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No. 64749-1
(King County No. 09-2-10932-0 SEA)

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

NO BOUNDARIES, LTD., a Washington corporation, and NBL II, LLC,
a Washington limited liability company,

Petitioners,

v.

PACIFIC INDEMNITY COMPANY
(a member of the CHUBB GROUP OF INSURANCE COMPANIES),
an insurer authorized by the Washington Insurance Commissioner,

Respondent.

POLICYHOLDERS' OPENING BRIEF

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TABLE OF CONTENTS

	<i>Page</i>
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR.....	2
A. Assignment Of Error.	2
B. Issue Pertaining To Assignment Of Error.	2
III. STATEMENT OF THE CASE	3
A. The Two Policy Provisions.....	3
B. Background Facts	5
C. Procedural History	7
IV. LEGAL ARGUMENT	10
A. Washington Law.....	10
B. Applying Washington Law To The Policy Language At Issue	12
1. The Policy’s “Valuation” Provision.	12
2. The Policy’s “Ordinance Or Law” Provision.	15
3. Adding “Enforcement” Language That The Insurance Company Did Not Include When It Sold This Policy.....	20
V. CONCLUSION	21

TABLE OF AUTHORITIES

American National Fire Ins. v. B&L Trucking And Construction,
134 Wn.2d 413, 951 P.2d 250 (1998) 11, 21

Boeing Co. v. Aetna Casualty & Surety,
113 Wn.2d 869, 784 P.2d 507 (1990) 10, 12

Commonwealth Ins. Co. v. Grays Harbor County,
120 Wn. App. 232, 84 P.3d 304 (2004)..... 21

Dickson v. USF&G,
77 Wn.2d 785, 466 P.2d 515 (1970) 11

Emter v. Columbia Health Services,
63 Wn. App. 378, 819 P.2d 390 (1991),
review denied, 119 Wn.2d 1005, 832 P.2d 488 (1992)..... 11, 21

Odessa School District v. Ins. Co. of America,
57 Wn. App. 893, 791 P.2d 237 (1990)..... 11

Panorama Village Condominium Owners Ass'n v. Allstate,
144 Wn.2d 130, 26 P.3d 910 (2001) 12

Phil Schroeder Inc. v. Royal Globe Ins. Co.,
99 Wn.2d 65, 659 P.2d 509 (1983) 10, 11

Shotwell v. Transamerica Title,
91 Wn.2d 161, 588 P.2d 208 (1978) 10, 11

United Pacific Ins. Co. v. Larsen,
44 Wn. App. 529, 723 P.2d 8 (1986)..... 11, 21

I. INTRODUCTION

This declaratory judgment suit concerns a 2004/2005 insurance policy. It insured the historic Metropole Building in Pioneer Square. That building was damaged in June 2005 when part of its basement collapsed.

The policy's "Valuation" and "Ordinance Or Law" provisions promised that the insurance company's payment would include the value of certain code upgrades. The parties disagree on how Washington law interprets those provisions.

The policyholders interpret them to apply to the Seattle commercial building code ordinance in effect at the time of the loss or damage to the building. That was Seattle Ordinance 121519. It adopted provisions of the 2003 building code for commercial buildings.

The insurance company interprets its policy to instead apply to the Seattle commercial building code ordinance that will be in effect at the time of repairs to the building. Seattle Ordinance 122528 was enacted after the Metropole Building's June 2005 damage. It adopted provisions of the 2006 building code for commercial buildings.

The issue before this Court is whose interpretation of the policy's Valuation and Ordinance Or Law provisions is correct.

II. ASSIGNMENTS OF ERROR

A. Assignment Of Error.

The trial court ruled the policy's Valuation and Ordinance Or Law provisions do *not* apply to the Seattle commercial building code ordinance in effect at the time of the loss or damage.¹

That interpretation was erroneous as a matter of Washington law.

B. Issue Pertaining To Assignment Of Error.

Do the policy's Valuation and Ordinance Or Law provisions apply to Seattle's commercial building code ordinance in effect at the time of loss or damage to the insured building, or to Seattle's commercial building code ordinance in effect at the time of repairs to the insured building?

