. Because Holden never repaired or replaced the items she lost in her fire, she is entitled only to the latter. This Court should not erode the requirement of actual replacement by permitting recovery for sales taxes never incurred, because the insured never repaired or replaced the property damaged or lost.

---

[9] Below, Holden relied on *Ghoman v. New Hampshire Ins. Co.*, 159 F. Supp.2d 928 (N.D. Tex. 2001), but the court there held contrary to *Berthelot* because it defined ACV as "replacement cost, less depreciation." *Id.* at 934.

D. CONCLUSION

The sales tax is not part of ACV, defined as the FMV of personal property. Such a tax is recoverable if the insured has replacement cost coverage and actually repairs or replaces damaged or lost personal property. The sales tax is not part of Holden's loss here because she did not actually repair or replace items she lost in the fire. To be sure, if she had replaced the damaged property, the sales tax would have been part of the cost replacement, as defined in that endorsement of her Farmers policy.

This Court should not accept Holden's invitation to find ambiguity in the definition of ACV, a definition this Court established. This Court should affirm the Court of Appeals, and award costs on appeal to Farmers.

DATED this 21st day of November, 2008.

Respectfully submitted,

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Jeffrey A. Rosenfeld
(admitted *pro hac vice*)
Danielle S. Fitzpatrick, WSBA #37189
R. Omar Riojas, WSBA #35400
DLA Piper US LLP
701 Fifth Avenue, Suite 7000
Seattle, WA 98104
(206) 839-4800
Attorneys for Respondents

APPENDIX

FARMERS

National Document Center
P.O. Box 268994
Oklahoma City, OK 73126-8994
claimsdocuments@farmersinsurance.com
Fax: (877) 217-1389

July 6, 2004

Laura Holden
4330 E M St
Tacoma, WA 98404

RE: Insured: Laura Holden
Claim Unit Number: 1005015596-1-3
Policy Number: 79-0926280869
Loss Date: 06/09/2004

Dear Ms. Holden:

Enclosed is a check for $628.33. We will process the rest of your content items when that list is sent to our attention.

This settlement amount does not include the betterment that you are entitled to through your E6120 Replacement Cost on Personal Property endorsement.

You have 180 days from the date of loss to receive reimbursement for replacement of your personal property.

Please be aware of the following:

1. Your coverage provides for the replacement of stolen or damaged personal property with comparable items. If you wish to "upgrade" any item, we will only pay for the cost of a comparable new model. You are responsible for the difference between the comparable model and the "upgraded" model.

2. We will initially make payment for the item(s) being claimed at actual cash value at the time of loss. This means that we will pay the claim as if you did not have this special endorsement. If you replace the item(s) and wish to exercise this coverage after we make our first payment, submit copies of the receipts within six months (180 days) from the date of loss to receive the difference between the replacement cost and the actual cash value amounts. This also includes sales tax.

3. If you replace the item(s) before our first payment is made, submit copies of the receipts and we will provide for full replacement cost on the first payment.

The language regarding time limits in the endorsement is as follows:

6B$DM8HZ1

FARM000093

"The company shall not be liable for any loss under this endorsement unless and until actual repair or replacement is completed. The named insured may elect to disregard replacement cost in making claim hereunder but such election shall not prejudice the named insured's right to make further claim under this replacement cost provision within 180 days after loss."

Sincerely,
Farmers Insurance Company Of Washington

Oscar Ortiz

Oscar R.Ortiz
Claims Representative

Enclosures: Check 3067192967, Personal Property Estimate

FARM000094

FARMERS

Personal Property Worksheet

Insured: HOLDEN, LAURA
Date of Loss: JUNE 09, 2004
Policy No.: 0828280880
Sales Tax %: 8.8

Date: JULY 08, 2004
Company: FARMERS INSURANCE CO OF WA
Adjuster: ORTIZ, OSCAR
Adjuster Phone: 253 951 1158

