CIRMS Masters Program: Community Association Risk Management & Insurance Case Law Review Part 1

Thursday, January 12
3-4:10 p.m.

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2023 Community Association Law Seminar

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COMMUNITY ASSOCIATION Law Seminar

CIRMS Case Law Update—Part 1

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COMMUNITY ASSOCIATION Law Seminar

Grooms Property Management, Inc. *et al.* v. Muirfield Condominium Association *et al., 2022 NCCOA-488 (July 19, 2022)* *("The Inside-Out Case")*

- $1.4 million damage from fire/$933,421 paid out
- Does Association's duty to insure condominium "building" with no more than 80% co-insurance include unit interior?
- Court reviewed state condominium act and declaration
- Association must insure building interiors and units
- Motion for partial summary judgment affirmed

2

Law Seminar

Mortera v State Farm Fire & Cas Co, 2022 WL 1652834 (5th Cir., May 24, 2022) ("The Rainforest Case")

- Top owner used a water leak to create a tropical rainforest in bottom owner's unit in the Kona Villa Owners Association
- Owner sued the Association claiming he was covered under the Association's policy and suffered $60k in damages
- Owner was not a named insured under the policy
- Owner was not a third-party beneficiary under the policy
- Motion for summary judgment affirmed

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Law Seminar

Wildwood Townhome Homeowners Association v. *Travelers Property Casualty Company of America* *2022 WL 889179 (D. CO. March 25, 2022)* *("To Insure or Not to Insure Case")*

- Coverage for windows, window screens, entry doors, sliding doors, garage doors and air conditioners denied by insurer
- Analysis based on requirements of declaration and Colorado Common Interest Ownership Act
- Owner-insured components under declaration
- Grant insurer's motion for summary judgment to dismiss breach of contract claim
- Insurance policy dependent on obligations in declaration

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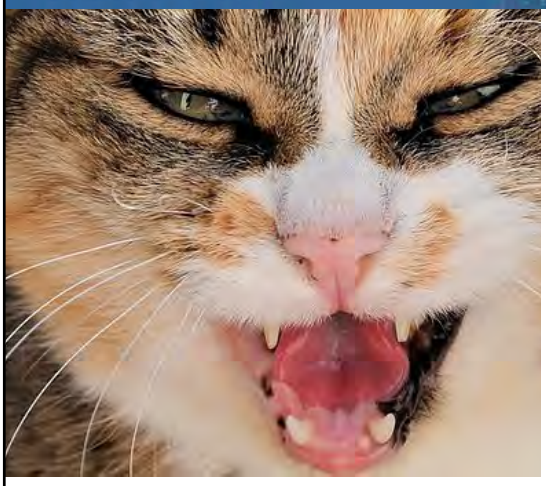
Community Association Law Seminar



Stoneburner v. RSUI Indemnity Company, 2022 WL 1091337 (D. Utah, April 12, 2022) ("The Kitty Case")

- The directors had their claws out in this HOA and a lawsuit was filed by some members of the management committee against fellow members, Kitty Stoneburner and Cory Abdalla
- The defendants argued that they were entitled to a defense as not all plaintiffs were named insureds
- Court said a "claim" was a single proceeding and there were no counts of the complaint that only involved non-insured v. insured claims
- Motion for summary judgment granted, an appeal is pending

5

Community Association Law Seminar

Frankenmuth Mutual Insurance Co. v. Gates Builders, Inc. *2022 WL 1322261 (USDC D. AL. May 3, 2022) ("The Balcony Debacle Case")*

- Gates obtains general liability coverage and endorsement extending coverage to include property damage caused by Gates' work (policy period April 2020 – April 2021)—Occurrence based policy
- Gates sued by Resort Conference Center (July 2020) for faulty balcony construction performed in 2014 - 2015; damages were discovered in 2020.
- Frankenmuth providing defense under reservation of rights and seeks summary judgment it is not obligated to provide defense
- Not enough facts to show all damages caused by 2014 – 2015 construction work, and issue is not ripe for summary judgment determination on some claims
- Motion for summary judgment denied in part and granted in part

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Law Seminar

Stonegate Insurance v. Smith,
2022 IL App (1st) 210931 (June 22, 2022)
("The Nutty Carpenter")

- Carpenter did a "favor" for a friend and caused significant damage to an adjoining condominium unit while sweating pipes
- The Association was in good hands with Allstate, who paid $66k and sought subrogation from Stonegate, the carpenter's homeowner's insurance policy
- The Court ruled Allstate was entitled to subrogation because:
  1) The professional services & business pursuits exclusions did not apply
  2) Stonegate was timely notified of the claim & the carpenter cooperated
  3) The carpenter's statement that it was "nuts" to assume that his homeowner's policy would provide coverage did not override the plain language of the policy