¹ As noted earlier in Part I of this Brief, the Seattle commercial building code ordinance in effect at the time of the building's damage was Seattle Ordinance 121519, which adopted provisions of the 2003 building code for commercial buildings. The trial court ruled "as a matter of law that the 2003 Seattle Building Code does not apply to the insurance company's obligations under the policy of insurance at issue in this matter", and denied the policyholders' request for a declaration that as a matter of law, Ordinance 121519 applies to the "Valuation" and "Ordinance Or Law" provisions in the insurance policy. CP 192:13-18.

III. STATEMENT OF THE CASE

A. The Two Policy Provisions

The insurance policy's Valuation provision states:²

Replacement Cost Basis

Lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage, but not more than you actually spend to repair or replace such property at the same or another location for the same use or occupancy. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged covered property, the valuation will include customs duties incurred.

If you do not repair or replace the covered property, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged covered property within 24 months from the date of the loss or damage, we will pay you the difference between the actual cash value and the lesser of the:

- Replacement cost at the time of loss or damage; or
- Actual cost you incur to repair or replace.

Payments under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the covered property.

² CP 128, also at CP 148:8-19.

The insurance policy's Ordinance Or Law provision states:³

Ordinance Or Law

If there is an ordinance or law in effect at the time of loss or damage that regulates zoning, land, or use or construction of a building or personal property, and if that ordinance or law affects the repair or replacement of the lost or damaged building or personal property, and if you:

- A. repair or replace the building or personal property as soon as reasonably possible, the valuation will include:
 - 1. a. the replacement cost of the damaged and undamaged portions of the building or personal property; or
 - b. the actual cash value of the damaged and undamaged portions of the building or personal property (if the applicable Loss Payment Basis shown in the Declarations is Actual Cash Value);
 - 2. the cost to demolish and clear the site of the undamaged portion of the building or personal property; and
 - 3. the increased cost to repair or replace the building to the same general size at the same site or personal property for the same general use, to the minimum standards of such ordinance or law....

³ CP 129; also at CP 150:7-8.

B. Background Facts

1. The Metropole Building is an over 100 year old building in Seattle's Pioneer Square.⁴

2. The policy at issue insured that building from September 1, 2004 to September 1, 2005.⁵

3. The building's basement area suffered damage in June 2005.⁶

4. For building code purposes, the Metropole Building is a *commercial* building rather than a *residential* building.⁷

5. The Seattle commercial building code ordinance in effect at the time of the loss or damage to the building was Seattle Ordinance 121519.⁸ That Seattle ordinance adopted provisions of the 2003 building code for commercial buildings.

6. \$712,260 is the repair cost number that triggers code upgrades under Seattle Ordinance 121519 (the commercial building code ordinance in effect at the time of the loss or damage to the building).⁹

⁴ E.g., *City of Seattle public information on the Metropole Building at <http://web1.seattle.gov/dpd/historicalsites/QueryResult.aspx?ID=32030428>.*

⁵ CP 5 at ¶10 and CP 57 at ¶10; see also CP 145:1-2.

⁶ CP 5 at ¶14 and CP 58 at ¶14; see also CP 145:3.

⁷ CP 153:15-154:1.

⁸ *Seattle Ordinance No. 121519, enacted July 2004; see also CP 145:4-6.*

⁹ *This dollar calculation is explained at CP 196:12-14 and 196:23-26. The referenced Assessed Value is at CP 189.*

7. \$752,683 is the repair cost number that the insurance company admits was covered by its policy.¹⁰

8. \$752,683 is more than \$712,260.

9. Since the repair cost number admitted by the insurance company (\$752,683) is more than \$712,260, that repair cost triggers code upgrades under Seattle Ordinance 121519 (the Seattle commercial building code ordinance in effect at the time of the loss or damage to the Metropole Building).

