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Hundreds of Conn. Homeowners Could Join in Class Action Involving Crumbling Concrete Foundations

Potential class action says insurers won't cover damages

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February 4, 2016

Homeowners Michael and Joyce Halloran of Ellington discovered cracks in their basement walls last September. They then learned the walls are collapsing and fixing them will cost over \$150,000. They claim the problem is due to faulty concrete. They aren't alone. The problem is affecting hundreds of Connecticut homeowners, mostly in the northeastern section of the state.

The problem is already the subject of an investigation by the state Office of the Attorney General. Now the situation has led to a class action filed on behalf of homeowners against their insurance companies, which have reportedly refused to pay to fix the problems.

Seven named plaintiffs filed the litigation in late January in U.S. District Court in New Haven against about 110 insurance companies, in the case of *Halloran v. Harleysville Preferred Insurance*.

"This is a massive problem and the scope of it is undetermined at this point," said Ryan Barry of Barry & Barall in Manchester, a former co-chairman of the General Assembly's Banks Committee who represents the plaintiffs. According to Barry, there could be anywhere from 500 to thousands of affected homeowners who could become part of the class.

For now, the named plaintiffs own homes in Manchester, Ellington, Andover and Stafford Springs. According to the lawsuit, each of their homes has basement walls that are irreversibly deteriorating as a result of "defective" concrete supplied by J.J. Mottes Co. of Stafford Springs. The only way to fix the foundations are to lift the houses, rip out the old concrete, and lay an entirely new foundation, according to Barry.

"Every house is different. Some are showing spider web-type cracking, while others have holes," Barry said. "They are in different states of collapse. Some show concrete chipping. At one house, the chimney has separated from the wall.

"These people can't sell their house, can't refinance, and eventually they won't be able to live in their house," Barry said. "These people really need [legal] action."

In addition to the litigation, the issue is the subject of an ongoing state investigation. Jaclyn Falkowski, the director of communications with the Office of the Attorney General, said that office launched an investigation in August following a request from Gov. Dannel Malloy. The office is working with the

state Department of Consumer Protection.

"Because this matter is active and ongoing, it would be inappropriate to comment in detail on its status," Falkowski said. "This investigation is a high priority for the office, and one to which we continue to devote substantial resources. The focus of our efforts is to determine if grounds exist to initiate legal action under the Connecticut Unfair Trade Practices Act, based on the past or present manufacture, sale or installation of concrete foundations in eastern Connecticut."

In the federal lawsuit, the plaintiffs are suing their homeowners' insurance companies and Insurance Services Office Inc. of New Jersey, or ISO, the association the insurers belong to, claiming that they are part of a "concerted scheme to deny them coverage for their failing basement walls, which experts say must be replaced."

The lawsuit alleges the walls were made with concrete containing iron sulfide minerals such as pyrrhotite, pyrite and marcasite, which produce a chemical reaction that causes concrete to swell and crack. "Ultimately, the plaintiffs' homes will fall into their basements," the lawsuit alleges. It seeks a court order compelling insurance providers to pay for new basement walls, along with reimbursement for the cost of litigation and attorney fees and interest.

No attorney had filed an appearance on behalf of the defendants as of Feb. 4. Richard Tauberman, an ISO spokesman, said the company has a policy of not commenting on pending litigation.

The homes in question were built in the 1980s and '90s. The defendant insurance companies are based all over the country, but also include some Connecticut-based ones, such as Hartford Casualty Insurance Co. and Property and Casualty Insurance Co. of Hartford, for example.

The cost of replacing a house's basement ranges from \$100,000 to \$250,000, according to the lawsuit.

The lawsuit asserts that any claims to the insurance companies seeking to get their basement problems fixed are an "exercise in futility," as they are "collectively denying these claims." The plaintiffs allege that after insurance companies learned about the concrete problem, they shored up their definition of "collapse" to minimize liability for defective concrete claims. The lawsuit claims the word was originally construed to mean a "substantial impairment in the structural integrity of a building," but was later amended to mean an "abrupt falling down."

"They knew they would be getting many costly claims, and they saw massive liability coming down the pike," Barry said.

The lawsuit alleges violations of the Connecticut Unfair Trade Practices Act and the Connecticut Unfair Insurance Practices Act. It claims the companies breached their contracts with the plaintiffs. The J.J. Mottes Co. is not named as a defendant in the litigation, though its product is criticized. There is a 10-year statute of limitations for product liability claims.

The company indicated in a statement that there are dozens of reasons foundations can fail, such as installation error, which can lead to freeze-thaw damage, which is unrelated to the concrete itself.

"The Joseph J. Mottes Company provides concrete to an installer but does not install the foundation. We believe those suffering from crumbling foundations deserve answers and help with solutions that can only come from a comprehensive investigation," the company said. •

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