

**THOUGHT LEADERSHIP**

Service

Insurance

**Professionals**

JASON R. FATHALLAH

MILWAUKEE:

414.978.5502

JASON.FATHALLAH@

HUSCHBLACKWELL.COM

DOUGLAS RAINES

MILWAUKEE:

414.978.5435

DOUG.RAINES@

HUSCHBLACKWELL.COM

MEGHAN VILLALPANDO

MILWAUKEE:

414.978.5656

MEGHAN.VILLALPANDO@

HUSCHBLACKWELL.COM

LEGAL UPDATES

PUBLISHED: MAY 20, 2025

# Wisconsin Court of Appeals Upholds Ordinance or Law Exclusion in Insurance Coverage Dispute

In a recent decision, the Wisconsin Court of Appeals affirmed the application of an “Ordinance or Law Exclusion” in a business owner’s insurance policy issued by Germantown Mutual Insurance Company.[1] The case, involving extensive fire damage to an apartment building owned by Distinguished Multiplying Buildings (D.M.B.) LLC, highlights the interaction between policy exclusions, municipal orders, statutes, and case law.

## Case summary

A fire caused significant damage to one of D.M.B.’s apartment buildings in Eau Claire, WI. City officials subsequently issued a raze order under Wis. Stat. § 66.0413, determining that the building was unsafe, unfit for habitation, and unreasonable to repair. D.M.B. filed a claim with Germantown, seeking coverage for the total loss of the building, asserting that the fire and subsequent raze order constituted a “constructive total loss,” requiring Germantown to pay the actual cash value to repair or replace the entire building. Germantown, however, denied coverage for portions of the building that were razed but not damaged by the fire, citing the policy’s ordinance or law exclusion. This exclusion stated that Germantown would “not pay for loss or damage caused directly or indirectly by ... [t]he enforcement of or compliance with any ordinance or law ... [r]equiring the tearing down of any property, including the cost of removing its debris.”

Upon filing of summary judgment, the circuit court sided with Germantown, and the court of appeals affirmed, concluding that the ordinance or law exclusion barred coverage for the costs associated with the raze order. In so doing, the court rejected D.M.B.’s arguments that raze orders conclusively demonstrate a total loss as a matter of law, regardless of the policy’s terms.

## **The court's analysis**

### **1. Separation of loss events**

D.M.B. argued that the fire and resulting raze order constituted a single loss because D.M.B.'s only option was to raze the building following the municipal order. In rejecting D.M.B.'s argument, the court determined that the fire and the raze order are separate losses, explaining that D.M.B. could have challenged the raze order if it thought the building was repairable, and that aside from the raze order, there was no evidence indicating that the building was not repairable.

### **2. Limitations of the valued policy law**

The court also rejected D.M.B.'s argument that Wisconsin case law requires an insurer pay the "full face value" of the policy when the entire building must be destroyed as a result of a covered loss. The court clarified that Wisconsin's valued policy law (Wis. Stat. § 632.05(2)) applies only to properties that are "owned and occupied by the insured primarily as a dwelling." Because the D.M.B. property was not occupied by the insured, the valued policy law did not apply.

### **3. Enforceability of ordinance or law exclusions**

D.M.B. asserted that the ordinance or law exclusion only applied to buildings that become deteriorated or dilapidated over time. The court disagreed with D.M.B. and emphasized that the exclusion was unambiguous and applied regardless of whether the raze order was issued as a result of a catastrophic event like a fire. The court determined that "a reasonable insured would understand the policy to mean what it says,"[2] and that Germantown would pay for damages caused by the fire but not those caused by the raze order.

## **What this means to you**

This decision underscores the enforceability of unambiguous ordinance or law exclusions in Wisconsin and that municipal orders, even if triggered by an insured peril, do not necessarily merge with the original loss for coverage purposes. This distinction is particularly important when evaluating claims involving compliance with safety regulations or municipal ordinances. Insurers should carefully distinguish between losses caused by the insured event and those resulting from compliance with the order.

## **Contact us**

If you have questions regarding the legal implications of this decision or other questions relating to insurance litigation, please contact Jason Fathallah, Doug Raines, Meghan Villalpando, or your Husch Blackwell attorney.

[1] *Distinguished Multiplying Buildings (D.M.B.), LLC v. Germantown Mut. Ins. Co.*, No. 2023AP1717, 2025 WL 1165881 (Wis. Ct. App. Apr. 22, 2025).

[2] *Id.*, ¶ 37.