

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

**American Modern Property and Casualty Insurance Company v.
Lacey Sullivan and Daniel Sullivan, a married couple, individually,
and as natural guardians to Infant Sullivan, a minor child, and Ryan
Yates**

American Modern v. Sullivan · No. 2:25-CV-0083-TOR · Decided February 10, 2026

SUMMARY

The United States District Court for the Eastern District of Washington granted American Modern Property and Casualty Insurance Company’s motion for partial summary judgment. The court declared that the insurer had no duty to indemnify Lacey Sullivan and Daniel Sullivan in an underlying personal-injury action arising from a golf-cart accident involving their minor child. The ruling followed the court’s earlier determination that the insurer had no duty to defend and the defendants’ failure to respond to the motion.

CASE DETAILS

COURT	United States District Court for the Eastern District of Washington
JURISDICTION	United States District Court for the Eastern District of Washington
DECIDED	February 10, 2026
DOCKET	2:25-CV-0083-TOR
DISPOSITION	other
PROCEDURAL POSTURE	Declaratory-judgment action by an insurer seeking a determination that it owed no duty to defend or indemnify insured defendants in an underlying personal-injury action; insurer moved for partial summary judgment on the duty to indemnify after previously obtaining summary judgment on the duty to defend.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant's papers support the motion and reveal no genuine issue of material fact; a court may deem a failure to respond consent to an adverse order under LCivR 7(e), but may not grant summary judgment if the movant's papers are insufficient or disclose a genuine issue of material fact.
PRECEDENTIAL VALUE	Unpublished federal district court order; limited persuasive value.

PARTIES

American Modern Property and Casualty Insurance Company v. Lacey Sullivan, Daniel Sullivan, Infant Sullivan, Ryan Yates

TOPICS

duty to indemnify

declaratory relief insurance

summary judgment

insurance coverage

civil procedure

PRACTICE AREAS

insurance coverage

insurance litigation

civil procedure

declaratory judgment

QUESTIONS PRESENTED

1. Whether the Court could construe defendants' failure to respond to the motion for partial summary judgment as consent to an adverse order under LCivR 7(e).
2. Whether American Modern was entitled to summary judgment declaring that it owed no duty to indemnify the defendants in the underlying personal-injury action.

HOLDINGS

1. The Court construed defendants' failure to respond as consent to entry of an adverse order because the motion was unopposed and the substantive record did not reveal a genuine issue of material fact.
2. American Modern had no duty to indemnify Lacey and Daniel Sullivan in the underlying action under the policy.

KEY QUOTATIONS

"The duty to defend is broader than the duty to indemnify." (at 2)

"The duty to indemnify hinges on the insured's actual liability to the claimant and actual coverage under the policy." (at 2)

"Thus, where the Court has determined that the complaint creates no potential for liability, it follows that there can be no actual liability." (at 2)

"Therefore, Plaintiff has no duty to indemnify the Defendants regarding the Underlying Action." (at 2)

FACTUAL BACKGROUND

Ryan Yates alleged that on July 7, 2024, he was struck and injured while walking along the side of a road by a golf cart driven by the Sullivans' 11-year-old daughter. Yates sued Lacey and Daniel Sullivan for negligence in Lincoln County Superior Court. At the time of the incident, Lacey Sullivan's manufactured home was insured by American Modern under a manufactured-home insurance policy. American Modern sought declarations that the policy imposed neither a duty to defend nor a duty to indemnify the defendants.

PROCEDURAL HISTORY

Ryan Yates sued Lacey and Daniel Sullivan in Lincoln County Superior Court for injuries allegedly caused when their minor daughter struck Yates with a golf cart. American Modern filed this federal declaratory-judgment action on March 11, 2025. The Court previously granted American Modern summary judgment on the duty to defend. Defendants did not respond to the present motion, and the Court granted partial summary judgment on the duty to indemnify.

DISPOSITION

other

CASES CITED

- Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994) (per curiam)
- Atain Specialty Insurance Co. v. Todd, No. 4:18-CV-5022-RMP, 2019 WL 2030329, at *5 (E.D. Wash. Jan. 24, 2019)
- Wilcox v. Batiste, 360 F. Supp. 3d 1112, 1125 (E.D. Wash. 2018)
- Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993)
- Allstate Insurance Co. v. Bowen, 121 Wash. App. 879, 884 (2004)
- Truck Insurance Exchange v. VanPort Homes, Inc., 147 Wash. 2d 751, 760 (2002)
- Unigard Insurance Co. v. Leven, 97 Wash. App. 417, 425 (1999)
- Liberty Mutual Insurance Co. v. Lange, 2023 WL 4704712, at *6 (W.D. Wash. July 24, 2023)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON 6 7
AMERICAN MODERN PROPERTY AND CASUALTY INSURANCE NO. 2:25-CV-0083-TOR
8 COMPANY, a foreign company, ORDER GRANTING PLAINTIFF’S 9 Plaintiff, MOTION
FOR PARTIAL SUMMARY JUDGMENT 10 v. 11 LACEY SULLIVAN and DANIEL
SULLIVAN, a married couple, 12 individually, and as natural guardians to INFANT SULLIVAN,
a minor 13 child, and RYAN YATES, 14 Defendants.

15 BEFORE THE COURT is Plaintiff’s Motion for Partial Summary Judgment 16 (ECF No. 13).
This matter was submitted for consideration without oral argument. 17 The Court has reviewed the
record and files herein and is fully informed.

