

## Florida Attorneys Prevail in Fight Against Catastrophic Ground Cover Collapse Case

Litchfield Cavo LLP partner **Jason M. Chodos** along with attorney **Dana B. Kuczynski** received a partial summary judgment ruling in favor of his client in US District Court, Middle District of Florida. The case was a commercial first-party property matter concerning a catastrophic ground cover collapse claim.

The case involved a condominium complex in Kissimmee, Florida that comprised of 13 separately-scheduled condominium buildings, and a 30 foot wide by 15 foot deep sinkhole that opened up next to one of the buildings. The insured had a commercial property policy from our client, a nationwide insurance company that provided “Catastrophic Ground Cover Collapse” coverage as the only form of coverage for loss or damage resulting from earth movement. The policy excluded coverage for all types of earth movement and sinkholes, except for catastrophic ground cover collapses.

The insured submitted a claim exceeding \$5 million in alleged loss and damage. The insured alleged that the sinkhole extended 200 feet deep and cast a wide “zone of influence” that impacted four separate buildings and a freestanding retaining wall at the property. The insured further alleged that policy limits would be implicated on all four buildings to make necessary repairs, including underpinning, grouting and cosmetic repairs. As part of the building damages, the insured was seeking coverage for repairs to the retaining wall, patios, sidewalks, land, landscaping, condominium unit owner property and “matching” damages. The insured was also seeking coverage for uncollected association dues and security expenses related to the hire a security guard and to erect a security fence surrounding the sinkhole.

After our client’s claim investigation, it accepted coverage for repairs to covered property at the one building adjacent to the sinkhole. In this respect, it issued payment for \$290,000 as undisputed repair costs. Our client denied coverage for the remainder of the claim. The insured subsequently brought suit. Litchfield Cavo was retained when our client chose to change counsel midway through the case.

After a year of discovery and two unsuccessful mediations, Litchfield Cavo attorneys filed a motion for summary judgment arguing that the majority of the insured’s claim is not covered under the policy. Our attorneys also argued that the insured failed to use all reasonable means to mitigate their damages and should be barred from any further insurance proceeds while there were still questions of fact.

The Court granted summary judgment on behalf of our client on all of our attorneys’ arguments, except for the mitigation wherein the Court could not rule due to unresolved facts. Notably, this case appears to be the first ruling in the country where a court was asked to interpret the “Catastrophic Ground Cover Collapse” provision. The ruling also enforced prior court rulings that “matching” damages and monetary expenses are not covered under a commercial property policy, a claim that is appearing with increased frequency in Florida as an element of claimed damages.

The parties in this case settled the remaining damages within a few days following the summary judgment order.

To obtain a copy of this order that has been chosen by Westlaw for their April 2019 publication, or to learn more about **first-party property** claims, please contact **Jason Chodos** and **Dana Kuczynski** in Litchfield Cavo’s **Fort Lauderdale** office.