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Law Seminar

Klass v. Liberty Mutual
2022 WL 126637 (CT. S. Ct. January 11, 2022)
("Roof v. Shingle Case")

- Liberty Mutual refused to provide appraisal when insurer's and insured's estimates did not match—replacement of damaged shingles v. entire roof.
- Action for order to compel Liberty Mutual to proceed with appraisal.
- Is a dispute as to the extent of an insurer's replacement obligation under the matching statute a question properly relegated to the appraisal arbitral process or a question of coverage to be resolved by the court before appraisal my proceed?
- Matching statute provides: "When a **covered loss** for real property requires the replacement of an item . . And the replacement . . . Do not match **adjacent** items in quality, color or size, the insurer shall replace all such items with materials of like kind and quality so as to conform to a **reasonably uniform appearance**".
- Affirmed trial court's ruling to compel appraisal

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Law Seminar

OPP You Know Me

Acuity v M/I Homes of Chicago, LLC, 2022 IL App (1st) 220023 (September 9, 2022) ("The Other People's Property Case")

- M/I Homes, a successor developer, was a named insured on subcontractor's policy. The Association sued for property damage caused by water issues associated with construction defects.
- Trial court ruled that there was no "occurrence" and Acuity had no duty to defend.
- The appellate court held that there was an "occurrence" under the policy as it related to M/I Homes, as a successor developer, as the complaint alleges that defects damaged something other than project itself.
- Court noted the trend in cases throughout the country is to view faulty workmanship as an "occurrence" and damage from that faulty construction to the project itself as "other property damage."
- Trial Court reversed and said complaint alleged damaged to "other property."

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Law Seminar

Acetta v. Brooks Towers Residences Condominium Association, Inc.
506 P. 3d 857, as modified on denial of rehearing (Jan. 13, 2022), as modified (Feb. 10, 2022)
("The Attorneys are Expensive Case")

- Right to collect attorney fees under Colorado statute when community created prior to statute's enaction.
- Analysis based on requirements of declaration and Colorado Common Interest Ownership Act ("CCIOA")
- CCIOA provision allowing prevailing party to collect attorney fees and costs, applicable to "pre-CCIOA" community.
- Insurance deductible does not limit award of attorney fees—Court refused to "penalize people who have the foresight to buy insurance by reducing their damages".

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COMMUNITY ASSOCIATION Law Seminar

Cresthaven-Ashley Master Association, Inc. v. Empire Indemnity Insurance Co., 2022 WL 873998 (SD. Fla., March 24, 2022) ("The Empire Strikes Back Case")

- Empire paid the Association the cash value amount awarded based on appraisal. Empire did not pay ordinance and loss amounts under the policy from the appraisal
- In order for Association to assert claim, the Court held the following 3 preconditions must be satisfied under the policy:
  1) Specific ordinance that was being enforced must be identified.
  2) The enforcement of the ordinance must create a loss in value or increased cost.
  3) The Association must pay or incur an increased cost, as opposed to just having an appraisal estimate, as a result of the enforcement of an ordinance.
- Court dismissed Association's claim without prejudice as unripe

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	CASE NAME	SUMMARY
1	**Grooms Property Management, Inc. *et al.* v. Muirfield Condominium Association *et al., 2022 NCCOA-488 (July 19, 2022)*** **Type of Association:** Condominium **Central Issues:** Whether Association was obligated to insure both exterior and interior of condominium buildings and whether the Association obtained sufficient insurance to cover such obligations. **Take Aways:** 1. An association's insurance obligations should be interpreted in accordance with the community's declaration, and it is imperative to review defined terms to determine the components to be covered by association insurance. 2. An owner's ability to obtain insurance, does not relieve an association from its obligation to maintain the requisite insurance.	Muirfield Condominium Association is condominium community in North Carolina containing approximately 50 units. The community experienced a fire on December 19, 2018, which damaged one of the buildings in the Association. Repair estimates ranged between $1.36 and $1.46 million. Association received insurance proceeds on October 29, 2019, in the total amount of $933,421 and an owner (Ms. Hays) initiated legal action against the Association and its directors claiming the Association, through its board, failed to maintain the requisite insurance coverage on the buildings. Ms. Hayes further alleged Association violated Chapter 47A of the statute and requirements of the declaration. Ms. Hayes requested declaratory relief that the Association promptly repair and restore the damage to her condominium unit. Trial court agreed with Ms. Hayes and concluded the Association failed to purchase insurance that was sufficient to cover at least 80% of the replacement value (i.e., at least $1,120,000) of the damaged building and therefore violated its declaration and Chapter 47A of the General Statutes. Crux of dispute was whether the Association was required to insure both exterior and interior of the building. Association argued it was only obligated to insure the building exterior and therefore the coverage was adequate. Association also argued the owners were responsible for fixing their own unit interiors outside of insurance coverage. The appellate court disagreed. Declaration specifically required Association to insure the "Condominium Units and Common Property" and only excepted personal property of the owners. Declaration further required insurance policies to be written on a co-insurance basis of not less than 80%. Court further noted that declaration defines "units" to include all interior drywall, paneling, and molding and any surface finish or wallpaper, and finished flooring. Based on the provisions of the Declaration, the court concluded the Association's insurance obligation with respect to the building and units was not ambiguous and the Association