SALN/Claim #: 1005015686-1-3
Room: SINGLE SUMMARY
Page: 1 of 3

Item #	Qty	Personal Property Description	Age Yrs/Mos	Source	Taxable Y/N	Settlement Action	Repl Cost Each	Repl Cost Total	Dep Rate	Dep% Total	Dep Amt Each	Dep Amt Total	ACV Each	ACV Total	Applicable Policy Limitations
1	1	QUEEN SET MATTRESS BOX SPRING	0/0	QUALITY RENTALS	N	DEPREC	1,170.00	1,170.00	11	11	128.70	128.70	1,041.30	1,041.30	
2	1	LUGGAGE	0/1	K-MART	N	NEW	87.03	87.03	0	0	0.00	0.00	87.03	87.03	
		SINGLE SUMMARY TOTALS:						1,257.03				128.70		1,128.33	

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1996-2004, The VIA Group

FARMERS

Personal Property Worksheet

Insured: HOLDEN, LAURA
Date of Loss: JUNE 09, 2004
Policy No.: 0926280889
Sales Tax %: 9.6

Date: JULY 08, 2004
Company: FARMERS INSURANCE CO OF WA
Adjuster: ORTIZ, OSCAR
Adjuster Phone: 253 851 1158

SALN/Claim #: 1005015598-1-3
Building: SINGLE FAMILY DWELLING
Page: 2 of 3

Location:	Replacement Cost Ext. Totals	Depreciation Amount Ext. Totals	Actual Cash Value Ext. Totals
SINGLE SUMMARY	$1,257.03	$128.70	$1,128.33
Subtotal	$1,257.03	$128.70	$1,128.33
SINGLE FAMILY DWELLING			

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts; may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1996-2004, The VIA Group

FARMERS

Personal Property Worksheet

Insured: HOLDEN, LAURA
Date of Loss: JUNE 09, 2004
Policy No.: 0029280880
Sales Tax %: 8.8

Date: JULY 08, 2004
Company: FARMERS INSURANCE CO OF WA
Adjuster: ORTIZ, OSCAR
Adjuster Phone: 253 851 1158

SAIU/Claim #: 1005016598-1-3
Building: CLAIM TOTALS
Page: 3

CLAIM TOTALS:

1. Full Amount of Contents Insurance applicable to the property for which the claim is presented was		$20,000.00
2. Full Cost of Repair or Replacement of the Contents (including tax if any) is		$1,257.03
3. Applicable Depreciation (including tax if any) is		$128.70
4. Actual Cash Value Loss (line 2 minus line 3) is		$1,128.33
5. Less Items Replaced and or Services direct billed to carrier (including tax if any) is		$0.00
6. Less Amount Over Limits (including tax if any) is		$0.00
7. Less Deductibles and/or participation by the insured		$500.00
Deductible:	$500.00	
Insured Participation:	$0.00	
8. Less Salvage Retained and/or Retrieved		$0.00
9. Actual Cash Value Claim (line 4 minus lines 5, 6, 7 and 8) is		$628.33
10. Pending Net Loss Amount		$628.33

Supplemental Claim, to be filed in accordance with the terms and conditions of the Replacement Cost Coverage within 180 days from date of loss as shown above, will not exceed $239.32.

The amount of tax included in the Full Cost of Repair or Replacement of the Contents is $0.00.

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payment of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1996-2004, The VIA Group

FARMERS

National Document Center
P.O. Box 268994
Oklahoma City, OK 73126-8994
claimsdocuments@farmersinsurance.com
Fax: (877) 217-1389

August 12, 2004

Laura Holden
4330 E M St
Tacoma, WA 98404

RE: Insured: Laura Holden
Claim Unit Number: 1005015596-1-3
Policy Number: 79-0926280869
Loss Date: 06/09/2004

Dear Laura:

Enclosed is a check in the amount of $1174.41, representing the actual cash value payment for the covered portion of your claim based on the inventory you provided. In order to receive the replacement cost settlement allowed under your policy, please forward a copy of the paid receipts for each item you replace. Please note that all receipts must be original and photocopies will not be accepted. I can reimburse sales tax, for the items replaced.

