STATE OF MINNESOTA

IN SUPREME COURT

A21-0240

Court of Appeals | Thissen, J.
Dissenting, Hudson, Chutich, McKeig, JJ.

St. Matthews Church of God and Christ,

Appellant,

vs.

Filed: November 23, 2022
Office of Appellate Courts

State Farm Fire and Casualty Company,

Respondent.

Edward E. Beckmann, Beckmann Law Firm, LLC, Bloomington, Minnesota, for appellant.

Scott G. Williams, HAWS-KM, P.A., Saint Paul, Minnesota, for respondent.

Beth A. Jenson Prouty, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota, for amicus curiae American Property Casualty Insurance Association.

Dale O. Thornsjo, Lance D. Meyer, O'Meara, Leer, Wagner & Kohl, P.A., Minneapolis, Minnesota, for amicus curiae The Insurance Federation of Minnesota.

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Timothy D. Johnson, Karly A. Kauf, Anthony A. Remick, Smith Jadin Johnson, PLLC, Bloomington, Minnesota, for amicus curiae United Policyholders.

S Y L L A B U S

1. Under Minn. Stat. § 65A.10, subd. 1 (2020), when a partial loss occurs, an insurer's obligation to bring the damaged portion of the property up to minimum code is limited to repairs necessary to bring up to code only that part of the property that was damaged in the insured event.

2. The insurance policy did not provide broader coverage than the minimum level of coverage required under Minn. Stat. § 65A.10, subd. 1.

Affirmed.

O P I N I O N

THISSEN, Justice.

This case involves an insurance coverage dispute. Appellant St. Matthews Church of God and Christ (St. Matthews) is located in St. Paul. Respondent State Farm Fire and Casualty Company (State Farm) insured St. Matthews. The policy provided replacement cost coverage for damage to St. Matthews's buildings.

In June 2017, a storm damaged the property of St. Matthews, including the building's drywall. State Farm agreed to cover repair costs for the damaged property caused by the storm, including removal and replacement of the damaged drywall. When the damaged drywall was removed, cracks in the masonry were discovered. There is no dispute that the cracks in the masonry preexisted the storm. However, because the cracks in the masonry violated the city's building code, the City of St. Paul (City) would not allow St. Matthews to replace the drywall without also repairing the masonry. St. Matthews requested that State Farm reimburse it for the cost of repairing the masonry.

At issue is the interpretation and application of Minn. Stat. § 65A.10, subd. 1 (2020). Section 65A.10 generally requires replacement cost insurance to cover the cost of repairing any "damaged property in accordance with the minimum code as required by state or local authorities." In "the case of a partial loss," replacement cost insurance is required to cover only "the damaged portion of the property." *Id.* Here, St. Matthews and State Farm disagree about whether State Farm must cover the cost of repairing the masonry (which had preexisting, non-storm-related damage) merely because the City of St. Paul would not allow St. Matthews to replace the drywall without also repairing the masonry. We hold that State Farm is not required to cover repair costs to the masonry under either Minn. Stat. § 65A.10, subd. 1, or the State Farm policy.[1]

FACTS

The relevant facts are not in dispute. St. Matthews purchased insurance from State Farm for damage to its property, which included church buildings. The policy provided coverage for accidental direct physical loss occurring between June 24, 2016, to June 24, 2017.

St. Matthews's policy provided replacement cost coverage, meaning that, in the event of a loss, "the insurer agrees to compensate for [that] loss without taking into account depreciation." *Couch on Insurance* § 175:96 (3d ed. 2018). Replacement cost coverage requires the insurer to pay for the cost of replacing the loss or damaged property at current

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[1] We also granted review on the question of whether St. Matthews is entitled to statutory interest on the delayed coverage of the masonry repairs. Because we hold that State Farm is not required to cover the masonry repairs, we do not reach the statutory interest question.

prices rather than limiting payment to the actual cash or depreciated value of the loss or damaged property. *See* Robert H. Jerry & Douglas R. Richmond, *Understanding Insurance Law* 633 (5th ed. 2012).

State Farm's typical policy does not require it to cover the cost of bringing property that is lost or damaged up to code.[2] But the policy issued to St. Matthews included a Minnesota Endorsement, which states, in relevant part:

> If this coverage is provided on a replacement cost basis we will pay the increased cost of replacing, rebuilding, repairing or demolishing any building in accordance with the minimum code in force at the time of loss as required by state or local authorities, when the loss or damage is caused by a Covered Cause Of Loss. In case of a partial loss to the covered property, we will pay only for the damaged portion of the property.