		was required to insure the both the exterior and interior of the buildings, including the units themselves. Association additionally argued that declaration provides guidance concerning who is responsible for repair in the event of casualty and therefore owners have such obligation. Court disagreed. Section 21(B) of the declaration only requires owners to repair when unit-only damage. However, in the event of "total destruction," the responsibility shifts to the Association. An owner's ability to obtain insurance coverage for the interior does not negate the Association's coverage obligations.

	CASE NAME	SUMMARY
2	Mortera v. State Farm Fire & Cas Co, 2022 WL 1652834 (5th Cir., May 24, 2022) **Type of Association:** Condominium **Central Issue:** Whether an owner was an insured or a third-party beneficiary under the condominium association's insurance policy for damage caused by another unit owner? **Other Related Comments:** For thoughts on allocating insurance responsibilities between a community association and the owner see this CAI Publication: Risk Management and Insurance for Community Associations (caionline.org) **Take Away**: Owners need to properly insure their units if the condominium association only has a bare walls policy, as they are not named insureds or third-party beneficiaries of the association for these types of insurance policies.	**Summary:** Plaintiff, Gilberto Alarcon Mortera ("Mortera"), was the owner of a condominium unit in the Kona Villa condominium. The Kona Villa Owners Association ("Kona Villa") had a property insurance policy through State Farm Fire and Casualty Company ("State Farm"). In 2018, Mortera's unit was damaged after a water leak occurred in the unit above his. The leak damaged carpeting, drywall, molding, trim, light fixtures, blinds, electrical outlets, furniture, and accessories, among other things. Mortera claimed approximately $59,720.40 in losses. Mortera submitted a claim to State Farm. State Farm determined that the insurance policy only provided coverage to the Association, and that individual unit owners were responsible for damage to their unit. Mortera sued State Farm for breach of contract, and subsequently filed a motion for summary judgment. Mortera argued that he was covered under the Association's insurance policy, even though the Association was the only named insured under the insurance policy, as the policy also provided coverage for "any other person…. qualifying as a Named Insured." The policy provided coverage for fixtures, improvements, alterations that are part of a building, and appliances. However, the court held that since Mortera did not satisfy the definition of a named insured, the fact that the policy may have contemplated coverage for these items was irrelevant and did not make him a contracting party under the policy. Mortera also argued that he was a third-party beneficiary of the insurance policy. The court rejected this argument as the policy did not explicitly identify him as a beneficiary of the contract, so he was only an incidental beneficiary as opposed to a direct intended third-party beneficiary. The court also determined that the policy specifically excluded coverage for personal property within a unit, which further highlighted Mortera's status as an incidental beneficiary, as opposed to a direct third-party beneficiary. The trial court granted summary judgment in favor of State Farm and the 5th Circuit affirmed.

	CASE NAME	SUMMARY
3	**Wildwood Townhome Homeowners Association v. *Travelers Property Casualty Company of America*** ***2022 WL 889179 (D. CO. March 25, 2022)*** **Type of Community:** Planned Development/Townhome **Central Issues:** Whether Association had financial interest in building components it did not maintain, and whether terms of declaration can carve out exceptions to coverage items set forth in property policy. **Take Aways:** 1. An association does not have a financial interest in property it does not maintain even if it has the authority to take on such maintenance. 2. When an insurance policy is specifically based on the terms of the declaration, the declaration can carve out exceptions to coverage.	Association was a townhome community containing two-story townhomes separated by vertical boundaries (i.e., party walls). Travelers issued property policy for Association. Property policy specifically indicated Travelers will insure the "building or structure described in the Declaration." Policy further provided it would not pay more than the insured's financial interest in the covered property. On July 6, 2019, the community experienced a wind and hailstorm that damaged various portions of the buildings, including windows, window screens, doors, garage doors, and air conditioning condensers. Travelers, after applying the 5% wind/hail deductible, paid Association $385,954.21, which did not include payment for destruction to the above-listed components. Association initiated legal action against Travelers claiming it did not pay the entire claim due to the exclusion of the above building components. Association claimed breach of insurance contract among other things. Travelers argued the policy only required it to only insure pay on policyholder's "insurable and financial interest as set forth in the Declaration." Association, in turn, argued it had an insurable interest in the various components and therefore, Travelers did not pay the full value of the Association's claim. Court concluded Association does not have insurable interest in windows, window screens, doors, garage doors, and air conditioning condensers, and therefore, Travelers did not breach the insurance agreement. Court reviewed the declaration and the Colorado Common Interest Ownership Act, and concluded the declaration requires owners, not the Association, to maintain and insure the disputed components. Based on these provisions, the court concluded the Association "would not incur a loss if the disputed property were harmed and thus has no insurable interest in the disputed property."