10. The insurance company did not complete its investigation of the Metropole Building's June 2005 damage until 2009.¹¹

11. By 2009, Seattle had adopted a new commercial building code ordinance. It is Seattle Ordinance 122528, which adopted provisions of the 2006 building code for commercial buildings.¹²

¹⁰ This dollar amount is confirmed at CP 196:12-14 and 196:23-26. The referenced Complaint and Answer are CP 9 at ¶52 and CP 62 at ¶52. [Note: the policyholder maintains that the insurance company's repair cost number is too low, but that does not matter for the policy interpretation issue at hand.]

¹¹ CP 19 (January 16, 2009 denial letter) ("Pacific Indemnity Company has been continuing its investigation into the claimed scope of the collapse and the cost of repair, including the extent to which repair of damage associated with the collapse might trigger obligations to comply with current code standards.... Mr. Dethlefs of WJE [the insurance company's retained engineer] has now completed his evaluation of the code-required upgrade issues."); see also CP 145:12-146:2.

¹² Seattle Ordinance No. 122528, enacted October 2007; see also CP 146:3-5.

12. Seattle Ordinance 122528 has a trigger for code upgrades that is different from the trigger in Seattle's prior Ordinance 121519.¹³

13. The repair cost number admitted by the insurance company (\$752,683) does not trigger code upgrades under the later Seattle Ordinance 122528.¹⁴

14. The insurance company's 2009 denial took the position that its policy did not require it to pay for the value of any upgrades to the damaged building because the cost of repairs would not trigger upgrades under the Seattle commercial building code that would be in effect at the time of repairs.¹⁵

C. Procedural History

March 2009: Policyholders file their Declaratory Judgment Complaint.¹⁶

November 2009: Both sides request summary judgment interpreting the policy language at issue.¹⁷

¹³ CP 196:14-197:3 and CP 197:21-24.

¹⁴ CP 196:14-197:3 and CP 197:21-24.

¹⁵ CP 19 (January 16, 2009 denial letter) and CP 21 (the denial letter's attached letter from the insurance company's engineer (Mr. Dethlefs) based on the 2006 building code provisions which, as noted earlier, were adopted in October 2007 with Seattle Ordinance 122528); see also CP 145:14-146:2.

¹⁶ CP 1 & 3.

¹⁷ CP 70-79 (insurance company's November 13, 2009 Motion For Partial Summary Judgment Regarding 2003 Seattle Building Code); CP 141-154 (policyholders' November 30, 2009 Response, cross-requesting a declaration as a matter of Washington law that Ordinance 121519 – the Ordinance in effect at

December 2009: Trial court interprets that policy language in the insurance company's favor – denying the policyholders' request for a declaration that Ordinance 121519 (the Ordinance in effect at the time of the loss or damage) applies to the policy's Valuation and Ordinance Or Law provisions, and holding instead that it does not.¹⁸

January 2010: The policyholders file a timely Notice For Discretionary Review¹⁹ consistent with the trial court's following RAP 2.3(b)(4) certification:

[T]he Court finds that the issues presented to the Court in the [policy interpretation] Motion and Response involve a controlling question of law as to which there is substantial ground for difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation. RAP 2.3(b)(4).

For this certification, the Court makes the following additional findings:

The interpretation of the code upgrade policy language is a controlling question of law. There appears to be no Washington case law squarely addressing the same policy language. There are no factual disputes that require further refinement for this Court or the Court of Appeals to review in order to interpret the policy language.

the time of the loss or damage – applies to the “Valuation” and “Ordinance Or Law” provisions in the insurance policy).

¹⁸ CP 192:13-18 (trial court's December 11, 2009 policy interpretation Order, holding “as a matter of law that the 2003 Seattle Building Code [Seattle Ordinance 121519] does not apply to [the insurance company's] obligations under the policy of insurance at issue in this matter”).

¹⁹ CP 220-225.