State Farm included this Minnesota Endorsement policy language because Minnesota law requires it to do so. *See* Minn. Stat. § 65A.10, subd. 1. By its terms, section 65A.10 provides the statutory minimum that an insurer must provide in cases of replacement cost coverage. It states:

> Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities . . . . In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Id.

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[2] Insurers commonly seek to exclude the cost of bringing a building "up to code" during the process of repair or replacement because the expense is costly. Robert H. Jerry & Douglas R. Richmond, *Understanding Insurance Law* 634 (5th ed. 2012). Code-compliance provisions obligate the insurance company to take a step that it might not otherwise take.

On June 11, 2017, a wind and hailstorm damaged the property of St. Matthews. Among other things, the storm damaged the drywall in the church. Approximately 1 year later, St. Matthews reported the loss to State Farm. State Farm worked with St. Matthews to process the claim and agreed to cover the storm-related damage to its buildings, including the drywall. By December 2018, State Farm paid St. Matthews $107,053, an amount that included the cost of replacing and repairing the drywall.

St. Matthews was required to obtain a building permit from the City to make the necessary repairs, including replacing the drywall. During the process of obtaining the permit and removing the drywall, cracks in the masonry behind the damaged drywall were discovered. The cracks in the masonry created a hazardous condition, and consequently, the City required St. Matthews to bring the masonry into accordance with the City's building code requirements. The City was concerned about the defects in the existing masonry wall which rendered the wall out of code. St. Matthews subsequently requested State Farm to pay the cost of bringing the masonry up to code. In response, State Farm hired a consultant to evaluate the damaged masonry and determine the cause of damage. The consultant concluded that the "cracked and out-of-plumb condition . . . was a long-term condition unrelated to the storm . . . ." There is no evidence in the record that State Farm provided any insurance coverage to St. Matthews for the time period when the masonry damage occurred. State Farm sent St. Matthews a letter denying coverage because the damage to the masonry was "unrelated to the storm event."

Before receiving State Farm's denial letter, St. Matthews brought the lawsuit that is the subject of this appeal. In its complaint, St. Matthews sought, among other relief, to

compel an appraisal of the storm damage. The district court ordered an appraisal. Following an in-person appraisal and inspection of the property, the appraisal panel determined that additional costs totaling $77,969 were necessary to address the code upgrades. The appraisal panel also confirmed that the "deteriorated conditions, cracks and out-of-plumb condition" of the masonry were not caused by the storm.

The matter returned to the district court where the parties agreed that they were bound by the appraisal panel's finding that the storm did not damage the masonry. On cross-motions for summary judgment, the district court granted summary judgment to State Farm. The district court determined that State Farm must provide the minimum coverage set forth in section 65A.10, subdivision 1. Further, the court determined that the "building code coverage would apply only if the June 11, 2017 storm produced actual damage that caused a building code violation." It ruled that, because the storm did not damage the masonry, which led to the code upgrade requirements, no coverage existed. Based on the undisputed facts, the court concluded that the "condition of the wall generating the building code violations was present before the storm . . . ."

St. Matthews appealed and the court of appeals affirmed. *St. Matthews Church of God & Christ v. State Farm Fire & Cas. Co.*, No. A21-0240, 2021 WL 4428919 (Minn. App. Sept. 27, 2021). We granted St. Matthews's petition for review.

ANALYSIS

The question we must answer is whether State Farm is required to cover the repairs to the masonry under either section 65A.10, subdivision 1, or State Farm's policy.

This question arises from an order on cross-motions for summary judgment. On appeal from summary judgment, we determine "whether there are any genuine issues of material fact" and whether the district court "erred in its application of the law." *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020) (citation omitted) (internal quotation marks omitted). We review summary judgment rulings de novo. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011). Interpretation of statutes and interpretation of insurance contracts are also questions of law, which we review de novo. *See Progressive Specialty Ins. Co. v. Widness ex rel. Widness*, 635 N.W.2d 516, 518 (Minn. 2001).

