

## WINTER LAW UPDATE: THE MEANING OF “COLLAPSE”

“Collapse” provisions in policies of insurance have been the subject of judicial debate and disagreement for decades. Generally speaking, there are three types of collapse provisions. Some policies insure against the “collapse of a building or any part thereof” without any further definition or exclusion. *Id.* Other policies contain a provision that insures against loss caused by “collapse,” but specifically excludes loss from “settling, cracking, shrinkage, bulging or expansion.” The third type of provision expressly defines the term “collapse.”

Over the years, judicial interpretation of the term “collapse,” as used in policies of property insurance, has been sharply divided. Courts have split as to the ambiguity of the term “collapse.” Some courts have concluded that the term “collapse” is plan and unambiguous. *See, e.g., Central Mut. Ins. Co. v. Royal*, So.2d 680 (Ala. 1959); *Higgins v. Connecticut Fire Ins. Co.*, 430 P.2d 479 (Colo. 1967); *Olmstead v. Lumbermens Mut. Ins. Co.*, 259 N.Ed.2d 123 (Ohio 1970); *Clendenning v. Worcester Ins. Co.*, 45 Mass. App. Ct. 658, 660 (1998). Other

courts have held the term ambiguous. *See, e.g., Campbell v. Norfolk & Dedham Mutual Fire Insurance Co.*, 682 A.2d 933, 935 (R.I. 1996); *Indiana Ins. Co. v. Liaskos*, 697 N.E.2d 398, 404 (Ill. 1998); *Weiner v. Selective Way Insurance Company*, 793 A.2d 434 (Del. 2002).



### The Meaning of “Collapse” When Ambiguity Exists

In general, when a policy of property insurance does not define the term “collapse” and a court concludes the term is ambiguous, there are several approaches courts use to interpret the meaning of “collapse.”

#### **Minority View**

First, there is the minority view where “collapse” is interpreted to mean the building or part of the building must have broken down, failed abruptly, caved in or fallen down. *See Niagara Fire Insurance Company v. Curtsinger*, 361 S.W.2d 762 (Ky. Ct. App. 1962).

#### **The Majority View**

In a majority of jurisdictions where the term collapse is ambiguous, courts do not require complete destruction or falling in of the building (or a part thereof) or a loss resulting from a sudden catastrophic occurrence. *Beach v. Middlesex Mutual Assurance Company*, 205 Conn. 246, 252 – 253 (1987). There are two common approaches under the majority view.

#### **“Imminent Collapse”**

The first approach adopted under the majority view is termed “imminent collapse.” As its name suggests, the “imminent collapse” standard requires that a structure be on the verge of collapse for a determination that a “collapse” has occurred. *See Whispering Creek Condo v. Alaska National Insurance*, 774 P.2d 176 (Alaska 1989); *see also Ocean Winds Council of Co-Owners, Inc., v. Auto-Owner Ins. Co.*, 656 S.E.2d 306, 308 (S.C. 2002) (agreeing with the imminent collapse standard and defining “collapse” to mean collapse is likely to happen without delay); *401 Fourth Street, Inc. v. Investors Ins. Group*, 879 A.2d 166, 174 (Pa. 2005) (holding the term “collapse” ambiguous and defining the term to mean “damage caused by the falling down, or



imminent falling down of a building or part thereof.”)

#### **“Substantial Impairment”**

The second, broader and more liberal approach under the majority view is the “substantial impairment” standard. Under the “substantial impairment” standard, “collapse” exists if a substantial portion of the building or any parts thereof are impaired or can no longer perform their required function. *See Beach v. Middlesex Mutual Assurance Company*, 205 Conn.

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246; see also *Indiana Ins. Co. v. Liaskos*, 697 N.E.2d 398, 404 (Ill. 1998) (holding that the term “collapse” means a substantial impairment to the structural integrity of a building).



