

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

MICHAEL AND JOYCE HALLORAN,  
KENNETH AND VICTORIA  
MASCIOVECCHIO,  
STEVEN AND PATRICIA BROZEK,  
MICHAEL DYER, MICHAEL AND SUE ANN  
FURLONG, MARK AND CAROLYN  
MCKINNEY, KELLY LUXENBERG, DONALD  
AND NANCY POULIN, DAVID AND PATRICIA  
KANDRYSAWTZ, MARK AND FELICE  
PAWELCYZK, PETER AND PAULA  
LAVALLEY, AND STANLEY ZAREMBA,  
Individually and on behalf  
of those similarly situated,

PLAINTIFFS,

V.

HARLEYSVILLE PREFERRED  
INSURANCE CO., HARLEYSVILLE  
WORCESTER INSURANCE CO.,  
HOMESITE INSURANCE CO.,  
THE HANOVER INSURANCE CO.,  
AMERICAN MODERN HOME  
INSURANCE CO., ACE AMERICAN  
INSURANCE COMPANY, UNITED  
SERVICES AUTOMOBILE ASSOC.,  
CALIFORNIA CASUALTY INDEMNITY  
EXCH., AMICA MUTUAL  
INSURANCE CO., ELECTRIC  
INSURANCE CO., CHUBB NATIONAL  
INSURANCE CO., AMERICAN  
AUTOMOBILE ASSOC., STATE FARM  
FIRE & CASUALTY CO.,  
NATIONWIDE PROPERTY  
& CASUALTY INSURANCE CO.,  
FOREMOST PROPERTY AND CASUALTY  
INSURANCE CO., METROPOLITAN  
PROPERTY AND CASUALTY INSURANCE  
CO., KEMPER INDEPENDENCE  
INSURANCE CO., ALLSTATE INSURANCE

DOCKET NO. 3:16-CV-00133-VAB

MAY 6, 2016

CO., FIREMAN'S FUND  
INSURANCE CO., SAFECO INSURANCE  
COMPANY OF AMERICA, HARTFORD  
INSURANCE CO. OF THE MIDWEST,  
HARTFORD CASUALTY INSURANCE  
CO., EMPLOYERS MUTUAL  
CASUALTY CO., AMERICAN INSURANCE  
CO., AIG PROPERTY CASUALTY CO.,  
LIBERTY MUTUAL FIRE INSURANCE CO.,  
CINCINNATI INSURANCE CO.,  
HORACE MANN INSURANCE  
CO., UNIVERSAL NORTH AMERICA  
INSURANCE CO., ARMED FORCES  
INSURANCE EXCH., 21<sup>ST</sup> CENTURY  
PREMIER INSURANCE CO.,  
AMERICAN STRATEGIC INSURANCE  
CORP., GREAT NORTHERN INSURANCE  
CO., VIGILANT INSURANCE CO., LIBERTY  
INSURANCE CORP., GENERAL  
INSURANCE COMPANY OF AMERICA,  
USAA CASUALTY INSURANCE CO.,  
BANKERS STANDARD  
INSURANCE CO., FEDERAL INSURANCE  
CO., MASSACHUSETTS HOMELAND  
INSURANCE CO., NATIONWIDE MUTUAL  
FIRE INSURANCE CO., PATRONS MUTUAL  
INSURANCE COMPANY OF CONNECTICUT,  
METROPOLITAN GROUP PROPERTY AND  
CASUALTY INSURANCE CO.,  
MASSACHUSETTS BAY INSURANCE CO.,  
PROPERTY AND CASUALTY INSURANCE  
CO. OF HARTFORD, UTICA FIRST  
INSURANCE CO., MERRIMACK MUTUAL  
FIRE INSURANCE CO., AMERICAN  
COMMERCE INSURANCE CO., VERMONT  
MUTUAL INSURANCE CO., QUINCY  
MUTUAL FIRE INSURANCE  
CO., NATIONAL GRANGE  
MUTUAL INSURANCE CO., ASSOCIATED  
INDEMNITY CORP., PRIVILEGE  
UNDERWRITERS RECIPROCAL EXCH.,  
CSAA FIRE & CASUALTY INSURANCE  
CO., PACIFIC SPECIALTY INSURANCE  
CO., UNION MUTUAL FIRE INSURANCE  
CO., CENTRAL MUTUAL INSURANCE

