ZELLE LLP

LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown | Wednesday, June 18, 2025 | ISSUE 26

Welcome to The Zelle Lonestar Lowdown, our monthly newsletter bringing you relevant and up-to-date news concerning Texas first-party property insurance law.

Our theme for 2025 is Collaboration. We recognize that we are not an island in this industry and our clients, and ultimately the property owners, best benefit when we collaborate to resolve disputes. In that vein, we invite you to submit an idea for an article that we can include this year in the Lowdown. Our editors will choose one article to include in each issue. Stay tuned for more information about our next quarterly event, collaborating with some of our partners in this industry to encourage networking and discussion on the issues in our field. Let's continue to make 2025 the best year yet for the property insurance industry in Texas!

If you are interested in more information on any of the topics below, please reach out to the author directly. As you all know, Zelle attorneys are always interested in talking about the issues arising in our industry. If there are any topics or issues you would like to see in the Lonestar Lowdown moving forward, please reach out to our editors: Shannon O'Malley, Todd Tippett, and Steve Badger.

INSIDE THIS ISSUE

Upcoming Events

You don't want to miss this!

June 19 – Zelle LLP is proud to sponsor the Blue Goose Texas Pond 18th Annual Golf Tournament at the Grapevine Golf Course.

June 23 – Steven Badger will present "Update From The Trenches -- Hot Topics In First-Party Claims" at the Texas Surplus Lines Association Mid-Year Meeting in Whistler, Canada.

June 23 - 25 – Brandt Johnson, Lindsey Davis, George Reede and Jessica Port will present at the PLRB Western Regional Adjusters Conference in Glendale, AZ.

June 26 - As part of our 2025 DFW Insurance Industry Collaboration event series, Zelle LLP and J.S. Held invite you to Sip, Snack, Socialize, and play a round of Mini-Golf at Puttshack (5100 Belt Line Rd, Addison, TX 75254) from 5:00 pm - 7:00 pm. Click here or on the image below to RSVP.

July 22 – Steven Badger will present at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in Dallas, TX.

August 19 – Steven Badger will present " Insurance Issues - Arising from 9/11 Attacks" at the Illinois Association of Mutual Insurance Companies 2025 Convention in Peoria, IL.

August 26 – Steven Badger will present "Fraud and Abuse in CAT Claims - What The Hail Is Going On and How Do We Stop It?" at the National Association of Mutual Insurance Companies (NAMIC) General Counsel Connect program in Chicago, IL.

September 9 - 10 – Jennifer Gibbs and Jessica Port are presenting at the PLRB Regional Innovation Summit from September 9-10, 2025, in Concord, NC.

September 17 – Steven Badger will present "Roofing & Insurance Claims Discussion" at the Roofing Contractors Association of Texas 2025 Texas Roofing Conference in Round Rock, TX.

October 1 – Steven Badger will present "Update From The Trenches" at the Western Loss Association 2025 Fall Conference in Lake Geneva, WI.

If you are interested in participating in a future quarterly collaboration event, please contact us.

Registration will open July 1, 2025!

Sponsorship opportunities available!

Contact Abannon@zellelaw.com for more information.

Holding an Insured to its Duties and Burdens

Shannon O'Malley explores a recent Fifth Circuit opinion and its implications for insurers.

Read the full article here!

News From the Trenches

by Steven Badger

1. Sammy's BBQ - https://www.sammysbarbeque.com/

2. Pecan Lodge - https://pecanlodge.com/

3. Terry Black's BBQ - https://terryblacksbbq.com/dallas/

4. Cooper's Old Time Pit BBQ - https://coopersbbqfortworth.com/

5. Railhead Smoke House - https://railheadsmokehouse.com/

6. Woodshed Smoke House - https://www.woodshedsmokehouse.com/

7. Angelos - https://angelosbbq.com/

8. Slow Bone Texas BBQ – https://www.slowbone.com/

9. Hard Eight BBQ - https://www.hardeightbbq.com/

10. Hurtado BBQ - https://hurtadobbq.com/

If you are in the DFW area this summer or fall, and want to enjoy some great Texas BBQ – give us a call.

