



Concerns About Sinking Structures Not Limited to Florida

The stability of high-rise buildings in Florida, California and other regions within the U.S. has become a growing concern as **reports** indicate that certain structures are sinking. After the tragic events of the **Champlain Towers condominiums** and ongoing remediation of the **Millennium Tower's tilt**, the issue of sinking and even tilting is more prevalent than ever.

Historically, subsidence (also known as earth movement) has been a near-universal exclusion in property insurance policies. As more reports emerge and cases are settled in court, there is a high likelihood that earth movement will shift the property insurance landscape.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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It all starts with the foundation

Modern construction relies on engineered pile systems to support structures, particularly in areas with unstable soil. A geotechnical report typically guides developers in selecting the appropriate foundation type. However, even when recommendations are followed, unforeseen settlement issues can arise post-construction.

Builder's risk policies can help mitigate risk, covering incidents that occur during construction. But if settlement issues arise after the policy expires, liability coverage can come into play. Understanding the specific terms of coverage and potential policy limitations is essential for developers and property owners.

Ambiguity of subsidence exclusions – case studies

A key aspect of insurance coverage for structural issues is the subsidence exclusion, also known as the earth movement or land subsidence exclusion. Some insurers have incorporated this exclusion into commercial general liability (CGL) policies, particularly for contracting accounts. The exclusion typically precludes coverage for claims arising from events such as earthquakes, landslides, mudflows and other types of earth movement.

However, courts are divided on whether it applies only to natural phenomena or also to man-made events. For example, in cases like [Nautilus Ins. Co. v. Vuk Bldrs., Inc.](#) and [Broom v. Wilson Paving & Excavating, Inc.](#), the court ruled that exclusions must clearly state whether they apply to man-made subsidence in order to be enforceable.

Some insurers attempt to eliminate ambiguity by adding wording such as “however caused” or specifying that the exclusion applies “regardless of whether emanating from, aggravated by, or attributable to any operations performed by or on behalf of any insured.” Nonetheless, legal disputes persist over these exclusions, creating uncertainty for policyholders.

Additionally, the ISO Causes of Loss—Basic and Broad Form contains an earth movement exclusion that precludes coverage for damage caused by natural events such as earthquakes, landslides and sinkholes. This exclusion, commonly found in property insurance policies, clarifies that losses due to earth movement are not covered unless explicitly added through an endorsement.



Ambiguity of subsidence exclusions – case studies (continued)

While this exclusion is typically directed at naturally occurring events, it reinforces the need for policyholders to carefully review their coverage to understand how subsidence-related claims might be handled.

Nationwide Mutual v. Bates further highlights the nuances that challenge these exclusions. Bates, a property owner, discovered structures on their rental property that were built atop construction debris, which decayed over time and caused severe structural damage. Nationwide Mutual denied Bates's claim under a policy exclusion for settling, shrinking or expansion. However, the court found the exclusion ambiguous, ruling that “settling” referred only to normal post-construction settling, not excessive subsidence due to decaying debris. As a result, Bates was awarded damages.

Policy wording and circumstances play a crucial role in each case, with courts left to interpret exclusions without clear precedent. Furthermore, courts often reference exclusions found in first party (property) coverage to help interpret liability (third-party) coverages, despite the fundamentally different purposes of these policies. These inconsistent applications make it critical for insured parties to fully understand their policy language and identify any potential gaps in coverage.

It's not only a coastal issue

Settlement issues are not exclusive to coastal cities. While Florida faces unique challenges due to its high groundwater levels, cities like Atlanta sit on a granite bedrock that requires a different approach to foundation stability. In earthquake-prone California, building codes account for seismic activity, but smaller projects may lack comprehensive coverage for settlement.

Some states have also seen legal disputes over whether the subsidence exclusion applies when a contractor's operations cause land movement. For example, in **Wilshire Ins. Co. v. RJT Const. LLC**, the court found that a subsidence exclusion applied only when the insured's operations directly contributed to earth movement. In contrast, **National Am. Ins. Co. v. New Dominion LLC** upheld a broad exclusion, precluding coverage for seismic activity allegedly caused by oil and gas operations.

As awareness of settlement risks grows, the construction and insurance industries may see more explicit policy language to address these concerns proactively. Stricter underwriting requirements and improved geotechnical assessments could also become standard practice.

We help you win

The nature of subsidence is complex, involving engineering, insurance and regulatory considerations. Developers must ensure they select the right foundation system for the environment, while insurers need to clarify coverage boundaries. Consulting with industry professionals like those at Amwins can help property owners navigate these challenges effectively.

While conflicting interpretations of subsidence exclusions remain, our experts know the latest policy language and legal trends that are essential for stakeholders across the landscape. Amwins' specialists understand that construction exposures vary by region, or even state, and there's not a one-size-fits-all solution for every risk. We're focused on bringing your clients the right solutions to match their exposure and appetite.

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