I took off the twin bed that you listed on the inventory list, as the twin bed was unavailable for cleaning. From the information received to date, the twin bed was stolen. If you would like to make a theft claim for the theft of this bed please contact our help point and file a new claim. You will need to file a police report for theft of this bed.

I have also enclosed payment for ServiceMaster of Tacoma. As long as you where happy with the work completed by them, you will need to sign the check and send to the following address:
1016 S 30th Street
Tacoma, WA 98409

If you feel we have omitted an item or do not understand any aspect of your claim, please feel free to contact me for a complete explanation of how we arrived at your damages. Our prices are based on the same or comparable items to the ones that were stolen, based on the information that you supplied.

Please note you have 180 days from the date of this letter to make a replacement cost claim.

Your Broad Form Renter's Homeowners policy states the following language:

DEFINITIONS

1. **Actual Cash Value** - means fair market value of the property at the time of loss.

HY2SM87W1

FARM000147

SECTION I – CONDITIONS

3. *Loss Settlement.*

b. Covered loss to the following types of property will be settled at **actual cash value.** Payments will not exceed the amount necessary to repair or replace the damaged property, or the limit of insurance applying to the property, whichever is less.

You have also purchased the **Contents Replacement Cost Coverage** endorsement, E 6120, 2nd edition, which states:

For an additional premium, insurance applicable to the following property is extended to include the full cost of repair or replacement without deduction for depreciation:

1. property covered under Coverage C – Personal Property.

The endorsement goes on to state, in part:

The Company will not be liable for any loss under this endorsement unless and until actual repair or replacement is completed. The named insured may elect to disregard replacement cost in making claim hereunder but such election shall not prejudice the named insured's right to make further claim under this replacement cost provision within 180 days after date of this letter.

Please forward original receipts to the above address, and make sure to include item that corresponds with the matching number on the inventory attached. Please make sure that the receipts are legible, and please put your claim number on every receipt to ensure that they are not lost.

Your attention is also directed to the Conditions section of your policy where it states:

Per the insurance code, we are required to advise you of time limitations within your policy. Please be advised you have one year from the date of loss to pursue this matter further, or file a lawsuit if you feel it is necessary. Please refer to the "Suit Against Us" language discussed in Section I – Conditions, in your Broad Form Renter's policy 3rd Edition.

Please call me at 425-635-2906 if you should have any questions regarding your loss.

Thank you for choosing Farmers Insurance Company of Washington for your insurance needs.

Sincerely,
Farmers Insurance Company Of Washington

Kelly Holt

Kelly J Holt

FARM000148

Field Claims Representative

Enclosures: Check 3067194901, Check 3067194902, Worksheet

FARM000149

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 05, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SAL N/Claim #: 1005015598
Room: SINGLE SUMMARY
Page: 1 of 8

