IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

OLDE COLONIAL VILLAGE CONDOMINIUM COUNCIL,	)	
Plaintiff,	)	
v.	)	C.A. No. 99C-06-187-FSS
MILLERS MUTUAL INSURANCE COMPANY,	)	
Defendant.	)	

Non-Jury Trial Held: October 3, 2000
Upon Submission After Post-trial and Supplemental Briefing: September 21, 2001
Decided: January 28, 2002

CORRECTED OPINION
(Cover page only, adding Mr. Goddess)

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SILVERMAN, J.

This is an insurance coverage case arising from the condemnation, emergency evacuation and reconstruction of a residential condominium building. The court will decide whether the building's condition amounted to a "collapse" caused by "hidden decay." If it did, the Condominium Council is entitled to recover its reconstruction costs from Millers Mutual.

The facts are a homeowner's nightmare. For a time, some of the condominium's unit owners suspected that something was wrong with their building. Floors sagged, doorframes were out of whack, drywall was cracked. In some units, the floors sagged as much as 6 inches. The owners hired a civil engineer who discovered serious structural defects and damage in the building's inadequately ventilated, poorly drained, basement crawlspace. Eventually, the New Castle County building inspectors were notified, which almost immediately precipitated the building's condemnation. As ordered, the Council quickly evacuated the building. It cost a fortune to relocate the building's residents, and even more to cure the defects.

Some expenses presumably were covered by the unit holders' homeowner's insurance. This litigation will decide whether the hundreds of thousands of dollars spent by the Condominium Council for the relocation and reconstruction is covered by the business insurance policy that Millers Mutual sold

to the Council. As mentioned above and discussed below, the outcome initially turns on whether the building's condition, coupled with the condemnation, amounts to a "collapse even if the building did not fall down." Then, the court must consider whether the collapse was caused by hidden decay. The insurance policy covers that. Because the building did not come down and because evidence of decay could be seen by flashlight in the crawlspace, Millers Mutual argues that the collapse provision was not triggered. Alternatively, Millers Mutual contends that the decay was visible and, therefore, the collapse was not a covered occurrence.

The court will decide that this situation amounts to a collapse caused by hidden decay. So, the court also must consider whether the Council's claim is knocked out by the policy's exclusions. Finally, the court will decide which of the Council's reconstruction costs are covered damages, as opposed to improvements or preventative measures. Ultimately, the court will conclude that costs directly attributable to restoring the building to its pre-collapse condition, such as it was, are covered and the costs for improvements or preventative measures are not. The court also will reject collateral costs, including the cost of relocating the building's residents.

The Council filed its insurance claim in 1999. Millers Mutual responded by letter dated June 7, 1999. The insurance company denied coverage, citing several

of its policy's exclusions. The denial of coverage, of course, sparked this lawsuit and a two day, bench trial focusing on what caused the building's deterioration and condemnation. The court also took evidence about the reconstruction and the work's cost. After trial, the parties refined their damages presentation by taking the Council's contractor's deposition. And they submitted post-trial briefs.

The parties have few disputes about the facts. Mostly, they disagree about the accepted facts' legal significance. This is not to say that there are no disputes. To the limited extent that there are differences, however, the court generally is relying on the Council's view of the facts because the Council's evidence is more believable. As presented below, the court has drawn its own legal conclusions, sometimes favoring one side and sometimes the other.

I.

The court is satisfied by a preponderance of the evidence that when the building was condemned its structural condition was so precarious, it probably would fail completely at any moment. Put another way, no one could offer the building's occupants reasonable assurance that the building would remain standing.

While there is room for controversy over whether the building's total failure was imminent or merely soon, and over how long the building had been in such a dangerous condition, the fact is the building was failing and dangerous when

it was condemned. The Council proved that although the building had not fallen, it was at the point of total failure and uninhabitable due to structural weakness. But for the reconstruction, the building probably would have fallen to the ground, perhaps momentarily.

The building reached its structural failure point for several reasons. Most importantly, due to inadequate ventilation and various construction defects, the unfinished crawlspace beneath the building was a breeding ground for wood-destroying fungus. While the evidence does not support a precise finding as to the final degree of impairment to the building's substructure, the court is satisfied that the wooden substructure, especially the joists in the building's crawlspace, was so weakened by fungus it could not be relied upon to carry the building's weight. The building's support was compromised fatally. The court accepts the testimony that some joists in the crawlspace had lost as much as 75% of their strength. The court also is satisfied that the pockets in the building's concrete foundation and the masonry piers supporting the building's steel beam, which were barely adequate to begin with, were compromised by the conditions in the crawlspace.