The parties agree that there are no relevant disputed facts. Additionally, the parties agree that the damaged property at issue is a partial loss and that, before the drywall can be repaired, St. Paul's city code requires that the masonry be repaired sufficiently to bring it in accordance with minimum code.[3]

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[3] The listed purpose for required repairs is to "protect the public health, safety and welfare in all structures and on all premises . . . ." St. Paul, Minn. Code of Ordinances, pt. II, tit. VI, ch. 34, § 34.01.

I.

We begin by analyzing whether State Farm is required to pay for repairs needed to bring the masonry up to code under section 65A.10, subdivision 1. Once again, that provision reads in relevant part:

> Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities . . . . *In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.*

Minn. Stat. § 65A.10, subd. 1 (emphasis added). Because this case concerns a partial loss, our particular focus is on the last sentence of this provision.

When interpreting a statute, we first determine whether the statute is unambiguous; if it is, then we follow its plain meaning. *Vill. Lofts at St. Anthony Falls Ass'n*, 937 N.W.2d at 435. A statute is unclear or ambiguous only when it is susceptible of multiple reasonable interpretations. *Id.*

We conclude that the statutory language "[i]n the case of a partial loss . . . this coverage applies only to the damaged portion of the property" is susceptible of only one reasonable interpretation. First, the phrase "this coverage" refers to the general replacement cost coverage framework set forth in the first sentence of section 65A.10, subdivision 1; namely, that the insurer must cover the cost of bringing "any loss or damaged property" up to minimum code. Second, by providing different rules for a "partial loss" and a total loss, the statute makes it clear that if only part of the property is damaged by an insured event, State Farm's coverage responsibility does not extend to the entire property

covered by the policy. Third, in the event of a partial loss, the insurer's obligation is limited to bringing up to code that "portion of the property" that was damaged. "Portion" means "[a] section or quantity within a larger thing; a part of a whole" and "[a] part separated from a whole." *Portion*, *The American Heritage Dictionary of the English Language* (New College ed. 1982). Fourth, the word "only"—which means "[e]xclusively; solely,"—makes clear that the obligation to bring the property up to code does not extend beyond that portion of the property that was damaged in the covered event. *See Only*, *The American Heritage Dictionary of the English Language* (New College ed. 1982). Finally, nothing in the language of the statute suggests that it expands the scope of insurance to cover losses or damage to property that is not expressly covered by the policy.

Accordingly, section 65A.10, subdivision 1, means that, when a partial loss like St. Matthews suffered here occurs, State Farm's obligation to bring the damaged portion of the property up to minimum code is limited to repairs necessary to bring up to code that part of the property that was damaged in the insured event. Here, it is undisputed that only the drywall was damaged in the storm. It is also undisputed that the masonry was damaged earlier as a result of a different, unknown cause. Consequently, State Farm is not required to pay for repairs to bring the masonry up to code under section 65A.10, subdivision 1.

St. Matthews urges us to reach a different conclusion. It makes two interrelated arguments.

First, St. Matthews offers an alternative, broader interpretation of section 65A.10, subdivision 1. It points out that section 65A.10, subdivision 1, covers "loss" in addition to "damaged property." Because one meaning of loss according to widely used dictionaries

is diminution in value, St. Matthews asserts that section 65A.10, subdivision 1, requires an insurer to not only repair the damaged property but also to cover the cost of repairing any not-up-to-code item (even items not damaged as a result of an insured event) when failing to make that repair would prevent restoring an item actually affected by an insured event to its full value.[4] It claims that the statute requires State Farm to pay for repairs to the masonry because fixing the masonry is a "precondition to repairing the rest of the wall" in as much as St. Matthews cannot replace the drywall (return the drywall to its full value) without first fixing the masonry. In other words, St. Matthews contends that insurance coverage is triggered by code enforcement alone, not whether the damage that caused the code violation was the result of an insured event.

Essentially, the implication of this argument is that section 65A.10, subdivision 1, requires an insurer to bring up to code every item that is discovered to be out of compliance during the process of repairing or replacing damaged property and which a municipality requires be brought up to code before it will issue a permit for repairing or replacing the item that was damaged as a result of the insured event. We find nothing in the limited and narrow language of the statutory text that supports the conclusion that the Legislature

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[4] We are not convinced that "loss," as used in section 65A.10, subdivision 1, means diminution in value. It also means "the thing lost." *Loss*, *Black's Law Dictionary* (6th ed. 1990) (further noting that loss "has been held synonymous with, or equivalent to, 'damage', 'damages' . . . ."); *Loss*, *Black's Law Dictionary* (5th ed. 1983) (same). In this case, the relevant thing lost was the drywall and not the masonry. Because we conclude that St. Matthews's argument based on the diminution in value meaning of loss fails, we need not resolve the definitive meaning of loss in the statute.

intended such a broad expansion of insurer liability to losses or damage not the result of the insured event when only a partial loss occurs.