Item #	Qty	Personal Property Description	Age Yrs/Mos	Source	Taxable Y/N	Settlement Action	Repl Cost Each	Repl Cost Total	Dep Rate	Dep Total	Dep Amt Each	Dep. Amt Total	ACV Each	ACV Total	Applicable Policy Limitations
1	7	HOURS OF CLEANING	0/0	ALLOWANCE	N	FULL	10.00	70.00	0	0	0.00	0.00	10.00	70.00	
2	8	HOURS OF CLEANING	0/0	ALLOWANCE	N	FULL	10.00	80.00	0	0	0.00	0.00	10.00	80.00	
3	22	LOADS OF LAUNDRY	0/0	ALLOWANCE	N	FULL	3.99	87.78	0	0	0.00	0.00	3.99	87.78	
4	64	PKGS 8.5X11 PAPER	0/0	MICHAEL'S	N	FULL	6.75	432.00	0	0	0.00	0.00	6.75	432.00	
5	64	PKGS 8.5X11 BAT PAPER	0/0	MICHAEL'S	N	FULL	6.25	400.00	0	0	0.00	0.00	6.25	400.00	
6	5	PKGS 12X12 PAPER	0/0	MICHAEL'S	N	FULL	8.50	42.50	0	0	0.00	0.00	8.50	42.50	
7	1	PKG PLASTIC CUPS	0/1	COSTCO	N	FULL	5.89	5.89	0	0	0.00	0.00	5.89	5.89	
8	1	PLASTIC CAKE DECORATING TIPS	0/1	SAFEWAY	N	FULL	4.99	4.99	0	0	0.00	0.00	4.99	4.99	
9	1	PKG BOBBY PINS	0/1	SAFEWAY	N	FULL	1.00	1.00	0	0	0.00	0.00	1.00	1.00	
10	5	BAGS OF POTPURRI	0/1	SAFEWAY	N	FULL	5.99	29.95	0	0	0.00	0.00	5.99	29.95	
11	1	DRIED KIWI UPDATED TO CANT READ	0/1	SAFEWAY	N	FULL	6.99	6.99	0	0	0.00	0.00	6.99	6.99	
12	1	BOX OF 500 PLASTIC FORKS	0/1	COSTCO	N	FULL	6.69	6.69	0	0	0.00	0.00	6.69	6.69	
13	1	PAPER TOWELS	0/1	COSTCO	N	FULL	9.99	9.99	0	0	0.00	0.00	9.99	9.99	
14	1	ZIPLOC PKG SANDWICH BAGS	0/1	COSTCO	N	FULL	6.79	6.79	0	0	0.00	0.00	6.79	6.79	
15	1	REYNOLDS WAX PAPER	0/1	SAFEWAY	N	FULL	1.69	1.69	0	0	0.00	0.00	1.69	1.69	
16	1	CLING WRAP	0/1	SAFEWAY	N	FULL	2.99	2.99	0	0	0.00	0.00	2.99	2.99	
17	1	BROWN LUNCH BAGS (100)	0/1	SAFEWAY	N	FULL	1.79	1.79	0	0	0.00	0.00	1.79	1.79	
18	1	NAPKINS (350)	0/1	COSTCO	N	FULL	6.99	6.99	0	0	0.00	0.00	6.99	6.99	
19	1	PKG PAPER PLATES	0/1	COSTCO	N	FULL	9.99	9.99	0	0	0.00	0.00	9.99	9.99	
20	1	HEFTY 2 1/2 GAL JUMBO BAGS	0/1	SAFEWAY	N	FULL	3.69	3.69	0	0	0.00	0.00	3.69	3.69	
21	1	KIRKLAND BAGS UPDATED TO CANT READ	0/1	COSTCO	N	FULL	10.59	10.59	0	0	0.00	0.00	10.59	10.59	
22	1	PKG LINED PAPER	0/1	SAFEWAY	N	FULL	1.49	1.49	0	0	0.00	0.00	1.49	1.49	

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 – Copyright 1998-2004, The VIA Group

100% DILLIGAD RIBIO

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 06, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SALN/Claim #: 1005015598
Room: SINGLE SUMMARY
Page: 2 of 6

