No. 101892-4

SUPREME COURT
OF THE STATE OF WASHINGTON

THE GARDENS CONDOMINIUM,
a Washington non-profit corporation,

Respondent,

v.

FARMERS INSURANCE EXCHANGE,
a California company,

Petitioner.

AMICUS CURIAE BRIEF OF WASHINGTON STATE COMMUNITY ASSOCIATIONS INSTITUTE

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A. INTRODUCTION

For the owners in a homeowners association, their home is typically their largest investment. Having to repair the building structure is often the most expensive repair facing an association and its owners. Washington law mandates that associations obtain insurance to protect the owners against having to pay out of pocket for such large repairs. Any damage to the condominium not paid for by the association's all-risk policy must ultimately be paid for by the owners of the association via a special assessment to the owners. Thus, it is extremely important that insurance policies be interpreted pursuant to Washington rules of policy construction, which require the policy to provide the coverage an average purchaser of insurance believes would apply and that all-risk policies mean exactly what insurers' marketing departments represent them to be.

Farmers Insurance Exchange ("Farmers") issued a policy to the Gardens Condominium ("Gardens") with a resulting or

ensuing loss provision[1] which explicitly preserves coverage if "loss or damage by a Covered Cause of Loss results" from inadequate construction.

Farmers stipulated that inadequate construction initiated a sequence of events in which Covered Causes of Loss under its policy such as water vapor, excessive humidity, and condensation, caused damage to the non-defective sheathing and fire board. An average purchaser of insurance would interpret Farmers' resulting loss clause to explicitly preserve coverage for the damage to Garden at issue here. Farmers' argument that its resulting loss clause does not preserve coverage for loss or damage from covered perils under its policy violates Washington rules of policy construction and this Court's precedents. This Court should not judicially limit the statutory-mandated coverage for Gardens in a policy purporting to cover *all* risks.

[1] Such provisions are referred interchangeably herein as resulting or ensuing loss provisions.

Division I faithfully applied this Court's precedents on resulting loss provisions, and this Court should affirm its decision.

B. INTEREST OF *AMICUS CURIAE*

The interest of the Washington State Community Associations Institute ("WSCAI") in this case is set forth in its motion for leave to file this brief, and it is incorporated herein by reference. WSCAI is the preeminent organization speaking for homeowners associations in Washington and it is vitally concerned about the interpretation of insurance policies that the Legislature mandated that its members must purchase and maintain. RCW 64.34.352(1). Resulting loss provisions are common in such policies. Farmers' interpretation of its resulting loss provision potentially subtracts coverage for homeowners associations in a dramatic fashion.

C. STATEMENT OF THE CASE

WSCAI adopts the Statement of the Case set forth in Gardens' supplemental brief and the recitation of facts and procedures in Division I's opinion. Op. at 1-4.

The insuring clause in Farmers' all-risk policy here states: "We will pay for direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss." A Covered Cause of Loss is defined as: "risks of direct physical loss unless excluded by the policy. CP 35.

The policy's paragraph 3 contains an exclusion for inadequate construction, but Farmers added the italicized language below by endorsement to make clear the policy provides coverage for damage by a "Covered Cause of Loss" that results from inadequate construction:

> 3. We will not pay for loss or damage caused by any of the excluded events described below. Loss or damage will be considered to have been caused by an excluded event if the occurrence of that event directly or solely results in loss or damage or initiates a sequence of events that results in loss or damage, regardless of the nature of any intermediate or final event in that sequence.
>
> . . . .
>
> b. Faulty, inadequate or defective:
>
> (1) Planning, zoning, development, surveying, siting;

> (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
>
> (3) Materials used in repair, construction, renovation or;
>
> (4) Maintenance;
>
> of part or all of any property on or off the described premises. *But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.*

CP 43 (emphasis added).

Farmers was aware it issued a statutorily mandated all-risk policy to Gardens, and that Farmers agreed to cover under its policy all risks it failed to exclude such as the "Covered Causes of Loss" at issue in this case.