		Another argument made by Association is that the declaration specifically authorizes the Association to assume the obligation for maintenance of additional property, which could include the disputed components. But the court concluded that having discretion with respect to maintenance, does not create an insurable interest in the disputed property. Furthermore, the Association had not demonstrated that it actually took on such additional maintenance responsibility and "unexercised authority is irrelevant to the question of whether the Association has an insured interest in the disputed property." Association also argued the policy itself indicates it covers "all fixtures outside individual units subject to exclusions." However, the court noted the policy also states that coverage is limited to property in which the Association has a financial interest. Reading all pertinent provisions of the insurance policy in conjunction, court concluded the Association does not have a financial interest in the disputed components and therefore coverage was property denied.

	CASE NAME	SUMMARY
4	Stoneburner v. RSUI Indem. Co., 2022 WL 1091337 (D. Utah, April 12, 2022) **Type of Association:** Homeowners Association **Central Issue:** Whether the Association's D&O insurance covered insured v. insured claims when not all parties were insureds but there were insureds as both plaintiffs and defendants? **Take Away**: A match across the "V" does not create an insurance controversy. All D&O policies are not created equal. Associations need to determine whether their D&O policy covers insured versus insured claims.	**Summary:** Five plaintiffs, some of whom were past or present officers, directors, and committee members, filed an underlying lawsuit against Kay "Kitty" Stoneburner and Cory Abdalla, who were members of the HOA's management committee. The lawsuit also named the HOA as a plaintiff. RSUI Indemnity Company ("RSUI"), the D&O carrier for the HOA, denied Kitty and Cory's claim to defend the lawsuit based on an insured versus insured exception in the policy. Kitty and Cory filed an action for declaratory relief against RSUI requested a ruling that RSUI had a duty to defend. Kitty and Cory argued that RSUI was required to provide a defense based on the definition of a "claim" in the D&O policy, notwithstanding the insured versus insured exclusion. Kitty and Cory argued that at least some of the counts in the underlying lawsuit were brought in part by non-insured parties. They argued that portions of the individual counts in the complaint were separate "claims" under the insurance policy that were not subject to the insured versus insured exception. RSUI argued that the policy defined a claim as a "written demand for monetary or non-monetary relief," including a "civil proceeding." The Court ruled that all claims in the complaint constituted a single "civil proceeding" and that the entire "civil proceeding" constituted a single claim, which could not be parsed. Accordingly, since part of civil proceeding involved insured versus insured claims, the coverage exclusion applied. The court also noted that the complaint, along with the four amended complaints, did not contain a single cause of action that was solely brought by a non-insured against Kitty and Cory. The Court acknowledged a 7th Circuit Case, *Miller v St Paul Mercury Ins Co*, 683 F3d 871 (CA 7, 2012), order clarified (Aug. 3, 2012), judgment entered No. 10-3839, 2012 WL 12930871 (CA 7, June 29, 2012), that reached a different result, based on an allocation clause in an insurance policy. The Utah Federal Court declined to follow Miller though, as it was concerned with situations in which a large number of plaintiffs were not insured, and only a single plaintiff was insured. In this case, the Court indicated that there was a significant mix of insured and non-insured plaintiffs. Finally, the Court also indicated that under Utah law, the

		public policy rational of encouraging inefficient multiplication of parallel lawsuits for coverage purposes did not outweigh the public policy of interpreting contracts according to their plain language. The trial court granted summary judgment in favor of RSUI. The plaintiffs have filed an appeal with the 10th Circuit, which is currently pending.