Feel free to contact **Todd M. Tippett** at 214-749-4261 or ttippett@zellelaw.com if you would like to discuss these Tips in more detail.

One of the problems that just won't go away is the infamous "UPPA" issue – the unauthorized practice of public adjusting by roofing contractors who improperly inject themselves into the claims process. I have recently been inundated with complaints by insurance companies, adjusters, and public adjusters about roofing contractors who are boldly negotiating insurance claims on behalf of insureds. I received one yesterday where the contractor is currently running radio ads in Dallas, talking about how they have "insurance adjusters on staff". Their website states that they will "advocate on your behalf" and "negotiate a fair settlement". This is absolutely improper under clear Texas law. Not only is it UPPA as a violation of the Public Adjuster Licensing Act (Tex. Ins. Code 4102), but it is also the unauthorized practice of law (UPL). Representing someone in an insurance claim is the practice of law. Licensed public adjusters have a narrow carve-out from this requirement, allowing them to negotiate insurance claims. Not roofing contractors.

So, what can roofing contractors do in the claims process?

They can explain their identified scope of damage and explain their cost to repair. Basically, they can discuss their roofing scope and roofing price. What they cannot do is then negotiate the insurance scope and the insurance price. They clearly cross the line when they start getting into what the policy covers, threaten bad faith lawsuits, complaints to the TDI, etc.

They also cross the line when they hijack the claim and submit an appraisal demand to increase their measure. Likewise, they cross the line when they hire a third-party supplementing company (working on a contingency fee) to call the insurance company and negotiate a higher claim measure. All of that is improper UPPA.

What should insurance companies do when dealing with a contractor engaged in UPPA?

Initially, a letter should be sent to the insured advising that the insurer will only negotiate the claim directly with the insured or its legally authorized representative. And then simply stop dealing with the roofing contractor. Additionally, if the conduct is bad enough, a complaint should be filed with the Enforcement Division of the TDI. In the past, roofing contractors engaged in UPPA received administrative fines for engaging in this improper conduct. It's time for the TDI to make examples out of a few of the new offenders.

Additionally, if a contractor engages in UPPA, their contract with the insured is illegal, void, and unenforceable. Which means that they can't obligate the insured for any monetary payment under the contract. No cancellation penalties. No payment for work performed. Nothing.

And, remember, Texas does not allow AOBs – assignments of benefits. Having an AOB or any other authorization does not give the contractor the right to handle an insurance claim. We even passed a law in 2019 making this abundantly clear. Section 4102.163(a)(2) states: "A contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide contracting services, regardless of whether the contractor…is authorized to act on behalf of the insured under a power of attorney or other agreement."

I have helped a lot of homeowners get out of contracts with bad roofing contractors when they engage in UPPA. I am always happy to help homeowners stuck in these illegal contracts. It's become my little pro bono project for the industry.

We all need to do our part to get roofing contractors out of the claim negotiation process.

AI Update

Insurance Commissioners Challenge One Big Beautiful Bill Act's Definition of Artificial Intelligence

by Jennifer Gibbs

One Big Beautiful Bill Act ("OBBA") which would impose a 10-year freeze on new state-level artificial intelligence regulations and suspend enforcement of existing ones is being challenged by several state insurance commissioners given concerns that the bill's definition of AI is too expansive.

Specifically, insurance commissioners argue the language in the bill could extend beyond machine learning systems to include common data tools and software regularly used by insurers. If enacted, the provision could potentially limit regulators' ability to monitor and address evolving issues associated with certain emerging technologies that do not fall strictly under the category of AI.

The commissioners also argue that the bill's moratorium would interfere with recognized oversight practices supporting fairness and transparency in insurance pricing and underwriting to ensure compliance with nondiscrimination standards.

Restricting oversight, the commissioners said, could erode these safeguards at a time when the use of predictive analytics is becoming more prevalent. The inability to adjust regulatory frameworks in response to the growing role of AI in insurance could hinder state-level supervision and consumer protection efforts.