D. ARGUMENT

(1) Washington's Condominium Act Mandates That Homeowners Associations Purchase Property Insurance

An important backdrop to the analysis of Farmers' resulting loss provision is that the Legislature *mandated*

homeowners associations must purchase and maintain all-risk insurance for their condominia. Pursuant to RCW 64.34.352, Washington homeowners associations are required to maintain all-risk property insurance for the benefit of the unit owners in the event that there is damage to the condominium complex. *See* Appendix. As noted in William B. Stoebuck, John W. Weaver, 18 *Wash. Practice Real Estate* § 12.10 (2d ed.) regarding RCW 64.34.352:

> As soon as the first unit is conveyed, the condominium association is required to obtain blanket casualty coverage on the entire "condominium," which insures owners of the individual units. This insurance may, but need not, cover equipment and improvements unit owners have added to their own units. Also, the association is required to obtain personal injury and property damage liability insurance, but only as to liability arising out of the use, ownership, or maintenance of the common elements, not of individual units. These are the statutorily required forms of insurance; the declaration may require the association to obtain other insurance, and, even if it does not, the association may voluntarily obtain other insurance. Each unit owner is an insured under the association's policies.

This legislative mandate is important because, as noted in WSCAI's motion for leave, the community association model is so prevalent in our state. Presently, 2.4 million Washington residents live in the nearly 10,700 communities subject to that mandate.

Farmers' truncated analysis of the ensuing loss provision in its policy is not only contrary to this Court's precedents, as will be discussed *infra*, it is positively prejudicial to homeowners associations required by RCW 64.34.352 to carry property insurance. Farmers' interpretation dramatically narrows the coverage WSCAI homeowner association members must buy and maintain. An average purchaser of insurance would not understand that an insurance company that promises to "pay" for "loss or damage by a Covered Cause of Loss" resulting from inadequate construction, can break its promise to pay for this exact damage, as Farmers is attempting to do here.

Rather than protect homeowner associations, as the Legislature envisioned, adopting Farmers' interpretation

eviscerates resulting loss coverage, shifting the burden of casualties to homeowner associations, which ultimately will require individual association members to fund costly repairs. This will result in many homeowners who cannot afford a special assessment having to sell or lose their homes, frustrating legislative policy. This Court should not allow Farmers such a judicially imposed narrowing of a policy it marketed as covering *all* risks. Other insurers will follow that bad example.

The potential harm of Farmers' analysis of resulting loss provisions is not confined to condominia. Washington's common interest community statute contains an analogous insurance coverage mandate after July 1, 2018. RCW 64.90.470, .475. *See* RCW 64.90.010(1) (definition of "common interest community" includes any real estate described in a declaration with common elements or ownership that includes sharing of taxes, insurance, maintenance, or improvements).

As will be noted *infra*, this statutory mandate is important for understanding why Farmers' policy should not be interpreted

to shift the cost of repairing covered resulting damage to Washington homeowners.

(2) Interpretation of Insurance Policies under Washington Law

The parties briefly address the principles for insurance policy construction in Washington. Gardens suppl. br. at 30-31; Farmers suppl. br. at 9-11. Division I did so as well. Op. at 4-5. But a more robust discussion of those principles is merited, as it bears directly on the interpretation of the resulting loss provision at issue here.

Ultimately, Washington courts liberally interpret insuring clauses because the purpose of insurance is to insure. *Phil Schroeder, Inc. v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 68, 659 P.2d 509 (1983). As Division I correctly observed, op. at 4, Washington law has long required that insurance policies be given a "fair, reasonable and sensible construction which fulfills the apparent object of the contract, rather than a construction which leads to an absurd conclusion or renders a policy

nonsensical or ineffective." *McDonald Indus. Inc. v. Rollins Leasing Corp*., 95 Wn.2d 909, 913, 631 P.2d 947 (1981).

Moreover, the policy language is interpreted in accordance with the way it would be understood by the average person purchasing insurance. *Am. Star Ins. Co. v. Grice*, 121 Wn.2d 869, 875, 854 P.2d 622 (1993). However, the commercial context in which the insurance coverage is obtained is also important, and extrinsic evidence is admissible to establish such context. *Intl Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282, 313 P.3d 395 (2013). Similarly, the structure of the policy itself is an important objective source of its meaning and intent. *Id.* Thus, this Court should be mindful of the circumstances that led Gardens to purchase the Farmers' "all-risk" policy. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 15 P.3d 115, 124-25 (2001). Here, that includes the mandate of RCW 64.34.352 to purchase broad insurance coverage "insuring against all risks of direct physical loss."

