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SUPREME COURT OF THE
STATE OF WASHINGTON
Case No. 90651-3

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

Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY, a
foreign insurance company

Appellee.

STATE FARM'S ANSWER TO AMICUS
BRIEF OF COMMUNITY ASSOCIATION
PARTNERS ET AL.

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ORIGINAL

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The Amicus Brief filed on behalf of real estate service companies Community Association Partners LLC and Bluestone and Hockley Real Estate Services (“amicus”), as explained below, is misdirected and unhelpful.

Significantly, amicus criticizes State Farm only for advocating an imminency standard, arguing, “At issue in this case is whether coverage for ‘collapse’ caused by ‘hidden decay’ is triggered by an immanency [*sic*] requirement not found in the policy.” Amicus Brief at 4.

Amicus’s argument ignores that State Farm argues “there must be *actual*, or *alternatively*, imminent collapse.” Brief of Appellee at 10 (emphasis added). Amicus does not assist this Court by mischaracterizing or ignoring the actual arguments made by the parties.

I. ARGUMENT

A. Policy interpretation requires that the policy language be interpreted in the context of facts to which it can apply.

State Farm agrees with amicus that the certified question asks this Court to interpret the collapse coverage

language of State Farm's policy as it may apply to multiple factual scenarios, not just to the present facts.¹ That hardly means, however, that the condition of insured property claimed to be in a state of collapse, in this case or others, is irrelevant. Indeed, it is impossible to interpret policy language except as it may apply to a factual context. What "collapse" means, or what "direct physical loss involving collapse" means, cannot be determined or described in the absence of facts to which those terms may apply. The policy language cannot be "dispositive" of anything in the absence of facts, hypothetical or actual, to which that language may apply.

Here, the HOA and amicus argue that collapse coverage, using the undefined word "collapse," can and should be interpreted to apply to a factual scenario in which a building has suffered no structural deformation more than 14 years after the collapse coverage ended. The

¹ See Amicus Brief at 3-4: "[T]his Court should provide a meaningful definition of 'collapse' that will be useful to insureds and insurers alike, in multiple factual scenarios, when the insurer fails to define the term 'collapse.'"

Court's interpretation must take that factual scenario (among others) into account because its decision will affect insurers and insureds whose coverage disputes involve that scenario, including the HOA and State Farm here.

B. Amicus's chart of cases illustrates the flaw of "interpreting" policy language without regard to the facts to which it applies.

Amicus provides a chart of "undefined collapse" cases purporting to show the outcome of each case without regard to the facts being considered by the courts deciding the cases. Amicus's assertion is that the facts of each case are not significant in understanding the disposition.

According to amicus, every case on the chart (1) involved a policy containing the undefined word "collapse," (2) applied the "substantial impairment of structural integrity" standard for collapse coverage, and (3) did not require "imminency." Amicus hopes, thereby, to persuade this Court that other courts have defined the word "collapse" to mean "substantial impairment of structural integrity" without any requirement of imminency.

But unless we know what constituted the so-called “substantial impairment of structural integrity” in each case, we cannot know the dimensions of the standard being applied. None of the cases cited by amicus in fact held that a building suffering no degradation of its vertical load was substantially impaired or had suffered a loss involving collapse.

The facts of the individual cases—what those cases recognized as a “substantial impairment of structural integrity”—is critical to understanding the standard applied. For example, the first case cited by amicus as having adopted substantial impairment of structural integrity without an imminency requirement is *Anderson v. Ind. Lumbermans Ins. Co.*, 127 So. 2d 304 (La. Ct. App. 1961). The facts in that case are that a concrete slab and two rear exterior corners of the building fell. That case cannot stand for the proposition that collapse coverage should apply in the absence of actual falling down; and there was no reason for the court to mention imminency when, in fact, a collapse had occurred.