St. Matthews suggests that its position is not so expansive. It argues that section 65A.10, subdivision 1, requires coverage only when there is a "direct connection" between the repairs required by the code and any diminution in value caused by the insured event. According to St. Matthews, a direct connection exists when, but for the repair of an additional item not damaged by an insured event, the item damaged in the insured event will not recover its value. However, the text of section 65A.10, subdivision 1, does not articulate a direct connection test as proposed by St. Matthews.

Moreover, contrary to St. Matthews's assertion, we are hard pressed to understand how this direct connection analysis provides a meaningful limit on the types of code violation repairs that an insurer would be required to cover. Take as an example a hypothetical raised at oral argument. St. Matthews was asked what State Farm's obligation would be if a crack in the church floor were discovered after the drywall was pulled down—a preexisting crack that was unrelated to the storm, but which violated city code—and the City declined to issue a permit to do any repairs unless the floor crack were repaired. St. Matthews asserted that, under section 65A.10, subdivision 1, State Farm would *not* be responsible for repairing the cracked floor under the direct connection test.

But aside from the argument (which we address below) that the drywall and the masonry are parts of a single thing called a "wall," it is not clear why the direct connection principle as articulated by St. Matthews would require State Farm to cover the cost of bringing the masonry up to code but not the floor. The reason that the item damaged in the

insured event (the drywall) is less valuable is because drywall is more valuable once it is hung. And in each case, the only connection between the additional item not damaged by an insured event (the cracked masonry or the cracked floor) and the diminution in the value of the item damaged in the insured event (the drywall) is the fact that the municipality would not allow repair to the item damaged in the insured event (the drywall) until the additional item not damaged by the insured event (the cracked masonry or the cracked floor) is also repaired. The direct connection rule offered by St. Matthews cannot distinguish those instances. We can perceive no limits on the obligation of an insurer to fix every code violation the City required to be fixed before issuing a permit if we were to accept St. Matthews's direct connection test for insurance coverage under section 65A.10, subdivision 1.

St. Matthews also argues that the drywall and the masonry are parts of a single damaged item: the wall. Therefore, according to St. Matthews, the "damaged portion of the property" is the wall, which includes both the drywall and the masonry. We disagree.

First, there is no dispute that State Farm fully covered the cost of replacing the drywall consistent with any municipal codes related to the drywall. Section 65A.10, subdivision 1, would certainly require an insurer to replace damaged half-inch drywall with ⅝-inch drywall if the current code required the use of ⅝-inch drywall. But that is not an issue here.

Second, all parties agree that the damage to the masonry was not caused or impacted by the storm. Accordingly, the damage to the masonry was not independently covered by State Farm's policy. And there is no claim before us by St. Matthews that, absent the City's

requirement mandating that the masonry be brought up to code before repairing the drywall, State Farm had an independent responsibility to pay for repairs to the masonry.[5]

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[5] St. Matthews claims that language in State Farm's policy compels the conclusion that the "wall"—which includes the drywall and the masonry—is the damaged portion of the property. It first quotes the Minnesota Endorsement, which states that "[i]n case of a partial loss to the covered property, we will pay only for the damaged portion of *the property*." (Emphasis added.) It claims that "the property" in that sentence means "Covered Property," which is defined in the policy as "Buildings, meaning the buildings and structures at the described premises . . . ." St. Matthews then asserts that there is no language suggesting that a portion of one element of the building is not covered. Thus, St. Matthews argues, the property includes every element of the building, including the masonry. This is an odd argument. We agree that the masonry is Covered Property under the policy. But if there is no loss or damage to the masonry resulting from an insured event (and all the parties agree that is the case here), there is no direct coverage under the policy's plain terms. And, as noted above, the sentence that St. Matthew's relies upon specifically refers to "partial loss" and "portion." The conclusion that "the wall" must be treated as a single item or element simply does not follow from St. Matthews's premises.

St. Matthews also points to a provision in the policy that defines State Farm's obligation when there is direct damage from an insured event to a party wall—a wall shared with a separate property. The provision states:

> In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall . . . ."