As the drafter of the resulting loss provision, Farmers had

the ability, and duty, to clearly express any policy coverage limitations. *Smith & Chambers Salvage v. Ins. Mgmt. Corp.*, 808 F. Supp. 1492, 1503 (E.D. Wash. 1992). Any ambiguity resulting from that drafting is strictly applied as to insurance contracts and a court must resolve any ambiguity in Gardens' favor. *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997); *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992) (explaining that as with any contract, ambiguous policies should be construed against the drafter). "Where exceptions to, or limitations upon coverage are concerned, this principle applies with added force." *Queen City Farms, Inc. v. Centennial Nat'l Ins. Co.*, 126 Wn.2d 50, 83, 882 P.2d 703 (1994) (citation omitted).

As to all-risk policies generally, such policies involve "a promise to pay upon the fortuitous and extraneous happening of loss or damage . . . *from any cause whatsoever*, . . . except when occasioned by the willful or fraudulent act or acts of the insured." *McDonald*, 119 Wn.2d at 731 n.5 (citation and quotation marks

omitted, emphasis added); *Vision One, LLC v. Phila. Indem. Ins. Co.*, 174 Wn.2d 501, 513-14, 276 P.3d 300 (2012) (explaining that "[a]ll-risk policies . . . provide coverage for all risks *unless the specific risk is excluded*," and that "[u]nder an 'all-risk' policy, the insurer bears the risk that a catastrophe *not mentioned in the policy* will occur.") (citations omitted, emphasis added).

This Court has opined that when insurers market policies as "comprehensive" or "all-risk," courts must strictly construe such policies when an insurer attempts to subtract from the comprehensive scope of its undertaking. *Olds-Olympic, Inc. v. Commercial Union Ins. Co.*, 129 Wn.2d 464, 472, 918 P.2d 923 (1996) ("CGL policies are marketed by insurers as comprehensive in their scope and should be strictly construed when the insurer attempts to subtract from the comprehensive scope of its undertaking."); *Findlay v. United Pac. Ins. Co.*, 129 Wn.2d 368, 381 n.2, 917 P.2d 116 (1996) (Talmadge, J. dissenting) (insurers should not market policies as "all risk" when expansive exclusions of coverage are present). Exclusions

are contrary to the basic intent of protecting the insured, and thus should not extend "beyond their clear and unequivocal meaning. *Id*. at 915.

Finally, a resulting loss provision *saves* coverage from what is otherwise exclusionary language. As such, the resulting loss provision must be liberally construed and the exclusionary provision it modifies narrowly construed. *McDonald*, 95 Wn.2d at 915 (exclusionary clauses are narrowly construed for the purpose of providing maximum coverage for the insured).

Applying the above principles, Division I correctly construed the resulting loss provision in Farmers' policy.

(3) Gardens Had Coverage Under the Resulting Loss Provision in Farmers' Policy

(a) This Court's Resulting or Ensuing Loss Provision Precedent

This Court has addressed ensuing or resulting loss clauses in *Vision One* and *Sprague v. Safeco Ins. Co. of America*, 174 Wn.2d 524, 276 P.3d 1270 (2012). Division I faithfully applied this Court's teachings in those cases. As the *Vision One* court

stated: "The purpose of an ensuing loss provision is to limit the scope of an exclusion from coverage; losses caused by the excluded peril will be covered unless they are subject to their own specific exclusion." *Id.* at 529. Such clauses are in the nature of an "inclusion within an exclusion." Given the interpretive rules referenced *supra*, the coverage aspect of the clause must be *liberally* interpreted, while its exclusionary aspect should be viewed *narrowly*.

In *Vision One*, the first floor of the building collapsed shortly after concrete was poured. *Vision One*, 174 Wn.2d at 506. The causes of the collapse were faulty workmanship and faulty design, both excluded under the policy. *Id.* at 506-07. The faulty workmanship exclusion had a resulting loss clause under which the insured sought coverage for the resulting collapse. *Id.* at 507. The resulting loss clause, which preserved coverage if "a Covered Cause of Loss results," is nearly identical to the resulting loss clause in Farmers' inadequate construction exclusion. *Id.* The trial court in *Vision One* found that this

resulting loss clause preserved coverage for the resulting collapse. *Id.* at 507, 509. While the cost to repair the excluded faulty shoring of the concrete slab was not covered, the damage to the "wet concrete, rebar, and framing" of the concrete slab was a covered resulting loss. *Id.* at 509.