A letter from commissioners also warned that the 10-year freeze might disrupt the state-based insurance regulatory system, which could lead to uncertainty for insurers, delay consumer protection initiatives, and complicate critical business decisions due to the lack of clarity around compliance and enforcement. Ultimately, NAIC leadership urged lawmakers to remove or amend the AI provision in the proposed bill. They also suggested that if the provision moves forward, the Senate should consider exempting the insurance sector.

Additionally, the commissioners stated that, if enacted, the provision is likely to be challenged under the McCarran-Ferguson Act, which prohibits federal laws from overriding state insurance regulations. However, they noted that until a legal ruling is issued, insurers would be left to operate under uncertain conditions, with unclear regulatory expectations and potential exposure to litigation.

OBBBA passed the House of Representatives on May 22, 2025, in a largely party-line vote of 215–214–1.

Court Dismisses Homeowner's Suit Over Winter Storm Damage Due to Rodent and Long-Term Water Exclusion

by Saad Akhtar (Law Clerk)

Recently, the United States District Court for the Southern District of Texas granted summary judgment in favor of State Farm Lloyds after determining that damage to the plaintiff's property was excluded under her homeowner's policy. The court held that the insured's conclusory and unsupported assertions regarding causation were insufficient evidence to defeat summary judgment.

In *Grotts v. State Farm Lloyds*, the plaintiff alleged that her property sustained water damage due to a pipe burst caused by freezing temperatures during Winter Storm Uri. No. 4:22-CV-02806 2025 WL 963081 (S.D. Tex. Mar. 30, 2025). However, State Farm's investigation revealed that the temperatures at the plaintiff's property remained above freezing on the date of loss originally reported —February 12, 2021. Rather, State Farm found that the damage was caused by long-term water leakage and damage to the pipe caused by rodents. Accordingly, State Farm denied the claim.

To rebut this evidence, the plaintiff attempted to change the date of loss from February 12, 2021, to February 16, 2021, by filing a conclusory affidavit in support of her response to State Farm's motion for summary judgment. The court found, however, that the facts already admitted in the plaintiff's pleadings were no longer at issue. Since the insured's live pleadings alleged that the loss occurred on February 12, 2021, the court held that the insured could not manufacture a fact issue by claiming a new date of loss in an affidavit. Thus, because State Farm's uncontradicted weather evidence showed that a freeze did not occur on February 12, 2021, the court held that the plaintiff's frozen-pipe theory failed.

Further, State Farm's experts concluded that the damage to the property was excluded by the policy's water leakage exclusion and animal exclusion. State Farm relied on three different experts, all of whom concluded that rodents chewed through the pipes, causing leaks and long-term water damage.

To rebut these findings, the plaintiff submitted two affidavits and a repair estimate, asserting that the damage was caused by a sudden rupture tied to the winter storm. However, the court found that this evidence was conclusory and failed to provide a

supported causation analysis. Specifically, the plaintiff relied on an affidavit from her designated estimator. The court held that the estimator's opinions regarding causation were unexplained, unsupported, and therefore conclusory. Additionally, the estimate the plaintiff relied on included language that explicitly disclaimed any independent causation determination. Accordingly, the court concluded that the plaintiff failed to provide any evidence that created a genuine issue of fact on causation and granted State Farm's motion for summary judgment.

The court also dismissed the plaintiff's extra-contractual claims under the Texas Insurance Code and DTPA, after finding no evidence of an independent injury beyond the denied claim itself. *Id.* at *11.

This case serves as a reminder that many policyholders provide conclusory evidence as a last-ditch attempt to create a fact issue, and such evidence is not sufficient to defeat summary judgment.

Battle of the Experts: Tenth Circuit Rejects Bad Faith Claim

by McKenna Ledbetter (Law Clerk)

In a recent decision, the Tenth Circuit reiterated that insurance companies do not act unreasonably or violate industry standards when they rely on a particular expert report that contradicts another expert's report. *See El Dueno, LLC v. Mid-Century Ins. Co.*, 2025 WL 1540329, at *1 (10th Cir. 2025).

