

**WRITTEN TESTIMONY**

Public Hearing on House Bill No. 5522

An Act Concerning Homeowners  
Insurance Policies and Coverage for the Peril of Collapse

March 8, 2016

*Submitted by:*

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*Submitted to:*

Joint Committee on Insurance and Real Estate,  
Connecticut General Assembly

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Dear Co-Chair Sen. Crisco, Co-Chair Rep. Megna, Vice Chairs and Legislative Committee Members:

Thank you for an opportunity to submit testimony in regard to House Bill No. 5522 requiring homeowner's insurance policies provide coverage for the peril of collapse.

First, I SUPPORT the intent of the proposed bill.

My wife and I have owned our home in Tolland since it was built in 1992. Over the course of nearly twenty-five years, we have faithfully purchased and renewed our homeowner's insurance from the same insurance company. We also have maintained and faithfully paid our mortgage on the property with the usual belief that investing in a home is perhaps the single best investment for a family and a primary form of long term savings for retirement. Homeownership has been a cornerstone of a stable and prosperous American society. In this vein, few would disagree that there exists a basic covenant that if you pay your mortgage, take care of your property and insure it against perils, your property and lifelong investment in it will be secure, subject to the vicissitudes of market risk. Sadly, that is not the case for many who have been victimized by an entirely unforeseen hazard relating to crumbling foundation concrete.

**The Supplier:** Publicly, the supplier of this concrete, JJ. Mottes Concrete, appears to maintain that the ready-mix concrete it supplied met standards and was not defective. This, however, stands in contrast to the reported hundreds of failing foundations and basement walls allegedly supplied by JJ Mottes and no other supplier appears to have experienced a similar failure. Further, the current JJ Mottes seems to assert it is not the same as the JJ Mottes Company that supplied the concrete in the late 1980s and early 1990s due to a subsequent an asset sale,

although allegedly made among related parties. Yet, as of March 4, 2016, it still holds itself out on its website with the following message:

*“JJ Mottes has been serving the Stafford Springs, CT and surrounding areas since 1947... For over 60 years we have been providing quality concrete, septic products and masonry supplies to customers throughout the region.”*

It also may be relying on the statute of limitations as a defense to defective product claims, which may operate to bar claims before homeowners uncover defects.

**The Insurers.** Based on publicly available information, insurers appear to have resisted claims for damaged foundations and basement walls under various policy terms and exclusions, including exclusions for material and structural defects, earth movement, and below ground water incursion.

In our case, we recently filed a claim with our insurer, Amica Insurance Company, which indicated that it has not yet made any coverage determinations for the dozens of claims it has received for foundation and basement wall damage. At this time, it appears that the damage to the foundation and basement walls is caused by a slow, undetectable chemical reaction involving the presence of normal humidity and water in contact with constituent compounds within the concrete that turn the otherwise solid internal structure of cement into gel and cause expansion. This process continues until manifesting as visible spider cracking and ultimately as premature material failure. The house structure itself suffers during this process as the foundation heaves and racks, with tilting chimneys, cracked and warping floors, racked doors and windows, cracked interior walls and finished surfaces, among other things. The cost to repair the damage is enormously expensive and can cost hundreds of thousands of dollars, including repairing of the foundation footings, basement walls and various aspects of the general home itself.

Insofar as those insurance companies that have settled claims are concerned, it appears that these settlements have occurred over many years and involve nondisclosure obligations. In this regard, to the extent insurers were aware of the pattern of claims, the process of using nondisclosure agreements as a condition to settling puts policyholders at an information deficit to the advantage of the insurer and the disadvantage of the policyholder and leads to inconsistent results for the insured.

Finally, I note that Connecticut courts have consistently and continually addressed foundation and peril of collapse issues in a manner favorable to insureds on matters regarding the definition of sudden collapse, scope of loss incidental to structural impairment and the like. Despite these precedents, some insurers appear insistent upon re-litigating the same issues against their customer-claimants as part of a highly questionable strategy that smells of a pattern of potential bad faith and unfair dealing. In fact, this practice is underscored by the US District Court for Connecticut which has repeatedly addressed and denied motions to dismiss over the same issue of coverage exclusion for foundations with increasing exasperation to the point where it took the unusual step of recently calling it out in Metsack v. Liberty Mutual Fire Insurance Company, No. 3:14-CV-01150 -VLB (*Den. Mot. Dismiss*, D. Conn. Sept. 30, 2015) (“**The arguments raised by Liberty Mutual here have been persuasively rejected three times by courts in this**

District.” [Emp. Added]). See, also, Belz v. Peerless Ins. Co., 46 F. Supp. 3d 157 (*Den. Mot. Dismiss*, 2014), then again on the same issue Gabriel V. Liberty Mutual Fire Insurance Company, No. 3:14-CV-01435-VAB (*Den. Mot. Dismiss*, D. Conn. Sept. 28, 2015). This alone should serve as sufficient notice of improper conduct and unfair dealing on a systemic basis to warrant action.