Item #	Qty	Personal Property Description	Age Yrs/Mos	Source	Taxable Y/N	Settlement Action	Repl Cost Each	Repl Cost Total	Dep Rate	Depr Total	Dep Amt Each	Dep Amt Total	ACV Each	ACV Total	Applicable Policy Limitations
23	1	WINDEX	0/1	SAFEWAY	N	FULL	1.19	1.19	0	0	0.00	0.00	1.19	1.19	
24	1	DISH SPONGES	0/1	SAFEWAY	N	FULL	3.99	3.99	0	0	0.00	0.00	3.99	3.99	
25	1	SPLENDA LG BAG	0/1	COSTCO	N	FULL	13.99	13.99	0	0	0.00	0.00	13.99	13.99	
26	1	ICE CREAM CONES	0/1	SAFEWAY	N	FULL	1.99	1.99	0	0	0.00	0.00	1.99	1.99	
27	1	BUTTER FLAVORED COOKING SPRAY	0/1	COSTCO	N	FULL	6.99	6.99	0	0	0.00	0.00	6.99	6.99	
28	1	MINUTE MAID CRANBERRY JUICE	0/1	SAFEWAY	N	FULL	1.19	1.19	0	0	0.00	0.00	1.19	1.19	
29	1	SALT	0/1	SAFEWAY	N	FULL	0.65	0.65	0	0	0.00	0.00	0.65	0.65	
30	1	SM BOX BAKING SODA	0/1	SAFEWAY	N	FULL	0.69	0.69	0	0	0.00	0.00	0.69	0.69	
31	1	BREAD	0/1	COSTCO	N	FULL	2.85	2.85	0	0	0.00	0.00	2.85	2.85	
32	1	GARLIC WHOLE	0/1	SAFEWAY	N	FULL	1.00	1.00	0	0	0.00	0.00	1.00	1.00	
33	1	APPLES	0/1	SAFEWAY	N	FULL	2.00	2.00	0	0	0.00	0.00	2.00	2.00	
34	1	8 LB BOX BAKING SODA	0/1	COSTCO	N	FULL	4.39	4.39	0	0	0.00	0.00	4.39	4.39	
35	1	BREAD CRUMBS	0/1	COSTCO	N	FULL	4.49	4.49	0	0	0.00	0.00	4.49	4.49	
36	1	50 LB BAG RICE	0/1	COSTCO	N	FULL	14.85	14.85	0	0	0.00	0.00	14.85	14.85	
37	1	BAG SUGAR	0/1	SAFEWAY	N	FULL	3.85	3.85	0	0	0.00	0.00	3.85	3.85	
38	1	2 LB BAG CEREAL	0/1	SAFEWAY	N	FULL	6.99	6.99	0	0	0.00	0.00	6.99	6.99	
39	1	4 LB BOXED SUGAR	0/1	SAFEWAY	N	FULL	2.99	2.99	0	0	0.00	0.00	2.99	2.99	
40	1	12 OZ PASTA	0/1	SAFEWAY	N	FULL	1.49	1.49	0	0	0.00	0.00	1.49	1.49	
41	1	ALL BRAN CEREAL	0/1	SAFEWAY	N	FULL	3.59	3.59	0	0	0.00	0.00	3.59	3.59	
42	1	MINI MARSHMALLOWS	0/1	SAFEWAY	N	FULL	1.99	1.99	0	0	0.00	0.00	1.99	1.99	
43	1	POWDERED MILK	0/1	COSTCO	N	FULL	14.59	14.59	0	0	0.00	0.00	14.59	14.59	
44	1	NOODLES	0/1	SAFEWAY	N	FULL	2.19	2.19	0	0	0.00	0.00	2.19	2.19	
45	12	KOOL AID PKGS	0/1	SAFEWAY	N	FULL	0.33	3.96	0	0	0.00	0.00	0.33	3.96	

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payment of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1998-2004, The VIA Group

Not Original Document

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 08, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SALN/Claim #: 1005015598
Room: SINGLE SUMMARY
Page: 3 of 5

