

OREGON CASE UPDATE

Unless Otherwise Defined in the Policy, “Collapse” Only Requires a Partial Involuntary Drop or Descent of an Object

Claims Pointer: For coverage purposes, it is not necessary that a building completely fall down in order to fall within the meaning of “collapse.” It is only necessary that a portion of the building drop involuntarily.

Hennessey v. Mutual of Enumclaw Ins. Co., Case No. A133592, in the Court of Appeals of the State of Oregon (April 29, 2009).

Kristine Hennessey is the owner of a commercial building insured by Mutual of Enumclaw Insurance Company (Enumclaw). The building was covered by a layer of stucco called marbledcrete. In late 2003, Hennessey discovered that a piece of stucco had visibly separated from the building’s underlying wall due to the freeze-thaw cycle of Oregon’s liquid sunshine. Hennessey hired a contractor to remove the damaged stucco and patch that portion of the wall. Hennessey later removed and replaced the remaining stucco on the rest of the building. Hennessey subsequently filed a claim for both repairs with Enumclaw for reimbursement of the costs. Enumclaw denied the claim.

Hennessey responded to Enumclaw’s denial of coverage by filing a breach of contract claim. She argued that under her insurance policy, which provided additional coverage for collapse, she was entitled to recover her losses for damage or direct physical loss caused by the “collapse” of any part of a building. The trial court agreed. Enumclaw appealed.

On appeal, Enumclaw argued that the visible separation of the stucco from the underlying wall did not constitute a “collapse.” Although the term “collapse” was not defined in the policy, the policy did specifically exclude “settling, cracking, shrinking, bulging, or expansion” from the definition of collapse. However, the court stated that the exclusion did not aid in determining the meaning of “collapse,” and as such, it looked to the dictionary definition of the term. By picking and choosing only select parts of the dictionary, the court found that “collapse” did not require a complete falling down, but rather only that an object fall some distance. Because the stucco changed shape when it separated from the underlying wall, the court held that it “collapsed” within the meaning of the policy. As such, the court ruled that Hennessey was entitled to recover the costs of removing and repairing that portion of the building’s exterior.

As for the damage award, although the trial court originally awarded Hennessey \$98,859.03 in damages for all of the removal and repair work to the building, the court found that Hennessey was only entitled to costs in the amount of \$2,469.68 for repair of the initial portion of the stucco. The court found that Hennessey was not entitled to costs for removal and replacement of the remaining stucco because the remaining stucco had not moved or fallen and because it was unaffected by the collapse of the initial portion. As such, damage to the remaining stucco was not covered under the policy and therefore, costs for those repairs were inappropriate.

Finally, the dissent in this case makes it highly likely that this will not be the last we hear from Enumclaw on this issue. Although the majority found the policy’s “settling, cracking, shrinking, bulging, or expansion” exclusion completely unhelpful in defining “collapse,” the dissent found that this exclusion directly answered whether the stucco separation was covered under the policy’s additional coverage for collapse. The dissent reasoned that because settling, cracking, shrinking, bulging and expanding was precisely what happened to the stucco as a result of the freeze-thaw cycle, the resulting damage was clearly not covered by the terms of the policy.

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