	CASE NAME	SUMMARY
5	**Frankenmuth Mutual Insurance Co. v. Gates Builders, Inc.** ***2022 WL 1322261 (USDC D. AL. May 3, 2022)*** **Central Issue:** Whether enough information was provided to determine that all alleged damages to association were caused by a single event and thereby allow Frankenmuth to deny coverage for defense of its insured. **Take Aways:** 1. Analysis to determine whether property damage must be covered is if it resulted from: 1) an occurrence; 2) during the policy period; and 3) was not known to the insured prior to the policy period. 2. No assumptions should be made as to whether a cause of damage was one uninterrupted cause or whether such cause was interrupted or replaced by another cause regardless of allegations.	Gates Builders, Inc. obtained commercial general liability coverage from Frankenmuth Mutual Insurance Company with endorsement to cover "property damaged that was caused by Gates' work on the Property." Commercial Liability Umbrella Coverage contains the same provisions as CGL. Policy period was April 2020 – April 2021 and was an occurrence-based policy. On July 30, 2020, a lawsuit was filed against Gates by Resort Conference Centre Gulf Shores Plantation Condominium Association for damages related to allegedly faulty construction work performed by Gates in 2014 - 2015. Six claims for relief were brought: negligence, wantonness, breach of warranty, breach of contract, misrepresentation, and Magnuson-Moss Warranty Act. Complaint alleges Association learned of the allegedly faulty work on or about November 1, 2019 and claimed that balconies and adjacent components of the building were not properly constructed. It was further alleged that shortly after discovery of the faulty work, Gates provided emergency shoring to keep the balconies from collapsing. On June 11, 2020, following a storm, Association discovered further damages it argues are attributed to Gates' work in 2014 – 2015. Frankenmuth provided defense subject to reservation of rights and seeks declaration from court that policy does not cover Association's allegations and imposes no duty to defend because damages were incurred prior to the policy period. Gates argued that the policy covers any continuation of damages occurring during policy period regardless of when the damage first occurred. Pursuant to Alabama law, determination of whether insurance company owes a duty to defend is based primarily on the allegations in the complaint. Court further stated that property damage must be covered if it resulted from: 1) an occurrence; 2) during the policy period; and 3) was not known to the insured prior to the policy period. All three prongs must be met. Damage discovered in November 2019 is clearly outside policy period, but what about damage discovered in June

		2020? The court identified the primary question as being whether there has been one proximate, uninterrupted, and continuing cause which resulted in all the damages. In other words, whether one occurrence was responsible for all damages or whether the initial cause of damages was "interrupted or replaced by another cause." Court determined there was simply not enough information provided to determine whether all the damages in question were caused by the defective work in 2014 – 2015. Were damages discovered prior to policy period and damages discovered during the policy period all caused by Gates' 2014 – 2015 work? Impossible to tell from the current complaint. Based on the above analysis, the court determine Frankenmuth had a duty to provide defense for negligence, wantonness, and breach of contract claims. However, Frankenmuth was not obligated to provide defense for breach of warranty, misrepresentation, or the Magnuson-Moss Warranty Act.

	CASE NAME	SUMMARY
6	Stonegate Insurance Company v. Smith, 2022 IL App (1st) 210931 (June 22, 2022) **Type of Association:** Condominium Association **Central Issue:** Whether the association's insurance carrier is entitled to subrogation against the homeowner's insurance policy of a carpenter that was doing a favor for a friend and caused fire damage to an upstairs unit in a condominium? **Take Away**: 1.Heating pipes with a torch is not a "professional service" that triggers a professional service exclusion. 2.Replacing a shower valve for a friend is not a "business pursuit" that triggers a business pursuits exclusion. 3.Another insurance carrier can provide notice of a claim, not just the insured, and an insurance carrier must exercise reasonable diligence in seeking cooperation from an insured.	**Summary:** John Smith, was a carpenter by trade who was helping a friend, Pauline Quigley, install a shower valve in her condominium unit. Smith had been a carpenter for 30 years, but was never a plumber, and was currently unemployed. Smith was not compensated for helping Quigley, as he was doing a favor for a friend. Smith used a torch to heat some pipes in Quigley's unit and caused significant fire damage to the upstairs unit. The owner of the upstairs unit had Travelers Insurance, who paid about $38,000 to cover the damage. The Association's insurance carrier was Allstate, who paid about $66,000 in damages to the Association. Allstate sought subrogation against Smith's homeowner's insurance policy, Stonegate Insurance Company ("Stonegate"). Stonegate filed an action for declaratory relief claiming that Allstate was not entitled to subrogation as there was no insurance coverage under Smith's homeowner's insurance policy. Stonegate first argued that Smith was providing professional services. The Stonegate policy contained an exclusion for property damage "arising out of the rendering or failure to render professional services." The policy did not define professional services. The Court defined professional services as any business activity that involved specialized knowledge, labor, or skill, and is predominantly mental or intellectual as opposed to physical or manual in nature. The Court ruled that it would defy common sense to argue that using a flame to heat pipes is predominantly mental or intellectual. The Court also found it important that Smith was not a plumber and was not paid, so it determined that the professional services exclusion did not apply. Stonegate also argued that Smith was engaged in a "business pursuit" so the business pursuits exclusions precluded coverage. The policy defined "business" as a trade, profession, or occupation. The Court held that it was absurd to argue that providing a favor to a friend would constitute a "business pursuit," so the exclusion did not apply. Stonegate also argued that Smith failed to provide timely notice of his claim and cooperate with Stonegate regarding