Item #	Qty	Personal Property Description	Age Yrs/Mos	Source	Taxable Y/N	Settlement Action	Repl Cost Each	Repl Cost Total	Dep Rate	Depr Total	Dep Amt Each	Dep Amt Total	ACV Each	ACV Total	Applicable Policy Limitations
46	1	BEAR CREEK SOUP	0/1	COSTCO	N	FULL	7.59	7.59	0	0	0.00	0.00	7.59	7.59	
47	1	FREETOS	0/1	COSTCO	N	FULL	3.89	3.89	0	0	0.00	0.00	3.89	3.89	
48	1	21LB BAG CAKE FLOUR	0/1	SAFEWAY	N	FULL	2.09	2.09	0	0	0.00	0.00	2.09	2.09	
49	1	TOASTER UPDATED TO Bid Date T2200 TOASTER	1/6	Insure's World	N	DEPREC	28.00	28.00	10	15	4.20	4.20	23.80	23.80	
50	1	LAUNDRY CART	2/0	COSTCO	N	DEPREC	36.99	36.99	10	20	7.40	7.40	29.59	29.59	
51	1	KITCHEN TOWELS UPDATED TO PITCHER TOWELS	0/3	COSTCO	N	DEPREC	11.99	11.99	20	5	0.60	0.60	11.39	11.39	
52	1	FRENCH BAKERS MAT	0/7	THE BON	N	DEPREC	21.00	21.00	20	11.67	2.33	2.33	17.67	17.67	
53	1	SCHICK RAZOR, NEW	0/0	SAFEWAY	N	FULL	10.99	10.99	0	0	0.00	0.00	10.99	10.99	
54	1	BOX OF STEEL WOOL	0/2	SAFEWAY	N	FULL	2.99	2.99	0	0	0.00	0.00	2.99	2.99	
55	1	SCRUB BRUSH	0/6	SAFEWAY	N	FULL	3.99	3.99	0	0	0.00	0.00	3.99	3.99	
56	2	BOXES COLORED TOOTHPICKS	0/4	SAFEWAY	N	FULL	1.55	3.10	0	0	0.00	0.00	1.55	3.10	
57	1	KOTEX	0/1	SAFEWAY	N	FULL	5.39	5.39	0	0	0.00	0.00	5.39	5.39	
58	1	SINK RUBBER STOPPER	2/0	SAFEWAY	N	FULL	2.49	2.49	0	0	0.00	0.00	2.49	2.49	
59	1	OXI CLEAN	0/1	COSTCO	N	FULL	12.99	12.99	0	0	0.00	0.00	12.99	12.99	
60	1	BAMBOO SKEWERS	0/1	SAFEWAY	N	FULL	2.19	2.19	0	0	0.00	0.00	2.19	2.19	
61	1	GLAD WARE CONTAINERS	0/1	SAFEWAY	N	FULL	8.99	8.99	0	0	0.00	0.00	8.99	8.99	
62	1	JAR OPENER	0/0	SAFEWAY	N	FULL	1.39	1.39	0	0	0.00	0.00	1.39	1.39	
63	1	25 DRAWER STORAGE UNIT PLASTIC WHITE	5/0	COSTCO	N	DEPREC	32.00	32.00	10	50	16.00	16.00	16.00	16.00	
64	51	CANDLE DYES	1/0	MICHAELS	N	FULL	2.29	116.79	0	0	0.00	0.00	2.29	116.79	
65	4	TOOTHBRUSHES	0/0	COSTCO	N	FULL	2.50	10.00	0	0	0.00	0.00	2.50	10.00	
66	1	PLASTIC CROPPER HOPPER	0/6	MICHAELS	N	FULL	32.95	32.95	0	0	0.00	0.00	32.95	32.95	
67	1	PKG DRIED YELLOW ROSES	0/6	MICHAELS	N	FULL	8.49	8.49	0	0	0.00	0.00	8.49	8.49	

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1998-2004, The VIA Group

DO NOT SUBMIT TO ISO

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 08, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SALN/Claim #: 1005015598
Room: SINGLE SUMMARY
Page: 4 of 6

Item #	Qty	Personal Property Description	Age Yrs/Mos	Source	Taxable Y/N	Settlement Action	Repl Cost Each	Repl Cost Total	Dep Rate	Depr Total	Dep Amt Each	Dep Amt Total	ACV Each	ACV Total	Applicable Policy Limitations
68	1	PKG MED OPEN RED ROSES	0/6	MICHAELS	N	FULL	8.49	8.49	0	0	0.00	0.00	8.49	8.49	
69	1	PKG SMALL RED ROSES	0/6	MICHAELS	N	FULL	8.49	8.49	0	0	0.00	0.00	8.49	8.49	
70	2	PKG SMALL PINK ROSES	0/6	MICHAELS	N	FULL	8.49	16.98	0	0	0.00	0.00	8.49	16.98	
		SINGLE SUMMARY TOTALS:						1,704.54				30.53		1,674.41	

