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Connecticut Answers Critical Questions Regarding Scope of Collapse Coverage in Homeowners Policies in Insurers' Favor

BY:

Nationwide, homeowners' insurers routinely face foundation wall collapse claims. But in Connecticut, where at least 30,000 homes are believed to have been constructed in the 1980s and 1990s with defective concrete, the scope of homeowners insurance for collapse claims has been a closely watched issue. In *Jemiola v. Hartford Casualty Insurance Co.*, 2019 WL 5955904 (Conn. Nov. 12, 2019), the Supreme Court of Connecticut held that a collapse coverage grant requiring "an abrupt falling down or caving in of a building... with the result that the building... cannot be occupied for its intended purpose" is unambiguous and enforceable.

In *Jemiola*, the insured homeowner purchased her home in 1986 and insured it continuously with the same insurer. In 2006, the homeowner noticed cracking in a basement wall, and was informed that the cracking likely resulted from defective concrete used in the construction of the home. The homeowner made a claim under her policy's collapse coverage, which the insurer denied because the cracking did not compromise the structural integrity of the foundation walls. In the resulting lawsuit, the insured's expert opined that the defective concrete substantially impaired the foundation walls' structural integrity, but that this impairment did not commence until 2006 when the homeowner first noticed the cracking. Accordingly, the court analyzed coverage under the collapse coverage grant in effect in 2006, which defined collapse to mean "an abrupt falling down or caving in of a building... with the result that the building... cannot be occupied for its intended purpose."

In interpreting the scope of the collapse coverage, the Court surveyed case law throughout the country and noted that "every single court that interpreted the policy language at issue in the present case... has concluded that a building that is still standing, even if it is in danger of falling down, has not suffered a collapse within the meaning of the policy." The Court further rejected the insured's argument that the collapse provision was ambiguous because its plain and ordinary meaning simply did not encompass a home "that is still standing and capable of being safely lived in for many years – if not decades – to come."

In Connecticut, policyholders and their representatives have now attempted to secure coverage for foundation claims through all three branches of government. In *Jemiola*, the Supreme Court of Connecticut upheld the policy language requiring an abrupt falling down or caving in that results in the home being uninhabitable. Given the potential economic impact of the Court's ruling on homeowners, this issue will require continued monitoring.