CO., BUNKER HILL INSURANCE CO.,  
CITIZENS INSURANCE CO. OF AMERICA,  
TRUCK INSURANCE EXCH.,  
IDS PROPERTY CASUALTY INSURANCE  
CO., USAA GENERAL INDEMNITY CO.,  
CAMBRIDGE MUTUAL FIRE INSURANCE  
CO., PACIFIC INDEMNITY CO.,  
NATIONWIDE GENERAL INSURANCE CO.,  
TOWER INSURANCE CO. OF NEW YORK,  
GENERAL CASUALTY CO.  
OF WISCONSIN, PROVIDENCE MUTUAL  
FIRE INSURANCE CO., REPUBLIC-  
FRANKLIN INSURANCE CO.,  
ECONOMY PREMIER ASSURANCE CO.,  
LM INSURANCE CORP., ENCOMPASS  
INDEMNITY CO., ENCOMPASS  
INSURANCE CO. OF AMERICA, ALLSTATE  
PROPERTY AND CASUALTY INSURANCE  
CO., ALLSTATE INDEMNITY CO.,  
AMERICAN BANKERS INSURANCE CO.  
OF FLORIDA, FARM FAMILY CASUALTY  
INSURANCE CO., UNITRIN PREFERRED  
INSURANCE CO., TWIN CITY FIRE  
INSURANCE CO., STILLWATER  
PROPERTY AND CASUALTY  
INSURANCE CO., FOREMOST INSURANCE  
CO. GRAND RAPIDS MI, NATIONAL  
SURETY CORP., TEACHERS INSURANCE  
CO., GRAPHIC ARTS MUTUAL INS. CO.,  
INTEGON NATIONAL INSURANCE CO.,  
PRAETORIAN INSURANCE CO., CASCO  
INDEMNITY CO.; UNITRIN DIRECT  
PROPERTY & CASUALTY CO., AEGIS  
SECURITY INSURANCE CO., AFFILIATED  
FM INSURANCE CO., MERASTAR  
INSURANCE CO., PHARMACISTS MUTUAL  
INSURANCE CO., UTICA MUTUAL  
INSURANCE CO., ONEBEACON  
AMERICAN INSURANCE CO., VALLEY  
FORGE INSURANCE CO., BALBOA  
INSURANCE CO., HINGHAM MUTUAL  
FIRE INSURANCE CO., DANBURY  
INSURANCE CO., SENTRY INSURANCE A  
MUTUAL CO., BEDIVERE INSURANCE  
CO., AIU INSURANCE CO., COUNTRYWAY

INSURANCE CO., INDEMNITY  
INSURANCE CO. OF NORTH AMERICA,  
ACE FIRE UNDERWRITERS INSURANCE  
CO., MERITPLAN INSURANCE CO.,  
INSURANCE CO. OF NORTH AMERICA,  
STONINGTON INSURANCE CO.,  
CONTINENTAL CASUALTY CO.,  
MIDDLESEX INSURANCE CO.,  
PEERLESS INSURANCE CO.,  
AMERICAN STATES INS. CO., TRAVELERS  
HOME & MARINE INS. CO., STANDARD  
FIRE INS. CO., MIDDLESEX MUTUAL  
ASSURANCE CO., NEW LONDON CNTY  
MUTUAL INS. CO., COVENANT INS. CO.,  
TRAVELERS IND. CO. OF AMERICA,  
TRAVELERS PERSONAL SECURITY INS.  
CO., SENTINEL INS. CO. LTD., TRUMBULL  
INS. CO., AUTOMOBILE INS. CO. OF  
HARTFORD CT., HARTFORD INS. CO.  
OF THE SOUTHEAST, HARTFORD  
ACCIDENT & INDEMNITY CO.,  
HARTFORD UNDERWRITERS INS, CO.,  
HARTFORD FIRE INS. COMPANY; UNITED  
SERVICES AUTOMOBILE ASSOCIATION,  
THE TRAVELERS COMPANIES; MAPFRE  
INSURANCE COMPANY; MAIN STREET  
AMERICA ASSURANCE GROUP.

DEFENDANTS.

