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**CERTIFICATION FROM
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT IN**

QUEEN ANNE PARK HOMEOWNERS ASSOCIATION,
a Washington non-profit corporation

Plaintiff-Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY,
a foreign insurance company,

Defendant-Appellee

Washington Supreme Court No. 90651-3
U.S. Court of Appeals for the Ninth Circuit No. 12-36021

**PLAINTIFF-APPELLANT'S RESPONSE TO AMENDED BRIEF OF
AMICUS CURIAE AMERICAN INSURANCE ASSOCIATION**

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This Court should interpret “collapse” as “substantial impairment of structural integrity” because the dictionary, cases from other jurisdictions, and the insurance industry’s own conduct all demonstrate that this is one reasonable interpretation of the word. Nothing in the American Insurance Association’s brief either contradicts this point or addresses an argument that State Farm has not already made.

AIA first implies in the Introduction section of its brief that “substantial impairment of structural integrity” is somehow different when the impairment is to a building’s “lateral” load-bearing elements, as opposed to “vertical” ones. *See AIA Brief*, at 2. But as the Association already explained in its Reply brief, the record contains no support for that contention. No affidavit, engineering report, or any other document states that “collapse” is materially different, from a structural engineering standpoint, depending on what kind of “load” the collapsed member supports. The argument would at best present a factual dispute anyway. The purely *legal* issue in this case is how to interpret the undefined term “collapse”—not whether “collapse” *in fact* exists in the particular kinds of wood at issue in this case.¹ The Association’s expert opined that “hidden decay” existed in parts of the Association’s building that was so severe it had substantially impaired the structural integrity of these parts of the building. That was all the Association had to establish to present this purely legal issue to the District Court.

AIA next claims that “substantial impairment of structural integrity” is not a reasonable interpretation of “collapse” because the author of AIA’s brief could not locate any “English literature” that applied that definition. *See AIA Brief*, at 5-6. But according to Washington law,

¹ AIA also claims in this section of his brief that what the Association’s engineer observed “was not visible structural deflection.” *AIA Brief*, at 2. The record contains no support for that assertion either. The engineer’s declaration simply states that he *did* observe “substantial impairment of structural integrity” (because that was all he was asked to opine on)—it does not say he did *not* observe “deflection.”

undefined terms in an insurance policy are to be given their ordinary meaning, which courts derive from English dictionaries, not “English literature.” *See, e.g., Boeing Co. v. Aetna Cas. and Sur. Co.*, 113 Wn.2d 869, 877, 784 P.2d 507 (1990) (Washington courts should look to “standard English language dictionaries” to give undefined policy terms their “plain, ordinary, and popular” meaning). As the Association explained in its Reply brief, “the phraseology may be different, but ‘substantial impairment of structural integrity’ is consistent with the dictionary definition, ‘a breakdown of vital strength.’” *Plaintiff-Appellant’s Reply Brief*, at 1. That same dictionary definition is what led other courts to interpret “collapse” as “substantial impairment of structural integrity”: “[S]ome of the dictionary definitions of collapse . . . include definitions such as ‘a breakdown in vital energy, strength, or stamina[,]’ . . . which suggest that the term ‘collapse’ is ‘fairly susceptible’ to an interpretation that it means a substantial impairment of structural integrity.” *Am. Concept Ins. Co. v. Jones*, 935 F. Supp. 1220, 1227-28 (D. Utah 1996). And whether or not poets have also applied that definition, State Farm has. *See, e.g., Mercer Place Condo. Ass’n v. State Farm Fire & Cas. Co.*, 104 Wn. App. 597, 602, 17 P.3d 626 (2000); ER 93. No Washington case requires that the policyholder look beyond this dictionary definition and also identify a Dickens novel or some other “English literature” that applies it.

AIA’s next argument is that even though courts in other jurisdictions have *held* “collapse” can reasonably be interpreted as “substantial impairment of structural integrity,” the Court should ignore these cases because the buildings in them were more damaged than the Association’s. For example, AIA claims that even though the court in *Beach v. Middlesex Mut. Assurance Co.*, 532 A.2d 1297 (Conn. 1987), held “the term ‘collapse’ is sufficiently ambiguous to include coverage for any substantial impairment of the structural integrity of a building,” the case is irrelevant because the building there “sustained enough damage to constitute a ‘collapse’ within the ordinary,

popular meaning of that term.” *AIA Brief*, at 11. AIA similarly claims that *Auto Owners Ins. Co. v. Allen*, 362 So.2d 176 (Fla. App. 1978), is distinguishable because the building there was in “imminent danger of complete failure.” *See AIA Brief*, at 13. This is the case in which the court stated, “Our *holding* that collapse in this policy means material and substantial impairment of the basic structure of a building or a part of a building is based on the ambiguity of the term.” *Auto Owners*, 362 So.2d at 177 (emphasis added).

