

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

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 10 to indemnify hinges on the insured's actual liability to the claimant and actual 11 coverage under the policy." *Bowen*, 121 Wash. App. at 884. 12 The Court previously determined that Plaintiff has no duty to defend 13 Defendants in the Underlying Action pursuant to the Policy.

ECF No. 12. Thus, 14 where the Court has determined that the complaint creates no potential for liability, 15 it follows that there can be no actual liability. *Liberty Mut. Ins. Co. v. Lange*, No. 16 C20-0309JLR, 2023 WL 4704712, at *6 (W.D. Wash. July 24, 2023) ("If there is 17 no duty to defend, then there is no duty to indemnify.").

Therefore, Plaintiff has no 18 duty to indemnify the Defendants regarding the Underlying Action.
19 // 20 // ACCORDINGLY, IT IS HEREBY ORDERED: 2 1. Plaintiff's Motion for Partial
Summary Judgment (ECF No. 13) is 3 GRANTED. 4 2. A declaratory judgment shall be entered
in favor of Plaintiff that states 5 Plaintiff has no duty to indemnify Defendants Lacey Sullivan and
Daniel 6 Sullivan, individually, as a marital community, or as the natural 7 guardians of Infant
Sullivan, in the separate action brought by Ryan 8 Yates against Lacey Sullivan and Daniel
Sullivan, individually, as a 9 marital community, or as the natural guardians of Infant Sullivan
under 10 the Policy issued by Plaintiff to Defendant Lacey Sullivan.

11 The District Court Executive is directed to enter this Order and furnish copies to counsel. The
file remains OPEN. 13 DATED February 10, 2026. <> United States District Judge 16 17 18 19
20 ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY