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THE EVOLUTION OF COLLAPSE COVERAGE

The transition from named peril to exclusion with limited coverage

Collapse coverage, as provided in standard property insurance forms, underwent significant revision in the 1980s and again in the late 1990s. Two events precipitated the reexamination and ultimately the rewording of policy language. They were the application of the doctrine of concurrent causation to property insurance, and a series of court decisions that addressed the meaning of “collapse” itself.

As a result of the changing nature of this coverage, it is helpful, and also necessary, to clarify the scope of coverage as it exists today.

The following discussion examines collapse coverage in three phases:

- *pre-concurrent causation*, when collapse was treated as a named peril or risk not excluded;
- *post-concurrent causation*, when collapse was excluded, but added back as a limited *incidental* or additional coverage; and
- *the meaning of collapse today*, as expressed by court decisions.

Pre-concurrent causation phase

The original version of coverage was plainly stated under named perils coverage as applying to “collapse of a building or any part thereof,” without any qualifications. Subsequently, in an effort to qualify the extent of coverage provided for “collapse,” new language was added that excluded “settling, cracking, shrinkage, bulging, or expansion,” in the absence of an actual collapse.

Even during this time (prior to the doctrine of concurrent causation being applied to property insurance), various courts were making law on the meaning of collapse. Two contrary positions emerged. Collapse involved either a falling down or caving in, into a flattened form of rubble (the conservative view), **or** a substantial impairment of structural integrity, without an actual collapse rendering the building unsuitable for use as a dwelling (the liberal view).

Post-concurrent causation phase

The doctrine of concurrent causation holds that when a loss can be attributed to two causes, one that is covered and one that is excluded, the loss will be covered. Its primary application is to “all risks” or “open perils” policies.

Several court cases in California and other states have advanced the doctrine of concurrent causation. Two of the more prominent California cases were *Premier Ins. Co. v. Welch*, 189 Cal. Rptr. 657, (Cal. App.), and *Safeco Ins. Co. of America v. Guyton*, 692 F.2d 551 (9th Cir. Cal. 1982).

Although the concurrent causation doctrine did not become a major factor in property insurance until the early 1980s, it was not a new concept. On the contrary, liability insurance adjusters had been working with joint tortfeasor liability for years. Whenever the independent acts of two or more individuals combine to

cause a single accident, the wrongdoers (or tortfeasors) are said to be jointly and *concurrently* liable. The concept has also been applied to coastal hurricane losses where damage by wind and waves could be separated, the damage by wind being covered, and the wave damage being excluded by the water damage exclusion.

In the early 1980s, when the doctrine began to be applied to property insurance in a series of court decisions, it was an alarming event for insurers. It could be likened to a powerful thunderstorm that struck California inflicting serious damage, and then began moving eastward striking other states as well.

The insurers’ concern over this doctrine was that its application ignored clearly excluded causes of loss such as flood and earth movement. In effect, it rendered these exclusions meaningless when a concurrent cause (e.g., negligence, faulty construction) that was not specifically excluded was a contributing cause of the loss. This exposed insurers to losses that were never contemplated or

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intended to be covered under property insurance policies.

Coverage for a loss caused by earthquake (or earth movement), for example, an excluded peril, might apply if *collapse* were considered as a concurrent cause of loss. Obviously, premium developed for a policy that did not specifically cover loss caused by earthquake would not be intended or expected to cover such a loss. Insurers were concerned, and justifiably so.

Industry response to the problem

Policy language revision was the most immediate response the industry could make under the circumstances. One of the first steps both AAIS and ISO took was to eliminate the “all” from “all risks” in the insuring agreement of property insurance policies written on that basis. This was done to avoid creating unreasonable and unrealistic expectations on the part of insureds. Typical coverage language today refers to “risks of direct physical loss, unless the loss is excluded . . .,” a much more realistic grant of coverage. And although insurance people still refer to “all risks” coverage, they are being encouraged to use the more neutral terms of “open perils” or “risks not excluded.”

With regard to *collapse* coverage, instead of being covered as a named peril or a risk not otherwise excluded in “open perils” forms, it is now specifically excluded in homeowners and commercial property forms. But limited coverage is provided under Incidental or Additional Coverages. Coverage for collapse may not be included in some named perils policies (e.g., BOP named perils, Homeowners Form 1), so such forms must be carefully reviewed.

When coverage applies, covered causes of collapse are limited to specific named perils, such as fire, wind, hail, weight of ice, snow, or sleet, etc.; hidden decay; hidden insect or vermin damage; weight of people or contents; weight of rain that collects on a roof; or the use of defective materials or methods in construction, remodeling, or renovation, if the collapse occurs *during* the course of construction, etc.

This last covered cause of collapse is worded so as to preclude coverage for a collapse caused by faulty construction that occurs *after* construction was completed. In such a case, however, the owner of the structure could attempt to recover from the negligent contractor or builder.

