

Property Damage Exclusion Bars Coverage for Construction Defects

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The Wyoming Supreme Court has concluded that the inclusion of construction defects in a residence constitutes "property damage" excluded from coverage under an errors and omissions policy. *See Helm v. Board of County Commissioners*, No. 98-121, 1999 Wyo. LEXIS 167 (Wyo. Nov. 10, 1999). The Helms sought damages from the Board of County Commissioners in Teton County, Wyoming, claiming that the county failed properly to inspect the Helms's residence and thereby overlooked serious construction defects. The county claimed governmental immunity, which under Wyoming law applies except where the county has purchased insurance to cover the loss in question. The Helms claimed that the county's errors and omissions policy covered the loss.

The court disagreed, citing the policy's "property damage" exclusion. Under the policy, "property damage" was defined, in part, as "physical injury to tangible property." The court opined that "it is well recognized that the installation of a defect into a building is physical injury as defined in insurance policies" (citations omitted). The court also disagreed with the Helms' argument that the exclusion does not apply because they sought damages for diminution in value as opposed to physical injury, noting that "the property damage exclusion is not triggered by how [the Helms] choose to characterize their damages, but by the substance of their claim."