



ADJUSTING TODAY

Adjusters International Disaster Recovery Consulting

EDITOR'S NOTE

"To fall or cave in; crumble suddenly."

Webster's lead definition of "collapse" seems so clear and straightforward as to preclude the possibility of such an event being debatable. Yet in the field of property insurance, few concepts have been as open to interpretation.

Insureds, insurers, insurance policy drafting organizations and the courts have all weighed in, with the results ranging from the emergence of both conservative and liberal views of the coverage, to the development of new policy forms to address it.

In this issue of Adjusting Today, expert Robert Prah! takes a close look at insurance coverage for collapse, including how it has evolved, how it has been interpreted by insurers and the courts, and some of the latest forms developed by the insurance industry to further define it.

In an appropriate adjoining article, Mr. Prah! offers insight into the subject of policy language ambiguity, including who wins in such situations and why the adjuster's role in interpreting complex policy language is especially important.

From cover to cover, it's interesting and informative reading for today's property insurance professional!

—Sheila E. Salvatore, Editor



Insurance Coverage For Collapse – How Has It Changed and Why?

By Robert J. Prah!, CPCU

Occasionally, losses occur for which insurance coverage was not contemplated by insurers, yet it is not clear from policy language that the loss is excluded. In such cases, the organizations that draft insurance language usually act swiftly to remedy the situation by introducing exclusions or limitations that will preclude

or limit coverage to what was originally intended. A good example is collapse coverage. This is not to say that collapse is not a covered peril under standard property insurance policies, but rather that court decisions have expanded the scope of the coverage well beyond what insurers originally intended.



It was in the 1980s, and then again in the late 1990s, when substantial changes took effect concerning how the peril of collapse was covered, or limited, under property insurance. There were two primary reasons for these changes in policy language. One was the doctrine of concurrent causation; the other a series of court decisions that addressed the meaning of collapse itself and rendered the standard property insurance policy vulnerable to broadening coverage beyond insurers' expectations.

Doctrine of Concurrent Causation

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. It applies primarily to "all risks" or "open perils" policies, rather than specific or named perils coverage.

To be clear, policies written on an all risks basis provide a wide-ranging grant of coverage, but subject coverage to a variety of exclusions. If the loss comes within the scope of coverage, and no specific exclusion applies, the loss is usually covered. In a named perils policy, the loss is not covered unless it was caused by one of the specifically named perils. Coverage written on an all risks or open perils basis is typically broader than coverage provided on a named perils basis.

Getting back to concurrent causation, it can be said that its



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application to property insurance took root in California with several notable court decisions. The doctrine then became the subject of court decisions in other states, and the aftermath of all those cases significantly alarmed insurers. 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 those exclusions meaningless when a concurrent cause (e.g., negligence, faulty construction) that was not specifically excluded was a contributing cause of the loss.

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). In the *Premier* case, heavy rains (which appear to be an almost seasonal event in the state) contributed to a mudslide that resulted in the insured's home sliding off its foundation on a hill into the ravine below. Investigation revealed that human error had caused damage to the house's drainage system, resulting in inadequate drainage and that this was a contributing cause. The court, therefore, viewed the loss as having two causes: the landslide, and the damaged drain. Although the landslide was excluded by the policy (earthquake exclusion), loss caused by the damaged drain was not, and the court decided coverage in the homeowner's favor.

In *Safeco v. Guyton*, loss from flooding caused by a negligently constructed flood control wall was held to be covered because one of the causes of loss — negligent construction of the flood control system — was not specifically excluded. This decision was rendered despite the fact that loss by flooding was clearly excluded.

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 concurrent causation began to be applied to property insurance in a series of court decisions, insurers were compelled to respond.

Evolution of Coverage – Insurance Industry Response

One of the first steps insurers took was to eliminate the “all” from “all risks” in the property insurance insuring agreement in policies written on that basis. This, insurers believed, would avoid creating unreasonable expectations on the part of insureds that most every kind of loss was covered. Typical insurance language today covers “risks of direct physical loss, unless the loss is excluded . . . ,” a more realistic grant of coverage. Although insurance people still occasionally refer to “all risks” coverage, they are being encouraged to use the more neutral terms of “open perils” or “risks not excluded.”