St. Matthews asks us to apply an-exception-proves-the-rule reasoning: Because State Farm thought it necessary to clarify that party walls may be treated as something other than a single unified element of property, it means that, under its policy, State Farm generally intended for walls to be treated as a single unified element of property. We decline St. Matthews's invitation. The party wall provision concerns allocation of liability between two potentially responsible insurers. It serves an entirely different purpose from the Minnesota Endorsement, which defines the scope of coverage under the policy. Nothing about the party wall provision convinces us that damage to the drywall requires replacing the masonry in every instance. Indeed, the logical implication of St. Matthews's party wall argument is that State Farm would be required to replace the masonry even if the masonry were undamaged and code compliant merely because the drywall was damaged in the storm. That is not a reasonable interpretation of the policy.

Third, aside from the permitting requirement that precluded St. Matthews from replacing the drywall without first fixing the masonry damage, there is nothing in the record to suggest that St. Matthews could not have installed the drywall without any additional repairs to the masonry. Indeed, St. Matthews's contractors sought a permit to do just that. In other words, viewing the project from the perspective of a drywall installer, there was nothing in the condition of the masonry that prevented the installation of new drywall.[6]

We acknowledge that resolving whether section 65A.10, subdivision 1, requires an insurer to cover the cost of fixing a particular code violation as a condition to issuing a permit to make a covered repair is a fact-intensive inquiry. After considering the facts specific to this case, we conclude that the damaged portion of the property that must be replaced, rebuilt, or repaired in compliance with the minimum code requirements is the drywall.

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[6] The specific facts here are important to our resolution of this case. Our opinion is limited to this particular context in which the drywall itself could be completely replaced in compliance with the municipal code without making any additional changes to other parts of the property. Other factual circumstances may lead to different results. For instance, one could imagine a situation where a storm caused damage to a section of aluminum wiring in a house. The insurer would be required to replace that section of aluminum wiring and, under section 65A.10, subdivision 1, if the building code required the use of copper wiring, the insurer would have to install copper wiring for the damaged section of the wiring. A different question would arise under the rule we announce today if the building code also prohibited the installation of new wiring that resulted in a mixture of copper and aluminum wiring; that prohibition might raise a different question of whether section 65A.10, subdivision 1, would require replacement of nondamaged aluminum wiring to comply with the wiring provisions of the code. We express no opinion today as to how we would resolve these alternative scenarios.

II.

We now turn to the question of whether the policy language provides coverage beyond the minimum required under section 65A.10, subdivision 1, such that the policy itself requires State Farm to pay for repairs needed to bring the masonry up to code. We conclude that it does not.

Once again, the Minnesota Endorsement in the policy states:

> If this coverage is provided on a replacement cost basis we will pay the increased cost of replacing, rebuilding, repairing or demolishing any building in accordance with the minimum code in force at the time of loss as required by state or local authorities, when the loss or damage is caused by a Covered Cause Of Loss. In case of a partial loss to the covered property, we will pay only for the damaged portion of the property.

We agree with both the district court and the court of appeals that the language of the policy closely mirrors Minn. Stat. § 65A.10, subd. 1, which, in the case of a partial loss, obligates an insurer to bring up to minimum code only that part of the property that was damaged in the insured event. *See St. Matthews*, 2021 WL 4428919, at *5. Indeed, the Minnesota Endorsement makes clear that State Farm must bring up to code the damaged portion of the property only to the extent that "the loss or damage *is caused by a Covered Cause of Loss*." (Emphasis added.) And as we have just held, section 65A.10, subdivision 1, similarly means that State Farm's obligation to bring the damaged portion of the property up to minimum code is limited to that part of the property that was damaged in the insured

event.[7] The policy language does not provide broader coverage than the statute; it provides the same level of coverage—the minimum coverage—as required under the statute.

It is certainly true that section 65A.10, subdivision 1, merely sets the statutory minimum that an insurer must provide in replacement cost coverage; State Farm could have offered broader coverage. *Cf. Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 144–45 (Minn. 2017) (noting that the Minnesota standard fire insurance policy was the minimum coverage an insurer could offer). In fact, the statute specifically contemplates additional coverage: "In the case of a partial loss, *unless more extensive coverage is otherwise specified in the policy*, this coverage applies only to the damaged portion of the property." Minn. Stat. § 65A.10, subd. 1 (emphasis added). Moreover, there are insurance products that provide more extensive coverage. *See, e.g.*, *DEB Assocs. v. Greater N.Y. Mut. Ins. Co.*, 970 A.2d 1074, 1076 (N.J. Super. Ct. App. Div. 2009) (citing policy language that provides coverage for "undamaged" property).[8] But here State Farm did not offer, and St. Matthews did not pay premiums for, such coverage.

