

# CONSTRUCTION DEFECT JOURNAL

"News and Information for Construction and Claims Professionals"

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## CONSTRUCTION DEFECT NEWS



*With sinking building cases making news, do not simply accept subsidence exclusions. Sharing a minimal amount of information with the insurance carrier at the outset of a project could mean the difference between coverage and no coverage in the event of a subsidence loss.*

## Sinking Buildings on the Rise?

Monday, July 1, 2019 — Jason M. Adams - Gibbs Giden

By now everyone in the construction and insurance industries is familiar with the 58-story Millennium Tower building in San Francisco that has sunk 17 inches and tilted another 14 inches to the northwest. Another recent New York lawsuit alleges that a 58-story luxury Manhattan condo high-rise is also sinking and causing significant damage. With construction booming in the Southeast and other areas with questionable soils, sinking building cases may be on the rise. Given this reality, the issue of subsidence should be of paramount importance to every construction and insurance professional when insuring a project.

Most insurance carriers will include a subsidence and/or other earth movement exclusion on a commercial general liability ("CGL") quote for insurance as a matter

of course. Construction professionals (owners/developers, general contractors, and subcontractors) or their brokers may be under the mistaken impression that they have no choice but to accept these subsidence exclusions as part of a standard construction policy. This is not the case. To the contrary, most insurance carriers are willing to remove subsidence exclusions if the underwriters are provided with acceptable geotechnical/soils reports when considering the project.

The insured construction professional often pushes back on the insurance carrier's request for soils reports because the insured sees the request as an unnecessary hassle, expense or unwelcome interference in the job. However, the carrier's soils review is designed to benefit everyone. If potential soils issues are discovered during the underwriting process they can be addressed at the outset of the project rather than after the project is built, which will typically cost substantially more to remedy. Moreover, a thorough analysis of the condition of the soils at the outset of the project allows the risk management team to recognize any potential issues and ensure that the proper coverage is obtained in order to provide protection down the road. Even if the insurance carrier charges more money to sign off on questionable soils after a review of the reports, the slight increase in premium is likely a worthwhile investment in the event of a subsidence loss.

The lesson is that the insured should not blindly accept a subsidence exclusion and should negotiate its removal. The insured should provide its broker and the insurance carrier the information they need in order to make a fully-informed decision as it pertains to the soils. Once the insurance carrier has had the opportunity to review and sign off on the condition of the soil, the carrier should feel comfortable enough to remove any subsidence exclusions or other similar earth movement limitations.

Subsidence is a relatively straightforward issue to deal with as long as the project team's lawyers, brokers, risk managers and insurance company underwriters are working together toward the common goal of properly evaluating the risk and adequately insuring the project. This simple cooperative process between the entire risk management team could mean the difference between being covered or not covered in the event of a loss related to earth movement.

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