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Lawsuits by Condo Associations Against Neighboring Developers, Builders Are New Norm

By Lindsey Thurswell Lehr and Susan C. Odess

Every South Florida construction boom brings with it a rise in defect claims by condominium associations against their buildings' developers, builders and design professionals. The current wave of development has been no different, except that due to the proximity of new condo developments to each other, recently there has also been an increase in damage claims from associations that are neighboring construction sites.

This new litigation trend appears to have especially taken hold in South Florida, where several prominent condominium developers and contractors have been sued by adjacent associations for damages emanating from their construction sites. The lawsuits raise claims for structural damage, fallen stucco, splattered paint, excessive dirt, broken glass/windows, and other damage resulting from the construction practices of neighboring developments.

The insurer for the 1060 Brickell Condominium Towers brought a lawsuit alleging construction debris from Panorama, 1010 Brickell and the Bond damaged the two 1060 Brickell buildings. The lawsuit claims that the construction activities at these properties damaged 1060 Brickell's facade, balconies, railings, pool deck, roof, cooling tower and other components.

The entire development team behind the ultra-luxe Porsche Design Tower faced a similar lawsuit brought by the association for the adjacent Millennium Condominium. The association alleged that its building suffered millions of dollars in damage caused by the Porsche Tower's construction next door, including extensive cracks to the lobby, parking garage and pool deck. Engineers concluded that the cracks were caused by excessive vibrations from the pile-driving equipment used for the neighboring tower's foundation, and the suit also alleged concrete overspray splattered onto Millennium's balconies, ruining the building's paint job and related exterior components.

Similar allegations were made in a lawsuit brought by the Bayside Terrace Condominium Association against the developers and builders of Biscayne Beach. Bayside Terrace alleged overspray of concrete and stucco, as well as other construction debris, caused permanent damage to its facade and landscaping as well as its residents' vehicles and property.

Even neighboring properties by the same developer are not immune to such suits. Fortune International Group was sued by the condominium association for Jade Beach, a tower it built in 2008, over alleged construction damage caused by the developer's latest tower next door dubbed Jade Signature. The suit

alleges that the development team failed to install protective netting, resulting in Jade Beach's pool deck and other common areas being hit with loose nails, concrete and dust.

Obviously, condominium construction involves the use of heavy equipment, and properties that are in proximity may incur damage related to the construction means and methods being employed as well as debris and concrete/stucco/paint overspray.

Prior to the start of construction at an adjacent site, condominium associations should conduct a thorough survey of their property and update their maintenance records to serve as a pre-construction backgrounder on the condition of their property. Similarly, the development teams behind new construction sites should prepare their own surveys and reports of the current conditions of neighboring buildings, and any existing damage should be documented with detailed images and reports.

If vibrations appear intense and likely to cause damage once heavy construction begins, a seismic testing company can be retained to monitor and document the intensity of the vibrations that are being created. The seismographic data can then be used to determine whether the vibrations were sufficient to cause any cracks or foundational concerns that may develop.

Once any potential construction-related damage begins to appear, condominium associations should immediately notify their insurance carrier and begin the claim process. The insurers and their adjusters will inspect the damage and conduct their own investigations to determine whether it is being caused by the nearby construction. They can work to mitigate the damage while also collecting and documenting the evidence that will be necessary to assign liability to the culpable parties. As the 1060 Brickell example demonstrates, in some cases it will be the insurance carrier that brings an eventual lawsuit against the neighboring development team on behalf of the aggrieved association.

For builders and development teams that wish to avoid liability, the use of adequate safety netting and other appropriate construction techniques and equipment to help mitigate the risks should now be standard operating procedure. In addition, associations for condominiums located adjacent to construction sites should take every precaution to document the condition of their property and work closely with their insurer should any damage arise.

These lawsuits by South Florida condominium associations against the developers and builders of nearby properties appear to have become the new norm, and as such the construction industry has essentially been put on notice to do all it can to eliminate the potential for damage to neighboring towers.

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