Insurers then countered the concurrent causation issue by adding language that made it clear that there was no coverage for loss caused by any of the general exclusions identified in the policy, regardless of any other cause that contributed concurrently or in any sequence to the loss. The standard or general exclusions refer to *ordinance*

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or *law*, *earth movement*, *water damage* (including flood), and *power failure*, among others. The following represents Insurance Services Office (ISO) standard anti-concurrent causation language and appears as the lead-in paragraph under the heading of Section I Exclusions:

- A. We do not insure for loss caused directly or indirectly by any of the following [general exclusions]. Such loss is excluded regardless of any other cause or event contributing

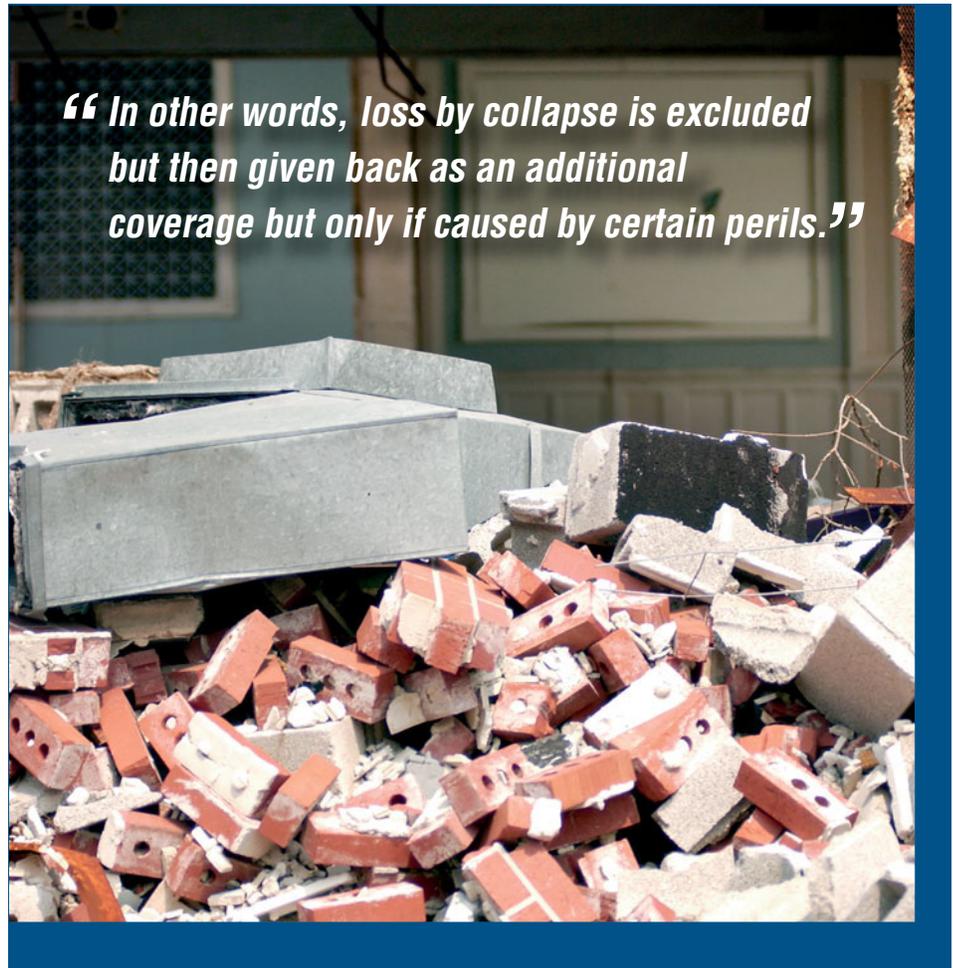


concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.¹

So, for example, in the *Safeco v. Guyton* case, where negligent construction of the flood control system was a contributing cause of the loss along with flooding, there likely would be no coverage for that loss had the above lead-in language to the general exclusions been included in the policy.

Other changes involved reformatting the policy with respect to collapse coverage. Prior to the emergence of the concurrent causation doctrine in property insurance, collapse was plainly stated under named perils coverage as applying to “collapse of a building or any part thereof,” without any qualifications.