Besides the problems caused by the crawlspace's poor drainage and ventilation, the building's structural integrity was impaired further by the fact that the builder situated bearing walls mid-span on their supporting joists, rather than on top

of beams or stronger bearing surfaces. The walls' mid-span placement added stress to the building's decayed joists and weakened substructure. It also seems that considering the subsoil's condition, the building's piers were too small and too few. That left the weakened joists with less support from below. In short, the rotted joists were overloaded and undersupported.

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The court also accepts the evidence showing that the Council probably knew for as long as two years, and perhaps longer, that something in the crawlspace was amiss. Specifically, after owners observed problems in their units the Council hired an engineering firm to evaluate the building in 1997. The engineers concentrated initially on the problems appearing in some units: sloping floors, wracked doors, cracked walls and so on. An engineer did a simple inspection of one condominium unit, but it does not appear that the engineer inspected the crawlspace. That is understandable. To inspect the crawlspace, it would have been necessary to squeeze through a 16" x 32" opening. The crawlspace, itself, was roughly 30 inches high, unlit, unventilated, mud-floored and wet. Before it was reconstructed and improved, the crawlspace was nasty.

On March 23, 1998, after a more extensive inspection, the engineers preliminarily concluded that the building's interior footings were settling. And the

floors were sagging because of the bearing walls' mid-span placement. They suggested replacing the masonry piers with "adequately designed footings." The engineers did not report on fungus or wood rot. But they recommended steps to control and reduce "humidity/moisture" in the crawlspace. At that point, however, the engineers still were focused on the building's foundation and the poor placement of the interior walls, rather than on decay.

On October 15, 1998, after further inspection, the engineers reported finding "growth of fungi (fruiting bodies) [in the crawlspace] evidenced by staining on the surfaces of the joists, surface growth of the decay fungi . . . and softening of the wood fibers." They also reported drainage problems, undersized and overstressed joists, and poor soil. The engineers recommended several remedial measures. In response, the Council put together a proposal addressing the engineers' concerns, but the Council did not put its plan into action. Apparently, the Council was looking for funding from sources other than the unit holders.

The engineers provided another report dated April 7, 1999. It was similar to, but more elaborate than, the earlier ones. Finally, on May 5, 1999, the engineers recommended that the "**Association begin the process of vacating the building until suitable remedial repairs can be made.**" The next day, the New Castle County building inspectors condemned the building.

In their May 5, 1999 report, the engineers defended their not having recommended evacuation sooner. They explained that until then, they had been satisfied by the fact that the building had not already collapsed. Or as the engineers put it:

> The reported and observed displacements in the buildings have occurred over time during which there has been historically satisfactory performance of the building's structural systems and components.

The engineers also were reassured by the fact that the building code's specified design loads have a significant "margin of safety." In other words, although the walls' mid-span placement added to the building's problems, that was not enough by itself to cause the building to collapse. If the building's structure had not decayed the building would have stood, despite its undersized and overstressed support. It was the fungus that jeopardized the structure fatally.

The engineers' sudden reversal came after "continued research of literature regarding the effects of fungus on the strength of wood members." The engineers learned "that the strength of wood subject to decay may be significantly reduced prior to the presence of visually observable evidence of decay." In other words, by the time decay appears it already may have weakened the affected wood. Their review of the literature convinced the engineers that the building's condition

was more precarious than they had assumed.

At some point, before or during all this, someone made cursory repairs in the crawlspace. As discussed below, the sketchy evidence about that does not necessarily mean that the decay was not hidden, much less that the Council knew what the building's problems really were before the engineers submitted their reports. The court accepts the Council president's testimony that "the first time any of us saw what was underneath that building" was "close to Christmas [1998]," which was when the engineers showed pictures of the crawlspace.

Millers Mutual hints that more than the reconstruction was engineered. The insurance company implies that the condemnation's smoothness and its timing are suspicious. Millers Mutual observes that the Council bought its insurance at about the time the Council retained the engineers. Millers Mutual also points out that the consultants reversed themselves and called the County right after the Council failed to find supplemental funding from alternative sources for the recommended reconstruction project. Perhaps after the Council was rebuffed by the federal, state and county governments, the Council turned to Millers Mutual.

