

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

**Foremost Insurance Company Grand Rapids Michigan v. Patrick
Lathrop, et al.**

Foremost v. Lathrop · No. C25-5968 BHS · Decided January 16, 2026

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA 7 FOREMOST INSURANCE COMPANY CASE NO. C25-5968 BHS 8 GRAND
RAPIDS MICHIGAN, ORDER 9 Plaintiff, v. 10 PATRICK LATHROP, et al., 11 Defendant. 12
13 THIS MATTER is before the Court on plaintiff Foremost Insurance Company's 14 motion for
summary judgment, seeking a declaratory judgment that it has no duty to 15 defend its insured,
defendant Patrick Lathrop, from defendant Stanley Delano's 16 underlying case against him.

Dkt. 15. 17 Lathrop was a Gig Harbor Safeway customer. As he was checking out, Safeway 18
employee defendant Christopher White told Lathrop there was a shoplifter near the store's 19 exit.
Lathrop concluded that another customer, Delano, who had just paid and departed 20 the store,
was the culprit. Lathrop took it upon himself to detain Delano, and demanded to 21 see his receipt.

Delano resisted, and attempted to flee. Lathrop shot Delano in the neck. 22 1 Delano survived, and
sued Lathrop, Safeway, and White. Lathrop was charged with 2 assault. He testified at trial,
claiming he acted in self-defense.

The jury found him guilty 3 and he is in prison. 4 As to Lathrop, Delano's complaint asserts: 5 11.
Plaintiff Delano then became frightened of what defendant Lathrop might do as Ms. Geary was
next to him and struck a glancing blow at 6 defendant Lathrop's head to try to get him away from
them. Plaintiff Delano and defendant Lathrop quickly spilled outside the store, and 7 plaintiff
Delano turned around and walked away from defendant Lathrop, but defendant Lathrop pulled a
handgun and shot plaintiff Delano in the 8 neck as he was walking away.

9 *** 10 16. Defendant Lathrop was prosecuted for first degree assault and sentenced to prison.
11 *** 12 VI. DEFENDANT LATHROP'S INTENTIONAL TORTS 13 1. Plaintiff re-alleges
paragraphs I.7 through II.16. 2. Defendant Lathrop's actions constitute the intentional torts of
assault and 14 battery. 3.

As a direct and proximate cause of defendant Lathrop's actions, plaintiff 15 Delano was injured
and suffered damages. 16 Dkt. 16-1 at 4-5; 7. 17 Lathrop tendered defense of Delano's lawsuit to
Foremost, under his homeowners' 18 insurance policy. Foremost agreed to defend Lathrop under a
reservation of rights, and 19 20 21 22 1 commenced this declaratory judgment action¹ to obtain a

judicial determination of its obligation to continue defending, and to ultimately indemnify, Lathrop.

I. DISCUSSION
Foremost argues and demonstrates that its policy does not cover intentional acts or the foreseeable consequences of such acts; it only covers damages caused by accidents. It specifically excludes bodily injury “resulting from an act committed [] in the course of or in furtherance of any crime or offense of a violent nature.” Dkt. 15 at 5-7.

It seeks a summary judgment declaring that it has no duty to defend or indemnify Lathrop from Delano’s underlying claim against him. Lathrop claims—as he did in his criminal trial—that he acted in self-defense. He argues that Foremost’s policy contains an exception to its intentional act exclusion for “the use of reasonable force to protect persons or property.” Dkt.

18 at 2; see also Foremost’s summary judgment motion, Dkt. 15 at 13 (citing Policy, Dkt. 1-2 at 24). Lathrop asserts that his self-defense claim triggers Foremost’s duty to defend: [A]s set forth in Mr. Lathrop’s sworn testimony and defense in the underlying action, Mr. Lathrop acted in self-defense in response to the conduct of Stanley Delano. That fact alone is sufficient to trigger Foremost’s duty to defend.

Dkt. 18 at 3.2 Lathrop cites no authority in support of this assertion, and it is inconsistent with Washington law on what triggers an insurer’s duty to defend. Lathrop (and his defendant spouse) is Foremost’s insured. Foremost also named as defendants in this declaratory judgment action underlying plaintiff Delano, underlying defendant Safeway, and its employee, defendant Christopher White.

Lathrop’s self-defense testimony at his criminal trial is in the record. Dkt. 19-1. Lathrop also argues the fact the jury rejected his defense and convicted him of a felony does not preclude his assertion of self-defense in the underlying civil case or deprive him of coverage in this one: “Collateral estoppel is an equitable doctrine that will not be applied mechanically where doing so would work an injustice.” Dkt.

18 at 4 (citing *Hadley v. Maxwell*, 144 Wn.2d 306, 315 (2001)). The issues are addressed in turn. Interpretation of an insurance contract is a question of law. *Woo v. Fireman’s Fund Ins. Co.*, 161 Wn.2d 43, 52 (2007). Terms are to be interpreted as the “average person purchasing insurance” would understand them. *Id.* While the insured has the burden of proving that claims fall within a grant of coverage, the insurer has the burden of proving that an exclusion bars coverage.

