

# Impaired Property Exclusion Coverage Update

November 17, 2025

## Impaired Property Exclusion – 9th Circuit (Washington Law)

*BITCO Gen. Ins. Corp. v. Union Ridge Ranch, LLC*

No. 24-6474, 2025 WL 3022309 (9th Cir. Oct. 29, 2025)

The U.S. Court of Appeals for the Ninth Circuit recently held that BITCO General Insurance Corporation (BITCO) had no duty to indemnify Inland Company (Inland) in relation to Inland's settlement with Union Ridge Ranch, LLC (Union Ridge) as a result of an impaired property exclusion.

Applying Washington law, the appellate court analyzed whether BITCO's impaired property exclusion precluded coverage for a defectively built retaining wall. In the underlying state court action, a geotechnical engineering consultant that had performed testing on the walls alleged that Inland's retaining walls were improperly constructed and posed a substantial risk of failure. The defects with the retaining wall caused another prospective purchaser to back out of the contract. Union Ridge and Inland discussed the defects in November 2018, resulting in Inland reducing its contract price. One wall ultimately failed in January 2019, leading to a settlement between Inland and Union Ridge regarding the contract.

The BITCO policy contained an impaired property exclusion that excluded coverage for "property damage" to "impaired property" or "property that has not been physically injured, arising out of: (1) a defect, deficiency, inadequacy or dangerous condition in 'your product' or 'your work'; or (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms." In its dispositive motion, Inland admitted that the property at issue met the policy's definition of "impaired property." Even if it had not, the trial court concluded that the impaired property exclusion applied to the property at issue.

However, the BITCO policy also contained an exception to the impaired property exclusion that provided coverage for "loss of use of other property arising out of sudden and accidental physical injury to 'your product' or 'your work' after it has been put to its intended use." The parties disputed whether the insurer or insured bore the burden of proving an exception to the exclusion.

Regardless of that burden, the appellate court determined the "sudden and accidental" exception did not apply. Under Washington law, the appellate court noted that "sudden and accidental" in an insurance contract means "unexpected and unintended." Given the facts, the appellate court concluded there was no genuine dispute that Inland knew and expected the wall to fail before its actual

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failure.

Inland and Union Ridge argued the trial court erred by relying on Union Ridge's counterclaims pled in the state court action. The appellate court disagreed, stating that appellate courts may rely on state court pleadings. Thus, the appellants' argument failed.

Therefore, the appellate court affirmed the trial court's ruling for BITCO, finding no insurance coverage was owed to Inland and Union Ridge for the settlement in the underlying state court as a result of the impaired property exclusion.

By Chelsea Saferian