Subsequently, due to the increased exposure to insurers created as a result of the concurrent causation concept, insurers responded by specifically excluding loss by collapse in homeowners and commercial property policies, but adding it back as an additional coverage, but with a limited scope. Standard forms now specifically exclude loss by collapse, except as provided under the additional coverage for collapse. In other words, loss by collapse is excluded, but then given back as



“In other words, loss by collapse is excluded but then given back as an additional coverage but only if caused by certain perils.”

an additional coverage but only if caused by certain perils.

As an additional coverage, covered causes of collapse are now 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. This last covered cause of collapse is worded so as to preclude coverage for a collapse caused by

faulty construction that occurs *after construction is completed*. However, the owner of the structure could attempt to recover from the negligent contractor or builder.

Reproduced below is collapse coverage language in a 2000 edition Insurance Services Office (ISO) Homeowners policy. (Commercial insurance policies read similarly.)

Keep in mind, however, that coverage for collapse may not be included in some named perils policies (e.g., some older version Businessowners (BOP) named perils, Homeowners Form 1, in rare

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instances where the Form 1 may still be used), so forms must be carefully reviewed.

Homeowners (HO 00 03 10 00)

8. Collapse

b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

- (1) The Perils Insured Against named under Coverage C;
- (2) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an “insured” prior to collapse;
- (3) Decay that is hidden from view, unless the presence of such decay is known to an “insured” prior to collapse;
- (4) Weight of contents, equipment, animals or people;
- (5) Weight of rain which collects on a roof; or
- (6) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.²

Note that the new language indicates that coverage will not apply if collapse is caused by decay or insect/vermin infestation that are known to the insured prior to the collapse.

Language was also added that specifically excluded loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain,

cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock unless the loss is a direct result of the collapse of a building or any part of a building. New language also was added that excluded “settling, cracking, shrinkage, bulging, or expansion,” in the absence of an actual collapse.

Another insurance organization that drafts policy language for its member companies, as does



“The traditional or conservative view held that collapse involved either a falling down or caving in, into a flattened form of rubble, thus an actual collapse. The liberal view held that collapse involved a substantial impairment of structural integrity, without an actual collapse of the building or part thereof being necessary.”

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ISO, is the American Association of Insurance Services (AAIS), in Wheaton, Illinois. Reproduced below is an example of how AAIS has addressed collapse coverage in its commercial property policy.

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**.³

Simultaneously as these policy wording changes were being made, various courts were making law on the meaning of collapse, and two contrary positions emerged.

Two Positions on the Meaning of Collapse

A series of court decisions in various states addressed the

meaning of collapse and two opposing views emerged. The *traditional or conservative view* held that collapse involved either a falling down or caving in, into a flattened form of rubble, thus an actual collapse. The liberal view held that collapse involved a substantial impairment of structural integrity, without an actual collapse of the building or part thereof being necessary. However, it would likely be too broad a view to say that simply because a structure may be vulnerable to collapse at some indefinite time in the future that coverage would be triggered. Seemingly, it is more accurate to say that there must be a clear or imminent danger of collapse before collapse coverage would apply under the liberal interpretation.

One fairly recent case holding for the traditional view is *529 E. Broadway Condo. Trust v. Vermont Mut. Ins. Co.*, an unpublished decision of the Massachusetts Appeals Court.⁴ In this case, an outside brick wall was detaching from the structure. The insurance adjuster concluded that the problem was a result of water infiltration. The court held that the detaching wall did not meet the definition of collapse, which, as established by case law in Massachusetts, includes “both a temporal element of suddenness and a visual element of altered appearance that comprises a structural collapse, distinct from the degenerative process causing the collapse.”

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⁴Nina Kallen, Attorney at Law, Roslindale, MA 02131; *New Decision on Collapse*.



A case holding for the liberal view is *Allstate Ins. Co. v. Forest Lynn Homeowners Association*, 892 F. Supp 1310 (W.D. Wash. 1995), a Federal Court for the Western District of Washington.⁵ The court held that the meaning of collapse when the term is not defined in the policy means “substantial impairment of structural integrity.” The court rejected Allstate’s assertion that the structure had to fall down before coverage applied.