Original Claims File Copy

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1998-2004, The VIA Group

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 08, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SALN/Claim #: 1005015595
Building: SINGLE FAMILY DWELLING
Page: 5 of 8

Location:	Replacement Cost Ext. Totals	Depreciation Amount Ext. Totals	Actual Cash Value Ext. Totals
SINGLE SUMMARY	$1,704.94	$30.53	$1,674.41
Subtotal SINGLE FAMILY DWELLING	$1,704.94	$30.53	$1,674.41

Official Claims File Copy

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information to an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which those acts occur.

VIA Version 14.03.01 - Copyright 1995-2004, The VIA Group

FARMERS

Personal Property Worksheet

Insured: Holden, Laura
Date of Loss: JULY 30, 2004
Policy No.:
Sales Tax %: 0

Date: AUGUST 06, 2004
Company: FARMERS INS CO OF WASHINGTON
Adjuster: HOLT, KELLY
Adjuster Phone:

SAIN/Claim #: 1005015598

Building: CLAIM TOTALS
Page: 6

CLAIM TOTALS:

1. Full Amount of Contents Insurance applicable to the property for which the claim is presented was	$20,000.00
2. Full Cost of Repair or Replacement of the Contents (including tax if any) is	$1,704.94
3. Applicable Depreciation (including tax if any) is	$30.53
4. Actual Cash Value Loss (line 2 minus line 3) is	$1,674.41
5. Less Items Replaced and or Services direct billed to carrier (including tax if any) is	$0.00
6. Less Amount Over Limits (including tax if any) is	$0.00
7. Less Deductibles and/or participation by the Insured	$500.00
Deductible: $0.00	
Insured Participation: $500.00	
I have deducted 500 from the inventory list to account for advance of $500 made on June 15, 2004.	
8. Less Salvage Retained and/or Retrieved	$0.00
9. Actual Cash Value Claim (line 4 minus lines 5, 6, 7 and 8) is	$1,174.41
10. Pending Net Loss Amount	$1,174.41

Supplemental Claim, to be filed in accordance with the terms and conditions of the Replacement Cost Coverage within 180 days from date of loss as shown above, will not exceed $30.53.

The amount of tax included in the Full Cost of Repair or Replacement of the Contents is $0.00.

WASHINGTON: For your protection please be advised of the following: any person who knowingly presents a false or fraudulent claim for payments of a loss, or knowingly presents false or misleading information in an insurance company for the purpose of defrauding or attempting to defraud an insurance company, or provides false information concerning a material fact on an application for insurance, or helps any other person commit such acts, may be guilty of fraud, and may be subject to substantial civil and criminal penalties pursuant to the laws of the state in which these acts occur.

VIA Version 14.03.01 - Copyright 1996-2004, The VIA Group

Official Claims File Copy

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV 21 P 2:18
BY RONALD R. CARPENTER
CLERK

DECLARATION OF SERVICE

On this day said forth below, I deposited with the U.S. Postal Service a true and accurate copy of: Farmers' Supplemental Brief in Supreme Court No. 81487-2 to the following parties:

Jeffrey A. Rosenfeld
DLA Piper Rudnick Gray Cary US LLP
1999 Avenue of the Stars, 4th Floor
Los Angeles, WA 90067-6022

Anthony Todaro
Danielle S. Fitzpatrick
R. Omar Riojas
DLA Piper US LLP
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044

Brad J. Moore
Stritmatter Kessler Whelan Coluccio
200 2nd Avenue W
Seattle, WA 98119-4204

Original sent by email for filing with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: November 21, 2008, at Tukwila, Washington.

Christine Jones

Christine Jones, Legal Assistant
Talmadge/Fitzpatrick