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Conn. Justices Back Insurers In Faulty Foundation Battles


By **Jeff Sistrunk**

Law360 (November 13, 2019, 9:16 PM EST) -- Connecticut's highest court has ruled that common terms found in homeowners insurance policies don't cover repairs to basement walls damaged by defective concrete foundations, dealing a serious blow to scores of state residents who have sought to have their insurers foot the bill for such expenses.

In a trio of opinions issued Tuesday, the state justices sided with units of Liberty Mutual and The Hartford in coverage disputes with their policyholders, which stem from widespread problems with faulty concrete used to pour the foundations of thousands of homes across northeastern Connecticut beginning in the 1980s.

The most voluminous of the state high court's opinions addressed multiple questions certified from a Connecticut federal judge in policyholders Steven and Gail Karas' suit against their insurer, Liberty Insurance Corp.

The Karases' homeowners policy with Liberty extended coverage for the collapse of all or part of a building due to a number of specific causes, including progressive "hidden decay." However, the insurer refused to pay for the couple to replace the basement walls of their home because the building was not in immediate danger of falling to the ground.

The case gave the Connecticut Supreme Court the opportunity to clarify its 1987 ruling in **Beach v. Middlesex Mutual Insurance** , which found that, if the term "collapse" is not defined in a homeowners policy, it is ambiguous and can encompass a "substantial impairment" to a home's "structural integrity." Until Tuesday, no Connecticut appellate court had ever weighed in on what actually constitutes a substantial impairment.

The Karases had argued that a home is substantially impaired under Beach if evidence shows that it will eventually fall to the ground, even if it is "in no present danger of doing so" and is likely to be habitable in the near term. But after assessing a number of out-of-state rulings on collapse coverage, the Connecticut high court rejected the Karases' position and instead agreed with Liberty that a home is only substantially impaired if it is in imminent danger of falling down.

"Of course, whether this evidence satisfies the standard in any particular case necessarily will depend on the specific facts of the case and the strength and credibility of the expert testimony adduced by the insured and the insurer," Associate Justice Richard N. Palmer wrote for the court.

In a further setback for the Karases, the justices ruled that basement walls are clearly part of a home's foundation for purposes of an exclusion in the Liberty policy for losses tied to foundation collapses.

The state high court's ruling on the scope of Beach's substantial impairment requirement in the Karas case also resolved a certified question from a different Connecticut federal judge in homeowners Steven and Kim Vera's suit against their insurer, Liberty Mutual Fire Insurance Co. The Veras' policy contained the same terms as the Karases'.

While the Connecticut justices didn't explicitly say that the Veras' and Karases' policies won't cover their losses, they noted that expert opinions presented in the two cases indicate that neither couple's home is in imminent danger of collapsing.

Finally, in a third case, the Connecticut high court affirmed a state trial court's ruling that Hartford Casualty Insurance Co. has no obligation to cover its policyholder Edith Jemiola's costs to replace her basement walls.

Unlike the Liberty units' policies, Hartford's policy, which covered a period from 2005 to 2006, specifically defines a collapse as "an abrupt falling down or caving in" of the home that renders it uninhabitable. According to court documents, Jemiola's home has remained standing.

Jemiola had tried to convince the Connecticut justices that the damage to her basement walls began prior to 2005, when her home was insured under policies that lacked a detailed collapse definition. The high court, however, said Jemiola failed to offer evidence indicating the damage predated that year.

"[Hartford] has succeeded where the insurer in Beach failed: the policies the defendant issued to the plaintiff after March 2005, define 'collapse' in terms that leave no doubt that coverage for a collapse is triggered only by an abrupt falling down or caving in of the insured premises," Justice Palmer wrote.

The decisions could help dictate the scope of coverage available to 34,000 policyholders in the state's Tolland, Hartford and Windham counties whose homes have suffered damage tied to foundations containing defective concrete. A joint investigation by Connecticut's attorney general and its Department of Consumer Protection concluded in 2016 that the problematic concrete was traceable to a single quarry operated by J.J. Mottes Concrete Co., although the company has disputed that finding.

While dozens of coverage disputes over the crumbling foundations have wound their way through the courts, Connecticut lawmakers authorized more than \$100 million in funding for a grant program to assist homeowners with repair costs, which can exceed \$200,000. The initiative is run through a state-backed captive insurer known as the Connecticut Foundations Solution Indemnity Co., or CFSIC.

In addition, Liberty and Hartford have committed \$7 million and \$3.5 million, respectively, to provide supplemental financial assistance to current and former policyholders who receive grants from CFSIC.

Brian D. Danforth of Tolisano & Danforth LLC, who represents the Veras, said Tuesday's rulings will have ramifications for a number of his clients.

"The decisions are yet another serious blow in their continued efforts to rectify their dire situation," Danforth said in a statement on Wednesday. "Nonetheless, my office will continue to review these decisions, which are only a day old, and counsel clients accordingly."

Liberty spokesman Glenn Greenberg told Law360, "We empathize with our customers who have been impacted by crumbling foundations due to defective concrete. However, the home insurance policy was determined not to be the avenue for relief for this unfortunate

situation."

Hartford spokesman Matthew Sturdevant said, "We agree with the court's decision and maintain that this type of loss is not covered by most homeowners' policies."

"However, we recognize the highly unusual nature of this issue and the impact it is having on families in Connecticut," Sturdevant said. "That is why we provided additional funding for our customers in cooperation with the state captive insurer."

Attorneys for Jemiola did not immediately respond to requests for comment.

The Karases are represented by Michael D. Parker and Jeffrey R. Lindequist of the Law Office of Michael D. Parker.

Jemiola is represented by Jeffrey R. Lindequist of the Law Office of Michael D. Parker.

The Veras are represented by Brian D. Danforth of Tolisano & Danforth LLC.

Hartford is represented by Thomas O. Farrish, Daniel J. Raccuia and John W. Cerreta of Day Pitney LLP.

The Liberty insurers are represented in the Karas and Vera cases by Robert A. Kole of Choate Hall & Stewart LLP and Kieran Leary of Quilling Selander Lownds Winslett & Moser PC.

The cases are Edith R. Jemiola v. Hartford Casualty Insurance Co., case number 19978, Steven Karas et al. v. Liberty Insurance Corp., case number 20149, and Steven L. Vera et al. v. Liberty Mutual Fire Insurance Co., case number 20178, in the Connecticut Supreme Court.

--Editing by Brian Baresch.

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