Reproduced below is current

collapse coverage language in AAIS homeowners Form 3 Ed 2.0 and AAIS commercial property form CP-85 Ed 1.0, respectively.

Homeowners

8. **Collapse — “We”** pay for direct physical loss to covered property involving the collapse of a building or a part of a building caused by the following:

- a. any of the perils insured against described under Coverage C. Under this coverage, these perils apply to covered buildings and personal property;
- b. hidden insect or vermin damage or hidden decay;
- c. weight of contents or people;
- d. weight of rain which collects on a roof; or
- e. the use of defective materials or methods in construction or repair if the collapse occurs during the course of construction or repair.

Under b. through e. above, unless the loss is the direct result of the collapse of a building, “**we**” do not pay for loss to awnings; swimming pools; fences; patios; paved areas; retaining walls; bulkheads; foundations; wharves; docks; piers; underground pipes, flues, and drains; cesspools; or septic tanks.

Collapse does not mean settling, cracking, shrinking, bulging, or expanding. This coverage does not increase the “limits” shown for the property covered.

Under Exclusions That Apply To Property Coverages, the exclusion for Errors, Omissions, and Defects does not apply to this coverage.

Commercial Property

ADDITIONAL COVERAGES

1. **Collapse — We** pay for loss caused by direct physical loss involving collapse of a building or structure or any part of a building or structure caused only by one or more of the following:

- a. **specified perils**; all only as covered in the Commercial Property Coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of people or business personal property;
- e. weight of rain that collects on a roof; or
- f. the use of defective material or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction,

remodeling, or renovation.

If otherwise covered under the Commercial Property Coverage, under items a. through f. above, **we** do not pay for loss to the following types of property unless the loss is a direct result of the collapse of a building or structure: outdoor radio, television, satellite, dish-type, or other antennas including their masts, towers, and lead-in wiring; outdoor awnings or canopies or their supports; fences; gutters and downspouts; yard fixtures; outdoor swimming pools; piers, wharves, and docks; beach or diving platforms or appurtenances; retaining walls; foundations; walks, roadways, and other paved surfaces.

Collapse does not include settling, cracking, shrinking, bulging, or expanding.

This does not increase the **limit**.

The meaning of collapse as expressed by the courts

As noted earlier in this discussion, the courts are divided as to the meaning of collapse. The *conservative* view holds that “collapse” refers to a falling down or caving in, into a flattened form of rubble. The *liberal*, and now the majority, view is that all that is necessary to constitute a “collapse” is a substantial impairment of structural integrity, without an actual falling down into rubble or debris.

As a result of the differing views of the meaning of collapse, policy drafters have begun to include language that attempts to specifically limit the scope of the coverage. In fact, the message to insurers in several of these court decisions has been to define what is meant by the term “collapse” if the intent is to confine it to the more conservative view. In response, policy language limiting collapse to a flattened form or rubble has been added in some forms.

The AAIS “Alternate” homeowners policy, for example, contains a provision that states, “. . . collapse of a building or part of a building means the sudden and unexpected falling in, caving in, or giving way of the building or part of the building into a *flattened form of rubble*.” Under the exclusion for Settling, Cracking, Shrinking, Bulging, terms such as *Expanding, Sagging, Bowing, Bending, Leaning, Impairment, and Collapse* have been added. It is also specifically stated that there is no coverage for “a weakening or impairment of structural integrity.”

ISO has also added language to its latest homeowners and commercial property policies (those with 2000 edition dates) that limits collapse (when caused by certain perils) to 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. In addition, the term “collapse” is further limited in that a building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse, nor is a building that is standing, even if it has separated from another part of the building.

These efforts to clarify policy language are aimed at limiting collapse coverage to the conservative view, which the drafters believe is the original intent of the policy.

Collapse coverage and builders risk insurance

Collapse is a major exposure for project owners and contractors engaged in construction projects. Buildings or structures in the course of construction are more susceptible to collapse loss than existing buildings or structures. Common perils include wind, faulty workmanship, and design error.

The vast majority of builders risk policies provide coverage for collapse, but there are exceptions. Some forms exclude collapse outright, while others offer the approach taken today in standard property insurance; that is, to exclude it, and then add it back on a limited basis. The truth is that collapse coverage is available in builders’ risk forms, and producers and insureds should make every effort to obtain policies that provide the coverage on as broad a basis as possible.

Note also that many builders risk policies contain a design error exclusion. However, many of these same policies provide collapse coverage as an ensuing loss. AAIS offers four levels of builders risk coverage. All four forms cover collapse, and three of the four cover collapse that results from a design error.

For more information about AAIS insurance programs, contact Robert Schnoll, Marketing Manager, at (800) 564-AAIS (2247), ext. 222, or by e-mail (bobs@aaisonline.com). ■

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