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[7] St. Matthews also asserts that the Minnesota Endorsement is *narrower* than section 65A.10, subdivision 1, because it adds that the loss or damage must be covered by a "Covered Cause Of Loss." Consequently, St. Matthews argues, the policy provision must be reformed to meet the minimum requirement set by the statute. As we explained above, St. Matthews's argument on this point is based on a misreading of the statute. In any event, we agree with the court of appeals that St. Matthews has forfeited the argument that State Farm's policy must be reformed to meet the statutory minimum because St. Matthews did not raise the claim before the district court. *St. Matthews*, 2021 WL 4428919, at *5; *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts generally do not consider issues that were not presented and considered by the district court).

[8] The dissent expresses concern that some insureds will be left in a position of having to bear the cost of repairing damage to a portion of their property caused by an uninsured event in order to bring that portion of the property up to code. Although true, it is also true

In short, we conclude that the State Farm policy does not provide broader coverage than section 65A.10, subdivision 1.

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In sum, under a plain reading of section 65A.10, subdivision 1, in the case of a partial loss, replacement cost coverage applies "only to the damaged portion of the property" covered by a cause of loss. The drywall was damaged because of the storm, but the masonry was not. Therefore, only the damaged drywall is subject to the statute's code-compliance provision. Moreover, State Farm's Minnesota Endorsement policy language does not provide broader coverage than that provided in section 65A.10, subdivision 1. Accordingly, although State Farm is responsible for providing replacement cost coverage to the damaged drywall, we agree with the district court and the court of appeals that State Farm is not required to cover repair costs to the masonry under either Minn. Stat. § 65A.10, subd. 1, or the State Farm policy.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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that an insured may contract, and pay additional premiums, for insurance that covers that risk—insurance that would extend beyond the minimum requirements of section 65A.10, subdivision 1.

D I S S E N T

HUDSON, Justice (dissenting).

This case involves an insurance coverage dispute over repair costs for the wall of a church building, which was damaged in a hail and windstorm. The insured, St. Matthews Church of God and Christ, asked its insurer, State Farm Fire and Casualty Company, to cover the cost of repairs that the City of St. Paul determined were needed for the wall to conform to "current codes." The parties agree that Minnesota law requires State Farm to cover the cost of repairing "the damaged portion of the property" in accordance with local code requirements. Minn. Stat. § 65A.10 (2020). But the parties disagree on what constitutes "the damaged portion of the property" here. The majority agrees with State Farm that "the damaged portion of the property" is limited to the drywall portion of the wall that was damaged in the storm. St. Matthews counters that "the damaged portion of the property" encompasses more broadly the wall of the church building and includes the defective masonry part of the wall. According to St. Matthews, the drywall cannot and should not be separated from the wall as a whole. In short, St. Matthews argues that a wall is a wall. I agree, and for that reason, I respectfully dissent.

A.

The resolution of this case turns on the application of a statutory insurance provision. The statute at issue, section 65A.10, applies generally to replacement cost insurance for buildings and provides, in relevant part:

> [T]he insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities . . . . In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Minn. Stat. § 65A.10, subd. 1. The dispute here focuses on the meaning of "the damaged portion of the property" as applied to the storm damage to the church building.[1]

The objective of statutory interpretation is to determine the intent of the Legislature. *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 169 (Minn. 2021). "Our first step is to examine the statutory language to determine whether the statute is ambiguous, that is, whether the statute is susceptible to more than one reasonable interpretation." *Sershen v. Metro. Council*, 974 N.W.2d 1, 8 (Minn. 2022). The statute is ambiguous "if more than one meaning is reasonable in context, and as applied in the particular case . . . ." *AIM Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 337 (Minn. 2020).

The majority holds that the obligation of an insurer "to bring the damaged portion of the property up to minimum code" under section 65A.10 is "limited to repairs necessary to bring up to code that part of the property that was damaged in the insured event." I agree that this interpretation is the clear meaning of the statutory language. But applying the statutory language to the property here does not yield a clear result.