See *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 731 (1992). In Washington, the duty to defend arises when an action is filed and is based on the potential for liability. *Woo*, 161 Wn.2d at 52. “Upon receipt of the complaint against its insured, the insurer is permitted to use the ‘eight corners rule’ to determine whether, on the face of the complaint and the

insurance policy, there is an issue of fact or law that 17 could conceivably result in coverage under the policy.” *Xia v. ProBuilders Specialty Ins.*

18 Co., 188 Wn.2d 171, 182 (2017) (citing *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 19 793, 803 (2014)) (emphasis added). If the insurance policy “conceivably covers” the 20 complaint’s allegations, the duty to defend is triggered. *Woo*, 161 Wn.2d at 53. 21 “[I]f a complaint is ambiguous, a court will construe it liberally in favor of 22 triggering the insurer’s duty to defend.” *Id.* Although an insurer may look outside the 1 complaint if the allegations are contradictory or ambiguous, or if coverage is unclear, the 2 insurer may only rely on extrinsic facts to trigger—not deny—the duty to defend.

Id. at 3 54; *Grange Ins. Ass’n v. Roberts*, 179 Wn. App. 739, 752 (2013). 4 Once the duty to defend attaches, insurers may not desert policyholders and allow 5 them to incur substantial legal costs while waiting for an indemnity determination. *Truck 6 Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 761 (2002). An insurer “unsure of its 7 obligation to defend in a given instance... may defend under a reservation of rights 8 while seeking a declaratory judgment that it has no duty to defend.

Id. This way, “the 9 insured receives the defense promised, and if coverage is found not to exist, the insurer 10 will not be obligated to pay.” *Id.* (quoting *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 563 11 n.3 (1998)). 12 Delano’s claims against Lathrop are not conceivably covered by Foremost’s 13 insurance policy as a matter of law.

First, Foremost correctly contends that under 14 Washington law, the duty to defend is triggered by the allegations on the face of the 15 underlying complaint, not in the insured’s response to it. *Xia*, 188 Wn.2d at 182. 16 Delano’s complaint unambiguously alleges that Lathrop intentionally assaulted him. Dkt. 17 1-1 at 7. An intentional tort is not covered under the Foremost policy.

18 Second, even if the four corners of Delano’s complaint implicated a conceivably 19 covered the “use of reasonable force to protect persons or property,” Lathrop already 20 litigated this self-defense claim, and lost. He is collaterally estopped from asserting that 21 his defense to Lathrop’s civil intentional tort claim is covered because he was using 22 reasonable force to defend himself.

1 Collateral estoppel prevents re-litigation of an issue “when an issue of fact or law 2 is actually litigated and determined by a valid and final judgment, and the determination 3 is essential to the judgment.” *Amadeo v. Principal Mutual Life Insurance Co.*, 290 F.3d 4 1152, 1159 (9th Cir. 2002). Collateral estoppel applies when the following factors are 5 satisfied: “(1) the issue at stake was identical in both proceedings; (2) the issue was 6 actually litigated and decided in the prior proceedings; (3) there was a full and fair 7 opportunity to litigate the issue; and (4) the issue was necessary to decide the 8 merits.” *Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th Cir.

2019) (quoting *Oyeniran v. 9 Holder*, 672 F.3d 800, 806 (9th Cir. 2012), as amended (May 3, 2012) (looking to the 10 record to determine if an issue had been raised, contested and submitted for 11 determination)). 12 Lathrop asserted self-defense in his criminal trial. He contended the state could not 13 prove beyond a reasonable doubt that he intentionally assaulted Delano, because he was 14 instead using reasonable force to defend himself.

The jury necessarily and irrevocably 15 rejected that position when found him guilty³ of first-degree assault. The viability of the 16 defense was squarely at stake in the criminal case, and it is at stake in this case.

The 17 reasonableness of Lathrop's intentional use of force was actually litigated and necessarily 18 decided in the criminal trial (where the state had to prove its case beyond a reasonable 19 doubt). Lathrop had a full and fair opportunity to litigate that defense. See Dkt. 19-1. And 20 the jury necessarily resolved the viability of Lathrop's self-defense claim as a prerequisite 21 3 The Washington Court of Appeals affirmed Lathrop's conviction.

Wash. v. Lathrop, 31 22 Wn.App.2d 1072 (Wash. App. July 23, 2024) (unpublished). 1 to convicting him. It rejected that claim, and found beyond a reasonable doubt that 2 Lathrop had intentionally assaulted Delano. Criminal convictions have preclusive effect 3 where, as here, they resolve "the critical issue" in the coverage case. See Dkt. 21 at 5-6 4 (citing *Martinez v. Universal Underwriters Ins.*

Co., 819 F. Supp. 921, 923 (1992); and 5 *Safeco Ins. Co. v. McGrath*, 42 Wn. App. 58, 62 (1985)). 6 Lathrop is collaterally estopped from re-litigating the reasonableness of his use of 7 force in this coverage case. 8 Foremost's summary judgment motion, Dkt. 15, is GRANTED. Its policy does 9 not cover intentional acts and it does not cover Delano's claim against its insured, 10 Lathrop.

Lathrop is collaterally estopped from re-litigating the merits of his self-defense 11 claim. Foremost has no duty to defend or indemnify Lathrop in the underlying case as a 12 matter of law. 13 The Clerk shall enter a JUDGMENT and close the case. 14 Dated this 16th day of January, 2026. A 15 16 BENJAMIN H. SETTLE 17 United States District Judge 18 19 20 21 22