The innuendo is intriguing, but too cynical. The court cannot conclude from the record that the Council has pulled a fast one on the insurance company. The condemnation was necessary because the building's support was shot. Assuming for

argument's sake that the Council was scheming, not even Millers Mutual suggests that the Council faked the building's damage. The Council's motives, whatever they were, are beside the point.

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As mentioned, after the building was condemned it was reconstructed at great expense. The final work was top-notch. The building's masonry piers, parts of its foundation and the rotted wood were replaced. The building's steel beams were replaced and reset in rebuilt pockets in the building's foundation.

Unfortunately, in order to rebuild the building's substructure, the Council's general contractor had to install temporary facilities, such as an access road and a construction trailer where fixtures and tools could be stored. The contractor also had to rent equipment, buy insurance and pay various fees.

The contractor also undertook expensive site work. For example, the contractor mucked out the crawlspace and prepared it so that the contractor could jack up the building to rebuild the foundation walls and replace the rotted joists and weakened steel beams. To gain working room in the confined crawlspace, the contractor did considerable damage to some of the units above, opening the subfloors, ruining the mud beds under the units' showers, tearing up hardwood, vinyl and tile floors, and removing and storing cabinets, heaters and fixtures until they could be

reinstalled. In the process of doing the reconstruction, the contractor also destroyed interior, stud walls and exterior decks. The contractor had to do expensive plumbing in the crawlspace because as the building's floor's sagged, "they pushed all the soil pipes into the ground, causing a trap."

The Council did not stop merely at restoring the building to its original condition. As discussed in section IV, which concerns damages, the Council not only brought the building back to its original condition and up to where it probably should have been when it was built, the Council further enhanced the building's structural integrity and durability in several ways. In particular, the Council improved the crawlspace's ventilation. It installed a french drain, put down a concrete floor and added piers and steel beams in the crawlspace. The Council also made smaller improvements, such as electrical work and landscaping. The Council also paid $142,764 in temporary relocation expenses for the individual unit owners. Of course, that expense was necessitated primarily, but not entirely, by the emergency evacuation after the condemnation.

While the reconstruction was costly and inconvenient, the condominium now exceeds the building code. Everyone is unequivocal about the fact that the building is in excellent condition and its structural problems are behind it completely. The Council's thorough, organized and decisive approach to the crisis truly is

impressive. Presumably, the comprehensive way that the Council addressed the building's problems will benefit the owners over time, especially when they sell their units.

II.

A. Coverage Provisions

Everyone acknowledges that the Council is insured for "collapse" to the building caused by "hidden decay." Specifically, it is agreed that the building is "Covered Property" under the Council's "Special Businessowners's [sic] Policy," issued by Millers Mutual, which was effective September 26, 1997 and renewed through September 26, 1999. And everyone agrees that under the Additional Coverages section of the policy's Coverage Form, Millers Mutual pays for "direct physical loss or damage to Covered Property . . . caused by collapse of a building or any part of a building insured under this policy, if the collapse is caused by . . . hidden decay . . . ."[1]

The policy also covers collapse caused by hidden decay during or after construction, even if "defective construction material or method of construction"

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[1] **d. Collapse**: (1) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this policy, if the collapse is caused by one or more of the following . . . (2) [sic] hidden decay . . . .

contributes to the collapse.[2] Put another way, the policy provides that if a covered building collapses due to hidden decay, the insurance company cannot deny coverage because defective materials or shoddy construction caused or contributed to the decay. So, using this case as an example, the way the building was designed and constructed played a part in the joists' premature decay, but that does not justify refusing coverage to the Council.

The policy further covers collapse caused by "weight of people or personal property." But there is no evidence that the building was overloaded by people or their property. The problem with the building was that its supporting members could not be counted on to carry a live load because they were rotten. This is not a case where the floor gave way during a party, or the like. Ultimately, the building was determined to be unable to carry its own weight.

Accordingly, the only coverage provision that concerns the court is the one concerning collapse caused by hidden decay. The initial dispute arises because

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[2] **d. Collapse**: (1)(6) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in **d. (1)(a)** through **d. (1)(e)** [sic] we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation, contributes to the collapse. (The policy is misindexed.)

the policy does not define "collapse." Nor does it define "hidden decay." Therefore, the first things the court will address, in Section III, will be the meaning of "collapse" and "hidden decay."