The majority agrees with State Farm that the *drywall* is the damaged part of the wall—"the damaged portion of the property"—under section 65A.10. Because the drywall was the only part of the wall actually damaged in the storm, the majority holds that State

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[1] I agree with the majority that the State Farm policy does not provide broader coverage than section 65A.10. My analysis therefore focuses on the language of the statute.

Farm is not required to pay for repairs to bring the masonry "up to code under section 65A.10, subdivision 1." I agree that this is a reasonable interpretation of the statute as applied to the church building. I disagree with the majority, however, that this is the only reasonable interpretation.

St. Matthews contends that the *wall* is the damaged part of the church building—"the damaged portion of the property"—under section 65A.10. St. Matthews argues that the masonry and the drywall are "components of a single item"—a wall—that are "affixed together." The damaged drywall is attached to wooden framing that is attached to the defective masonry. According to St. Matthews, State Farm is required to pay for repairs to bring the wall up to code under section 65A.10 where the City of St. Paul will not "authorize repair of one component without repair of the other."

I conclude that St. Matthews's application of the statutory language to the church building also is reasonable. The State Farm policy describes the property insured as including "the buildings and structures" at the church property. The drywall could be treated as "the damaged portion" of the wall, but the wall could also be treated as "the damaged portion" of the church building. Minn. Stat. § 65A.10, subd. 1. It is not unreasonable to believe that the Legislature intended in a case like this for "the damaged portion of the property" to mean the damaged wall of the church building and not an individual, discrete damaged component of the wall, where the church building is the covered property.

We have previously construed similar coverage provisions broadly. For example, in a dispute over hail-damaged siding and color-mismatch issues, we rejected the insurer's

argument that it had no obligation to replace "individual siding panels" that had not sustained "direct physical loss or damage from the hail storm." *Cedar Bluff Townhome Condo. Ass'n v. Am. Fam. Mut. Ins. Co.*, 857 N.W.2d 290, 295 (Minn. 2014). Instead, we concluded that the townhome "*buildings*" were "the covered property" that sustained the loss. *Id.* (emphasis added).[2] State Farm's narrow construction of section 65A.10 would leave St. Matthews far from whole following the storm that damaged the church building—no coverage for the defective, out-of-compliance masonry to which the storm-damaged drywall is attached—notwithstanding St. Matthews's purchase of replacement cost insurance.

In sum, the court can reasonably construe the code-compliance provision of section 65A.10 narrowly to cover only the damaged drywall part of the church building's wall or broadly to cover the damaged wall of the church building. *Cf. Windridge of Naperville Condo. Ass'n v. Phila. Indem. Ins. Co.*, 932 F.3d 1035, 1040 (7th Cir. 2019) (concluding that "the unit of covered property" under a policy that covered direct physical loss to property from a hail and windstorm—"each panel of siding vs. each side vs. the buildings

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[2] Our decision in *Cedar Bluff* is not directly on point because the insurer there was obligated to "[p]ay the cost of repairing or replacing the lost or damaged property," 857 N.W.2d at 291, not the cost of repairing or replacing "the damaged portion of the property," Minn. Stat. § 65A.10, subd. 1. Nonetheless, *Cedar Bluff* is instructive because the same principle applies here. Just as the term "damaged property" can be interpreted broadly or narrowly, the term "damaged portion of the property" in section 65A.10 can be interpreted broadly or narrowly. In this case, the damaged portion of the building—the covered property—could be the entire wall of the building or just the drywall part of the wall of the building. On the other hand, it would be unreasonable to conclude that the damaged *portion* of the building is the entire building. *Cf. Cedar Bluff*, 857 N.W.2d at 295.

as a whole"—was "ambiguous as applied" to the facts of the case). Because the words of the statute, as applied to the facts of this case, "are susceptible to more than one reasonable interpretation," I conclude that the statute is ambiguous. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72–73 (Minn. 2012).

B.

When the words of a statute "in their application to an existing situation" are not clear and free from all ambiguity, we may consider additional factors to ascertain the intention of the Legislature. Minn. Stat. § 645.16 (2020). Additional factors we may consider include "the occasion and necessity for the law" and "the consequences of a particular interpretation." *Id.* Here, public policy considerations underlying the code-compliance provision and the consequences of different interpretations of section 65A.10 both support the result that State Farm should pay to repair the wall.

