

California Supreme Court Strictly Applies the Definition of "Collapse"

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The California Supreme Court has reversed a trial court's decision in favor of a policyholder, holding that the term "collapse," as defined by a homeowner's policy, encompasses only an "actual falling down" and cannot be construed as providing coverage for an imminent collapse. *Rosen v. State Farm General Insurance Co.*, No. S108308 (Cal. June 12, 2003). Wiley Rein & Fielding LLP represented *amicus curiae* Complex Insurance Claims Litigation Association before the court.

The policyholder submitted a claim to its homeowner's insurer for the cost to repair two decks attached to his California home. The policyholder claimed coverage under the policy because the decks were about to collapse. The insurer denied coverage based on several grounds, notably the absence of an actual "collapse" of the policyholder's deck within the meaning of the policy. The policyholder subsequently filed a declaratory judgment action in the California Superior Court.

The trial court ordered coverage holding that public policy mandated that an insurer cover imminent collapse, even if the policy provided otherwise. On appeal, although the court of appeal determined that the policy expressly and unambiguously excluded coverage for the policyholder's claim, it ultimately agreed that, as a matter of public policy, coverage should be ordered.

By contrast, the California Supreme Court, quoting *Certain Underwriters at Lloyd's of London v. Superior Court*, 103 Cal. Rptr. 2d 672 (Cal. 2001), stressed that the court of appeals, in prior cases,

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refused to "rewrite any provision or any contract, [including an insurance policy], for any purpose." Citing *Foster-Gardner, Inc. v. National Union Fire Insurance Co.*, 77 Cal. Rptr. 2d 107 (Cal. 1998), the court squarely rejected judicially created coverage, declaring that "[w]hatever merit there may be to [] conflicting social and economic considerations, they have nothing whatsoever to do with our determination" of the policy's meaning. The court further reasoned that "[t]o rewrite the provision imposing the duty to indemnify in order to remove its limitation to actual collapse would compel the insurer to give more than it promised and would allow [the policyholder] to get more than it paid for, thereby denying their freedom to contract as they please." Therefore, the court, having determined that the "collapse" provision was unambiguous, concluded that public policy considerations cannot override clear policy language. [View the court's decision.](#)