B. Exclusions

Despite Millers Mutual's express promise to pay for damage caused by collapse due to hidden decay, the policy's exclusions deny coverage for damage caused "by fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself." At first glance the coverage and exclusion clauses seem contradictory. The court, however, reads the coverage and exclusion provisions together to mean that Millers Mutual must pay for collapse caused by hidden decay, but not for other damage caused by visible fungus or decay. Therefore, if the collapse was caused by hidden decay the damage was covered, like the coverage clause says.

Similarly, the policy excludes "settling, cracking, shrinking or expansion." But this case does not hinge on those things. Although the engineers first suspected that something akin to settling was causing cracking and the other problems in the units, the final, primary diagnosis was decay. So, the exclusion for settling and cracking is not implicated.

The policy excludes payment for "increased costs incurred to comply

with an ordinance . . . in the course of . . . repair . . . following a physical loss . . . ." That exclusion is not involved directly, but it bears indirectly on how the court will apply the policy's "Loss Payment" provisions when the court awards damages.

In summary, the court sees no basis to apply any of the policy's exclusions here. As presented above and discussed below, if the building's condition amounted to a collapse caused by hidden decay, it was a Covered Cause of Loss and the policy must respond.

C. "Loss Payment" Provisions

While the policy's exclusions, discussed above, do not apply, the policy's "Loss Payment" provisions are important to the final damages calculation, discussed in Section IV. Under the policy, Millers Mutual agrees to pay at its option, the "value of lost or damaged property," "the cost of repair or replacing" or the cost to "repair, rebuild or replace the property with other property of like kind and quality." The court considers the policy's exclusion for increased costs necessary to make the reconstruction meet the building code and the "Loss Payment" provisions in a similar light.

Taken together, the two provisions establish that the policy will pay to return the building to its pre-loss condition, but that is all. In that vein, the court cannot see the distinction that the Council draws between the promise to "repair,"

"replace" or "rebuild." Those terms all concern returning something to its pre-loss condition, without improvement. Millers Mutual never promised to provide the Council with a more durable, functional, serviceable and, presumably, more valuable building than it had before the condemnation. Millers Mutual did not even promise to rebuild the building to meet the modern, more exacting building code. To the contrary, it promised not to pay for increased cost of compliance.

The Council can look to its insurance to restore the building to its *status quo ante,* its pre-collapse condition minus any damage caused by decay. The Council, however, is financially responsible for seeing to it that the building meets the latest code and that it does not fail again. As an insurance company issuing property coverage to a business owner, Millers Mutual's concern about the property's condition started at the inception of the policy's term, and its concern about the future ended at the policy's expiration.

III.

A. "Collapse" Defined

More than anything, this case turns on the meaning of "collapse." If this case's facts do not present a "collapse," the Council cannot recover. But if the facts amount to a collapse, that paves the way for the Council to establish coverage. Everyone appreciates that there is a split among jurisdictions over the meaning of

collapse.

Some courts have insisted on seeing ruins, holding that a collapse has not occurred unless the structure has fallen to the ground, in whole or in part. More authorities hold otherwise, that a collapse provision can be invoked even if the structure still stands.[3] This court broadly perceives a legal trend away from all-or-nothing formalism. It would be easy if a collapse always involved a building's actually falling down. But in a society like ours, which features complicated building codes and enlightened standards of care, simple expedience is less virtuous. Today, a structural engineer's laptop or a building inspector's citation book can render a building as functionally useless as a sinkhole or an earthquake can. If it comes down to it, requiring a disaster before a payout under a collapse provision is not in anyone's interest. That includes insurers.

