Case Alert

Connecticut District Court to Review Proposed Class Action in Defective Concrete Suit

Thousands of Connecticut homeowners have fallen victim to a defective concrete epidemic. Over the last thirty years, the foundation in many homes, particularly in the Northeast region of the state, was built with a concrete aggregate that contained the mineral pyrrhotite. When exposed to the elements, including water and air, pyrrhotite oxidizes, resulting in cracking and disintegration over time. For Connecticut homeowners, this has resulted in disaster, both financially and to the foundations of their homes.

Previously, many homeowners insurance policies provided coverage for a "collapse" caused by the "use of defective material . . . in construction, remodeling or renovation." As the pyrrhotite epidemic became more prevalent, insurers altered the coverage afforded for a "collapse" in several ways that potentially minimized or eliminated coverage for these types of claims. Primarily, coverage for a "collapse" is now restricted to collapses that are "abrupt," and coverage is excluded for buildings in danger of falling down or those that are still standing, even if evidence of cracking or settling is demonstrated. The insurers did not notify homeowners of the change. Thus, homeowners who renewed policies were not informed of a coverage reduction nor were they provided with a corresponding reduction in the amount of premium.

As a response to this change, a proposed class action lawsuit was filed in 2016 on behalf of hundreds of homeowners in Northeastern Connecticut against more than one hundred insurers. The suit includes bad faith claims under the Connecticut Unfair Insurance Practices Act and the Connecticut Unfair Trade Practices Act, alleging that the insurers conspired with the Insurance Services Office (ISO) to eliminate coverage for this type of damage to foundations. The homeowners also seek a declaratory judgment that the insurers must pay to repair their foundations.

Earlier this month, most of the insurers moved to strike the allegations against them, arguing that each homeowner has a distinct set of facts regarding their specific claims, foundation troubles, and policies. They argue that bad faith claims warrant "individualized allegations and proof" and that each individual homeowner's claim would require "fact-intensive investigation" and discovery by attorneys and experts, rendering it unsuitable for a class action or a declaratory judgment of this magnitude.

Additionally, many insurers moved to dismiss the bad faith claims, arguing against the allegations that they engaged in a widespread pattern of bad faith denial of claims and denying that the law requires them to notify policyholders of the changes made to their policies.

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This case is unique in that it involves a class action that revolves around the adoption of a single policy provision and its implementation on an industry-wide scale. SDV will be monitoring this case for future developments.

For more information about this case contact Tiffany Casanova at tlc@sdvlaw.com or 203-287-2108.

1 *Halloran v. Harleysville Preferred Ins. Co. et al.*, Case No. 3:16-cv-00133-VAB (filed Jan. 29, 2016).