Division II reversed, holding that for there to be coverage under the resulting loss clause, there must be a causal break, i.e. a "a secondary covered peril," that proximately caused the ensuing loss. *Id.* at 505. The court explained its ruling as follows:

> There was no independent covered peril (such as fire) that caused a covered resulting loss. The collapse resulted directly from the initial excluded peril of faulty workmanship, and loss resulting directly from the initial excluded peril remains uncovered.

Vision One, LLC v. Phila. Indem. Ins. Co., 158 Wn. App. 91, 107-08, 241 P.3d 429 (2010).

This Court *rejected* the requirement that there must be a secondary, new peril to trigger coverage under the resulting loss clause and criticized Division II's analysis for failing "to

consider that collapse is a covered peril under the policy." *Vision One*, 174 Wn.2d at 518. Thus, this Court held that while the excluded events remained uncovered, "if the policy covers the peril or loss that results from the excluded event, then the ensuing loss clause provides coverage" and, therefore, determined that despite the faulty workmanship exclusion, the resulting loss provision preserved coverage for collapse. *Id.* at 516, 521-22.

The *Sprague* court's analysis of a resulting loss provision is consistent with *Vision One*. There, the parties agreed that damage to deck supports was caused only by the excluded perils of rot and inadequate construction. 174 Wn.2d at 526-27. Even though all causes of damage were excluded, the insured argued the policy covered collapse as a resulting loss if advanced rot reached a state of collapse at the deck supports. *Id.* at 527-28. In a 5-4 decision, the *Sprague* court ruled that advanced rot was not a collapse, and thus there was no covered "loss under these facts." *Id.* at 527-30. In direct contradiction to Farmers' position, *Sprague* made clear that it is the resulting loss clause itself that

"breaks the causal chain between the excluded risk and losses caused by the excluded peril in order to provide coverage for the subsequent losses." *Sprague*, 174 Wn.2d at 529. The *Sprague* court did not, as Farmers argues in its supplemental brief at 5, impute a "new peril" requirement for resulting loss coverage, but rather found that the insured's claimed loss, collapse, *did not occur* and there was otherwise no coverage due to the policies' exclusions for inadequate construction and rot.

In an attempt to avoid the fact that a "Covered Cause of Loss" resulted from inadequate construction, and that its policy explicitly states that it will "pay for that resulting loss or damage," Farmers asks this Court to create additional hurdles to coverage not contained in the policy and thus determine that "when, as here, the policy excludes the sequence of events initiated by faulty design and construction, condensation is not a new peril that may be covered under the resulting loss exception. It is part of the admittedly excluded sequence of events." Farmers suppl. br. at 5.

Farmers' argument that the Court should impute a "new peril" requirement to Gardens' loss was directly rejected by the *Vision One* court and does not follow from *Sprague*. In *Vision One and Sprague*, this Court gave the following example to illustrate how a resulting loss clause works:

> Suppose a contractor miswires a home's electrical system, resulting in a fire and significant damage to the home. And suppose the homeowner's policy excludes losses caused by faulty workmanship, but the exclusion contains an ensuing loss clause. In this situation, the ensuing loss clause would preserve coverage for damages caused by the fire.

Farmers *admits* in its supplemental brief at 12-13 that this example illustrates how its resulting loss clause should operate. Because both fire and condensation and water vapor are covered perils separate from defective construction as fully explained *infra*, substituting condensation and water vapor in place of fire in *Vision One*'s example of how a resulting loss provision works leads to the conclusion that both *Vision One* and *Sprague* support finding resulting loss coverage in this case.

Other courts since *Vision One* have also rejected Farmers'

analysis of a resulting loss provision. For example, in *Ingenco Holdings, LLC v. Ace American Ins. Co.*, 921 F.3d 803 (9th Cir. 2019), the Ninth Circuit noted that ensuing loss provisions "ensure that, where an uncovered event takes place, any ensuing loss which is otherwise covered by the policy remains covered, even though the uncovered event itself is never covered." *Id*. at 818. The court determined that the resulting loss clause preserved coverage because the peril ensuing from excluded inadequate construction was covered, and no specific exclusion applied to it. *Id*. at 819.

