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Breaking Down The Collapse Doctrine In Wash.

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Picture an old red barn perched in the middle of a rolling green farm. The barn's best days are long gone and the faded wooden siding leaks whenever it rains. A structural engineer inspects the leaky barn at the owner's behest and opines that it has reached a state of substantial structural impairment and may fall down. Nonetheless, the barn is still standing, for now, and remains in use. The ownership files a property insurance claim.

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Has the barn "collapsed" for the purposes of first-party property insurance? The answer depends on the collapse doctrine applied under the law governing the interpretation of the insurance policy. In Washington, the present answer is "wait and see," as the Ninth Circuit has recently certified this question to the Washington Supreme Court in Queen Anne Park Homeowners Ass'n v. State Farm Fire and Cas. Co., 2014 U.S. App. LEXIS 15966 (9th Cir. Was. Aug. 19, 2014).[1]

The meaning of the term "collapse" in first-party property insurance policies has been extensively litigated nationwide. In cases where collapse is undefined in the policy, two divergent doctrines have emerged — one requiring an actual physical collapse and another applying a more expansive definition. Some states, including Washington, have not yet decided which doctrine to adopt.

The first doctrine, sometimes referred to as the "rubble-on-the-ground" approach, strictly defines "collapse" to require an actual collapse.[2] In other words, a structure has to break down or come apart in order to collapse. This doctrine views the state of collapse as a black-or-white issue. As one court noted, "There are no degrees of collapse".[3] Some courts additionally require a temporal element of suddenness, as well as visual evidence of collapse that is "distinct from the degenerative process causing the collapse."[4] Under this first doctrine, the red barn has not collapsed until some part of the barn abruptly and visibly breaks down or falls apart.

The second doctrine takes a broader view of "collapse," which includes actual collapse as well as imminent collapse and/or substantial structural impairment. Under this standard, a structure need not actually fall down or break apart to collapse. Rather, evidence that the structure is in danger of such damage may suffice. There are, of course, some nuances within this line of jurisprudence. Some courts have conflated the concepts of substantial structural impairment and imminent collapse.[5] Others have

held that these concepts are distinct because “imminent collapse” is temporal in nature and, therefore, requires proof that “collapse is likely to happen without delay.”[6] Under any shade of this more expansive doctrine, however, the trusty red barn may have collapsed for insurance purposes even if it is still standing and intact.

But what happens to the old barn if Washington law applies to the relevant insurance policy? Let’s turn to the Queen Anne Park case pending in the Washington Supreme Court.

The Queen Anne Park Condominium is a two-building residential condominium in Seattle, originally constructed in the 1980s. In 2009, the insured homeowner’s association discovered that, like our hypothetical barn, the siding on the buildings was leaking. The HOA and its insurer hired engineers who disagreed as to whether decay hidden by the siding caused a state of “substantial structural impairment.” An insurance claim was filed under a coverage extension for “direct physical loss or damage … involving collapse of a building or any part of a building caused only by one or more of the following … (2) hidden decay…”[7] The insurer denied coverage on the basis that the buildings had not collapsed, and the HOA commenced a declaratory judgment and breach of contract action in the U.S. District Court for the Western District of Washington.[8]

The district court denied cross-motions for summary judgment, explaining it was unclear which collapse doctrine the state would apply.[9] The court expressed doubt that Washington would adopt the more liberal reasoning of the imminent collapse doctrine.[10] If Washington did apply some version of the imminent collapse doctrine, however, the Western District speculated that proof establishing that an actual collapse would occur in the near future could be required to show an “imminent” collapse.[11] The Ninth Circuit, noting the absence of clear and controlling Washington precedent as to the meaning of the term “collapse,” certified the question to the Washington Supreme Court.

Certification was not surprising. As discussed by the Western District and the Ninth Circuit, the most recent Washington Supreme Court case concerning collapse coverage, Sprague v. Safeco Ins. Co. of America, 276 P.3d 1270 (Wash. 2012), expressly declined to address what constitutes “collapse” under Washington law. Sprague was a 5-4 split decision, however, and two of the justices filed a concurring opinion applying the following dictionary definition of “collapse”: “to break down completely: fall apart in confused disorganization: crumble into insignificance or nothingness … fall into a jumbled or flattened mass.”[12] The four dissenting justices opined that the Washington Supreme Court should have adopted the more liberal “substantial impairment of structural integrity” standard instead.[13]

It is too early to tell which approach Washington will adopt, and it is likely that whatever conclusion the Washington Supreme Court reaches will not be unanimous. Although prior cases suggest that Washington could require an actual collapse, the specific language at issue in Queen Anne Park (i.e., loss … "involving collapse") may open the door to a broader judicial interpretation. As with the old red barn, the state of collapse coverage under Washington law is, for now, a waiting game.

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[1] The Ninth Circuit certified the following question to the Washington Supreme Court:

What does “collapse” mean under Washington law in an insurance policy that insures “accidental direct physical loss involving collapse,” subject to the policy’s terms, conditions, exclusions and other provisions, but does not define “collapse,” except to state that “collapse does not includes, settling, cracking, shrinking, bulging or expansion?”

[2] See KAAPA Ethanol LLC v. Affiliated FM Ins. Co., 660 F.3d 299 (8th Cir. 2011) (discussing the two different approaches to interpreting “collapse” provisions).

[3] Clendenning v. Worcester Ins. Co., 700 N.E.2d 846, 848 (Mass. App. Ct. 1998).

[4] Id.

[5] See, for example, Fantis Foods Inc. v. N. River ins. Co., 753 A.2d 176, 183 (N.J. Sup. Ct. App. Div. 2000) and Whispering Creek Condo. Owner Ass’n v. Alaska Nat’l Ins. Co., 774 P.2d 176, 181 (Alaska 1989).

[6] Ocean Winds Council of Co-Owners Inc. v. Auto-Owner Ins. Co., 565 S.E.2d 306, 308 (S.C. 2002).

[7] Compare this language with ISO coverage extension form CP 10 30 10 12, which defines collapse in accordance with the actual collapse doctrine. The ISO form states, in part:

D. Additional Coverage — Collapse
The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limit in D.1. through D.7.

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building cannot be occupied for its intended purpose.

3. This Additional Coverage — Collapse does not apply to:

a. A building or any part of a building that is in danger of falling down or caving in;
b. A part of a building that is standing, even if it has separated from another part of the building; or
c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion.

[8] Queen Anne Park Homeowners Ass’n v. State Farm Fire and Cas. Co., 2012 U.S. Dist. LEXIS 160592 (W.D. Wash. Nov. 8, 2012).

[9] Id.

[10] Id. discussing, among others, Sprague v. Safeco Ins. Co. of Am., 174 Wn.2d 524, 276 P.3d 1270 (2012).

[11] Id., discussing Ocean Winds, 565 S.E.2d at 308.

[12] Sprague v. Safeco Ins. Co. of America, 276 P.3d 1270, 1276 (Wash. 2012)

[13] Id. 276 P. 3d at 1274.