In any event, this is not the first time that this court has looked at a

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[3] *See American Concept Ins. Co. v. Jones*, 935 F. Supp. 1220, 1227-1229 (D. Utah 1996); *Island Breakers v. Highlands Underwriters Ins. Co.*, 665 So.2d 1084,1085 (Fla. Dist. Ct. App. 1995); *Thomasson v. Grain Dealers Mut. Ins. Co.*, 405 S.E.2d 808, 809 (N.C. Ct. App. 1991); *Royal Indem. Co. v. Grunberg,* 553 N.Y.S.2d 527, 528-529 (N.Y. App. Div. 1990); *Beach v. Middlesex Mut. Assurance Co.*, 532 A.2d 1297, 1300 (Conn. 1987); *Whispering Creek Condominium Owner Assoc. v. Alaska Nat'l Ins. Co.*, 774 P.2d 176, 179-80 (Alaska 1989). *But see Olmstead v. Lumbermens Mut. Ins. Co.*, 259 N.E.2d 123, 126 (Ohio 1970); *Higgins v. Connecticut Fire Ins. Co.*, 430 P.2d 479, 480-81 (Colo. 1967).

collapse provision like the one presented here. In *Judge v. State Farm Ins. Co.,*[4] Judge T. Henley Graves held that a collapse provision identical to the one here would apply when actual collapse is "imminent and unavoidable in the event that repairs were not commenced."

Although the court is applying *stare decisis* here, the court is not following *Judge* merely because of the doctrine of precedent.[5] *Judge* was decided and announced in 1993. After citing specific precedents, *Judge* characterized the court's holding as "the majority rule." Millers Mutual issued its policy to the Council in 1996, years after *Judge*. If Millers Mutual wanted the court to define collapse differently to avoid *Judge* and most other authorities, it could have made that clear.[6] When it wrote its policy, the insurance company presumably knew how this court would read it under circumstances like *Judge's*. And so it shall.

After arguing that the court should require rubble to prove a collapse, Millers Mutual falls back discretely, arguing alternatively that even under the less harsh *Judge* standard, this case does not involve a collapse. In the process, Millers Mutual relies on the preliminary opinions of the Council's engineers, and Millers

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[4] Del. Super., C.A. No. 92C-03-010, Graves, J. (May 3, 1993) (Letter Op.).

[5] *See Oscar George, Inc. v. Potts*, 115 A.2d 479, 481 (Del. 1955).

[6] *See O'Brien v. Progressive Northern Ins. Co.*, 785 A.2d 281 (Del. 2001) (". . . insurers [should] reexamine even their most unambiguous policies. . . .").

Mutual minimizes the condemnation's significance by questioning the building inspector's credentials.

Millers Mutual also strongly emphasizes the engineer's testimony that as far as he knew, the building's condition when it was condemned in 1999 could have been no worse than it was in 1996, which was before Millers Mutual entered the picture. Along the same line, the engineer could not exclude the possibility that the fungus was inactive. He did not know the type of fungus. Nor did he know its growth rate. Nevertheless, the engineer opined that it was "more probable" that the building was more deteriorated in 1999 than it was in 1996. Despite the gaps in his testimony, the court agrees with the engineer that the fungus caused "progressive deterioration." Whatever the building's condition was when Millers Mutual took on the risk, the building's condition probably worsened significantly during the insurance policy's term. That is a logical deduction based on the evidence, even if other possibilities have not been excluded.

Millers Mutual's engineering expert defined a collapse as "something falling into itself and falling to the ground" and "collapse also involves failure of a structural member to the point where it has absolutely no load-bearing capacity, even though it may not have actually fallen down to the ground." The expert used as an example of a collapse the case where a building's joists are damaged to the point that

the building is being supported by its plywood subfloor. And the experts could not say that the joists here were that far gone. Accordingly, Millers Mutual concludes that the facts do not support finding that the building's failure was imminent and that it collapsed. Millers Mutual's definition of collapse is too restrictive, compared to *Judge's*.

The court is impressed by the engineers' final, written opinion on May 6, 1999. As presented above, the engineers emphatically recommended that the building be vacated because it no longer could be considered safe. Furthermore, the court accepts the building inspector's opinion about the building's dangerous condition**.** But if the court shared Millers Mutual's dissatisfaction with the building inspector's opinion, the court still would give his order considerable weight. Even if the condemnation order had been baseless, the order nonetheless meant that the building had to be vacated and major work had to be undertaken.

In any event, the court accepts the inspector's and the Council's view that the building was in imminent peril, which justified its condemnation, even if no one could say specifically that the building's failure was "imminent" and even if no one opined that the building had reached the point where it was being held up by its nails alone. The court is satisfied from all the evidence, discussed above, in part, that the building had reached the point where its existence depended on luck. And that

fact satisfies *Judge's* imminency requirement. The engineers' final report coupled with the condemnation establish a collapse under the policy.