Following a hailstorm, Plaintiff submitted a claim to the Defendant for hail damage. *Id*. Defendant's claim adjuster inspected the roof and concluded that the storm caused around $22,000 in hail damage. *Id.* Subsequently, Defendant conducted an additional inspection of the property, where its engineer, Templeton, came to a different conclusion: hail did not damage the roof, and any damage was either pre-existing or resulted from other causes. *Id.* Defendant consequently informed Plaintiff that the policy did not cover the roof repairs. *Id.*

In April of 2021, Plaintiff filed a lawsuit against Defendant in Colorado state court. *Id.* After Defendant removed to federal court, Plaintiff amended its complaint to assert a claim for unreasonable delay or denial of covered benefits, citing Colo. Rev. Stat. § 10-3-1115. *Id*. at *2. During litigation, Defendant retained another engineer, Peterson, to re-inspect the roof and review Templeton's findings. Peterson agreed with Templeton, concluding that the hailstorm did not cause damage to the property's roof. Conversely, Plaintiff's expert found hail damage to the roof and suggested that Templeton conducted a flawed inspection because snow and ice were present during the inspection. *Id.* Accordingly, Plaintiff argued that Defendant's reliance on Peterson's engineering report was unreasonable because: 1) it contradicted the initial findings, and 2) it repeated Templeton's errors. *Id.* at *2.

The Tenth Circuit gave Plaintiff's claim little credence. Specifically, the court held that Plaintiff's failure to provide any industry standard regarding the initial engineer's opinion made it impossible for the court to conclude whether Defendant acted unreasonably by relying on Templeton's report and investigation.

The court, however, concluded that to the extent Plaintiff argues Defendant unreasonably relied on Templeton's report because it was prepared after and conflicted with the claim adjuster's initial report, Plaintiff's claim still failed. The court held that "an insurance company does not act unreasonably in determining the scope and value of a claim by relying on a report generated by an independent engineer, even if that report conflicts with an insurance adjuster's initial assessment." *Id.* at *3

Without an industry standard to support their claim, Plaintiff's arguments showed a mere disagreement with Templeton's findings. *Id.* The court held that mere disagreements between the parties' experts do not suggest that a claim denial is unreasonable.

The court further held that "even if [the inspector's] report was wrong about the lack of hail damage," Plaintiff would still need to show that Defendant "not only wrongly but also unreasonably" relied on the report, which Plaintiff failed to do. *Id.*

The court's holding in *El Dueno* demonstrates that conflicting evidence between a party's own experts does not warrant bad faith claims. This case further highlights that when a "battle of the experts" exists, it does not automatically suggest that insurance companies acted unreasonably when relying on a second opinion.

Spotlight

Chambers and Partners recognized Zelle LLP's Texas Insurance practice in its 2025 Chambers USA Guide.

Chambers notes: "*Zelle does a very good job and has a big bench of good talent to bring in on cases. This is the firm's principal strength and means they are training the new generation.*"

Chambers USA is the world's leading legal data and analytics provider, highlighting the top lawyers and law firms across the USA for over two decades.

Zelle LLP's Dallas Office Welcomes Six Summer Law Clerks from Law Schools Across the Lonestar State!

Saad Akhtar
Texas A&M University

Tanner Denton
Southern Methodist University

Anna Kuhlman
Southern Methodist University

McKenna Ledbetter
Southern Methodist University

Chris Webber
Baylor University

opinion.

Grace Zuo
Southern Methodist University

Appellants Shoot 0/6 From the Field in Governmental-Action Exclusion Case

by Tanner Denton (Law Clerk)

Recently, the United States Court of Appeals, Fifth Circuit, affirmed dismissal of all Plaintiff's claims, finding that the governmental-action exclusion bars coverage and affirmed sanctions under Rule 37(d) of the Federal Rules of Civil Procedure. Importantly, the Fifth Circuit also held that disputes that are purely coverage related are not appraisable under the policy's appraisal provision.

In *Wright v. Lloyds*, No. 23-40719, 2025 WL 1588832 (5th Cir. June 5, 2025), the insured's property suffered damage from the City of Clear Lake Shores' (the "City") demolition activities at a neighboring building. The policy issued by ASI Lloyds ("ASI") included an exclusion for "governmental action," defined as "the destruction, confiscation or seizure of property . . . by order of any governmental or public authority." The court ruled that this exclusion applied to the damage suffered by the insured and precluded any recovery.

