

# WASHINGTON CASE UPDATE

## Construction Work Exclusion on Multi-Family Housing Upheld

**From the desk of Kyle Riley: The Washington Court of Appeals examines a multi-unit residential housing exclusion to determine whether defective repairs made to three, “two unit” townhomes are covered.**

**Claims Pointer: Definitions provided within insurance policies govern a court’s coverage interpretation. When a term isn’t defined, the court will give the term its plain and ordinary meaning. Creative arguments won’t persuade the court when coverage is clearly defined and a court will never “write in” coverage where none exists.**

case in point...

American States Ins. Co. v. Delean’s Tile and Marble, LLC, 178 Wash.App. 1013 (2013)

When construction defects were discovered at the site of three Seattle townhouse duplexes, the unit owners hired Lawless Construction Corporation, Inc. to make appropriate repairs. Lawless, in turn, subcontracted with Delean’s Tile & Marble, LLC. Delean’s work, however, was defective and when Delean refused to fix their work, Lawless hired another company to perform repairs. At the time of Delean’s defective work, Delean was insured by American States Insurance Company. Per the subcontract agreement with Lawless, Lawless was listed as an additional insured under Delean’s policy.

Lawless tendered a claim to American States for Delean’s defective work, but American States refused coverage pursuant to its Multi-Unit and Tract Housing Residential Exclusion. American States then sought a declaratory judgment regarding coverage. The trial court ruled that the plain language of the exclusion precluded coverage of the claim. Lawless and Delean appealed.

On appeal, the court scrutinized the subject property in light of the exclusionary clause of Delean’s policy. The exclusion stated that coverage did not apply to property damage resulting from “construction operations” involving a “multi-unit residential building.” Under the policy, “construction operations” referred to “pre-construction, construction, post-construction, reconstruction, renovation . . . , maintenance or repair.” “Multi-unit residential building” was defined as “condominiums, townhouses . . . or similar structures that have more than four (4) units built or used for the purpose of residential occupancy, at the same location or complex, regardless of the number of buildings.” The exclusion, however, did not apply to repairs, maintenance, or remodeling performed for the owner of a detached single family dwelling.

In reviewing the records, the court noted that the subject property was designed, permitted, and built as “three duplex townhouses with underground parking.” Other discovery documents referred to the property as a “multi-unit construction” with “three, three-story buildings joined by courtyards” and with each building being a “two-family dwelling.” In total, there were six units between the three townhomes, making the property a “multi-unit residential building” under the policy.

Insurance policies are construed as contracts and are “given a fair, reasonable, and sensible construction . . . .” When interpreting a policy, courts are bound by the definitions provided. Exclusionary clauses, however, are to be strictly construed in favor of the insured.

Lawless and Delean made a number of arguments in support of their position that coverage should apply. First, they asserted that the claim did not “arise out of construction operations” because Delean’s work occurred outside of the residential structure on the shared exterior walkways. The Court of Appeals, found this argument unpersuasive, as the plain meaning of the exclusion did not limit repairs to the residential structure.

Next, Lawless and Delean argued that Delean’s work did not involve a multi-unit dwelling as the work only touched four of the units. Again, the court found that their argument lacked merit. The policy’s plain language focused on whether the construction operations involved a “multi-unit residential building,” not on the location on a complex where the work occurred. The subject property clearly fell within the policy’s “multi-unit residential building” definition in the view of the court.

Finally, Lawless and Delean contended that the exclusion was inapplicable because of the exception for detached single family dwellings. Again, this argument was unpersuasive. Although the units were single family dwellings, they were



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not “detached.” The two units in each townhome had “continuous siding, a continuous guttering system, a common roof, and appear[ed] to be part of a single building.” The inner walls that separated the units did not classify them as “detached.” “A practical interpretation of the term ‘detached’ suggests that the units be noticeably separate from one another . . . .”

The Court of Appeals, finding none of Lawless and Delean’s arguments to be of merit, affirmed the lower court’s ruling and held that Lawless and Delean’s claim was not covered under the American State’s policy.



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