The second case cited by amicus is *Auto Owners Ins. Co. v. Allen*, 362 So. 2d 176 (Fla. Dist. Ct. App. 1978), in which “one exterior wall of the building had collapsed and a second was leaning out from the interior wall a significant distance.” Moreover, “the total building . . . was in imminent danger of falling.” *Id.* at 176-77. As with the first case listed by amicus, this case does not indicate that courts have adopted a standard of substantial impairment of structural integrity not involving actual collapse or imminent collapse.

The third case on amicus’s chart, *Beach v. Middlesex Mut. Assur. Co.*, 532 A.2d 1297 (Conn. 1987), demonstrates the same problem. In *Beach*, the foundation of the building had “tipped over into the basement and no longer was supporting the house.” *Id.* at 1298-99.

And so on. The facts of each case, as set forth in the Brief of Appellee (at 16-19),² are important to understanding how other courts have developed and applied

² See also Amended Brief of Amicus Curiae American Insurance Association at 8-15.

standards for collapse coverage. Amicus's chart of cases is not informative, probative, or illustrative of anything that would help this Court answer the certified question.

C. State Farm does not propose to add "unwritten temporal conditions" to its policy language.

State Farm's policy covers "direct physical loss" "involving collapse" "caused by hidden decay." The loss must occur during the policy period. Amicus argues that the imminency requirement imposed by some courts (and accepted, in the alternative, by State Farm) adds "unwritten language" to impose a temporal dimension on the policy's use of the undefined word "collapse." Amicus Brief at 7-8. State Farm is not proposing to add an unwritten requirement; amicus is.

1. Amicus ignores the argument State Farm makes.

As noted above, amicus fails to address State Farm's argument that coverage for "direct physical loss involving collapse" requires actual collapse.

The State Farm policy requires a "loss involving collapse." When there is a loss involving "collapse" (as

that term is understood by the average purchaser of insurance) during the policy period, then there is a covered loss. If there is no loss involving “collapse,” then coverage cannot apply. *Mercer Place Condo. Ass’n v. State Farm Fire & Cas. Co.*, 104 Wn. App. 597, 604-05, 17 P.3d 626 (2000), *rev. denied*, 143 Wn.2d 1023 (2001) (“Precursors of collapse”—dry rot, water seepage, and design/construction defects—did not themselves constitute collapse, and there was no coverage when only the precursors existed during the policy period.) State Farm relies upon the unambiguous language of its policy requiring a loss involving collapse in order for collapse coverage to apply.

2. Amicus incorrectly assumes the word “collapse” means “substantial impairment of structural integrity.”

Amicus *starts* with the false premise that the undefined word “collapse” means “substantial impairment of structural integrity.”

Specifically, amicus argues (at 4) that State Farm’s collapse coverage (which provides coverage for “direct physical loss involving collapse”) “is triggered when decay

has affected the structure to the point where its structural integrity is impaired.” “All that is required” for coverage, amicus says later (at 7), “is that ‘hidden decay,’ which takes years to develop, causes ‘collapse,’ which is undefined.” In so many words, amicus proposes that the word “collapse” means—is defined as—“[substantial] impairment of structural integrity.”

a. The word “collapse” does not mean “substantial impairment of structural integrity.”

Undefined words will be read as the average purchaser of insurance would understand them, in the context in which they are being used. Brief of Appellee at 10. Courts will consult dictionaries to determine the common, ordinary definitions of words. “Collapse,” in reference to physical objects such as buildings, is defined in dictionaries to mean “a situation or occurrence in which something . . . suddenly breaks apart and falls down.” *Id.* at 11. One thing seems certain: No dictionary defines the word “collapse” to mean “substantial impairment of structural integrity.” And it should be equally certain that

the average person does not understand the word “collapse” to mean “substantial impairment of structural integrity.” In other words, if the task is solely to define the word “collapse” as applied to buildings, the definition cannot be “substantial impairment of structural integrity,” a definition that does not exist in dictionaries and would not occur to the average purchaser of insurance.