An immediate review may materially advance the ultimate termination of the litigation because the repair costs that the insurer admits are covered (\$752,683) may exceed the threshold for building ordinance coverage under the 2003 Building Code (\$712,260). Consequently, if this Court has made an error of law in its December 11, 2009 coverage interpretation of the building ordinance coverage, the litigants are entitled to have that error corrected as soon as possible for two reasons: resolution of the policy language in the policyholder's favor may eliminate the need for other disputed positions from being litigated and decided, given the insurer's concessions regarding covered damages; and the litigants are entitled to "secure the just, speedy, and inexpensive determination of every action." CR 1.²⁰

April 2010: This Court grants discretionary review, holding after oral argument that:

[T]he trial court's certification that the coverage dispute involves a controlling question of law, as to which there is substantial ground for a difference of opinion, is well taken. And the trial court is in the better position to determine whether immediate review may materially advance the ultimate termination of the litigation.

Now, therefore, it is

ORDERED that discretionary review is granted under RAP 2.3(b)(4).²¹

²⁰ CP 218:1-18 (January 6, 2010 Order denying reconsideration and granting certification of its December 11, 2009 policy interpretation Order). The policyholders' underlying motion for that certification or reconsideration is at CP 194-198.

²¹ April 15, 2010 letter to counsel from Court Administrator/Clerk Johnson informing the parties of the notation ruling by Commissioner Mary Neel on April 14, 2010. This Court subsequently confirmed that under that ruling, June 4 is the due date for the policyholders' Opening Brief. May 14, 2010 letter to counsel from Court Administrator/Clerk Johnson informing the parties of the notation ruling by Commissioner Mary Neel on May 13, 2010.

IV. LEGAL ARGUMENT

A. Washington Law

Washington law reads policy language as a lay person would read it rather than as a skilled lawyer or trained professional would read it:

The proper inquiry is not whether a learned judge or scholar can, with study, comprehend the meaning of an insurance contract, but instead whether the insurance policy contract would be meaningful to the layman. The language of insurance policies is to be interpreted in accordance with the way it would be understood by the average man, rather than in a technical sense.²²

Washington law mandates that whenever a policy's wording is fairly susceptible to more than one interpretation, the interpretation most favorable to the policyholder must be employed – even if it's not the interpretation the insurance company had intended.²³

Washington law construes policy language strictly against the insurance company.²⁴ Washington law accordingly holds that an insurance policy's wording must “be liberally construed to provide

²² *Boeing Co. v. Aetna Casualty & Surety*, 113 Wn.2d 869, 881 (1990) (internal quotation marks and citations omitted).

²³ E.g., *Shotwell v. Transamerica Title*, 91 Wn.2d 161, 167-68, 588 P.2d 208, 212 (1978) (“Where a provision of a policy of insurance is capable of two meanings, or is fairly susceptible of two constructions, the meaning and construction most favorable to the insured must be employed, even though the insurer may have intended otherwise.”) (underline added).

²⁴ E.g., *Phil Schroeder Inc. v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 69, 659 P.2d 509, 511 (1983) (underline added); *Shotwell v. Transamerica Title*, 91 Wn.2d 161, 167-68, 588 P.2d 208, 212 (1978).

coverage whenever possible,”²⁵ and that “any doubts, ambiguities and uncertainties arising out of the language used in the policy must be resolved in [the policyholder’s] favor.”²⁶

Washington law applies its pro-policyholder reading with even greater force to language that the insurance company invokes to limit or restrict payment under the insurance policy.²⁷

And Washington law prohibits an insurance company from “interpreting” its policy to effectively have wording that is different from the wording in the policy it had sold.²⁸ As our State Supreme Court has

²⁵ *Odessa School District v. Ins. Co. of America*, 57 Wn.App. 893, 897, 791 P.2d 237 (1990) (underline added) (the wording in a policy must “be liberally construed to provide coverage whenever possible”).

²⁶ *Phil Schroeder Inc. v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 69, 659 P.2d 509, 511 (1983) (underline added).

²⁷ E.g., *Shotwell*, 91 Wn.2d at 167-68.

