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## **Actual cash value does not include sales tax under Washington law**

By Matthew J. Sekits

In *Holden v. Farmers Insurance Co. of Washington* (January 22, 2008), in the context of a homeowner's insurance policy under a broad form renter's package, the Washington Court of Appeals held that actual cash value does not include sales tax.

The policy defined "actual cash value" as "fair market value." The insured argued that because fair market value could conceivably be determined by replacement cost less depreciation, and because replacement would require payment of sales tax, fair market value should include sales tax. On that basis, she sought to compel the insurer to include sales tax in the calculation of actual cash value.

The court, without deciding whether fair market value could be determined under such a replacement cost analysis, held that "sales tax is reimbursable only when incurred by the insured." The insured elected not to replace the damaged items and not to use the replacement coverage. Because she had incurred no sales tax, the court held, the insurer did not have to include sales tax in the actual cash value payment.