This Court should give the word “collapse” the meaning an average purchaser of insurance would give it, without augmentation. By contrast, amicus proposes to add language to the policy—amicus would have this Court read the policy as if it said “direct physical loss involving substantial impairment of structural integrity”—even though that phrase is not in any dictionary defining “collapse” or contemplated by the average purchaser of insurance as meaning “collapse.”³

³ For the reasons discussed in Brief of Appellee (at 41), this Court should reject amicus’s invitation to define the word “collapse” as “substantial impairment of structural integrity” on the ground (amicus argues) that State Farm did not define the word in the policy so as to eliminate the possibility of that definition. See Amicus Brief at 5. Moreover, the rule is clear:

- b. *“Substantial impairment of structural integrity” is a term of art describing an approach to collapse coverage; it is not a definition of collapse.*

The word “collapse” cannot itself be defined to mean “substantial impairment of structural integrity.” As explained in the Brief of Appellee (at 16), and as further discussed in the Amended Brief of Amicus Curiae American Insurance Association (at 2-3), “substantial impairment of structural integrity” is an approach to applying collapse coverage, or a legal term of art used to describe situations in which collapse coverage may be applied in circumstances where a complete collapse of a structure has not occurred. It is not, however, a definition of the word “collapse.”⁴ It is confusing, not helpful, that amicus conflates the two concepts.

When terms are not defined in a policy, they are to be given the meaning an ordinary purchaser of insurance would give them.

⁴ Amicus quotes excerpts from and paraphrases Brief of Appellee in a manner that further confuses the distinction and illustrates amicus’s failure to understand the distinction. Amicus argues (at 3), “State Farm’s theme, repeated numerous times before this Court, . . . is that defining ‘collapse’ as ‘substantial impairment of structural integrity’ ‘makes no sense in this case’ and ‘is unreasonable under the facts of this case.’ *Appellee’s Brief*, p. 42.” But what State Farm actually said was

Contrary to amicus's claim at page 11 of its brief, many courts have adopted an imminent collapse standard. See Brief of Appellee at 16-21. Some courts have derived the imminency requirement from policy language different from State Farm's⁵; some have adopted an imminency requirement regardless of policy language.⁶

State Farm agrees that interpreting "direct physical loss involving collapse" to require actual collapse, rather than imminent collapse, best adheres to all established rules of insurance policy construction. Amicus does not dispute this.

"[t]he HOA's use of 'substantial impairment of structural integrity,' without imminency, suddenness, or distortion to the point of uninhabitability, makes no sense in this case." State Farm did not say or suggest that the word "collapse," by itself, can mean "substantial impairment of structural integrity" in this case or any other.

⁵ In *Doheny W. Homeowners' Ass'n v. Am. Guar. & Liab. Ins. Co.*, 60 Cal. App. 4th 400, 70 Cal. Rptr. 2d 260 (1997) and *Assur. Co. of Am. v. Wall & Assocs., LLC*, 379 F.3d 557 (9th Cir. 2004), the courts reasoned that policy language covering loss arising from "*risks of* direct physical loss" extended to imminent loss.

⁶ See *Buczek v. Cont'l Cas. Ins. Co.*, 378 F.2d 284 (3d Cir. 2004), discussed at 20-21 of Appellee's brief.

If, however, collapse coverage is applied more broadly, an imminency requirement is more nearly consistent with the express intent of such coverage—*viz.*, to cover loss involving collapse—than is coverage for impairment of property that has not collapsed and will not soon collapse. Policies should be construed to effect their general purpose. *See, e.g., Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wn.2d 678, 689-90, 871 P.2d 146 (1994). A policy, such as the State Farm policy here, that excludes coverage for “decay [and] deterioration” (ER 139) not amounting to collapse—*i.e.*, which covers loss involving collapse but not “precursors to collapse”—should be construed to effect its purpose. Construing “direct physical loss involving collapse” to require either actual collapse or, alternatively, imminent collapse would not obligate an insurer to pay for maintenance of a defective, impaired building in no particular risk of collapse.