B. "Hidden Decay" Defined

In its supplemental submission to its post-trial briefs, the Council presented *Panorama Village Condominium Assoc. Bd. of Directors v. Allstate Ins. Co.*[7] *Panorama* holds that "hidden," as it is used in a collapse provision concerning decay like the one here, is susceptible to different meanings and, therefore, it is ambiguous. Even though *Panorama*'s context is different, this court agrees that hidden can mean "out of sight" or "concealed," as opposed to "unknown." Accordingly, assuming that the Council had actual knowledge of the decay in the crawlspace, the decay still can be characterized as "hidden," because it was out of sight and concealed.

Technically, however, the court is not adopting *Panorama* because even though "hidden" lends itself to separate definitions, "hidden" is not ambiguous in this case's context. "Hidden's" definitions are different, but they are not conflicting, much less mutually exclusive. Here, the insured is attempting to establish coverage. As far as this court is concerned, if the Council can show that the decay was "hidden" in any legitimate sense of the word, the policy must respond.

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[7] 26 P.3d 910, 915-916 (Wash. 2001) (en banc).

Millers Mutual, in its supplemental response to *Panorama*, does not quibble. It tacitly concedes that decay that is out of sight or concealed can be "hidden," even if it is known. Millers Mutual, however, insists that the decay was not "hidden" because it plainly was visible to the engineer who crawled into the basement and photographed it. Millers Mutual observes: "The joists were not behind a wall and nothing had to be removed to see the joists which were readily observable in the crawl space."

As far as the court is concerned, however, the decay was out of sight or concealed in two ways. First, the decay was not apparent, even if, paraphrasing the engineer, the growth of fungi was evidenced by staining on the joists' surfaces. While the decay's cause was visible, the decay, itself, was not. Thus, the engineer only saw enough evidence of decay to infer its presence. Despite their discovery of the staining and evidence of decay, the engineers still did not know how badly it had damaged the building's substructure. The actual damage was discovered only when a contractor cut into the joists and confirmed that the wood was rotten. Second, and more importantly, the only way to see the staining on the joists was to crawl into an narrow, unlit, unventilated, mud-floored crawlspace and shine a flashlight on the joists. For decay to be "hidden," the court does not agree that it has to be concealed in a wall.

The court finds that the decay was not readily observable. The decay, or the evidence of it, was in such an inaccessible place that it was sufficiently out of sight or concealed and it was hidden. As explained above, the court does not even agree that the decay was known to the Council before the contractor cut into the joists after the reconstruction was underway. Or at the earliest, the Council knew about the decay when the engineers showed photographs to the Council, only five months before the condemnation. By that time, the decay probably had done most of its damage. In passing and at the risk of twisting the blade, the court wonders why Millers Mutual issued a policy covering collapse for a visibly decayed building. Of course, the answer is that the decay was hidden.

C. The Coverage's Trigger

At trial, the court questioned when the loss actually occurred. The court suggested that because the decay obviously took years to destroy the building's support and Millers Mutual was on risk for only two years, perhaps the loss should be apportioned. The court is satisfied, however, that the loss took place when the collapse occurred. That happened when the engineers recommended evacuation and the building was condemned. The court agrees with the Council that a collapse provision's trigger is the collapse itself, not what led to it. In this case, the collapse happened when the government, in the person of the building inspector, declared the

building unsafe for occupancy. Despite the court's preliminary ruminations, this case does not lend itself to a continuous trigger analysis.

IV.

Having decided that the insurance policy covers the Council's loss, the court must turn to damages. By now, the court's approach should be obvious. As discussed above, the policy's "Loss Payment" provisions are clear. Thus, Millers Mutual is not liable for improvements or preventative measures. Similarly, as also discussed above, the insurance does not have to pay relocation costs. The court appreciates that apart from the engineers' recommended evacuation and the condemnation, the reconstruction would have justified relocating some residents for a while. Even so, the relocation expense was too collateral and too personal. The policy does not support the notion that Millers Mutual promised to cover relocation costs like these. The policy expressly limits coverage to "direct physical loss of or damage to Covered Property at the premises. . . ."