See also, Sunwood Condo. Ass'n v. Travelers Cas. Ins. Co. of Am., 2017 WL 5499809, at *4 (W.D. Wash. 2017) ("But *Sprague*'s holding rested on an absence of facts showing the occurrence of the Association's asserted covered loss—collapse. *Id.* Here, the Association presents facts to show its asserted covered losses—rain intrusion and water damage—occurred."); *Leep v. Trinity Universal Ins. Co.*, 261 F. Supp. 3d 1071, 1084 (D. Mont. 2017) (following *Vision One*, court determined cost to

replace faulty furnace vent remains uncovered under faulty workmanship exclusion but "the damage caused by the intrusion of water vapor from the furnace, is an ensuing loss"); *The Bartram, Ltd. Liab. Co. v. Landmark Am. Ins. Co.*, 864 F. Supp. 2d 1229, 1233 (N.D. Fla. 2012) (loss to sheathing is covered *separate* loss from cost to repair faulty workmanship of exterior wall); *Boardwalk Condo. Ass'n v. Travelers Indem. Co. of Illinois*, 2007 WL 1989656, at *8-10 (S.D. Cal. 2007) (covered condensation damage to cavities of roof and wall separate and independent from excluded defective venting).

In sum, this Court's analysis of resulting or ensuing loss provisions in policies has been in place for more than a decade. Division I faithfully applied that analysis. Rather than write policies without resulting loss provisions,[2] Farmers chose to

[2] Rather than make convoluted arguments to avoid coverage, Farmers could have simply excluded "condensation" or "water in any form" as it did in later policies. Farmers also could have omitted a resulting loss clause from its inadequate construction exclusion, as it did in its "war" exclusion, or chosen not to explicitly add by endorsement the resulting loss clause at

explicitly include by endorsement such coverage here. For this Court to allow Farmers to judicially revise its policies to exclude covered resulting losses, would severely prejudice homeowners associations that are required to purchase such all-risk policies by the Legislature.

(b) Farmers' Interpretation of Its Resulting Loss Provision Is Erroneous

Applying the interpretive principles discussed in section (2) *supra*, this Court should reject Farmers' interpretation of its resulting loss provision. That provision must be read in Gardens' favor and against Farmers as its drafter.

Farmers' all-risk policy specifically covers water vapor, excess humidity, and condensation despite its exclusions of such

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issue in this case. This Court has repeatedly recognized that "the industry knows how to protect itself and it knows how to write exclusions and conditions." *Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co.*, 144 Wn.2d 130, 141, 26 P.3d 910 (2001). Farmers simply failed to exclude the loss at issue and cannot now ask this Court to rewrite its policy.

perils in certain inapplicable circumstances.[3] *Sunbreaker Condo. Ass'n v. Travelers Ins. Co.*, 79 Wn. App. 368, 377, 901 P.2d 1079 (1995), *review denied*, 129 Wn.2d 1020 (1996) ("the limited weather conditions exclusion, indicate an intent to characterize dry rot and wind-driven rain as distinct perils"). Farmers covered the damage at issue at Gardens. By acknowledging these perils and then not specifically excluding them, Farmers agreed to cover them and that its resulting loss clause would preserve that coverage. *Vision One*, 174 Wn.2d at 517 (resulting loss clause applied because the insurer did "not argue that collapse was a risk beyond the reasonable contemplation of the policy").[4]

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[3] Farmers' policy excludes "Water" only in the form of a flood, mudslide, sewer backups, underground water intrusion, or leaks from frozen plumbing. (CP 35 (excl. 1.f, and 2.e)). Similarly, it excludes "Vapor" only from "industrial operations" (CP 35 (excl. 2.c)) and "Dampness . . . of atmosphere" only when it damages personal property. CP 36 (excl. k. (7)(a)).

[4] Recognizing the flaw in the present policy's resulting loss provision, in later issued policies not pursued by Gardens, Farmers actually added exclusions for both "water in any form" and "condensation," recognizing that it must specifically exclude

An average purchaser of insurance would understand that Farmers did not exclude water vapor, condensation, and excess humidity from its "Covered Cause of Loss" definition. Given Farmers' stipulation that inadequate construction initiated a sequence of events including water vapor, excessive humidity, and condensation, and that such covered perils caused the damage to the non-defective sheathing and fire board, coverage is preserved under Farmers' resulting loss clause in light of *Vision One* and the case law, referenced *supra*.[5]

Farmers' argument that there must be some unspecified "new peril," other than resulting loss or damage from a covered

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these perils in its all-risk policy. CP 142-43, 148.