	4.It is not "nuts" to assume that a homeowners insurance policy could cover damages caused by a homeowner while in another person's property.	the fire. The court found that the fire occurred on March 28, 2013, and that Travelers, provided notice of the fire to Stonegate on April 25, 2013. The Court found that the notice provided by Travelers constituted timely notice of the claim, and that it was irrelevant that the notice came from Travelers as opposed to Smith. The Court also stated that Stonegate failed to establish the defense of lack of cooperation, as it only sent one letter to Smith before denying his claim. The record also demonstrated that Smith did cooperate with Stonegate's investigator when they requested to interview him. Finally, Stonegate argued that Smith's admission in his deposition testimony that it would be "nuts" to assume that his homeowner's insurance policy would provide coverage precluded coverage under the policy. The Court held that the plain language of the insurance contract, including the failure to expressly exclude personal liability on another person's property, did not override the "it's nuts" statement made by Smith in his deposition. The trial court granted summary judgment in favor of Allstate, which was affirmed on appeal.

	CASE NAME	SUMMARY
7	**Klass v. Liberty Mutual** ***2022 WL 126637 (CT. S. Ct. January 11, 2022)*** **Type of Association:** Single Family **Central Issue:** Whether a dispute as to an insurer's replacement obligation under the statute is a question properly relegated to the appraisal process or a question of coverage to be resolved by the court. **Take Away:** Under Connecticut's statute, the determination of whether there is a duty to replace adjacent undamaged components to achieve a uniform appearance, should be accomplished via the appraisal process.	In 2018 Karl Klass contacted Liberty Mutual to report roof damage. Liberty Mutual sent representative to the home who concluded missing shingles that were consistent with wind damage and would be a covered loss under the policy. However, only the missing shingles would be covered. Klass retained his own contractor to inspect the damages who provided an estimate for replacing entire roof, which was significantly higher than Liberty Mutual's estimate. Because there were two different estimates, Klass requested Liberty Mutual provide and appraisal in accordance with his homeowner's policy, which required any dispute concerning amounts of loss to be resolved by disinterested appraiser. Liberty Mutual took the position that Klass was not entitled to invoke the pertinent provision in the insurance policy because this was a coverage issue—not a loss amount issue. Klass brought legal action against Liberty Mutual to compel an appraisal. Liberty Mutual argued this was a coverage dispute and therefore was not subject to the appraisal process; thus, it would be improper for the court to compel an appraisal before it resolved the legal issue regarding the coverage dispute. The court disagreed. Court cited Connecticut's insurance law, which provided when a covered loss for real property requires replacement of an item and the replacement item does not match "adjacent" items in quality, color, or size, the insurer must replace all such items with "material of like kind and quality so as to conform to a reasonably uniform appearance." Liberty Mutual argued that providing replacement of the entire roof exceeded the requirements of the statute. The court disagreed. The court focused on the language of the statute and pointed out the statute suggests that a replacement obligation is different than a coverage obligation. Furthermore, the court took note of the words "adjacent" and "reasonably uniform appearance," which it believed to be indicative of factual judgments based on visual inspections rather than legal determinations.

		The court further looked at the legislative history and circumstances surrounding the statute's enactment. The court determined that the legislative history demonstrated the statute was enacted to codify existing insurance industry practice because some insurers had not been following it and were replacing only damaged portions of the covered property. Furthermore, the legislative history indicates another intent of the statute was to provide insureds and insurers with an appraisal process if they disagree over the necessary scope of replacement. Court concluded with the following: "when an insurer concedes the existence of a covered peril to an insured's premises, issues concerning the extent of the insurer's obligation to replace adjacent, undamaged items to achieve a reasonably uniform appearance are a component of the 'amount of loss' and are therefore, part of the appraisal process."