### **When the Term “Collapse” Is Unambiguous**

Some jurisdictions have concluded that the term “collapse” is unambiguous. Of these jurisdictions, most have concluded that the policy expressly and unambiguously defines the term “collapse.” A minority of jurisdictions have held that the term “collapse” is unambiguous when used without definition and apply its plain or ordinary meaning to the policy.

### **The Policy Expressly Defines “Collapse”**

Where a policy expressly defines the term “collapse,” several courts have held the term unambiguous.

In *Rosen v. State Farm Insurance Company*, 70 P.3d 351, 353 (2003),

the homeowner’s insurance policy at issue defined “collapse” as “‘actually fallen down or fallen to pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.’” The insured submitted a claim to his homeowner’s insurance carrier for the cost of repairing two decks attached to his home that were in a state of imminent collapse. *Id.* The insurer denied coverage for the claim on the basis that a collapse of the decks had not occurred within the meaning of the policy. *Id.* The insurer opined that coverage was restricted to actual collapse. *Id.* The Supreme Court of California agreed with the insurer and held that the “collapse” provision was unambiguous and “‘susceptible only of one reasonable interpretation – actual collapse of a building . . .’” *Id.* at 354.

In *Sexton v. State Farm and Casualty Company*, 2003 WL 23274849, \* 2 (Del. Super. 2003), the policy at issue defined “collapse” as “‘actually fallen down or fallen into pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.’” *Id.* After a structural engineer examined the insureds’ home and concluded that the main support beam of the insureds’ home was decayed and entire first floor was at risk to imminent failure, the insureds submitted a claim to their homeowner’s insurer on the basis that their home “collapsed.” *Id.* The insurer disagreed and opined that the insureds’ home did not meet the policy definition of collapse because the home was still standing. *Id.* Although the parties

agreed that the policy language was unambiguous, the insureds asked the court to reject a literal interpretation of the policy provision on the basis of public policy promoting the mitigation of damages and avoidance of waste. *Id.* at \*4. The court was “unable to identify a public policy so compelling that it should override the parties’ express agreement as memorialized in their clear and unambiguous contract . . .” *Id.* at \*1, 3 – 5. The court applied the rule of strict construction to the term “collapse” and concluded that a collapse did not occur because the structure had not fallen down or fallen into pieces. *Id.* at \*5.

### **“Collapse” Not Defined, But Held Unambiguous**

A minority of jurisdictions, including Massachusetts, Maine and Vermont, have concluded that the term “collapse” is unambiguous when used without definition and have applied its plain or ordinary dictionary meaning.

In *Clendenning v. Worcester Ins. Co.*, 45 Mass. App. Ct. at 660, held that the term “collapse” is unambiguous and includes “a temporal element of suddenness . . . and visual element of altered appearance that comprises a structural collapse, distinct from the degenerative process causing the collapse.” “The hidden destructive process must run its full course . . .

Anything short of that” does not meet the definition of “collapse.” *Id.* at 661. “Collapse” does not mean “imminent collapse.” *Id.*

In *Ames v. Nationwide Ins. Co.*, 2002 WL 1335869, \*2 (2002), a Maine trial court followed Massachusetts’ lead and concluded that the term “collapse” is unambiguous and applied its ordinary dictionary meaning “‘to break down completely . . . to fall or shrink abruptly and completely . . . to cave in, fall in, or give way . . . to fold down into a more compact shape . . . the action of collapsing . . . sudden failure.’” *Id.* at \*1.

Similarly, the Vermont Supreme Court in *Gage v. Union Mutual Fire Ins. Co.*, 122 VT. 246, 248 – 249 (1961) also concluded that the term “collapse” is unambiguous and applied its ordinary definition “‘[t]o fall together suddenly’ . . . or ‘[t]o fall together or into an irregular mass or flattened form, through loss of firm connection or rigidity or support of the parts or loss of the contents, as a building through the falling in of its side . . .’” *Id.*

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