[5] Unlike the resulting loss clause in *Sprague*, which hinged on whether the resulting loss was covered, here, as in *Vision One*, the resulting loss clause is broader and preserves coverage if loss or damage from a "Covered Cause of Loss results." *See Sunwood*, 2017 WL 5499809, at *12-13 ("By these terms, if an excluded peril (e.g. inadequate construction) brings about a covered *peril* (e.g. rain intrusion, repeated water seepage, or water damage), any resulting damage is covered.").

peril, to trigger resulting loss coverage under its policy is not new and has been rejected by this Court and other courts, as noted above. The Farmers policy covered perils (water vapor, condensation, and excess humidity) resulting from inadequate construction, causing the loss or damage, triggering the resulting loss coverage under the policy.

Farmers argues there is no coverage here because "The Gardens' loss is the natural and unavoidable consequence of the stipulated faulty construction and design, and no new peril ensued . . . ." *Id*. at 5, but that "new peril" argument is wrong. For example, under Farmers' reasoning there would be no resulting loss coverage for a fire resulting from defective wiring because the fire would be the natural consequence of defective wiring. Similarly, the covered collapse in *Vision One* would not be covered because a concrete slab falling down is the natural consequence of faulty shoring.

Given that for the resulting loss clause to apply, a covered

peril must result from an excluded peril,[6] Farmers' position effectively means that resulting loss coverage would never apply.

Further, Farmers' policy preserves coverage for a "Covered Cause of Loss" that result from inadequate construction. Similarly, Farmers argument ignores its stipulation that condensation, water vapor, and excess humidity are *independent* from the inadequate construction and that such covered causes of loss caused the damage. If loss or damage from such covered perils do not trigger resulting loss coverage, then such coverage is illusory.

In its supplemental brief at 10, 19, Farmers claims that Division I erred in not giving effect to the so-called inverse efficient proximate cause language preceding the inadequate

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[6] Farmers' argument rests on its assertion that the loss here inevitably resulted from inadequate construction. However, there is nothing in the record that supports this assertion. *See* CP 57-61 showing portions of roof sheathing and framing at the Gardens with no damage from condensation or water vapor. Instead, the parties stipulated that what caused the damage is "Covered Causes of Loss" under the policy including water vapor, condensation, and excess humidity.

construction exclusion. However, the cases cited by Farmers[7] are irrelevant as they do not involve resulting loss coverage and only illustrate that Farmers could have avoided coverage here by not including a resulting loss clause in its inadequate construction exclusion. *See, e.g.*, *Hill & Stout, PLLC v. Mut. of Enumclaw Ins. Co.*, 200 Wn.2d 208, 213-14, 515 P.3d 525 (2022) (virus exclusion not subject to any exceptions).

Farmers' argument that a single construction defect negates resulting loss coverage for the entire structure was rejected by *Vision One*. Consistent with *Vision One*, no ordinary insured would read Farmers' resulting loss clause, which states "but if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage," CP 43, to negate coverage for damage by covered causes of loss to non-defective fireboard and sheathing. Farmers' position that its inadequate construction exclusion eviscerates coverage for all resulting

[7] Farmers' citation to *Vision One* does not advance its position, as this Court found resulting loss coverage in that case.

damage caused by covered causes of loss simply does not follow from the policy language or Washington precedent. Its analysis will deprive numerous Washington homeowners associations and their members of necessary property insurance, and shift the burden of paying for resulting covered damage to homeowners, contrary to both the policy language and the Legislature's intent.

E. CONCLUSION

Farmers' analysis of its resulting loss clause is contrary to this Court's precedents, both on construing insurance policies generally and on resulting or ensuing loss provisions specifically, and is harmful to homeowner associations and their members mandated by statute to buy and maintain insurance. This Court should affirm Division I's well-reasoned opinion interpreting the ensuing loss clause in the Farmers policy issued to Gardens.

This document contains 4,522 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 5th day of December, 2023.

Respectfully submitted,

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APPENDIX

RCW 64.34.352(1):

Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

DECLARATION OF SERVICE

On said day below I electronically served via appellate portal a true and accurate copy of the ***Washington State Community Associations Institute's Amicus Curiae Brief*** in Supreme Court Cause No. 101892-4 to the following:

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Original E-filed with:
Supreme Court Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: December 5, 2023 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

December 05, 2023 - 9:44 AM

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