On appeal, the insured raised a number of arguments, none of which succeeded. First, the insured claimed that her property was damaged by the City's demolition of the property "at the time of a fire to prevent its spread." However, Plaintiff did not provide any evidence of the existence of a fire at the time of the City's demolition, nor any indication that the City demolished the abandoned property to prevent a fire from spreading. Although the policy included an exception for this very scenario, the insured did not provide a scintilla of evidence to support the existence of a fire.

Second, the insured claimed, notably for the first time in this litigation, that the governmental-action exclusion did not apply to her property since the house next door was demolished by the City, rather than her own property. The court noted that "a party forfeits arguments not raised in the district court or in the party's opening brief absent extraordinary circumstances." Plaintiff, however, did not make any extraordinary circumstance argument. The court explained that even if an extraordinary circumstance existed, the policy's governmental-action exclusion still precluded coverage because the exclusion applies if the loss is either "directly or indirectly" caused by governmental authority.

Third, the insured brought a whole host of extra-contractual claims, including breach of the duty of good faith and fair dealing, DTPA violations, and Texas Insurance Code violations. The court makes swift work of these claims, reiterating that a bad faith claim can only survive if ASI had no reasonable basis for denying the insured's claim. Because the governmental-action exclusion precluded coverage for the claimed damage, ASI was more than reasonable in their denial of the claim.

Fourth, the insured challenged the denial of her motion to compel appraisal and abate the suit, relying on the fact that at least one court has ordered an appraisal despite coverage disputes. The relevant provision of the insured's policy states that parties must "agree on the scope of direct physical loss or damage" and "disagree on the amount payable" for appraisal to be appropriate. In this case, the dispute between the insured and ASI is not one for the amount of loss, but whether the loss should be covered at all. Accordingly, the court affirmed that this dispute is not appraisable.

Further, the court determined that even if an appraisable issue existed, the insured impliedly waived her appraisal rights. Implied waiver "requires a litigant to clear a high threshold" and must be clearly demonstrated by the surrounding facts and circumstances, construed most favorably to the party relinquishing a right. Even construing the facts favorably to the insured, the overwhelming evidence suggests that she waived her appraisal rights throughout the lifetime of this case. Specifically, the insured first invoked appraisal more than two years after the insurer denied her claim. Further, the insured litigated the matter for over a year without indicating that appraisal would be an appropriate option. Accordingly, the court found that the insured's active participation in the litigation of her claim and the fact that she only attempted to compel appraisal more than two years after ASI's denial was a sufficient implied waiver of her appraisal rights.

Fifth, the Dick Law Firm challenged the district court's sanctions imposed under Rule 37 for failing to provide a key to access to the insured's property during a scheduled inspection. The Dick Law Firm asserted that Rule 37 sanctions should only be imposed on intentional conduct, and not innocent mistakes. However, Rule 37(d) provides "broad discretion" for a court to assign sanctions, giving the district court the ability to act as it sees fit. Whether the Dick Law Firm forgetting the keys at home was an intentional mistake or not does not matter under Rule 37; placing this conduct squarely within the crosshairs for justified sanctions. Because the insured could not show that the failed inspection was "substantially justified," the court upheld the sanctions against the Dick Law Firm.

This is what we commonly refer to as the "reverse sweep" for the appellants. Casting a wide net of claims does not work if the holes are too large to catch any fish. The Fifth Circuit's decision in this case highlights the importance of the governmental-action exclusion language, reaffirms the high burden plaintiffs must meet to succeed on a bad faith claim, and is a good reminder that disputes involving purely coverage related issues are not appraisable. If nothing else, this case serves as a friendly reminder to us all: Check your pockets for your keys before you leave the house!

BEYOND THE BLUEBONNETS

Massachusetts Collapse Decision Highlights Importance of Careful Underwriting

by Kyle Espinola (Boston Office)

During the underwriting process, carriers should review affirmative coverages not only to ensure consistency with applicable exclusions but also to make sure that the coverages themselves are internally consistent. Failure to do so can lead to litigated coverage disputes and developments in the law that are inconsistent with policies' language and intent. A recent Massachusetts

coverage disputes and developments in the law that are inconsistent with policies' language and intent. A recent Massachusetts case is a cautionary tale.

