Crumbling Concrete Not Covered Under 'Collapse' Provision in Homeowner's Policy

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What do you do when your house falls out from underneath you? Over the last few years, homeowners in northeastern Connecticut have been suing their insurers for denying coverage for claims based on deteriorating foundations in their homes. The lawsuits, which have come to be known as the "crumbling concrete cases," stem from the use of faulty concrete to pour foundations of approximately 35,000 homes built during the 1980s and 1990s. In order to save their homes, thousands of homeowners have been left with no other choice but to lift their homes off the crumbling foundations, tear out the defective concrete and replace it. The process typically costs between $150,000 to $350,000 per home, and homeowner's insurers are refusing to cover the costs. As a result, dozens of lawsuits have been filed by Connecticut homeowners in both state and federal court.

Of those cases, three related lawsuits against Allstate Insurance Company were the first to make it to the federal appellate level.[1] The Second Circuit Court of Appeals was tasked with deciding one common issue: whether the "collapse" provision in the Allstate homeowner's policy affords coverage for gradually deteriorating basement walls that remain standing.

The Allstate policies at issue were "all-risk" policies, meaning they covered "sudden and accidental direct physical

losses" to residential properties. While "collapse" losses were generally excluded, the policies did provide coverage for a limited class of "sudden and accidental" collapses, including those caused by "hidden decay," and/or "defective methods or materials used in construction, repair or renovations." Covered collapses did not include instances of "settling, cracking, shrinking, bulging or expansion."

Under Connecticut law, if an insurance policy's terms are "clear and unambiguous," then courts will give the terms their ordinary meaning. If the terms are ambiguous, however, courts will construe the language in favor of the insured. The homeowners argued that under Connecticut Supreme Court precedent, the term "collapse" is ambiguous, because it includes not only sudden catastrophe, but also the type of gradual deterioration occurring in the foundations of their homes.

The homeowners principally relied on the Connecticut Supreme Court's decision in *Beach v. Middlesex Mutual Assurance Co.*[2] In *Beach*, the plaintiffs sought coverage from their homeowner's insurer for a crack in the foundation of their home, caused by a "collapse" within the terms of the policy. The insurer denied that a collapse had occurred and argued that the crack was caused by "settlement of earth movement," a type of loss excluded under the policy. The homeowners argued that because "collapse" was not defined in the policy, it was ambiguous because it could include both a catastrophic breakdown, as well as a gradual breakdown based on loss of structural strength. The Connecticut Supreme Court agreed, finding that the term "collapse," left undefined, encompasses "substantial impairment of the structural integrity of a building." As a result, the court construed the term in favor of the homeowners, noting that if the insurer intended for the definition of "collapse" to be limited to a sudden and complete catastrophe, it had the opportunity to expressly include such a limited definition in the policy.

The Second Circuit Court of Appeals was not persuaded, however, that *Beach* was controlling, and found that the policy at issue in *Beach* was easily distinguishable from the Allstate policies, which included qualifying terms to define covered collapses as "entire," "sudden" and "accidental." The Court of Appeals explained that by including these terms, it was expressly clear that Allstate intended for covered collapses to be limited to abrupt, unexpected collapses. As a result, the Court concluded that the damages sustained by the homeowners were not covered under the policies, because not only was the gradual erosion and cracking of the foundations not "sudden" or "accidental," but "cracking" was expressly excluded from the definition of collapse.

These decisions are a perfect example of the significance of policy terms and definitions, which can vary greatly from one insurance carrier to the next, and the impact that they can have on potential claims. The likelihood of success for the countless crumbling concrete cases still pending in Connecticut courts will largely depend on the specific terms of each policy, and the manner in which terms like "collapse" are defined or otherwise qualified.

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1 The three cases are *Valls v. Allstate Insurance Co.*, 919 F.3d 739 (2d Cir. 2019); *Carlson v. Allstate Insurance Co.*, Case No. 17-3501, 2019 WL 1466935 (2d Cir. April 2, 2019); and *Lees v. Allstate Insurance Co.*, Case No. 18-007, 2019 WL 1466939 (2nd Cir. April 2, 2019).

2 *Beach v. Middlesex Mutual Assurance Co.*, 205 Conn. 246, 532 A.2d 1297 (1987).

3 *Valls*, supra, at 744 (quoting *Beach v. Middlesex*, 205 Conn. at 253).