There are numerous court decisions addressing the meaning of collapse, some favoring the traditional view, others the liberal view. Many of these decisions provided insurers with a clear message to define what is meant by the term “collapse” if they wanted to clarify their intent and avoid litigation. In response, ISO and AAIS introduced language limiting collapse to a flattened form of rubble. One version of the homeowners policy developed by AAIS, 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



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weakening or impairment of structural integrity.”

ISO has also added language to its homeowners and commercial property policies 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.

Reproduced below is language defining collapse that is contained in the ISO 2000 edition homeowners policy:

a. With respect to this Additional Coverage:

⁵Linda Foreman, Attorney At Law, Marston Heffernan Foreman, PLLC, Redmond, WA 98052-4424; *Soggy Building? Better Check Your Insurance*.



- (1) 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 current intended purpose.
- (2) 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.
- (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.
- (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking,

bulging, sagging, bending, leaning, settling, shrinkage or expansion.⁶

AAIS policy language in its standard homeowners policy is similar to the ISO wording.

Conclusion

The latest standard property insurance forms of ISO and AAIS specifically exclude loss by collapse, except as provided under the incidental or additional coverage for collapse. Thus, loss by collapse is excluded, but then given back as an incidental or additional coverage, provided the loss is caused by one of the specific perils identified earlier in this article (e.g., hidden insect or vermin damage, hidden decay, etc.).

As noted earlier, two opposing viewpoints emerged that defined the meaning of collapse. The

traditional view requires that there be a sudden falling-in, or caving in, into a flattened form of rubble of a building before coverage will apply. In short, an actual collapse must take place. Other courts have favored the broad or liberal view of collapse — requiring only a structural impairment of the building without the necessity of an actual collapse.⁷ However, it is doubtful under the liberal view that coverage would be triggered unless there is a clear or imminent danger of collapse.⁸ As noted earlier, ISO and AAIS added definitions of “collapse” to limit its scope to the traditional or conservative view.

Admittedly, it appears that insurers have fortified their position with this new wording in standard property insurance forms to exclude coverage for loss by collapse unless there has been an



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⁷In the following states, court decisions have held for the traditional view: ME, MI, MA, MO, IN. Decisions in the following states favored the liberal view: UT, RI, MD, FL, NC, NY, CT, GA, CO, NM. A South Carolina court has taken a middle ground position concerning collapse which requires that a structure must not only suffer substantial impairment of its structural integrity, but must also be in danger of “imminent” collapse to trigger coverage. This information should not be viewed as a complete list, but rather as a starting point for further inquiry. *Insurer Prevails on the Meaning of “Collapse,”* by Antoinette L. Banks, Esquire, NY law firm of Mound Cotton Wollan & Greengrass, that appeared in *riskVue*, 2004, published by Warren, McVeigh & Griffin, Inc., Risk Management Consultants, Newport Beach, CA.

⁸Alan Miller, Esquire, *What Constitutes a Collapse Under a Property Insurance Policy?* reprinted from “*The Brief*,” Vol. 29, NO.2 (Winter 2000), a publication of the American Bar Association.



actual collapse, that is, an abrupt caving in or falling down of the structure. However, it is important to mention that not all insurers have adopted the latest editions of property insurance forms that define (and, quite frankly, limit) coverage for collapse. These efforts to clarify policy language are aimed at limiting collapse coverage to the traditional view, which the drafters believe is the original intent of the policy. It is important, therefore, to be aware of the edition date of the policy form in effect when a claim occurs and to determine if the form in question is a more current edition that includes a definition of collapse. If collapse is not defined, that is, limited in the policy, and the state involved is one that adheres to the liberal view, coverage could very well apply, even in the absence of an actual collapse of the structure or a part of the structure.

“Buildings undergoing construction are exposed to damage by wind, faulty workmanship, and design error, among other perils.”

A Word About 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. Buildings undergoing construction are exposed to damage by wind, faulty workmanship, and design error, among other perils. 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 coverage is available in builders risk forms, and agents 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.





Who Wins When Policy Language is Ambiguous?

Like most contracts, insurance policies typically are complex documents that require knowledge and experience in order to achieve a reasonable understanding of their meaning. It is imperative that insurance adjusters as well as agents and insureds carefully review the policy when a loss or claim occurs and coverage is sought. The reputation of individual insurers as well as the industry at large can be affected by how insurance companies interpret policy provisions. It is fairly common for disputes to arise over the meaning of a particular word or provision that may be

subject to more than one possible interpretation. In such cases, what “rules of the road” apply?