The *Life Skills* Case

1. *Background*

In *Life Skills, Inc. v. Harleysville Insurance Company*, the policyholder, a non-profit social service agency, discovered that its basement floor had "'sunk' between eight to twelve inches." 744 F. Supp. 3d 124, 127 (D. Mass. 2024). Specifically, the floor "had sagged, was bouncing, and … had partially detached from the Property's exterior wall." *Id*. At the time the damage was discovered, the floor was holding two large kilns, weighing approximately 200 pounds. *Id*. The policyholder hired a contractor to investigate the loss. That contractor removed a section of the planking, exposing "deteriorated and compromised beams." *Id*. The insured hired a second contractor to remove the remainder of the floor. *Id*. The second contractor subsequently discovered that "everything was rotted" and that the structural beams underneath displayed "severe deterioration." *Id*. The policyholder then roped off the area to prevent further access and retained a structural engineer to design a temporary support system for the floors above as those also became unsafe for occupancy. *Id*. at 128.

The policyholder reported the loss to its property insurance carrier, which undertook a claim investigation. The adjuster inspected the site and "reported no issues regarding coverage." *Id*. In his report, he concluded that the "weight of (2) kilns in the Workspace Area caused the flooring to collapse and cause [sic] damage to laminate flooring, subflooring, concrete anchor blocks, joisting and a foundation wall." *Id*. A few days later, the adjuster e-mailed the policyholder to confirm that there was coverage for the damage resulting from hidden decay. That same day, the adjuster sent a letter detailing an actual cash value payment of $49,481.06 and requested that the policyholder submit any invoices related to demolition as costs were incurred. The policyholder later submitted an initial repair estimate of $264,000. *Id*.

Following an inspection by a forensic structural engineer, the insurer issued a reservation of rights letter, raising possible coverage issues and stating that payment on the previously issued check would be stopped. *Id*. Specifically, the insurer raised concerns about whether the observed facts and damage satisfied the policy's criteria for "Additional Coverage – Collapse." *Id*.

The forensic structural engineer's report concluded that "the reported vertical displacement of the floor…was caused by long-term, on the order of decades, deterioration, in the form of decay of the floor structure's timber beams." *Id*. at 128-29. The report clarified that this "vertical displacement" was inconsistent with the International Building Code's definition of the term "collapse." *Id*. at 129. According to the report, a collapse occurs "when a structure or portion of a structure fall from their intended position onto the ground or floor below." *Id*. Instead, the report found that the damage had been caused by "elevated levels of moisture in the crawlspace" which caused the floor to decay. *Id*.

Based upon the structural engineer's report, the insurer issued a letter denying coverage. The denial was based on the conclusion that "[the] loss was caused by long term deterioration of the timber beams in the crawl space due to moisture," a condition which was excluded under the policy. The insurer also emphasized the fact that the vertical displacement of the floor did not satisfy the policy's definition of "collapse" and was not caused by an overloaded condition. The carrier's denial letter cited not only the structural engineer's report but also relevant policy provisions and definitions in "[The] Causes of Loss – Special Form." *Id*.

After hiring a public adjuster who argued that the damage met the policy's definition of "collapse," the policyholder initiated litigation, claiming breach of contract and unfair claim settlement practices. The insurer filed a motion for summary judgment.

2. *Relevant Policy Language*

The parties agreed that the relevant policy provision was "[The] Causes of Loss – Special Form" (CP 00 10 06 07). *Id*. The form provided, in relevant part:

> **A. Covered Causes of Loss**
>
> When Special is shown in the Declarations, Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:
>
> **1.** Excluded in Section **B.**, Exclusions; or
>
> **2.** Limited in Section C., Limitations that follow:
>
> **B. Exclusions**
>
> ***
>
> **1.** We will not pay for loss or damage caused by or resulting from any of the following:
>
> ***
>
> **d.** **(1)** Wear and tear
>
> **(2)** Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
>
> **(4)** Settling, cracking, shrinking or expansion
>
> ***
>
> **f.** Collapse, including any of the following conditions of property or any part of the property:
> **(1)** An abrupt falling down or caving in;
>
> **(2)** Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
>
> **(3)** Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to **(1)** or **(2)** above.