²⁸ E.g., *American National Fire Ins. v. B&L Trucking And Construction*, 134 Wn.2d 413, 430 (1998) (“We will not add language to the policy that the insurer did not include.”); see also, *Emter v. Columbia Health Services*, 63 Wn. App. 378, 382-83 (1991), review denied, 119 Wn.2d 1005 (1992) (Washington law does not even allow the insurer to insert commas it had omitted); *United Pacific Ins. Co. v. Larsen*, 44 Wn. App. 529, 532 (1986) (per Utter, J.) (refusing to allow the insurance company to “interpret” the policy language at issue to have the same meaning as more explicit language used elsewhere, noting that the insurance company’s other policy language showed that it “knew how to limit coverage to the scope [it argued in the instant case]. That it employed different and less explicit language in the [the sentence at issue] is evidence that it meant to convey a different meaning.”); accord, *Dickson v. USF&G*, 77 Wn.2d 785, 789 (1970) (when insurer uses certain language in one situation but not in a second situation, it manifests an “obvious intent” that that certain language does not apply in the second situation).

repeatedly explained, the insurance industry “knows how to protect itself and it knows how to write exclusions and conditions.”²⁹

B. Applying Washington Law To The Policy Language At Issue

1. The Policy’s “Valuation” Provision.

The insurance company in this case did not write its policy to say that loss or damage to the insured building is valued at the time of repairs. Instead, it wrote its policy to say that such loss or damage is valued at the time of loss or damage.

More fully, the insurance company in this case wrote its policy’s Valuation provision to say:³⁰

²⁹ *Panorama Village Condominium Owners Ass’n v. Allstate*, 144 Wn.2d 130, 141 (2001) (citing *Boeing v. Aetna Casualty & Surety*, 113 Wn.2d 869, 887 (1990)).

³⁰ CP 128, also at CP 148:8-19.

Replacement Cost Basis

Lost or damaged covered property will be valued at the cost to repair or replace such property **at the time of loss or damage**, but not more than you actually spend to repair or replace such property at the same or another location for the same use or occupancy. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged covered property, the valuation will include customs duties incurred.

If you do not repair or replace the covered property, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged covered property within 24 months from the date of the loss or damage, we will pay you the difference between the actual cash value and the lesser of the:

- Replacement cost **at the time of loss or damage**; or
- Actual cost you incur to repair or replace.

Payments under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the covered property.

As the insurance company in this case wrote it, this Valuation provision tells the policyholder the following three things:

First, it tells the policyholder when loss or damage to the Metropole Building will be valued: “Lost or damaged covered property will be valued at the cost to repair or replace such property **at the time of loss or damage**”.

Second, it sets a cap on that valuation amount: “but not more than you actually spend to repair or replace such property”.

Third, it tells the policyholder when that capped valuation amount will be paid: “Payments ... will not be made until the completion of the repairs”.

With respect to the June 2005 damage to the Metropole Building in this case, it is undisputed that Seattle Ordinance 121519 was the building code ordinance affecting the cost to repair or replace that commercial building at the time of loss or damage.³¹ Seattle Ordinance 121519 is therefore the building code ordinance that applies under the Valuation provision’s promise that this commercial building’s loss or damage “will be valued at the cost to repair or replace such property at the time of loss or damage”.

The insurance company in this case did *not* write its Valuation provision to say the value of the insured building’s loss or damage would be established “at the time of repairs”. It could have written its Valuation provision to say that. But it didn’t. Washington law does not allow the insurance company to now re-write its policy language to make that change. *Supra* Part IV.A of this Brief.

³¹ *Seattle Ordinance No. 121519 was enacted July 2004; Seattle Ordinance No. 122528 was not enacted until October 2007; see CP 145:4-6 and 146:3-5.*

In short, it is undisputed that Seattle Ordinance 121519 was the building code ordinance affecting the cost to repair commercial buildings in Seattle such as the Metropole Building at the time of loss or damage in this case (June 2005).³² Seattle Ordinance 121519 is therefore the commercial building code ordinance that applies under the Valuation provision's plain language telling the Metropole Building's owner that loss or damage "will be valued at the cost to repair or replace such property at the time of loss or damage". The trial court's policy language interpretation to the contrary was accordingly wrong under Washington law.

