

# Anderson Kill & Olick, P.C.

## POLICYHOLDER ADVISOR

The Policyholder Law Firm



## Wear and Tear Does Not Erode Ordinance or Law Coverage

By Marshall Gilinsky and Carrie Maylor DiCanio

Ordinance or law coverage is a common type of insurance added to commercial property insurance policies. It covers the cost to a policyholder caused by the enforcement of an ordinance or law following loss or damage to insured property. Ordinance or law coverage is designed to restore the policyholder to its pre-loss position by covering the costs of demolishing, repairing, rebuilding or replacing undamaged property due to the enforcement of an ordinance or law.

Because property insurance policies containing ordinance or law coverage often also exclude damage caused by wear and tear, it is not unusual for situations to arise where wear and tear is associated with the post-loss enforcement of an ordinance or law and, all too often, insurance companies improperly try to use the wear and tear as an excuse to avoid paying ordinance or law claims. This issue was squarely before the court in *City of Elmira v. Selective Insurance Company of New York*, 83 A.D.3d 1262, 921 N.Y.S.2d 662 (3d Dep't 2011).

In *City of Elmira*, a windstorm caused the collapse of part of a historic armory located in and owned by the city of Elmira, New York. After the collapse, the city hired an architectural firm to assess the damage. The firm's report determined that the collapse was due to the deterioration of mortar in the armory's south wall and that the condition existed in other parts of the

armory's walls such that the building should not be occupied until the exterior was rebuilt. The city provided the report to its fire marshal, who found the armory to be in violation of the New York State Property Maintenance Code and ordered that it be immediately repaired or demolished. Instead of rebuilding the armory, the city purchased an existing office building to house its displaced staff and accepted a bid to demolish the armory.

Agreeing that the windstorm was a covered event, Selective Insurance Company of New York paid the city the actual cash value of the collapsed portion of the armory wall, but refused to pay for the demolition or replacement of the building on the ground that the enforcement of the code was due to wear and tear, not the enforcement of the property code or the windstorm. The city filed suit, arguing that Selective Insurance was liable for the entire cost to demolish and replace the armory under the ordinance or law coverage provided under the city's insurance policy, which stated that "[i]f a Covered Cause of Loss occurs to covered Building property, we will pay . . . [f] or Loss or damage caused by enforcement of any ordinance or law that . . . [r]equires the demolition of parts of the same property not damaged by a Covered Cause of Loss."

Strictly construing the policy language, the court held that the ordinance or law coverage was triggered and that Selective Insurance

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was required to pay for the armory's demolition. The court reasoned that because the ordinance or law coverage only required a covered cause of loss to trigger coverage and since the demolition (i.e., the "loss or damage" at issue) was caused by the enforcement of the property code, the coverage applied to the amount the city paid to demolish the armory.

Whether there was ordinance or law coverage under the city's policy came down to the specific policy language and general principles of proximate cause. Here, both of these

factors favored the city because the policy only required that a covered cause of loss occur to the armory and that the demolition of undamaged parts of the armory be "caused by enforcement of [ ] ordinance or law . . ." Policyholders pursuing ordinance or law claims that receive denials or pushback from their insurance company based on "wear and tear" exclusions should question the validity of the insurance company's coverage position, using the decision that Anderson Kill obtained for the City of Elmira as a guide.▲

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