On the other hand, the policy must pay for more than simply replacing the rotted wood. The policy also must pay 100 percent of all directly related, construction expenses. The policy must pay even if a directly related expense also facilitated non-covered work. Moreover, the policy must pay for other work if it was made necessary by the covered reconstruction work. But as discussed above, the

policy does not have to pay for any improvements or measures intended to prevent reoccurrence of the decay or to strengthen the building's substructure. If, however, an improvement reduced the cost of required work, the Council's reimbursement must be adjusted, as presented in the examples below in Section V. The examples are not exhaustive, but they should make it possible for the parties to sort the expenses.

V.

For the foregoing reasons, the court will find in favor of the Condominium Council for the cost of remedying the collapse, including the removal and replacement of piers, posts, beams, joists, sill plates and band boards. The Council also is entitled to the costs directly associated with the remediation, including necessary demolition; jacking-up and shoring the floors above the crawlspace while the piers, beams and joists were replaced; permit fees; the construction trailer and other rentals; tipping charges; fencing; the temporary road and so on.

The Council is entitled to costs associated with replacing the original piers, such as digging the footings deeper to reach undisturbed soil suitable for supporting the building. Deeper footings are an improvement, but that is incidental to the required replacement of the original piers. The Council is entitled to reimbursement for the cost of replacing and resetting the original steel beams in rebuilt pockets.

The Council also is entitled to reimbursement for any money it paid to cover damage caused to a condominium unit by the reconstruction. That should include repairing or replacing subflooring, hardwood floors, ceramic tiles, sheet goods and carpet. It also includes plumbing, drywall, carpentry and painting. To the extent that decks were demolished to gain access to the crawlspace, the insurance must pay. But the insurance does not have to replace patios that were damaged to facilitate the french drain's installation. The court appreciates the insurer's argument that it never agreed to pay for work in individual units. True. But if the Council's contractor entered a unit and destroyed its floor in order to work on the common crawlspace, the unit owner does not have to pay for a new floor. The court also is concerned about the cost of repairing the damaged, condominium units. The total seems high, but there is no tangible reason to question it.

The Council is not entitled to reimbursement for the improvements in the crawlspace, such as the new vapor barrier, concrete floor, and french drain system. Nor is it entitled to reimbursement for the electric work. It is not entitled to new landscaping, unless it replaced shrubbery destroyed by the reconstruction. It is not entitled to interior improvements such as new air vents, drainage holes and access doors.

The Council is not entitled to new piers, nor any costs associated with

them. Millers Mutual must accept, however, that the unit cost of replacing the existing piers was reduced because the Council added so many new piers and steel beams. Accordingly, for example, the court accepts the contractor's testimony that the unit cost for replacing the existing piers would have been $350, instead of $100, if the Council had not installed so many more, new piers. It is possible that some other items may need to be adjusted similarly.

The most difficult expense is the very costly removal of mud in the crawlspace and the addition of stone there. The court accepts the contractor's word that the soil was unfit. But the court cannot believe that merely to replace the existing steel and piers, so much mud would have been removed and so much stone would have been added. The court believes that the excavation and new ballast primarily served the new concrete floor and the french drain's installation. The insurance must pay for some of that site work, but the lion's share is the Council's.

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In considering damages as the fact-finder, the court has kept this case's context in mind. A collapse is a calamity. While the insurance company cannot renounce coverage when disaster strikes, the insured is not entitled to turn a calamity into a windfall. Here, thanks to the condemnation, the Council expects Millers Mutual to replace a badly designed, shoddily constructed building with a splendid

structure that exceeds a more stringent, modern building code, and to spare no expense. Under the circumstances and consistent with the insurance contract, everyone must take a hit here. The insurer is obligated only to replace what was there before the collapse. There was no promise in the Council's insurance that Millers Mutual, at its expense, would leave the unit holders with a better and, presumably, more valuable building.

VI.

For now, the court will not attempt to calculate a precise damage award. With this decision's guidance, the parties are better able to derive an actual dollar figure. Upon its submission, the court will enter a final order. If the parties cannot agree on the form of an order despite this elaborate decision, the court will accept each party's submission and craft its own order based on what it receives.

Finally, the court sincerely thanks counsel for their assistance. This case's presentation at trial and in briefing was first-rate. The court regrets the time it took to issue this opinion. The court hopes it is clear, however, that the court labored to consider the record in light of the parties' arguments. The lawyers' professionalism made the court's work much easier.

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Judge

oc: Prothonotary (Civil Division)