2. The Policy's "Ordinance Or Law" Provision.

Consistent with the wording of its Valuation provision, the insurance company in this case did not write its policy's Ordinance Or Law provision to reference ordinances or laws in effect at the time of repairs. Instead, the insurance company in this case wrote its policy to reference ordinances or laws in effect at the time of loss or damage.

³² *Seattle Ordinance No. 121519 was enacted July 2004; Seattle Ordinance No. 122528 was not enacted until October 2007; see CP 145:4-6 and 146:3-5.*

More fully, the insurance company in this case wrote its policy's Ordinance Or Law provision to say:³³

Ordinance Or Law

If there is an ordinance or law in effect **at the time of loss or damage** that regulates zoning, land, or use or construction of a building or personal property, **and** if **that** ordinance or law affects the repair or replacement of the lost or damaged building or personal property, and if you:

- A. repair or replace the building or personal property as soon as reasonably possible, the valuation will include:
 - 1. a. the replacement cost of the damaged and undamaged portions of the building or personal property; or
 - b. the actual cash value of the damaged and undamaged portions of the building or personal property (if the applicable Loss Payment Basis shown in the Declarations is Actual Cash Value);
 - 2. the cost to demolish and clear the site of the undamaged portion of the building or personal property; and
 - 3. the increased cost to repair or replace the building to the same general size at the same site or personal property for the same general use, to the minimum standards of **such** ordinance or law....

As the insurance company in this case wrote it, this Ordinance Or Law provision tells the policyholder the following three things:

³³ CP 129; also at CP 150:7-8.

First, it tells the policyholder the applicable time frame. Consistent with the policy’s Valuation provision, the policy’s Ordinance Or Law provision tells the policyholder that the policy’s coverage applies to ordinances or laws that regulate zoning, land, or use or construction of a building that are “in effect at the time of loss or damage”.

Second, it limits that broad pool of ordinances and laws to the ones which affect the type of building that was insured. For example, Seattle has ordinances that affect the repair of a *residential* building as well as ordinances that affect the repair of a *commercial* building.³⁴ Both types of repair-related ordinances would be “in effect at the time of loss or damage”. This policy’s Ordinance Or Law provision, however, limits the pool of building ordinances in effect at the time of the insured building’s loss or damage to the subset that “affects the repair or replacement of the lost or damaged building” – which in the case of the damaged Metropole Building, is the subset of Seattle building ordinances that affect the repair of a *commercial* building.

³⁴ See, e.g., CP 152:13-154:1.

Third, the policy's Ordinance Or Law provision assures the policyholder that the policy's valuation of the insured building's damage will include the increased cost to repair that building "to the minimum standards of such ordinance or law" – which, as noted above, is the subset of Seattle building ordinances in effect at the time of the Metropole Building's damage that affect the repair of a *commercial* building.

It is undisputed that Seattle Ordinance 121519 was the building code ordinance in effect at the time of the Metropole Building's damage that affects the repair of a *commercial* building such as that Metropole Building.³⁵ Seattle Ordinance 121519 is therefore the building code ordinance that applies under the Ordinance Or Law provision's promise that the policy's damage valuation includes the increased cost to repair the Metropole Building "to the minimum standards of such ordinance or law".

The insurance company in this case did *not* write its Ordinance Or Law provision to say it applied to the commercial building code ordinance in effect "at the time of repairs". It could have written its Ordinance Or Law provision to say that. But it didn't.

³⁵ *Seattle Ordinance No. 121519 was enacted July 2004; Seattle Ordinance No. 122528 was not enacted until October 2007; see CP 153:15-154:1 and CP 145:4-6 and 146:3-5.*

And the reason it didn't is obvious. Building code requirements typically become more stringent over time, which increases the cost of repairing a damaged building. By writing its policy to apply to the commercial building code ordinance in effect at the time of the building's damage – rather than the ordinance in effect at the time of the building's subsequent repair – the insurance company protects itself from having to pay that increased repair cost when building code changes make that subsequent repair more expensive. Washington law does not allow the insurance company to now re-write that policy language just because, in this particular case, the insurance company thinks it can pay less with the building code ordinance in effect at the time of repairs than with the one in effect at the time of the building's damage. Supra Part IV.A of this Brief.