	CASE NAME	SUMMARY
8	Acuity v. M/I Homes of Chicago, LLC, 2022 IL App (1st) 220023 (September 9, 2022) **Type of Association:** Townhome Owners Association **Central Issue:** Whether the CGL policy of a subcontractor, which named a successor developer as a named insured, had a duty to a duty to defend construction defect claim brought by the Association? **Take Away**: This case acknowledges a growing trend in which courts are recognizing faulty construction as an "occurrence" and the resulting damage to "other property" as a covered claim, as to a general contractor or developer, when the "other property damage" is beyond the scope of the actual work performed by a subcontractor.	**Summary:** Neumann Homes Inc. ("Neumann") was the original developer of the Church Street Station Townhomes. M/I Homes of Chicago, LLC ("M/I Homes") was a successor developer that succeeded to Neumann's remaining interest in the project. The Church Street Station Townhome Owners Association (the "Association") sued M/I Homes, alleging that Neumann and M/I Homes constructed and sold units with substantial exterior construction defects, which caused water damage. The complaint alleged that Neumann and M/I Homes hired subcontractors to perform all work. The Association brough a claim for breach of contract and breach of the implied warranty of habitability against M/I Homes. M/I Homes was a named insured on an insurance policy held by a subcontractor, H&R Exteriors Inc. ("H&R") that performed construction on the exterior of the building that allegedly caused the water damage and had a CGL policy from Acuity. Acuity filed an action for declaratory relief seeking a ruling that it did not have a duty to defend M/I Homes. The trial court granted summary judgment in favor of Acuity. The trial court held that there was no "occurrence" under the Acuity policy because any damage that occurred outside of H&R's work alone was not an "occurrence" under the policy and the mere mention of damage to "other property" in the underlying complaint was insufficient to trigger Acuity's duty to defend. The appellate court noted that a duty to defend exists if the allegations in the complaint even potentially fall within a policy's coverage provisions. The policy defined property damage as a "physical injury to tangible property, including all resulting loss of use of that property." The policy defined an "occurrence" as an accident, including continuous or repeated exposure to substantially the same harmful conditions." The appellate court noted that in recent years, the trend in cases throughout the country is to view faulty workmanship as an "occurrence" and damage from that faulty construction to the project itself as "other property damage." The Court noted that any other approach would essentially render the standard "your work" exclusion meaningless in CGL policies.

		The appellate court also noted that a federal case, *Westfield Insurance Co. v. National Decorating Service, Inc.*, 147 F. Supp. 3d 708 (N.D. Ill. 2015) *aff'd*, 863 F.3d 690 (7th Cir. 2017), held that a general contractor, who was a named insured on a subcontractor's CGL policy, was entitled to coverage under the subcontractor's policy when the underlying complaint alleged damages beyond the scope of work of the subcontractor. The appellate court then held that the same logic would apply in this case, as the underlying complaint broadly alleged that the work of subcontractors "caused damage to other portions of the Townhomes that was not the work of those subcontractors." The appellate court reversed the trial court's grant of summary judgment in favor of Acuity, and ordered that Acuity provide a defense to M/I Homes.

	CASE NAME	SUMMARY
9	**Acetta v. Brooks Towers Residences Condominium Association, Inc.** ***506 P. 3d 857, as modified on denial of rehearing (Jan. 13, 2022), as modified (Feb. 10, 2022)*** **Type of Association:** Condominium **Central Issue:** Whether an insurance deductible limits an award of attorney fees to the prevailing party who was covered by the policy. **Take Away:** An award of attorney fees will not be limited to the deductible amount and defendants who were smart enough to obtain insurance will not be penalized by having their attorney fees award diminished. **Of Special Note:** Three judges issued a dissent to this opinion concluding Association was not entitled to an award of its legal fees based on CCIOA as it did not apply.	Brooks Towers Residences Condominium Association, Inc. is a condominium complex with over 900 units located in downtown Denver. Anthony and Nancy Accetta were owners of a unit in the Association and discovered they were paying 50% more assessments than owners of similar units in the community. Acetta sued the Association under provisions of the Colorado Common Interest Ownership Act ("CCIOA") arguing the statute prohibits unconscionable provisions in the covenants and requires all common expenses to be calculated using formulas. Association prevailed and requested an award of its legal fees, which was awarded by the district court. Acetta appealed the award of attorney fees on three grounds. First, Acetta argued CCIOA's provision authorizing attorney fees did not apply to the Association because it was created before CCIOA (i.e., prior to July 1, 1992) and was therefore required to utilize the Colorado Condominium Act which did not provide for attorney fees awards. The court disagreed. The Court discussed that although the Association was originally created prior to July 1, 1992, CCIOA contains a section making certain portions of CCIOA applicable to pre-CCIOA communities, which included the attorney fee provision. Based on this, the court concluded the fee shifting provision in CCIOA was applicable to the Association. Acetta then argued that because the Association was covered by its insurance policy, it only incurred legal fees in the deductible amount of $10,000 and should therefore not recover more than that amount. The Court disagreed with this position as well. The court also concluded the Association was not limited to an award of legal fees equaling its insurance deductible. The court discussed that legal fees over and above the deductible amount were still fees incurred by the Association and as the "injured party" it was entitled to recover all its damages from the party at fault. The court further provided that people who have the