Insurance policy contracts are subject to the same rules that apply to contracts in general. However, the uniqueness of the insurance product creates some distinctive features associated with insurance contracts. These features affect the way in which insurance policies are interpreted.

Insurance is an Intangible

Because an insured pays a premium but technically does not receive anything material

or physical in return, insurance is characterized as being an “intangible” product. Although there are many social benefits associated with insurance — peace of mind, loss prevention services, etc. — and to society in general — a basis for credit and creating investment capital — the characterization of insurance as an intangible is accurate. In essence, the product embodied in an insurance policy is a promise — a promise to pay for a covered loss. The payment of a claim consummates the insurance contract, but not all insureds have losses or make claims. But this is



“ Court decisions stemming from insurance disputes often tend to balance what is perceived as the unequal bargaining positions of insureds and insurers by giving the insured the benefit of the doubt. ”



the nature of insurance. A premium is paid in return for the assurance that a potential loss will be covered.

A Contract of Adhesion

Since an insurance policy is drafted or written by the insurance company (or an advisory organization such as AAIS or ISO) and generally accepted by the insured without any discussion or negotiation, insurance contracts are said to be contracts of adhesion. The insured ordinarily has no voice in establishing the terms of the policy and simply adheres to the policy terms as drawn by the insurer.

Note, however, that many large commercial insureds with a sophisticated risk and insurance management staff are in a position to negotiate or bargain with an insurer regarding coverage. In these cases, the policy eventually agreed upon will likely not be considered a contract of adhesion. For example, a manuscript policy (usually prepared for high value or unusual risks by a brokerage firm or consultant with input from the insured) would ordinarily not be considered a contract of adhesion.

When policy language is clear and unambiguous, the parties to the contract are usually bound by its terms. Generally, a party to a contract is expected to have knowledge of the contract provisions and will be bound by the terms whether they were read and understood or not.



“Fairness dictates that any doubt as to the meaning of the language used should be resolved in favor of the insured.”

Courts, however, have shown some reluctance to hold insureds responsible for having read or having understood their policies.¹ This is because of the highly technical nature of insurance and the fact that insurance policy language is often complicated and not easily understood by the average insured. Court decisions stemming from insurance disputes often tend to balance what is perceived as the unequal bargaining positions of insureds and insurers by giving the insured the benefit of the doubt.

What “Contract of Adhesion” Means for Insurers

Expressed simply, a contract of adhesion means that any doubt

or ambiguity in a policy provision will be resolved against the party that drafted it. Since the insurer drafted the policy, any question concerning its meaning will ordinarily be decided against the insurer and in favor of the insured. Courts across the country have essentially adopted this position. Fairness dictates that any doubt as to the meaning of the language used should be resolved in favor of the insured. To do otherwise, and employ a narrow and technical construction, would result in an injustice.²

Most insurers do not take denial of coverage lightly. A wrongful denial of coverage can lead to bad faith claims against the insurer

¹*Couch on Insurance*, 2d 15:79, p. 389.

²*Couch on Insurance*, 2d 15:78, p. 386-387.



and an award of extra-contractual damages. Although it may not be widespread, and some adjusters may dispute it, some insurers seemingly are taking what can be described as a “positive claims attitude” toward policy



“It is in the best interest of insurers to consider the interests of the insured as equal to their own.”

interpretation, that is, to focus on looking for ways to cover a claim rather than for ways to exclude it. Because of the nature of the insurance product — that is, its characterization as an unfulfilled promise by the insurer, unless or until a covered loss occurs — insurance companies are highly regulated. State insurance regulators monitor the solvency of insurers to ensure that the protection insureds have paid for will be available if and when they sustain a loss. Regulators also respond to consumer complaints and approve rates and policy forms, among other things.

Conclusion

Adjusters are responsible for interpreting rather complex policy language that ordinarily has a legal as well as a commonsense meaning. This responsibility exists in an environment that is characterized by extensive competition in which customer service and good faith relationships with insureds are vital to a company’s success. It is in the best interest of insurers to consider the interests of the insured as equal to their own. To do otherwise, is to invite claims of bad faith and to face exposure to extra-contractual damages.



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