

# In the Case of ...

July 2021

Welcome to Pendulum Claims Management's first installment of *In the Case of ...*

These semi-regular articles will outline a set of fictitious claim circumstances and some opinions on actions that a senior housing and/or elder care insured can use to help protect their coverage and improve communication with their brokers and insurers.

These articles are not legal advice, they are merely being provided as general examples meant to help educate and inform. Always follow up with your carrier and broker on any actual claims and coverage questions and, as always, make sure to read and understand your policies.

## Fact Pattern

The property is a large, multi-story senior living facility with multiple units rented by the residents. Each unit has a balcony, the bottoms of which have a drainage pipe allowing rainwater to flow off the balcony ledge and away from the building.

The facility maintenance crew did not perform any preventive maintenance to the balconies and, over time, leaves and debris built up and clogged several drainage pipes on the balconies on the fourth and fifth floors.

During a particularly heavy storm, rainwater collected on several balconies and subsequently backed into two units as well as leaked into the ceilings of units below, causing severe water damage to the units as well as to the personal property (furniture, clothing, electronics, etc.) of the affected units' residents.

## Considerations

Complex property damage cases can be some of the most frustrating to handle because, inevitably, multiple insurance coverages and carriers will become involved.

It is important to consider which carriers you should notify of a loss. In this case, the management company should notify two policy carriers:

- 1) Notify their own Property carrier.

The building is owned and maintained by the senior living management company. Therefore, the water damages to the walls, framing, drywall, and maybe even the flooring and carpet of the unit (depending on the rental agreement) are also owned by the management company. Those are considered direct property losses (also known as a first-party loss) and coverage for those losses needs to be directed to the management company's property carrier.

- 2) Notify their General Liability carrier.

Residents may be required to carry their own renter's insurance under the rental agreement, and they can file a claim against those carriers for the damages they sustained to their personal property. It is more than likely that separate claims of negligence will be pursued by either the residents individually or their carriers in the form of a "subrogation" claim.

It could be assumed that the resident or their carrier will make allegations that the management company negligently maintained the facility, which allowed the water to back up and into the units, causing their respective damages.

Additionally, it is important to remember that a third-party claimant cannot be forced to file a claim with their own insurance first. If they have a reasonable belief that the damages were caused due to someone's else's liability, they have a right under most state regulations to pursue a third-party liability claim without having to undertake a claim with their own property carrier or having to expose their own deductible first.

That is not to say it wouldn't be to their benefit to do so as replacement and repairs of their damaged property can be performed sooner, especially if the claimant is forced to relocate to a hotel or an outside residence while repairs to their unit are being performed. They can then have their property carrier pursue a subrogation/liability claim against the management company and include the costs of the deductible for reimbursement to their insured.

## Conclusion

Many senior housing and long term care communities and companies have separate commercial insurance packages, each addressing separate types of losses: a commercial property policy and a liability package that covers both professional liability and general liability.

The contacts to report these types of losses are usually not the same. A property carrier typically has staff and field adjusters to handle first-party property losses, while the liability package may involve a substantial self-insured retention or deductible for the third-party liability claims. In those cases, it's likely that there may be an in-house adjuster or a third-party administrator that may be involved as well.

Keep a handy "cheat-sheet" of your insurance contacts for every type of policy your company maintains and maintain a close relationship with your broker to ensure that the appropriate carriers are promptly notified of a loss. This can help reduce the possibility of receiving denial letters from liability carriers who do not cover first-party property losses or from property carriers who do not cover damages to a third-party claimant.

## About Pendulum Claims Management

Pendulum Claims Management offers professional and general liability claims management to the aging services industry. As a boutique claims management firm, Pendulum customizes services specifically to meet clients' needs. Our mission is to serve our clients by utilizing our strong industry background and experience to generate the best possible outcomes. Visit us at [www.PendulumClaims.com](http://www.PendulumClaims.com).

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