

THOUGHT LEADERSHIP

News

FEDERAL JUDGE IN THE SOUTHERN DISTRICT GRANTS INSURER'S MSJ ON NO COVERAGE FOR FLOOR COLLAPSE DUE TO TERMITES

Newsbrief

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Last week, Federal District Court judge Lee Rosenthal in Houston granted an insurer's summary judgment motion on the basis that there was no coverage for claimed termite damage. In *Stewart v. Metropolitan Lloyds Ins. Co. of Texas*, H-19-5008, (S.D. Tex. June 24, 2020), Metropolitan Lloyds filed a motion for summary judgment arguing there was no coverage for claimed termite damage. In December 2017, part of the floor of Stewart's home sank after termites and rot caused some joists underneath the home to deteriorate and break. Stewart filed a claim. Metropolitan determined that Stewart's policy did not cover the damage because it was not within the policy definition of "collapse." Stewart filed suit, alleging breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code and the Texas Deceptive Trade Practice and Consumer Protection Act. The parties cross-moved for summary judgment on whether the policy covered the damage.

Metropolitan argued the policy coverage for "collapse" does not cover the damage because there was not an "entire collapse" of the structure. Metropolitan also argued the damage was caused not only by insects and hidden decay, but also by moisture from the lack of a vapor barrier, and damage to the joists and foundation is not covered under the policy's collapse provision unless that damage results from a different collapse. Stewart argued there was coverage under the policy's "collapse" coverage because the section of the floor that collapsed was an "entire collapse" of that section. The court narrowed the coverage question to the policy language which covers "sudden and accidental direct physical loss to covered property involving the entire collapse of a building or any part of a building." The court then examined the policy definition of the term "collapse" and concluded the claimed damage did not fall under the policy terms because there was not an entire collapse. Because there was no breach of the policy, the court granted summary judgment on all of Stewart's claims including claims under the Texas Insurance Code and Texas Deceptive Trade Practice and Consumer Protection Act.