## **SECOND AMENDED CLASS ACTION COMPLAINT**

### **I. Summary.**

1. The Plaintiffs in this case own homes in Ashford, East Hartford, Ellington, Manchester, Stafford, Stafford Springs, Tolland, and South Windsor, Connecticut. Each of their homes has basement walls that are irreversibly deteriorating as a result of defective concrete. They sue their homeowners' insurance companies (collectively "Defendants" or "Defendant

Insurance Companies”), for being part of a concerted scheme to deny them coverage for their failing basement walls, which experts say must be replaced.

2. Plaintiffs’ basement walls are in a state of collapse because they were built with defective concrete containing deleterious iron sulfide minerals.<sup>1</sup> The oxidation (rusting) of these minerals, some of which are pyrrhotite, pyrite, and marcasite, produces a chemical reaction that causes the concrete to swell and crack and the cement paste to break down. This is a continuous and irreversible condition. Ultimately, the Plaintiffs’ homes will fall into their basements.

3. The Plaintiffs have filed claims for coverage with their insurance companies. Some of these claims have been denied while others are being reviewed by insurance companies who know they will reject them anyway. In fact, two claims have been denied since the filing date of the Complaint. Repeated complaints are filtering into the Courts. In all of these cases, the Defendant Insurance Companies have all signed on to standardized language peddled to them by the Insurance Services Office, Inc. (“ISO”) and other similar insurance industry associations and they have refused to do what they promised, namely – provide coverage should hidden decay occur in or defective material be found in the basement walls. The homeowners in all of those cases all had the same problems, made the same kind of claims based on standardized policy language, and got the same type of denial letters. These people have been operating in isolation but, actually, they are all saying the same thing — their basement walls are in a state of collapse and their insurance should pay to replace them.

4. Now, after discovering their deteriorating basement walls, Plaintiffs have homes that are practically impossible to sell, practically impossible to refinance and, eventually, will be

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<sup>1</sup> See Exhibit 1 – Picture of Plaintiffs Masciovecchio’s cement wall displaying pattern cracking from the presence of sulfide minerals known as pyrrhotite, pyrite and marcasite..

impossible to safely live in. They sue Defendants individually and on behalf of others who are similarly situated because they (1) have basement walls that are irreversibly deteriorating and failing due to defective concrete and (2) have claims that have been denied or will be denied by the Defendant Insurance Companies. The net result of these twin problems leaves those whose homes have decaying concrete in a heap of trouble. In fact, the only remedy for these people is, as a matter of science, to replace their basement walls. They seek a Court order for, among other things, new basement walls, their attorneys' fees, their costs, punitive damages, pre- and post-judgment interest and for other equitable relief.

## **II. Jurisdiction and Venue.**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) as the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and this matter is a class action in which members of the class of Plaintiffs are citizens of a state different from one of the Defendants.

6. This Court has personal jurisdiction over this action pursuant to Connecticut General Statutes §§ 33-929(e) and (f) and Connecticut General Statutes § 38a-41.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (1) and (2) as a substantial part of the events and omissions giving rise to this action occurred in Connecticut.

## **III. Plaintiffs.**

8. Plaintiffs Michael and Joyce Halloran are residents of Ellington, Connecticut. built in 1985. They own and live in a single-family home at 127 Pinney Street in Ellington. The home's basement walls were built with defective concrete. The Hallorans bring this lawsuit individually and on behalf of all similarly-situated homeowners.

9. Plaintiffs Kenneth and Victoria Masciovecchio are residents of Ashford, Connecticut. They own and live in a single-family home at 54 Portland Drive in Ashford. The home was built in 1985. The home's basement walls were built with defective concrete. The Masciovecchios bring this lawsuit individually and on behalf of all similarly-situated homeowners.

10. Plaintiffs Steven and Patricia Brozek are residents of Stafford Springs, Connecticut. They own and live in a single-family home at 27 Laurel Drive in Stafford Springs. The home was built between 1984 and 1985. The home's basement walls were built with defective concrete. The Brozeks bring this lawsuit individually and on behalf of all similarly-situated homeowners.

11. Plaintiff Michael Dyer is a resident of Manchester, Connecticut. He owns and lives in a single-family home at 83 Bentley Drive in Manchester. The home was built in 1995 and Mr. Dyer purchased the home in 2015. The home's basement walls were built with defective concrete. Mr. Dyer brings this suit individually and on behalf of all similarly-situated homeowners.

