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COZEN O'CONNOR

Common Sense Prevails: State of Collapse Nonexistent 13 Years before Discovery of Decay

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For years, property insurance policies that exclude rot damage have been called upon to cover rot because the policies extend coverage to collapse — an undefined term — caused by hidden decay, even if the structure remains standing and in use. A frequent argument employed by policyholders is that collapse existed years or even decades in the past, when the property insurance policy at issue was effective.

In 2011, the Queen Anne Park Homeowners Association discovered decay within the walls of its condominium buildings in Seattle. State Farm provided property insurance coverage for the buildings between 1992 and 1998. The association presented a claim to State Farm for the decay damage, on the theory that when State Farm's policies were in effect the buildings had collapsed, a covered cause under the policies. State Farm denied the claim and the association sued in federal court in Washington.

State Farm's policies excluded from coverage gradual deterioration and rot, but they extended coverage for collapse caused by hidden decay. The policies did not define the word collapse. The association argued that the buildings had collapsed because the hidden decay had substantially impaired their structural integrity, although they had not fallen down. The federal district court ruled that collapse meant that the buildings must have been in imminent danger of falling down when the policies were effective. The court entered summary judgment for State Farm because the association could not prove that the buildings, which remained standing in 2012, were in imminent danger of falling down when the last State Farm policy expired in 1998. The association appealed to the Ninth Circuit Court of Appeals, which affirmed the district court's summary judgment.

Before considering the lower court's summary judgment, the Ninth Circuit first certified the question of the definition of collapse to the Washington Supreme Court. Last June the Supreme Court answered the question by defining collapse as the "substantial impairment of the structural integrity of a building or part of a building that renders such building or part of a building unfit for its function or unsafe." The collapse "must be more than mere settling, cracking, shrinkage, bulging, or expansion." *Queen Anne Park Homeowners Association v. State Farm Fire & Cas. Co.*, 183 Wn.2d 485, 352 P.3d 790 (2015).

Armed with this definition, the Ninth Circuit reviewed the summary judgment entered by the federal district court in favor of State Farm. It issued its decision, favorable to State Farm, on February 3, 2016. *Queen Anne Park Homeowners Association v. State Farm Fire & Cas. Co.*, 2016 WL 424736 (9th Cir. 2/3/16).

The lower court had applied an imminent danger standard to evaluate collapse, not the substantial impairment of structural integrity test adopted by the Washington Supreme Court. However, the Ninth Circuit held that the particular definition made no difference under the facts before it; the lower court's denial of coverage was correct under either standard. The Ninth Circuit noted that the association had presented no "evidence that would allow a reasonable jury to find that parts of its condominiums 'collapsed' over 17 years ago, given that the condominiums are still standing today." Slip opinion at *4 (February 3, 2016). The court found it "simply implausible" that any walls of the buildings became "unfit for [their] function or unsafe" in or before 1998. Therefore, the court

affirmed the summary judgment in favor of State Farm that dismissed the association's claims.

The *Queen Anne Park* decisions, from both the Ninth Circuit and the Washington Supreme Court, are significant. First, the Washington court's definition of collapse, although the most expansive and arguably least practical definition to apply, clarified Washington law on the subject, as Washington courts had never before specifically defined the word collapse for insurance purposes. The decision will have little effect outside of Washington, as most states have adopted their own definitions of collapse, whether it be "substantial impairment," "imminent danger," or "complete falling down." For Washington claims, the decision fails to provide a clear, predictable resolution to the collapse issue. The definition relies on a determination of whether any impairment to the structure is substantial. The court provided no guidance as to the meaning of that word, allowing the finder of fact to apply it broadly or narrowly. How much decay must exist for impairment to be substantial? The court left the answer to that question wide open.

Second, the Ninth Circuit held that the existence of collapse at a point in time years in the past cannot be assumed without supporting evidence, particularly if the structure remains standing and in use. The court's opinion may provide useful guidance to courts elsewhere because it addresses an argument often made to extend coverage to old, expired policies, for decay damage under the guise of collapse with no evidence to support its existence. The Ninth Circuit's decision is a refreshing application of common sense to facts that frequently seem to become detached from reality.