AIRE Alert
Water Intrusion

Property damage may escalate into a complex D&O claim, with defense costs far exceeding damages.

A Look at The Loss

A significant water intrusion in the crawlspace beneath a condominium unit caused mold and moisture damage in both the crawlspace and the condo owner's living space. The water intrusion stemmed from an artesian well under the property and additional moisture that infiltrated from common areas maintained by the condominium's homeowner's association (HOA), according to the condo owner. No action was taken for years as the owner and the HOA disputed responsibility for repairs. What began as a straightforward property damage dispute spiraled into complex litigation. The plaintiff filed suit against the HOA and its directors and officers alleging emotional distress, nuisance, and breach of fiduciary duty. The court found for the plaintiff, awarded damages, which were covered under the HOA's general liability policy, and ordered the HOA to complete the repairs. A second judgement later added over $6 million in attorneys' fees with post-judgement interest accruing at 10%, an amount that far exceeded the compensatory damages.

The Takeaway

The combination of unmanaged property damage disputes, unclear governance processes, and delayed action can rapidly transform a routine loss into a costly D&O and litigation event. Early dispute resolution documented fiduciary decision-making and proactive remediation are critical to contain both loss costs and attorneys' fees.

Prevention in Practice: Key Risk Control Strategies

Proactive risk control strategies can help HOAs and property managers mitigate exposure when property damage occurs. These include:

A formal early dispute resolution framework is essential to mitigate costs in property damage disputes.

Setting protocols for early identification and mandatory remediation.
Formal procedures should be established to ensure prompt investigation and repair of moisture intrusion, regardless of disputed responsibility. Clear internal thresholds for engaging engineers, industrial hygienists, and contractors can prevent conditions from worsening and limit secondary damages arising from issues such as mold, habitability, and emotional distress claims.

Clearly allocating maintenance and repair responsibilities.
Governing documents should explicitly define HOA versus unit owner repair obligations, especially for concealed conditions (e.g., crawlspaces, subsurface water sources, building envelope components). Ambiguity in responsibility is a core driver of prolonged disputes and litigation.

Documenting decision making and fiduciary oversight.
Board decisions related to repairs, claims handling, and litigation strategy should be well documented, supported by expert input, and tied to fiduciary duties under applicable statutes (e.g., the Davis Stirling Common Interest Development Act). This will help in the defense of breach of fiduciary duty, constructive fraud, and D&O allegations.

Utilizing neutral third-party experts and owner communications.
Engage independent consultants (e.g., engineers, building envelope specialists) early and communicate findings transparently to owners. Neutral expert recommendations can reduce mistrust, limit refusals to cooperate, and support court defensible repair decisions when owners challenge HOA actions.

Adopting litigation cost management and early resolution strategies.
As this claim demonstrates, attorneys' fees and costs from statutory fee shifting provisions can far exceed underlying damages in protracted litigation. A formal early dispute resolution framework (e.g., mediation, structured settlement authority) is essential to mitigate costs.

Reviewing risk transfer and insurance programs.
Regular reviews are important to ensure that Commercial General Liability, D&O Liability, and Property coverage align with the insured's desired strategies, practices and exposure. Reviews should include defense cost structures, fee shifting exposures, and implications for injunctive relief. In addition, understanding how potential legal defense fees measure up to policy limits can materially influence early decisions in managing and mitigating a claim.

Establishing habitability and rental interruption controls.
Internal guidelines should be set to ensure habitability concerns and loss of rent exposures are addressed promptly when units are rendered uninhabitable. Prolonged inaction can significantly increase costs, raising potential lost rent, emotional distress, and punitive damages.

Detecting Leaks and Moisture

Promptly identifying leaks and moisture in properties is essential to mitigate potential damages. These proactive strategies can help.

Define clear leak detection objectives upfront and ensure systems are designed to address high severity water losses, protect critical areas, and reduce overall event frequency, rather than relying on ad hoc or reactive installations.

Use a risk-based approach to prioritize sensor placement, focusing on mechanical rooms, domestic water infrastructure, spaces above sensitive occupancies, and low visibility or low traffic areas where leaks are less likely to be discovered quickly.

Apply a layered detection strategy by combining point or area moisture sensors with water flow monitoring to identify both visible leaks and concealed water that may not immediately trigger floor-level alarms.

Pair detection technology with response capabilities, including automatic shutoff where appropriate and a response plan that outlines immediate actions, escalation protocols, and staff responsibilities. ***Detection alone does not prevent losses***.

What AIRE Can Do For You

AIRE provides an array of services and resources to help middle market companies strengthen maintenance practices and reduce the likelihood of property damage and secondary liability. These include:

- A Technical Library with curated, practical guidance on common loss drivers, including water damage, building operations, landlord exposures, and business continuity considerations. The library is designed to support informed decision-making by translating industry standards, engineering principles, and loss experience into accessible and actionable (?) materials.
- AIRE Risk Assessments and Loss Analysis Services evaluate hazards, effectiveness of controls, and historical loss trends to help companies identify where breakdowns in decision-making or delayed action can lead to severe losses. Post-assessment risk management support can include guidance on water damage prevention, preventive maintenance, and business continuity planning to help companies proactively manage high-severity exposures before they evolve into complex claims and litigation.

Arch Insurance Risk Engineers (AIRE) Alert

The AIRE team continuously monitors loss trends and events impacting our middle market clients. AIRE Alerts highlight issues driving real-world claims and provide practical, actionable insights to help clients strengthen risk controls and prevent claims.

For more information, visit www.archinsurance.com/aire or contact us at aire@archinsurance.com.

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