		foresight to buy insurance should not be penalized by having their damages reduced. Based on this analysis, the court concluded "the Association's foresight to purchase an insurance policy to cover its legal expenses does not preclude it from collecting the full amount of its attorney fees, regardless of how much it paid for its insurance deductible to cover its costs of defense against the Accettas." Acetta further argued that the district court's award of attorney fees was unreasonable because it included fees incurred in the courts of its failed attempt to join all individual unit owners in the litigation. The court also disagreed. In this case the appellate court could not determine that the award of legal fees was either patently erroneous, or unsupported by the record. The appellate court further indicated the district court did not abuse its discretion by determining the Association's costs were reasonable in their totality, given that the Association ultimately prevailed against the Acettas on every claim.

	CASE NAME	SUMMARY
10	Cresthaven-Ashley Master Association, Inc. v. Empire Indemnity Insurance Company, 2022 WL 873998 (SD. Fl., March 24, 2022) **Type of Association:** Master Association **Central Issue:** Whether the Association's claim for building and loss coverage was ripe and the Association had Article III standing? **Take Away**: The Association's claim was not ripe until the following occurred: 1.The Association identified a specific ordinance that was being enforced. 2.The enforcement of the ordinance created an increased cost or loss in value under the policy. 3.The Association was forced to pay or incur an increased cost, as opposed to just having an appraisal estimate, as a result of the enforcement of an ordinance.	**Summary:** The Cresthaven-Ashley Master Association, Inc. (the "Association") suffered property damage as a result of Hurricane Irma. The Association had an insurance policy from Empire Indemnity Insurance Company ("Empire") that contained three provisions for Ordinance or Law Coverage ("OLC"): Coverage A – Coverage for Loss to the Undamaged Portion of a Building; Coverage B – Demolition Cost Coverage; and Coverage C – Increased Cost of Construction Coverage. Coverage A states that Empire will pay for the "loss in value" of the undamaged portion of the building as a consequence of an ordinance or law that requires demolition of undamaged parts of the same building. Coverage C states that Empire will pay for the "increased cost" to reconstruct damaged and undamaged portions of the building when the increased cost is a consequence of the enforcement of the minimum requirements of the ordinance or law. The policy also contained an appraisal provision that permitted Empire to deny a claim even if there was an appraisal. The matter was submitted to appraisal, which determined the cause of the damage, extent of the damage, and an estimated amount of repair. Empire paid the actual cash value under the appraisal award but did not pay the OLC amounts. Cresthaven argued that the sheathing work identified in the award required removing 520,000 square feet of undamaged roof and replacing it per applicable building codes so that permits could be issued. Empire argued that the appraisal award does not identify any building code, law, or ordinance that would require demolition of sheathing. Cresthaven sued Empire for coverage under the OLC provisions of the insurance policy. Empire filed a motion to dismiss arguing that Cresthaven lacked Article III standing as Cresthaven's claim was not ripe. First, Empire argued that OLC coverage is only triggered when repairs have been completed and paid for. Second, Empire argued that even if the repairs were completed, Cresthaven did not identify a specific ordinance or law that required demolition of the undamaged property. Third, Empire argued that liability under the policy was limited to amounts the insured would actually spend to make ordinance or law mandated repairs, and the Cresthaven had not spent any money.

		Cresthaven argued that it had Article III standing and its claims were ripe as it was seeking a concrete amount of damages owed under Coverage A. Cresthaven argued that the right to payment was not conditioned on the completion of repairs or the expenditure of money. In analyzing the policy, the Court stated that under both Coverages A and C, the "loss in value" or "increased cost" must occur as a "consequence of enforcement." Accordingly, there must be a specific ordinance or law that is being enforced that actually causes a "loss in value" or "increased cost." The Court held that all of the above preconditions for payment had not been satisfied. Specifically, Cresthaven did not identify a specific ordinance that had been enforced, that enforcement of an ordinance had occurred, or that it had suffered any type of loss. Accordingly, the Court concluded that Cresthaven's claim was not ripe and that it did not have Article III standing to pursue a claim. The Court also indicated that Cresthaven would not suffer a significant hardship if its claim for OLC coverage was denied at this juncture as Empire had already made significant payments under the policy and Cresthaven was already in the middle of the rebuilding process. The Court indicated that if it awarded OLC insurance proceeds to the Association, based on an estimate in the award, it is possible that the actual OCL costs are greater than the estimated award. Accordingly, the Court dismissed Cresthaven's claim without prejudice until the above preconditions in the Association's policy were satisfied.