3. The timing of the claim submission is relevant only to show that the buildings here (and any like them) cannot have collapsed.

Amicus asserts (at 8), "State Farm would have this Court adopt a standard for 'collapse' that is somehow dependent upon the timing of the claim." Amicus does not cite to a place in Brief of Appellee where State Farm made that request or argument, either express or implied.

The Brief of Appellee mentions when the claim was made in two places. First, in the Statement of Facts (Brief of Appellee at 4), State Farm notes that, once the claim was made, it was first able to inspect the buildings in order to determine if they were, at that point in time, in a state of collapse, even before considering whether they had reached a state of collapse 12 years earlier, as coverage requires.⁷ Common sense dictates that if buildings were not in a collapse state in 2010, they could not have been in a collapse state in October 1998, when the last State Farm policy period expired.

⁷ The policy provides, "We cover loss commencing during the policy period" (ER 152)

Second, State Farm notes (Brief of Appellee at 40-41) that the *Mercer Place* case differs from the present because, among other things, the claimant in that case claimed that the insured building was presently in a state of collapse, as opposed to claiming the building was in a state of collapse more than a decade earlier.

Neither of those references in the Brief of Appellee to when the claim was made constitutes an argument that coverage depends upon when the claim was made. Rather, the timing of the claim simply illustrates that a building standing straight and true for over a decade cannot have suffered a loss involving collapse a decade earlier.

D. The fact that decay occurs slowly does not contribute to the analysis.

Amicus asserts that “[c]ollapse caused by hidden decay occurs slowly.” Amicus Brief at 4 (see also 7-8). While the intended gravamen of amicus’s argument is not clear, it seems to be that, *because* decay compromises the integrity of a building slowly, substantial impairment of structural integrity caused by hidden decay must be a “loss involving collapse.”

That argument starts and stops in the same place, merely begging the question. No one disputes that decay occurs slowly, and no one disputes that decay itself is not collapse. Moreover, no one disputes that decay is not a covered event until there is a loss involving collapse. But the fact that decay occurs slowly does not necessarily mean, as amicus apparently assumes, that collapse must occur and coverage apply whenever there is substantial impairment of the building's structural integrity.⁸ Rather, coverage applies when there has been a loss involving *collapse*, as that word will be understood by the ordinary purchaser of insurance.⁹

Thus, there is no reason to assume, as does amicus, that collapse means "substantial impairment of structural

⁸ The fact that decay is a slow process does not necessarily mean that collapse must occur slowly when caused by decay. *See, e.g., Minneapolis Mill Co. v. Wheeler*, 31 Min. 121, 16 N.W. 698, 698 (1883) (horses and wagon fell into a canal when decayed bridge collapsed). That said, State Farm does not contend that "collapse" requires suddenness.

⁹ As discussed above (at 8-9) and elsewhere (see Brief of Appellee at 13-16 and Amended Brief of Amicus Curiae American Insurance Association at 8), the average purchaser of insurance has never heard of "substantial impairment of structural integrity."

integrity.” The fact that decay occurs slowly does not validate that assumption.

II. CONCLUSION

State Farm does not propose to add an unwritten requirement to its policy language. Unlike amicus, State Farm does not propose to give the word “collapse” a meaning at odds with the common understanding of the average purchaser of insurance.

State Farm asks that the Court adopt the actual collapse standard expressed by the policy terms: “direct physical loss involving collapse.” Alternatively, the Court should adopt the imminent collapse standard.

DATED this 29th day of December, 2014.

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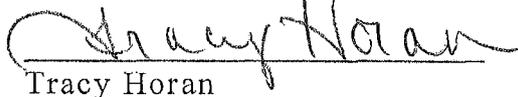
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Attached for filing are the following documents:

State Farm's Answer to Amended Brief of Amicus American Insurance Association
State Farm's Answer to Amicus Brief of Community Association Partners, et al.

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