12. Plaintiffs Michael and Sue Ann Furlong are residents of Tolland, Connecticut. They own and live in a single-family home at 68 Bakos Road in Tolland. The home was built in 1997 and the Furlongs purchased the home in 2006. The home's basement walls were built with defective concrete. The Furlongs bring this suit individually and on behalf of all similarly-situated homeowners.

13. Plaintiffs Mark and Carolyn McKinney are residents of Manchester, Connecticut. They own and live in a single-family home at 70 Yale Drive in Manchester. The home was built

in 1991 and the McKinneys purchased the home in 2006. The home's basement walls were built with defective concrete. The McKinneys bring this suit individually and on behalf of all similarly-situated homeowners.

14. Plaintiff Kelly Luxenberg is a resident of Manchester, Connecticut. She owns and lives in a single-family home at 45 Chatham Drive in Manchester. The home was built in 1994 and she purchased the home in 2014. The home's basement walls were built with defective concrete. Ms. Luxenberg brings this suit individually and on behalf of all similarly-situated homeowners.

15. Plaintiffs Donald and Nancy Poulin are residents of Manchester, Connecticut. They own and live in a single-family home at 57 Colgate Drive in Manchester. The home was built in 1991 and they purchased it in 2004. The home's basement walls were built with defective concrete. The Poulins bring this suit individually and on behalf of all similarly-situated homeowners.

16. Plaintiffs David and Patricia Kandrysawtz are residents of East Hartford, Connecticut. They own and live in a single-family home at 355 Long Hill Street in East Hartford. The home was built in 1984. The home's basement walls were built with defective concrete. The Kandrysawtzes bring this suit individually and on behalf of all similarly-situated homeowners.

17. Plaintiffs Mark and Felice Pawelczyk are residents of South Windsor, Connecticut. They own and live in a single-family home at 44 Evans Crossing in South Windsor. The home was built in 1985 and they purchased it in 2001. The home's basement

walls were built with defective concrete. The Pawelczyk bring this suit individually and on behalf of all similarly-situated homeowners.

18. Plaintiffs Peter and Paula LaValley are residents of Stafford, Connecticut. They own and live in a single-family home at 125 Buckley Highway in Stafford. The home was built in 1984. The LaValleys bring this suit individually and on behalf of all similarly-situated homeowners.

19. Plaintiff Stanley Zaremba is a resident of Ashford, Connecticut. He owns and lives in a single-family home at 190 Oakes Road in Ashford. The home was built in 2002. Mr. Zaremba brings this suit individually and on behalf of all similarly-situated homeowners.

20. All of the aforementioned homeowners shall collectively be referred to as the “Plaintiffs.”

#### **IV. Defendants.**

##### ***Insurance Defendants***

21. Harleysville Preferred Insurance Company (“Harleysville”) is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

22. Harleysville Worcester Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

23. Homesite Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Massachusetts.

24. The Hanover Insurance Company is incorporated in New Hampshire and its principal place of business is in the State of Massachusetts.

25. American Modern Home Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio.

26. ACE American Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

27. United Services Automobile Association is incorporated in Texas and its principal place of business is in the State of Texas.

28. California Casualty Indemnity Exchange is incorporated in California and its principal place of business is in the State of California.

29. Amica Mutual Insurance Company is incorporated in Rhode Island and its principal place of business is in the State of Rhode Island.

30. Electric Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

31. Chubb National Insurance Company is incorporated in Indiana and its principal place of business is in the State of New Jersey.

32. American Automobile Insurance Company is incorporated in Missouri and its principal place of business is in the State of Illinois.

33. State Farm Fire & Casualty Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

34. Nationwide Property & Casualty Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio.

35. Foremost Property and Casualty Insurance Company is incorporated in Michigan and its principal place of business is in the State of Michigan.

36. Metropolitan Property and Casualty Insurance Company is incorporated in Rhode Island and its principal place of business is in the State of Rhode Island.

37. Kemper Independence Insurance Company is incorporated in Illinois and its principal place of business is in the State of Florida.

38. Allstate Insurance Company of Amerifa 4is incorporated in Illinois and its principal place of business is in the State of Illinois.

39. Firemans Fund Insurance Company incorporated in California and its principal place of business is in the State of Illinois.

40. SAFECO Insurance Company of America is incorporated in New Hampshire and its principal place of business is in the State of Massachusetts.

41. Hartford Insurance Company of the Midwest is incorporated in Indiana and its principal place of business is in the State of Connecticut.

