

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MAX B. SPRAGUE and KRISTA
SPRAGUE,

Respondents,

v.

SAFECO INSURANCE COMPANY
OF AMERICA,

Petitioner.

No. 85794-6

EN BANC

Filed May 17, 2012

KORSMO, J.*—The supports for the deck system at Max and Krista Sprague’s house rotted out due to improper construction techniques exposing the supports to the elements. Their claim for homeowners’ insurance coverage was denied due to exclusions for rot and defective construction. The trial court granted summary judgment to their

*Judge Kevin M. Korsmo is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

insurer, Safeco Insurance Company of America. The Court of Appeals reversed, finding that the ensuing loss provision provided coverage for the otherwise excluded losses. We now reverse the Court of Appeals.

FACTS

The Spragues purchased their home in 1987. Safeco has insured the property continuously since the Spragues purchased the home. In 1995-96, the Spragues extensively remodeled the property and installed the deck system at issue here. The system consists of two large decks on the bottom and middle levels, and a smaller third deck on the top level. Six supports, known as “fin walls,” run from a concrete pad up through the decks. The supports are not connected to the house.

The fin walls were encased in a foam and stucco coating. In 2007, contractors repairing rot in an exterior wall near a bay window suggested that the Spragues install vents in the fin walls to permit the supports to air out if they ever got wet.¹ When the vents were installed in March 2008, workers discovered that the fin walls were in an advanced state of decay. The Spragues notified Safeco of the problem.

Safeco hired engineers to study the problem. They warned the Spragues not to use the decks and also directed a contractor to install shoring to uphold the decks. The

¹ The Spragues submitted a claim to Safeco for the window repairs. The claim was denied; it is not at issue in this action.

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engineers eventually concluded that the fin walls had inadequate flashing and other construction defects that caused the supports to rot. The decks were in a state of imminent collapse due to impairment of the structural integrity of the system. The condition had existed prior to September 2003.

The Spragues sought coverage from Safeco due to the decks being in a state of “collapse.” A claims representative tentatively believed there would be coverage under the initial policies issued to the Spragues. The company, however, ultimately denied coverage due to the exclusions for construction defects and rot damage.

The Safeco homeowners’ policy provided coverage for all losses that were not excluded. Prior to September 2003, the policies issued by Safeco did not define the term “collapse” nor explicitly address “collapse” as a covered or excluded loss. The policies did exclude coverage for losses caused by “smog, rust, mold, wet or dry rot.” The policies also provided that despite those exclusions, “any ensuing loss not excluded is covered.” Another set of exclusions covered building defects, including defective design, construction, or materials. That section of the policies also recognized that “any ensuing loss not excluded is covered.”

Safeco issued new policies to the Spragues in September 2003. The new policies expressly included “collapse” in the exclusion from coverage. “Collapse” was defined to

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mean fallen to the ground.

The Spragues paid \$282,000 to repair the fin walls. The day after Safeco denied coverage, the Spragues filed suit. The trial court granted summary judgment to Safeco. The Spragues then appealed to the Court of Appeals. Division One of that court reversed, concluding that the decks had collapsed and that collapse was not an excluded loss due to the ensuing loss provisions of the policy. *Sprague v. Safeco Ins. Co. of Am.*, 158 Wn. App. 336, 241 P.3d 1276 (2010).

This court then granted discretionary review of that decision. *Sprague v. Safeco Ins. Co. of Am.*, 171 Wn.2d 1028, 257 P.3d 662 (2011). The case was consolidated for argument with *Vision One LLC v. Philadelphia Indemnity Insurance Co.*, No. 85350-9 (Wash. May 17, 2012). The cases were subsequently severed for the issuance of separate opinions.

ANALYSIS

The question presented here is whether the advanced decay of the fin walls was a separate, ensuing loss² that was covered under the policy despite the exclusions for rot and building defects. We conclude that it was not.

² The terms “ensuing loss” and “resulting loss” have the same meaning. *See Vision One*, slip op. at 11 n.6. We will use the term “ensuing loss” in this opinion because that is the language used in the policies in this case.

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Interpretation of the language of an insurance policy presents an issue of law that is reviewed de novo. *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 52, 164 P.3d 454 (2007). Insurance contracts are construed in accordance with the meaning understood by the typical purchaser of the insurance. *Id.* As with any contract, ambiguous policies are construed against the drafter. *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992).

