

Coverage for code upgrades is based on the building code in effect as of the time of loss even though the building code was repealed before repairs were undertaken

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The Washington Court of Appeals has ruled that an insured was entitled to include the cost of code upgrades in the valuation of covered repairs to its damaged building based on the building code in effect at the time the damage occurred, even though that building code was repealed before repairs were undertaken. *No Boundaries, Ltd v. Pacific Indemnity Company*, 249 P.3d 689 (Wash. Ct. App. 2011).

No Boundaries owns the Metropole Building, located in Seattle's historic Pioneer Square. In June 2005, the building suffered water damage, and part of the basement collapsed. No Boundaries made a claim with Pacific, and each retained experts to estimate the cost of repairing the building. Pacific's policy included "replacement cost" valuation as well as "ordinance or law" coverage (sometimes referred to as "code upgrade" coverage).

At the time the water damage occurred in 2005, Seattle Ordinance 121519 was in effect, which adopted provisions of the 2003 building code for commercial buildings. This ordinance included a formula or cost threshold for determining whether a damaged building had to be upgraded to code standards when it was repaired. In October 2007, a new ordinance amended Ordinance 121519, which repealed portions of the old ordinance and included a different formula to determine when code upgrades were required. No Boundaries claimed that the old ordinance applied because it was in effect at the time the damage occurred. Pacific contended that the repeal of the old code made the old code irrelevant for purposes of the "ordinance or law" coverage." No Boundaries sued. The trial court ruled in Pacific's favor. The Court of Appeals reversed.

In settling the coverage dispute, the Court of Appeals first reviewed the policy's "replacement cost" provision, observing that damaged property "will be valued at the cost to repair or replace such property **at the time of loss or damage . . .**" (Emphasis added.) It then reviewed the policy's "ordinance or law" provision, which provided that code upgrades would be included in the loss valuation if what the court referred to as three "if" clauses were met:

1. There must be an ordinance or law in effect at the time of loss or damage that regulates zoning, land use, or construction of a building;
2. That ordinance or law must "affect" the repair or replacement of the damaged building; and
3. The property must be repaired or replaced as soon as reasonably possible.

Only the second "if" clause was at issue. Pacific argued that this requirement was not met because the defunct code provisions did not "affect" the repair or replacement of the building. On the other hand, No Boundaries argued that the policy used the term "affect" to zero in on the particular subset of building code ordinances that will trigger coverage. Because the word "affect" was not defined, the court consulted a dictionary, ultimately determining that the

insured's interpretation of "affect" was reasonable. As a matter of law, the valuation of the cost to repair the water damage must include the cost of meeting the minimum standards of Ordinance 121519.

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