

Broken Buildings: Legal Rights and Remedies in the Wake of a Collapse

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A tragedy transpired on June 24 in Surfside, Florida, when the Champlain Towers South suddenly fell, becoming one of the country's most deadly unintentional building collapses. It is imperative that construction industry professionals be aware of the legal issues that are raised by such ill-fated events.

Who Is Held Responsible?

Who can be held responsible for such disasters lies among several possible parties:

- » The building's design professionals, particularly its architects and structural engineers. They are charged with ensuring that the building's design is safe. They must take many factors into account, including, but not limited to, the materials that are used, the foundation, the weight, and the height.
- » General contractors and the subcontractors. General contractors implement the design created by the architects and engineers and are responsible for appropriate materials. The general contractor also supervises the subcontractors aiding with multiple areas of the building's construction and which also share the responsibility of executing the design and maintaining the building's structural integrity.
- » The owner of the building may be held liable. Property owners have a duty to examine their properties to discover



and fix any hazardous conditions that are present, and they must do so with reasonable care. Property managers might also share the burden of responsibility and could very well be held responsible for failing to perform proper maintenance.

- » Building inspectors can be blamed if they do not report a dangerous condition that threatens the safety of the structure.
- » Equipment and material suppliers. Undetected defects in equipment or materials can cause a structure to fail.

Who Pays?

Construction professionals need to be aware of whether

the damages that result from a collapse will be covered by insurance.

Collapse language is usually found in the additional coverage section of a property's insurance policy and typically includes an independent insuring clause, an independent list of exclusions, and an independent list of exceptions to exclusions. Often, insurance policies that permit coverage for abrupt collapse will require various conditions to be met in order to warrant coverage.

Regarding the collapse in Surfside, the primary questions are: What caused the collapse? Was the cause previously known to, or at least reasonably discoverable by, the insured?

If the cause was unknown, or not reasonably discoverable to the insured, the insured might be able to secure coverage. However, if it was due to one of various excluded causes, such as normal wear and tear, bad repairs, deterioration or neglect, and the parties were aware of such conditions, they may be barred from coverage. If there are multiple causes for the collapse, professionals should check their policies for any anti-concurrent causation language, which is used to disqualify coverage for losses that are partly induced by both an excluded cause and an included cause. Also, pursuant to Florida law, false information in an insurance application, intentionally or unintentionally, can void the policy.

Who Can Sue and When?

After determining which parties can be sued to remedy the harms of a collapse, it is crucial that the action is brought in a timely manner, and time restrictions vary by state. In New York, the statute of limitations for malpractice claims, other than medical, dental or podiatric, is three years from the completion of the project. There is currently no statute of repose in New York to act as an absolute cutoff on construction claims; however, there is a bill moving through the state's legislature, proposing to institute a 10-year statute of repose, which is common among many states.

Florida's statute of limitations for negligence cases is four years. The general rule in Florida's construction cases is that the statute of limitations begins to accrue at the completion


of the project, but if the defect is latent, then it begins to accrue at the time that the defect was, or should have been, discovered with reasonable due diligence. Florida also has a statute of repose for construction claims, which is 10 years from the date of completion; counterclaims, cross-claims and third-party claims that arise out of the same controversy may be brought within one year from the commencement of the action, regardless of whether they fall within that 10-year restraint.

How Does the Environment Factor?

Construction professionals should consistently strive to prevent such accidents from happening. Learning about environmental factors that can lead to a building's collapse is an essential consideration. The collapse in Surfside made many people ask whether climate change played a part and whether South Florida's extreme exposure to rising sea levels could lead to the destabilization of other structures.

In South Florida, the sea level is about eight inches higher than it was 100 years ago, and it is expected to increase—with an additional 17 inches predicted by 2040. To make things worse, the region sits on a bedrock of porous limestone, which allows saltwater to rise through, causing flooding without rain. Although the role of the sea level in this particular collapse is not entirely clear, it certainly poses a threat to other buildings. Saltwater, which corrodes both steel and concrete, can rise through the porous bedrock and weaken foundations. The idea of building a large sea wall to prevent ocean flooding in Miami is no defense against underground water.

At present, construction professionals must be extremely vigilant when examining foundations and immediately fix cracks or defects.

As technology and education advance, the construction of buildings ideally will reach a point of quality and durability that will avoid such tragedies in the future. However, with the knowledge that non-deliberate structural collapses can still happen, it is in the best interest of construction professionals to be aware of the many issues that these kinds of catastrophes raise. 



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