Since collapse was an excluded cause of loss, the policyholder relied on the following additional coverage provision:

> **D. Additional Coverage – Collapse**
>
> The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited 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 or part of the building cannot be occupied for its intended purpose.
>
> **2.** We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
>
> **a.** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to

collapse;

***

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.

Id. at 129-130.

3. *The Arguments.*

At the heart of the parties' dispute was the meaning of the term "collapse." Section D.1 of the Additional Coverage – Collapse provision defined the term as "an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose." Section D.2 of that same coverage specified that an "abrupt collapse" must be caused by an insured peril, such as "decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse."

The insurer, relying on section D.3 of the Additional Coverage – Collapse provision, argued there was no coverage for several reasons. First, it noted that the damage to the floor did not meet the policy's definition of "abrupt collapse." Second, it cited the fact that the exterior wall from which the floor detached remained standing and that several of the policyholder's personnel and contractors continued to walk on the floor after discovering its displacement. *Id*. at 133. Finally, the insurer pointed to the testimony of the policyholder's structural engineer who retracted his initial conclusion that the floor had collapsed. Instead, he clarified that the floor suffered a "structural failure due to rot and masonry deterioration" and that it did not qualify as an "abrupt collapse" because the floor did not end up "on the dirt." *Id*. Alternatively, the insurer contended that coverage was excluded under the general exclusions Section B.f.(2) because the "presence of condensation of humidity, moisture or vapor" caused the floor to be damaged.

The policyholder argued there was coverage because the definition of "collapse" under the Additional Coverage – Collapse provision, unlike the international building code definition, included "partial collapse" and did not specify a minimum vertical displacement to qualify as a collapse. *Id*. Since the floor had partially detached from the exterior wall due to decay of which the policyholder had no knowledge prior to the incident, the insured argued that the building sustained an "abrupt collapse" because the damage was unexpected. Finally, the policyholder cited the fact that the building could no longer be occupied for its intended purpose, thereby satisfying the policy's definition of a "collapse".

4. *The Decision*

The court denied the insurer's motion for summary judgment with respect to the breach of contract claim based on its conclusion that the policy was ambiguous. Specifically, the court held that Sections D.1 and D.2 of the Additional Coverage – Collapse provision were logically inconsistent with Section D.3. The former sections described coverage for the "abrupt falling down of … any part of a building." This, the court inferred, meant there was coverage for a "partial collapse" like the partial detachment of the floor from the exterior wall. On the other hand, Section D.3 arguably excluded coverage because, although the floor sagged, it did not completely collapse to the ground and remained standing. According to the court, accepting the insurer's interpretation of these internal inconsistencies would restrict coverage solely to scenarios where an insured's building is "flattened form or rubble." *Id*. at 135. The court concluded that such a scenario would contravene what an objectively reasonable insured would expect to be covered. If the insurer intended for a "collapse" to require the entire building to fall to the ground immediately, the court held, it should have explicitly defined collapse accordingly in the policy.

Separately, the court held that the exclusion under Section B.f.(2) did not apply under First Circuit precedent. Specifically, in *Easthampton Congregational Church v. Church Mut. Ins. Co.*, 916 F.3d 86 (1st Cir. 2019), the First Circuit held that where an Additional Coverage – Collapse provision is found to provide coverage or is found to be ambiguous with respect to coverage, the policy's general exclusions do not apply. Here, because the court concluded that the Additional Coverage – Collapse provision's internal inconsistencies rendered the provision ambiguous, the general exclusion B.2.f was found not to apply.

5. *Conclusion*

The court's holding in *Life Skills* was recently followed by another federal court sitting in Massachusetts in *First Baptist Church in Newton v. Church Mut. Ins. Co.*, No. CV 23-10436-BEM, 2025 WL 1135439 (D. Mass. Apr. 17, 2025). While these federal cases are not binding authority, they suggest a troubling trend in the interpretation of Section D.

For more information on any of the topics covered in this issue, or for any questions in general, feel free to reach out to any of our

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