As the Association explained in response to the seven pages that State Farm devoted to this same argument,² these attempted factual distinctions both ignore the holdings in these other cases and miss the point of the Association citing them. Regardless of whether the damage was the same or different, these non-Washington cases illustrate that numerous other judges have determined that *one* reasonable interpretation of the word “collapse” is “substantial impairment of structural integrity”—so unless this Court thinks these other judges interpreted the word unreasonably, that is also the definition that should apply here:

State Farm is ignoring that these other courts *held* “collapse” can reasonably be interpreted as “substantial impairment of structural integrity.” The nature of the damage in *Jones* may or may not have been different than here. . . . Regardless, the *Jones* court decided that because the dictionary demonstrates one reasonable interpretation of “collapse” is “substantial impairment of structural integrity,” then that is all a policyholder must establish: “[T]he Joneses need only show that there is an issue of material fact regarding whether their home ‘or any part of’ their home sustained substantial impairment to its structural integrity.” *Jones*, 935 F. Supp. at 1228. Many facts in these non-Washington cases were presumably different. They may have involved houses, as opposed to condominiums. That does not change the fact that when faced with the exact legal issue here—how to interpret the undefined term “collapse”—these courts *held* the word can reasonably mean “substantial impairment of structural integrity.”

Plaintiff-Appellant’s Reply Brief, at 9-10.

² *See Brief of Appellee*, at 22-29.

AIA last argues that this Court should not adopt the “imminent collapse” standard from *Doheny West Homeowners Ass’n v. American Guarantee & Liab. Ins. Co.*, 60 Cal. App. 4th 400, 70 Cal. Rptr. 2d 260 (1997), because unlike here, the policy in that case contained the phrase “risks of.” See *AIA Brief*, at 17-20. The Court should ignore this section of AIA’s brief because the Association is not asking the Court to interpret “collapse” as “imminent collapse.” As the Association already explained in its Reply brief, “defining” a word by reference to itself is uselessly tautological. See *Plaintiff-Appellee’s Reply Brief*, at 3 (“[T]he labels ‘actual collapse’ and ‘imminent collapse’ make sense only if one first determines what the word ‘collapse’ means”). Nor does the Association contend that the Policies cover “the present cost of avoiding future damage.” *AIA Brief*, at 16. Rather, the Policies cover “substantial impairment of structural integrity” because that is one reasonable interpretation of the word “collapse”—not because the Policies cover the “precursors” to some other kind of damage. See *Plaintiff-Appellee’s Reply Brief*, at 3 n.2. Nor is it relevant that the Association’s Policies omit the phrase “risks of.” As the Association explained in its Reply, inclusion of that phrase cannot enlarge coverage, so the reverse must necessarily be true—a policy without the phrase “risks of” cannot afford less coverage than a policy that includes the phrase. See *Plaintiff-Appellee’s Reply Brief*, at 7 (“[T]he phrase [‘risks of’] simply confirms the ‘aleatory’ nature of an insurance contract—*i.e.*, that the insurer is underwriting risk, as opposed to certainty.”).

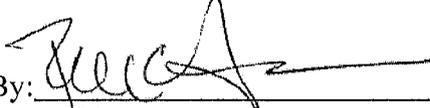
CONCLUSION

If an undefined word in an insurance policy is susceptible to more than one reasonable interpretation, a court must adopt the one that most favors the policyholder. As evidenced by the dictionary, by decisions from other jurisdictions, and by State Farm’s own conduct, one reasonable

interpretation of the undefined term “collapse” is “substantial impairment of structural integrity.”
That is therefore the interpretation this Court should adopt.

Respectfully submitted this 29th day of December, 2014.

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I certify that on the 29th day of December, 2014, I cause a true and accurate copy of **Plaintiff-Appellant's Response to Amended Brief of Amicus Curiae American Insurance Association** to be served on the following in the manner indicated below:

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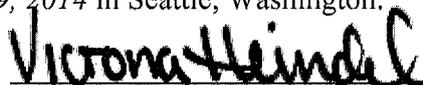
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I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED *December 29, 2014* in Seattle, Washington.



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Clerk of the Court,

Attached are the following documents to be filed in the Supreme Court of Washington

- Plaintiff-Appellant's Response to Amended Brief of Amicus Curiae American Insurance Association; and
- Certificate of Service

Sent on behalf of

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Thank you.

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