



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

'Sudden' Clause Lets Allstate Off Hook In Foundation Case

By **Ryan Boysen**

Law360, New York (February 23, 2017, 9:34 PM EST) -- A Connecticut federal judge let one insurer off the hook but said another may still be liable for coverage of the crumbling foundation at a couple's Ashford, Connecticut, home, part of a wave of insurance lawsuits that's swept the state as hundreds of faulty foundations poured in the 1980s and '90s begin to crack.

U.S. District Judge Vanessa L. Bryant granted summary judgment Tuesday to Allstate Insurance Co., saying the policy it issued to Stephen and Gail Metsack specified that a home collapse must be "sudden" in order to be covered, but said because another policy with Liberty Mutual Fire Insurance Co. lacked that term, the Metsacks' cracked foundation may be covered under that policy.

"Because the parties do not dispute that the Metsacks' basement walls deteriorated over time, rather than 'suddenly,' and that the effects ... [were] observable to the homeowners many years before the basement walls ... were substantially impaired, the Allstate policy excludes coverage for their loss," Judge Bryant wrote.

Judge Bryant also left the door open for the Metsacks to pursue a suit against Liberty Mutual under the Connecticut Unfair Trade Practices Act.

The Metsacks filed claims in 2014 through policies they held with Allstate covering 1991 to 2009 and Liberty Mutual from 2009 to the present, after cracks they had noticed in the walls of their basement in 2008 became more severe.

The Metsacks, who have lived in the same house since 1992, say Liberty Mutual did not sufficiently investigate their claim, and that the fact the insurer is currently involved in 19 lawsuits in which it denied coverage for the same problem could show it has a "general business practice of unfairly settling disputes."

The Metsacks are suing for breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the CUTPA and the Connecticut Unfair Insurance Practice Act, and are asking for \$125,000 plus attorneys' fees and damages.

The Metsacks are far from alone, however. At least 450 homeowners in the same area filed complaints last year with Connecticut's Department of Consumer Protection over crumbling foundations, and the DCP estimates many more may be holding off in order to avoid complications with their insurance companies when seeking coverage.

Last year, the state passed a law sealing complaints filed with the DCP and other state agencies involving crumbling foundations, specifically to protect homeowners worried that

doing so would affect their claims, a DCP spokesperson told Law360.

A proposal for a \$50 million bond to help ailing homeowners was recently shot down, and state lawmakers recently published a public letter asking insurers to work with homeowners in good faith and encouraging them to join the state's Crumbling Concrete Assistance Program, which creates a relief fund for homeowners.

"Given the complex factors contributing to the foundation problem, it is imperative that all stakeholders — including the insurance industry — come to the table to seek solutions," the letter states.

On Tuesday, the Connecticut General Assembly will hold a hearing on several other laws being debated that address the same issue, the DCP spokesperson said.

The problems stem from concrete from the quarry Becker Construction Co. and poured by a related business, J.J. Mottes & Co. The quarry has reportedly provided the concrete for roughly 20,000 foundations in the past 30 years.

An investigation by a local TV station reported J.J. Mottes has for years engaged in questionable practices such as pouring leftover concrete into foundations, and concrete from the quarry has been shown to contain pyrrhotite, a mineral that can cause cracking as it reacts with water and oxygen, according to a recent investigation by the DCP.

A joint investigation between the DCP and Connecticut's attorney general concluded there was not enough evidence to seek charges against Becker or J.J. Mottes for violating the CUTPA, but the two firms have agreed to stop providing concrete for the time being, according to the DCP's website.

A flurry of lawsuits have been filed in the past two years alleging insurers denied claims over hundreds of foundations poured by J.J. Mottes that homeowners say have begun to crack in recent years.

Ryan Barry, an attorney with the Manchester, Connecticut-based Barry Barall & Spinella, is currently litigating a proposed class action against 111 insurance companies on behalf of Connecticut homeowners, and told Law360 the situation is "tailor-made for a class action," saying many insurance providers copied and pasted the same language from form policies written by industry groups.

One other lawsuit against an insurer involving concrete poured by J.J. Mottes has been won at trial, and at least a half dozen have been settled over the past year after judges denied summary judgment, Barry said.

A recording indicated a phone number listed for J.J. Mottes had been disconnected, and the firm's website would not load Thursday. A local paper has reported the firm has been leasing its facilities to another operator since last spring.

Allstate and Liberty Mutual did not respond Thursday to requests for comment, and a representative for the Metsacks declined to comment.

The Metsacks are represented by Michael D. Parker and Jeffrey R. Lindequist of Michael D. Parker Law Office.

Liberty Mutual is represented by Phillip T. Newbury Jr. and Kieran W. Leary of Howd & Ludorf LLC.

Allstate is represented by Raymond T. DeMeo and Jessica A.R. Hamilton of Robinson & Cole LLP.

The case is Stephen A. Metsack et al. v. Liberty Mutual Fire Insurance Co. et al., cause number 3:14-cv-01150, in the U.S. District Court for the District of Connecticut.

--Editing by Richard McVay and Breda Lund.

All Content © 2003-2017, Portfolio Media, Inc.