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Fair Market Value Includes Sales Tax; Washington Supreme Court Reverses *Holden*

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In 2008, an intermediate Washington appellate court held that the term "actual cash value," defined under a renter's policy as "fair market value," included no coverage for hypothetical sales tax. The Washington Supreme Court recently reversed that ruling in a 6-3 decision. The Supreme Court deemed the policy's "actual cash value" provision ambiguous because the term "fair market value" was undefined and subject to more than one interpretation.

The court reasoned it would be unfair to deprive an insured of the value of sales tax paid on lost property simply because the property was not actually replaced. The court further found the insurer's "fair market value" analysis "denied the [insured] the full value of her ACV coverage because she purchased [replacement cost] coverage but did not use it."

In a lengthy dissent, three justices found the term "fair market value" was unambiguous and subject to only one reasonable interpretation: the market value before sales tax. The dissenting justices noted "fair market value" is generally used as the basis for calculating sales tax. Thus, these justices reasoned: "We cannot calculate taxes using value and value using taxes; either the chicken or the egg must come first." The majority expressly rejected this "chicken and egg" argument, stating "the meaning of [fair market value] in other contexts is irrelevant."