For the 18 reasons discussed below, Plaintiff’s Motion is GRANTED. 19 20 1 BACKGROUND 2
This action arises out of a Complaint for Personal Injuries (“Underlying 3 Action”) brought
against Lacey Sullivan and Daniel Sullivan (the “Sullivans”) 4 brought in Lincoln County
Superior Court. ECF No. 10-1.

In the Underlying 5 Action, the plaintiff, Ryan Yates (“Yates”), alleges that on July 7, 2024, while
6 walking on the side of the road, he was struck and injured by a golf cart driven by 7 the

Sullivans' 11-year-old daughter ("Infant Sullivan"). ECF No. 10-1 at ¶¶ 8 2.1,2.3. Yates brought the Underlying Action against the Sullivans alleging 9 negligence.

The complaint and summons were delivered to the Sullivans on or 10 about September 20, 2024. ECF No. 11 at ¶ 5. 11 At the time of the alleged injury, Lacey Sullivan's manufactured home was 12 insured by American Modern Property and Casualty Insurance Company 13 ("American Modern") through a manufactured home insurance policy (no. 102- 14 664-084) (the "Policy").

ECF No. 11 at ¶ 6. 15 Plaintiff brought this action on March 11, 2025, seeking declaratory 16 judgment that it neither owes a duty to defend or indemnify Defendants in the 17 Underlying Action pursuant to the Policy. ECF No. 1. Defendants filed their 18 Answer to the Complaint on May 8, 2025 alleging Plaintiff does owe Defendants a 19 duty to defend and indemnify in the Underlying Action.

ECF No. 7. On June 18, 20 2025, Plaintiff moved for partial summary judgment as to its duty to defend (ECF 1 No. 9), which the Court granted on August 28, 2025 (ECF No. 12). ECF No. 9. 2 Plaintiff now moves for summary judgment as to its duty to indemnify. ECF No. 3 13.

As was the case before, Defendants have not filed a response, and the motion 4 hearing date has now passed. 5 DISCUSSION 6 A district court has discretion to determine whether a party's failure to 7 respond to an opposing party's argument should be deemed consent to the entry of 8 an adverse order. LCivR 7(e); *Brydges v. Lewis*, 18 F.3d 651, 652 (9th Cir. 9 1994) (per curiam); see also *Atain Specialty Ins.*

Co. v. Todd, No. 4:18-CV-5022- 10 RMP, 2019 WL 2030329, at *5 (E.D. Wash. Jan. 24, 2019) ("A failure to respond 11 to an opposing party's argument is deemed consent to the entry of an adverse 12 order."); *Wilcox v. Batiste*, 360 F. Supp. 3d 1112, 1125 (E.D. Wash. 2018) 13 (granting summary judgment on two claims pursuant to LCivR 7(e) due to party's 14 failure to respond).

However, this discretion "is necessarily abused when 15 exercised to grant a motion for summary judgment where the movant's papers are 16 insufficient to support that motion or on their face reveal a genuine issue of 17 material fact." *Henry v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir.1993); see also 18 *Brydges*, 18 F.3d at 652. 19 Plaintiff seeks declaratory judgment that it does not have a duty to 20 indemnify the Sullivans as a matter of law.

ECF No. 13. The Court construes 1 Defendants' failure to respond as consent for entry of an adverse order. 2 Additionally, a substantive review of Plaintiff's motion does not reveal any issue 3 of material fact. 4 "The duty to defend is broader than the duty to indemnify." *Allstate Ins. Co. 5 v. Bowen*, 121 Wash. App. 879, 884 (2004). "The duty to defend 'arises when a 6 complaint against the insured, construed liberally, alleges facts which could, if 7 proven, impose liability upon the insured within the policy's coverage.'" *Truck 8 Ins.*

Exch. v. VanPort Homes, Inc., 147 Wash. 2d 751, 760 (2002) (quoting 9 Unigard Ins. Co. v. Leven, 97 Wash. App. 417, 425 (1999)). Whereas “[t]he duty to indemnify hinges on the insured’s actual liability to the claimant and actual coverage under the policy.” Bowen, 121 Wash. App. at 884. The Court previously determined that Plaintiff has no duty to defend Defendants in the Underlying Action pursuant to the Policy.

ECF No. 12. Thus, where the Court has determined that the complaint creates no potential for liability, it follows that there can be no actual liability. Liberty Mut. Ins. Co. v. Lange, No. C20-0309JLR, 2023 WL 4704712, at *6 (W.D. Wash. July 24, 2023) (“If there is no duty to defend, then there is no duty to indemnify.”).

Therefore, Plaintiff has no duty to indemnify the Defendants regarding the Underlying Action. **ACCORDINGLY, IT IS HEREBY ORDERED:** 1. Plaintiff’s Motion for Partial Summary Judgment (ECF No. 13) is **GRANTED**. 2. A declaratory judgment shall be entered in favor of Plaintiff that states Plaintiff has no duty to indemnify Defendants Lacey Sullivan and Daniel Sullivan, individually, as a marital community, or as the natural guardians of Infant Sullivan, in the separate action brought by Ryan Yates against Lacey Sullivan and Daniel Sullivan, individually, as a marital community, or as the natural guardians of Infant Sullivan under the Policy issued by Plaintiff to Defendant Lacey Sullivan.

The District Court Executive is directed to enter this Order and furnish copies to counsel. The file remains OPEN. **DATED** February 10, 2026. <> United States District Judge **ORDER GRANTING PLAINTIFF’S MOTION FOR PARTIAL SUMMARY**