The law governing all risk policies and ensuing loss provisions was authoritatively set forth in the companion decision in *Vision One*; that analysis will not be repeated here. Instead, this case presents a straightforward issue of applying that analysis to these facts. As recognized in *Vision One*, the policy at issue here is an "all risk" policy that provides coverage for all losses except those that had been excluded. *Vision One*, slip op. at 11-12. The parties agree that the loss occurred prior to the revised homeowners' policy issued in 2003 that excluded "collapse" from the insured risks. The Spragues argue that their deck was in a state of collapse and because "collapse" was not excluded under the pre-2003 policies, coverage was available under the ensuing loss provision. Safeco disputes whether the deck had collapsed and contends that coverage is excluded under the rot and defective construction exclusions.

We need not decide whether the deck had collapsed due to the loss of structural

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integrity even though it had not fallen to the ground. Whether or not the deck had reached a state of collapse, its condition was the result of the excluded perils of defective workmanship and rot and did not constitute a separate loss apart from those perils.

As explained in *Vision One*, the purpose of an ensuing loss provision is to limit the scope of an exclusion from coverage; losses caused by the excluded peril will be covered unless they are subject to their own specific exclusions. The classic example described there—a (covered) fire loss resulting from (excluded) defective wiring—explains the essence of the clause. *Id.* at 13. In effect, the clause breaks the causal chain between the excluded risk and losses caused by the excluded peril in order to provide coverage for the subsequent losses. *TMW Enters., Inc. v. Fed. Ins. Co.*, 619 F.3d 574, 578-79 (6th Cir. 2010).

“Many events can be characterized as both a loss and a peril,” and distinguishing between them will at times constitute “a semantic distinction without a difference.” *Vision One*, slip op. at 17. While we agree with that observation, we do not agree that it is applicable here. Although “collapse” is a covered peril under the pre-2003 Safeco policies at issue here, it is not a loss under these facts.

“Rot” is typically not defined in insurance policies and courts must rely on dictionary definitions of the term. *E.g., Phillips v. United Servs. Auto. Ass’n*, 146 S.W.3d

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629, 634 (Tenn. Ct. App. 2004); *Stamm Theatres, Inc. v. Hartford Cas. Ins. Co.*, 93 Cal. App. 4th 531, 540, 113 Cal. Rptr. 2d 300 (2001). “Rot” is defined:

1 a : to undergo natural decomposition : decay as a result of the action of bacteria or fungi **b** : to become unsound or weak . . . **2 a** : to go to ruin : deteriorate.

Webster’s Third New International Dictionary 1976 (1993). Stated simply, “rot” describes the *process* of deterioration.

These definitions confirm that rot typically results in the complete deterioration of the rotting material. In the case of a wooden structure, the natural process of deterioration will result in collapse and eventual decomposition of the wood. Advanced deterioration does not transmute the rotting process in some sort of alchemical fashion to a new and separate state of “collapse.” A “collapse,” whether consisting of a loss of structural integrity or a plunge to the earth, is the end result of the deterioration that constitutes “rot.” It is not a new and different peril.

The facts of *Vision One* demonstrate proper application of the ensuing loss provision. The policy at issue there excluded from coverage losses caused by faulty workmanship or deficient design but covered resulting losses including collapse. *Vision One*, slip op. at 4-5, 16-17. A floor slab collapsed when the shoring gave way due to defective workmanship, leading to the loss of the slab and the need to clean up the debris

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and cement. *Id.* at 3, 8. This court reinstated a judgment that awarded the building owners damages for the loss of the floor slab, reconstruction of that slab, and clean up costs; the cost of the shoring work was not covered due to the faulty workmanship and defective design exclusions. *Id.* at 8, 24.

As in *Vision One*, there is no coverage here for the fin walls because of the policy exclusions for rot and defective workmanship. If there had been losses other than to the fin walls—an injury to a person hurt by the collapse or property damaged by the deck failure—coverage would have existed under the ensuing loss provisions of the policy. Unlike *Vision One*, that was not the case here. The only loss was to the deck system itself. That loss resulted from rot caused by construction defects.

The trial court correctly concluded that there was no coverage for the rotting deck supports. It properly granted summary judgment.

CONCLUSION

Rotting wood deteriorates to the point that it loses its structure. That natural process of decay does not amount to a new or different condition. Because the homeowners' policies here excluded coverage for both rot and defective construction, the deterioration of the fin walls was not a covered condition. We reverse the Court of Appeals and reinstate the judgment of the trial court.

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AUTHOR:

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WE CONCUR:

Chief Justice Barbara A. Madsen

Justice James M. Johnson

Gerry L. Alexander, Justice Pro Tem.

Justice Mary E. Fairhurst
