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Conn. Officials Strike Deal in Matter Involving Cracking House Foundations

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Hundreds of Connecticut homeowners have experienced cracking in their basement walls, allegedly due to faulty concrete. The situation is the subject of a recently filed lawsuit and an ongoing investigation by the state Office of the Attorney General.

Now, two companies have reached an agreement with state officials to stop selling concrete aggregate from Becker's Quarry in Willington. Concrete aggregate is crushed stone, sand and gravel that is combined with cement, water and sometimes other additives to produce concrete.

Attorney General George Jepsen and the state Department of Consumer Protection announced the agreement on May 9.

The Joseph J. Mottes Co. and the Becker Construction Co. both voluntarily agreed to stop selling material or product containing aggregate from the Willington quarry for use in residential concrete foundations in Connecticut until June 30, 2017. At that point, the state is expected to have the results of its investigation into deteriorating foundations.

"We believe there is now sufficient evidence to conclude that significant levels of the mineral pyrrhotite in stone aggregate used in the production of concrete is a substantial contributing factor to the crumbling foundations experienced by some homeowners in eastern Connecticut," Jepsen said in a prepared statement.

While his office reached this conclusion based on input from scientific experts, Jepsen said more work is needed to understand all the contributing factors involved in the concrete's deterioration. Jepsen said that because the aggregate produced by this quarry and concrete made from it may contain significant levels of pyrrhotite, "caution dictates that concrete products and ingredients from these companies be removed from the residential construction market until our investigation is complete."

Once the investigation is over, he anticipates being better able to assess any legal remedies the state may have to address the problem, Jepsen said. Also, he said lawmakers by then will have more information to determine if public policy changes are warranted. "We commend these companies for agreeing to this voluntary step in the interest of public confidence in the safety of building materials and in allowing a full investigation to be completed," Jepsen said.

State Consumer Protection Commissioner Jonathan Harris said the department has received 220 complaints of deteriorating concrete foundations in eastern Connecticut so far.

The agreement only applies to the use of products in residential construction. However, state officials

urged those involved in commercial projects to exercise strict control over the quality of concrete products they use. So far, state investigators have not found evidence of failures in commercial or public building foundations, according to the announcement.

According to Jepsen, there hasn't been any finding of a legal violation to date. The state reserves its right to assert any legal claims against the companies after the agreement period expires, and the companies reserve the right to defend any such claims.

Attorney Robert Langer of Wiggin and Dana sent a letter to Jepsen and Harris on May 6 on behalf of the Joseph J. Mottes Co. and Becker Construction Co. He said the companies want to make several facts clear to the public. "Mottes and Becker continue to strongly believe that the current situation involving residential foundations in Eastern Connecticut is an installation issue," Langer wrote.

According to Langer, aggregate from the quarry has been routinely tested by the state and "has met all regulations and standards."

"The forming of foundations by installers and builders, on the other hand, is unregulated, unlicensed, unsupervised and uninspected – but needs to be, as these installation practices have the most significant effect on a foundation's strength and durability," he wrote. According to Langer, Mottes' ready-mix concrete containing aggregate from the Becker quarry has been used in state, municipal and commercial foundations, walls, sidewalks and other structures without deterioration.

Ongoing Litigation

The pending litigation was filed on behalf of homeowners against their insurance companies, which have refused to pay to fix the foundation problems. The plaintiffs are seeking 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.

The litigation, *Halloran et al v Harleysville Preferred Insurance et al.*, was filed in late January in U.S. District Court and names 110 insurance companies. Attorney Ryan Barry of Barry & Barall in Manchester, who represents the plaintiffs, has said there could be thousands of affected homeowners in eastern Connecticut. Barry could not be reached for comment on the Attorney General's office's announcement.

When the lawsuit was filed, Barry said the foundations have problems like spider web cracking, holes and concrete chipping. The only solution is to lift the houses, rip up the old concrete, and put in new foundations, according to Barry.

The lawsuit claims each of the plaintiffs' homes has basement walls that are irreversibly deteriorating as a result of "defective" concrete.

In addition to the insurance companies, the homeowners have filed suit against Insurance Services Office Inc. of New Jersey, or ISO, the association the insurers belong to. The plaintiffs claims the defendants are part of a "concerted scheme to deny them coverage for their failing basement walls, which experts say must be replaced," the lawsuit states.

Since January, a number of attorneys have filed appearances on behalf of the defendants. ISO has indicated that the company has a policy of not commenting on pending litigation.

The homes in question were built in the 1980s and 1990s. The defendant insurance companies are based all over the country, but also include some Connecticut based ones, like Hartford Casualty Insurance Co., and Property and Casualty Insurance Co. of Hartford.

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."

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