42. Hartford Casualty Insurance Company is incorporated in Indiana and its principal place of business is in the State of Connecticut.

43. Employers Mutual Casualty Company is incorporated in Iowa and its principal place of business is in the State of Iowa.

44. American Insurance Company is incorporated in Ohio and its principal place of business is in the State of California.

45. AIG Property Casualty Company is incorporated in Pennsylvania and its principal place of business is in the State of New York.

46. Liberty Mutual Fire Insurance Company is incorporated in Wisconsin and its principal place of business is in the State of Massachusetts.

47. Cincinnati Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio.

48. Horace Mann Insurance Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

49. Universal North America Insurance Company is incorporated in Texas and its principal place of business is in the State of Florida.

50. Armed Forces Insurance Exchange is incorporated in Kansas and its principal place of business is in the State of Kansas.

51. 21st Century Premier Insurance Company (“21st Century”) is incorporated in Pennsylvania and its principal place of business is in the State of Michigan.

52. American Strategic Insurance Corporation is incorporated in Florida and its principal place of business is in the State of Florida.

53. Great Northern Insurance Company is incorporated in Indiana and its principal place of business is in the State of New Jersey.

54. Vigilant Insurance Company is incorporated in New York and its principal place of business is in the State of New Jersey.

55. Liberty Insurance Corporation is incorporated in Illinois and its principal place of business is in the State of Massachusetts.

56. General Insurance Company of America is incorporated in New Hampshire and its principal place of business is in the State of Massachusetts.

57. USAA Casualty Insurance Company is incorporated in Texas and its principal place of business is in the State of Texas.

58. Bankers Standard Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

59. Federal Insurance Company is incorporated in Indiana and its principal place of business is in the State of New Jersey.

60. Massachusetts Homeland Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of New York.

61. Nationwide Mutual Fire Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio.

62. Patrons Mutual Insurance Company of Connecticut is incorporated in Connecticut and its principal place of business is in the State of Ohio.

63. Metropolitan Group Property and Casualty Insurance Company is incorporated in Rhode Island and its principal place of business is in the State of Rhode Island.

64. Massachusetts Bay Insurance Company is incorporated in New Hampshire and its principal place of business is in the State of Massachusetts.

65. Property and Casualty Insurance Company of Hartford is incorporated in Indiana and its principal place of business is in the State of Connecticut.

66. Utica First Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

67. Merrimack Mutual Fire Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

68. American Commerce Insurance Company is incorporated in Ohio and its principal place of business is in the State of Massachusetts.

69. Vermont Mutual Insurance Company is incorporated in Vermont and its principal place of business is in the State of Vermont.

70. Quincy Mutual Fire Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

71. National Grange Mutual Insurance Company is incorporated in Florida and its principal place of business is in the State of New Hampshire.

72. Associated Indemnity Corporation is incorporated in California and its principal place of business is in the State of Illinois.

73. Privilege Underwriters Reciprocal Exchange is incorporated in Florida and its principal place of business is in the State of New York.

74. CSAA Fire & Casualty Insurance Company is incorporated in Indiana and its principal place of business is in the State of California.

75. Pacific Specialty Insurance Company is incorporated in California and its principal place of business is in the State of California.

76. Union Mutual Fire Insurance Company is incorporated in Vermont and its principal place of business is in the State of Vermont.

77. Central Mutual Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio

78. Bunker Hill Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

79. Citizens Insurance Company of America is incorporated in Michigan and its principal place of business is in the State of Michigan.

80. Truck Insurance Exchange is incorporated in California and its principal place of business is in the State of California.

81. IDS Property Casualty Insurance Company is incorporated in Wisconsin and its principal place of business is in the State of Wisconsin.

82. USAA General Indemnity Company is incorporated in Texas and its principal place of business is in the State of Texas.

83. Cambridge Mutual Fire Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

84. Pacific Indemnity Company is incorporated in Wisconsin and its principal place of business is in the State of New Jersey.

85. Nationwide General Insurance Company is incorporated in Ohio and its principal place of business is in the State of Ohio.

86. Tower Insurance Company of New York is incorporated in New York and its principal place of business is in the State of New York.

87. General Casualty Company of Wisconsin is incorporated in Wisconsin and its principal place of business is in the State of Wisconsin.