In short, it is undisputed that Seattle Ordinance 121519 was the building code ordinance affecting the cost to repair *commercial* buildings such as the Metropole Building at the time of loss or damage in this case (June 2005). Seattle Ordinance 121519 is therefore the commercial building code ordinance that applies under the plain language of the Ordinance Or Law provision in this case, which told the Metropole Building's owner that the policy's coverage applies to such an ordinance “in effect at the time of loss or damage”. The trial court's policy language

interpretation to the contrary was accordingly wrong under Washington law.

3. Adding “Enforcement” Language That The Insurance Company Did Not Include When It Sold This Policy.

In the trial court below, the insurance company interpreted its Ordinance Or Law provision to say that “if enforcement of the Building Code actually affects the cost of repair, the increased costs will be covered”.³⁶ In other words, the insurance company “interpreted” its Ordinance Or Law provision to added the following language:

Ordinance Or Law

If there is an ordinance or law in effect at the time of loss or damage that regulates zoning, land, or use or construction of a building or personal property, and if **the enforcement of** that ordinance or law **actually** affects the repair or replacement of the lost or damaged building or personal property,

³⁶ CP 174:19-21.

Insurance companies frequently write their policies to include such language. For example:³⁷

Building Ordinance

In the event of loss or damage under this Policy that causes **the enforcement** of any law or ordinance regulating the construction or repair of damaged facilities, the [Insurance] Company shall be liable for:...

The insurance company in this case, however, decided not to add such “enforcement” language in the policy it sold to the Metropole Building’s owner. Washington law does not allow the insurance company to now “interpret” its policy to add such language to the detriment of its insured in this case.³⁸

V. CONCLUSION

The insurance policy’s Valuation and Ordinance Or Law provisions both say “at the time of loss or damage”.

Seattle Ordinance 121519 was the commercial building code ordinance in effect “at the time of loss or damage”.

³⁷ E.g., *Commonwealth Ins. Co. v. Grays Harbor County*, 120 Wn.App. 232, 236 (2004) (*underline added*).

³⁸ *Supra* Part IV.A of this Brief; especially, *American National Fire Ins.*, 134 Wn.2d at 430 (“We will not add language to the policy that the insurer did not include.”); *Emter*, 63 Wn.App. at 382-83 (Washington law does not even allow the insurer to insert commas it had omitted); *Larson*, 44 Wn.App. at 532 (per Utter, J.) (insurer did not use the language it could have to achieve the meaning it was proposing).

Seattle Ordinance 121519 is therefore the commercial building code ordinance that applies to the Valuation and Ordinance Or Law provisions in this case.

Washington law does not allow the insurance company to now revise those two policy provisions to insert different language to the detriment of its policyholder – e.g., change “at the time of loss or damage” to “at the time of repairs”, or add an actual “enforcement” requirement.

Washington law accordingly dictates that Seattle Ordinance 121519 – the Seattle commercial building code ordinance in effect at the time of this case’s June 2005 damage to the Metropole Building – is the ordinance that applies to the Valuation and Ordinance Or Law provisions in this case. Washington law therefore requires the trial court’s policy interpretation ruling to the contrary to be reversed.

RESPECTFULLY SUBMITTED this 4th day of June, 2010.

FOSTER PEPPER PLLC



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DECLARATION OF SERVICE

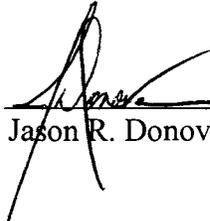
I, Jason R. Donovan, declare under penalty of perjury under the laws of the State of Washington that I am now and at all times mentioned herein, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On June 4, 2010, I caused to be served in the manner noted copies of the foregoing upon designated counsel:

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DATED in Seattle, Washington on this 4th day of June, 2010.



Jason R. Donovan

FILED
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