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"Collapse" Coverage Ensues from Excluded Perils

By Matthew J. Sekits

In *Sprague v. Safeco*, an intermediate Washington appellate court recently determined that coverage under all-risk homeowners' policies applied to a "state of collapse" in the insureds' residence based on an ensuing loss exception to exclusions for construction defects and rot, even though the policies at issue contained no mention of "collapse" coverage. No. 63933-1-I, 2010 WL 4274935 (Wn. App., Nov. 1, 2010). Experts for the homeowners and their insurer agreed the residence was in a state of "substantial impairment of structural integrity" that amounted to "a state of imminent collapse." In addition, this state developed before the insurer revised its policies to define collapse to require "actual falling down," and the relevant policies contained no "collapse" exclusion.

The court noted that the Washington Supreme Court has never determined the scope of "collapse" coverage where the term is undefined in an insurance policy. The appellate court, therefore, cited its earlier prediction (in *Mercer Place Condo. Ass'n v. State Farm Fire and Cas. Co.*, 104 Wn. App. 597, 602, 17 P.3d 626 (2000)) that "collapse" coverage would apply under Washington law to some degree of mere structural impairment, without actual collapse. The court, however, did not clarify whether "substantial impairment of structural integrity" alone triggers "collapse" coverage or if a state of "imminent collapse" must also exist. Since the all-risk policies at issue contained no "collapse" exclusion, the court determined that the state of "collapse" constituted a covered loss ensuing from the excluded perils. Thus, the insureds were entitled to coverage and their attorney fees.

The practical effect of *Sprague* is that it creates "collapse" coverage, based on structural damage less than "actual falling down," when the "collapse" ensues from excluded perils, even when no "additional peril of collapse" appears in the policy. Insurers presented with any first-party claim involving rot or design/construction defects should take a close look at the potential for significant structural impairment, particularly if the claim is submitted by a long-term insured under an all-risk policy.