

Property damage in execution of a warrant - reasonable or not?

By Gordy Van

Some of our members have formed SWAT teams via interlocal agreements. In a case that involved a SWAT team comprised of six municipalities including several WCIA members, a claim was made for property damage to a condominium.

A victim called 911, asserting she had been robbed and pistol whipped by a man inside the plaintiff's condominium. She was able to flee outside while being chased by the suspect and reported that she thought the suspect had returned to the condominium. The police department obtained a search warrant and contacted the SWAT team to execute the warrant, as they thought an armed suspect was inside. Pepper spray (OC) cannisters were shot through windows into the unit, causing damage to windows, walls and doors. Two doors were blown off and garage panels were torn off. Cabinets were broken, and contents of drawers were emptied. OC was also lobbed into the attic, which started a small fire that was able to be extinguished. The suspect was not located inside.

The owner of the condominium wasn't present when the incident took place and told police she did not know the suspect. While this turned out to be untrue (the suspect was her son), she was not involved in any of the events and was an innocent party. She filed a high dollar claim for significant property damage. WCIA denied the claim as it was felt the SWAT team actions were reasonable given the possibility an armed suspect was inside. A federal lawsuit was filed, claiming the warrant was improperly obtained and that the damage to the unit constituted an unreasonable search. The plaintiff hired an expert who opined that the damage caused amounted to a SWAT "training day".

In a previous case, *Brutsche v. City of Kent*, 193 P.3d 110 (2008), 164 Wash.2d 664, the Supreme Court issued a decision ruling that a trespass claim may be asserted against a city if law enforcement officers exceeded the scope of their lawful authority to enter property to execute a search warrant. The decision found that liability may arise if: officers took actions that a reasonable person would not regard as necessary to execute a warrant and caused property damage; executed a warrant in a negligent manner damaging the property; or if law enforcement officers exceed the scope of their privilege to be on the land to execute the search warrant. In the *Brutsche* case, the Court found that the evidence presented by the plaintiff did not demonstrate a trespass by officers.

In the current case, summary judgment motions were filed by both the defense and the plaintiff. The judge ruled that obtaining the warrant was reasonable which dismissed some claims. The Judge also dismissed the negligence claims. The judge found, however, that the damage

caused by the officers was unreasonable considering the threat officers faced, since it was unknown if the suspect was still inside the condo or not. The Judge ruled the execution of the warrant was unreasonable and constituted a trespass. This now exposed the SWAT team participating agencies and officers to having to pay the plaintiff's attorney fees in addition to damages to the condominium and possibly emotional distress damages. The decision was made to resolve the claim at mediation.

Reasonable damage resulting from the execution of a search warrant will not create liability to a property owner. Unreasonable damage will create liability. What constitutes "unreasonable damage" is a question of fact for a jury. WCIA evaluates claims on a case by case basis. While we may decide to resist a claim or lawsuit, as the above case illustrates, we may also have to make the decision to resolve a claim depending on how the case develops.