First, I look at public policy considerations. The majority's narrow interpretation of the code-compliance provision in section 65A.10 will make it more difficult for property owners to bring their property up to code following a covered loss and leaves the possibility that code violations will not be fixed. Public policy supports incentivizing insurance coverage for repairs that will remedy building code violations. Indeed, the 1987 legislative amendment to the statute specifically required replacement cost insurance to "cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities." Act of June 1, 1987, ch. 337, § 91, 1987 Minn. Laws 2086, 2135 (underlining omitted). The majority recognizes that code upgrades are "costly" but places the financial responsibility for the repairs on the

party least capable of bearing the cost. The condition of the masonry here was deemed "hazardous." The cost of the code upgrades here totaled $77,969. Not all property owners have the resources to remedy costly code violations that create dangerous conditions. Therefore, public policy favors a broad interpretation of the code-compliance provision. *See Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 689 (Minn. 2018) (determining that "public policy favors an interpretation [of an ambiguous statute] that is broadly protective of the rights of insureds").

Second, I consider the consequences of the majority's narrow interpretation of the code-compliance provision in section 65A.10. The drywall and the masonry are both components of a single item—the wall. Nonetheless, the majority concludes that even if there is a direct, physical connection between the components of the wall, accepting the position of St. Matthews would provide no "meaningful limit on the types of code violation repairs that an insurer would be required to cover." Although it is admittedly difficult to draw lines in these kinds of cases, there is an obvious difference between coverage for component parts of a single structural element of a building—a wall—and coverage for different structural elements of a building—a wall and a floor, in the example cited by the majority.

The majority emphasizes that the "specific facts" of this case are important to the resolution of this case, explaining that the drywall "could be completely replaced" without making changes "to other parts of the property." But the City of St. Paul will not allow St. Matthews to replace the drywall without also repairing the masonry. The drywall and the masonry comprise a single structural element of the church building—a wall. Common

sense dictates that a wall is a wall, and the insurer should not be permitted to replace the damaged drywall without also repairing the hazardous masonry to which the drywall is attached. *See White Bear Lake Restoration Ass'n ex rel. State v. Minn. Dep't of Nat. Res.*, 946 N.W.2d 373, 384 (Minn. 2020) (applying a "common-sense" meaning of a statutory term). In contrast, the roof, ceilings, walls, and floors of a building represent different structural elements of a building such that storm damage to a wall would not trigger coverage for an out-of-compliance roof, ceiling, or floor.

I worry that the majority's rule will encourage insurers to adopt an infinitely narrow view of "the damaged portion of the property" under section 65A.10 and seek to divide a single structural element of a building into increasingly smaller parts and subparts and sub-subparts. *See Trout Brook S. Condo. Ass'n v. Harleysville Worcester Ins. Co.*, 995 F. Supp. 2d 1035, 1042 (D. Minn. 2014) (rejecting the insurer's position that coverage for "direct physical loss" to "covered property" was limited to "each individual roof shingle"). State Farm has acknowledged that it covered the cost to repair the roof decking of the church building for St. Matthews where the storm damaged the roof shingles, explaining before the district court that it "viewed the decking as part of the roofing system." *Cf. Gutkowski v. Okla. Farmers Union Mut. Ins. Co.*, 176 P.3d 1232, 1235 (Okla. Civ. App. 2007) (holding for purposes of insurance coverage that "a roof is a unified product comprised of all its component parts and materials, including felt, flashing, sheathing (decking), valleys, nails, caulk, drip edges, and shingles"). Under the majority's analysis, however, it is not clear why State Farm would be required to cover the decking portion of the roof but not the masonry portion of the wall. If the components of the roof

are parts of a unified product, in my view, the components of the wall also should be treated as parts of a unified product.

In sum, the majority draws no lines and places no limits on the imagination of an insurer to justify denying coverage for a code upgrade under section 65A.10, except for an individual, discrete, storm-damaged part of a structural element of a building where that specific storm-damaged part generated the code violation. The majority's rule will lead to unforeseen and unmanageable costs for Minnesota property owners with replacement cost coverage whose property suffers storm damage and other covered losses. For these reasons, I respectfully dissent.

CHUTICH, Justice (dissenting).

I join in the dissent of Justice Hudson.

McKEIG, Justice (dissenting).

I join in the dissent of Justice Hudson.