**The Catch 22.** It appears homeowners are victims of a classic “Catch-22” where insurers often deny claims under exclusionary provisions while the supplier insists the material supplied was not defective. Meanwhile, hundreds of Connecticut families have had their financial lives ruined. But, the damage goes well beyond those directly impacted and reverberates through the entire northeastern housing market and beyond. The situation causes great market uncertainty and calls into question the value of all properties. Further, mortgage lenders also face potential losses as many simply choose to walk away, unable to financially handle the situation, and real estate professionals face liability exposure for negligence in due diligence and failing to discover suspect foundations. The overall financial impact on the economy of Connecticut is potentially enormous both in direct losses as well as indirect losses.

**The Bill.** I applaud the Committee for acting to address this situation. This seems to be precisely the type of issue that requires government intervention. Not only is a great injustice being perpetrated, it has secondary effects that impact communities as a whole. At minimum, this circumstance smacks of precisely the type of event that should be covered by insurance and most insureds have a reasonable expectation that it would be covered in the ordinary course. The fact that many insureds are currently embroiled with their insurers calls into question the integrity of the homeowner’s insurance industry. By all reasonable interpretations, the current circumstance is a peril beyond any form of reasonable foreseeability and does not fall within the intent of common exclusions written by insurers. Instead, attrition strategies are employed to avoid obligations. Many policyholders lack the financial means to pursue insurers in court, and those who can are subject to a long running, expensive process, and spurious litigation strategies. Much like the foundations, the insurance industry has banked on policyholders buckling under the weight of denials, delay and the heavy burden of litigation. The proposed bill takes away uncertainty as to scope of coverage and gives Connecticut homeowners what they assumed they had: insurance against unforeseen risks of loss.

#### **Specific Provisions.**

(a) **Redlining and Discrimination.** As proposed, my concern would be that insurers would “redline” or apply discriminatory underwriting practices that would unreasonably increase premiums for certain areas or time periods of construction. Thus, the provision should be made to anticipate and prevent this behavior.

(b) **Meaning of Occurrence.** Most homeowner policies offer coverage on an “occurrence” basis. The term “occurrence” should be construed to maximize coverage so as not to thwart the policyholder’s effort to recover for latent injuries or damage.

(c) **Hidden from View.** As proposed, the bill would appear to cover materials hidden from view, such as interior structural members enclosed within walls and underground structures.

Interestingly, failing concrete basement walls may not fall within the language as written because basement walls are viewable from the interior basement space. The portion that would not be viewable from the interior would be limited to the footing structure, thus potentially denying coverage for the bulk of the house system support structure. The better formulation would be "hidden from view or identification by means of visual inspection by a person of ordinary knowledge."

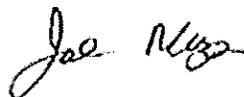
(d) **Structural Impairment.** Under the proposed bill, the scope of coverage could be interpreted as confined to the peril of collapse without consideration for losses and damage arising out of or incident to the structural impairment preceding or leading up to a state of impaired structural integrity lacking fitness for or safety. Merely covering the correction of the structural impairment does not leave the homeowner whole from the other costs of correcting impaired systems, materials, coverings, and finishes.

(e) **Peril of Collapse/Imminence & Sudden Loss.** The language providing for coverage for "peril of collapse" should be defined to ensure that it is interpreted as not being limited to imminent collapse and should extend to structural impairment that renders the structure unfit for its use or unsafe or likely to become unfit or unsafe in the reasonable foreseeable future.

(f) **Preemptive Provisions.** The legislature can take action to provide clarity and preempt abuse of process and ensure good faith and fair dealing. One area where the legislature should act is to prevent the judicial enforcement of policy language that purports to require filing suits within a specified period, rather than when a claim is made or the insurer breaches its coverage obligations. It appears some insurers are using these provisions to win motions to dismiss on the grounds insureds failed to commence legal action within a prescribed period of time from the date of loss. In most instances, homeowners have no idea what they are encountering and even the supplier is stating there is no shown defect, which causes confusion. Further, the policy exclusions include previously court determined ambiguity on key terms such as the word "foundation," and the insurers were on notice that there was a pattern of likely related claims arising from conditions and failed to notify policyholders, even on renewal. Finally, the contract language is at odds with legislatively enacted statute of limitation bars, including the specific lengthening of the statute of limitations for latent damages and in any case should be further extended.

In closing, I request that this testimony be entered into the record of the Committee's proceedings and hope my commentary is duly considered.

Submitted as of the date first above written,



Joe Mazarella