88. Providence Mutual Fire Insurance Company is incorporated in Rhode Island and its principal place of business is in the State of Rhode Island.

89. Republic-Franklin Insurance Company is incorporated in Ohio and its principal place of business is in the State of New York.

90. Economy Premier Assurance Company is incorporated in Illinois and its principal place of business is in the State of Rhode Island.

91. LM Insurance Corporation is incorporated in Illinois and its principal place of business is in the State of Massachusetts.

92. Encompass Indemnity Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

93. Encompass Insurance Company of America is incorporated in Illinois and its principal place of business is in the State of Illinois.

94. Allstate Property and Casualty Insurance Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

95. Allstate Indemnity Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

96. American Bankers Insurance Company of Florida is incorporated in Florida and its principal place of business is in the State of Florida.

97. Farm Family Casualty Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

98. Unitrin Preferred Insurance Company is incorporated in New York and its principal place of business is in the State of Florida.

99. Twin City Fire Insurance Company is incorporated in Indiana and its principal place of business is in the State of Connecticut.

100. Stillwater Property and Casualty Insurance Company is incorporated in New York and its principal place of business is in the State of Florida.

101. Foremost Insurance Company Grand Rapids MI is incorporated in Michigan and its principal place of business is in the State of Michigan.

102. National Surety Corporation is incorporated in Illinois and its principal place of business is in the State of Illinois.

103. Teachers Insurance Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

104. Graphic Arts Mutual Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

105. Integon National Insurance Company is incorporated in North Carolina and its principal place of business is in the State of North Carolina.

106. Praetorian Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Wisconsin.

107. Casco Indemnity Company is incorporated in Maine and its principal place of business is in the State of Ohio.

108. Unitrin Direct Property & Casualty Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

109. Aegis Security Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

110. Affiliated FM Insurance Company is incorporated in Rhode Island and its principal place of business is in the State of Rhode Island.

111. Merastar Insurance Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

112. Pharmacists Mutual Insurance Company is incorporated in Iowa and its principal place of business is in the State of Iowa.

113. Utica Mutual Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

114. OneBeacon American Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

115. Valley Forge Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Illinois.

116. Balboa Insurance Company is incorporated in California and its principal place of business is in the State of California.

117. Hingham Mutual Fire Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

118. Danbury Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

119. Sentry Insurance a Mutual Company is incorporated in Wisconsin and its principal place of business is in the State of Wisconsin.

120. Bedivere Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

121. AIU Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

122. Countryway Insurance Company is incorporated in New York and its principal place of business is in the State of New York.

123. Indemnity Insurance Company of North America is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

124. ACE Fire Underwriters Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

125. Meritplan Insurance Company is incorporated in California and its principal place of business is in the State of California.

126. Insurance Company of North America is incorporated in Pennsylvania and its principal place of business is in the State of Pennsylvania.

127. Stonington Insurance Company is incorporated in Pennsylvania and its principal place of business is in the State of Texas.

128. Continental Casualty Company is incorporated in Illinois and its principal place of business is in the State of Illinois.

129. Middlesex Insurance Company is incorporated in Wisconsin and its principal place of business is in the State of Wisconsin.

130. Peerless Insurance Company is incorporated in New Hampshire and its principal place of business is in the State of Massachusetts.

131. American States Insurance Company is incorporated in Indiana and its principal place of business is in the State of Indiana.

132. Travelers Home & Marine Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

133. Standard Fire Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

134. Middlesex Mutual Assurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

135. New London County Mutual Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

136. Covenant Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

137. Travelers Indemnity Company of America is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

138. Travelers Personal Security Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

139. Sentinel Insurance Company Ltd. is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

140. Trumbull Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

141. Automobile Insurance Company of Hartford CT is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

142. Hartford Insurance Company of the Southeast is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

143. Hartford Accident & Indemnity Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

144. Hartford Underwriters Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

145. Hartford Fire Insurance Company is incorporated in Connecticut and its principal place of business is in the State of Connecticut.

146. The Automobile Insurance Company of Hartford, Connecticut is incorporated in Connecticut and its principal place of business is in the State of Connecticut. The Travelers Companies is the parent company of AICHC and is incorporated in Connecticut with a principal place of business is in the State of Connecticut.

147. MAPFRE Insurance Company is incorporated in Massachusetts and its principal place of business is in the State of Massachusetts.

148. Main Street America Assurance Group is incorporated in Florida and its principal place of business is in the State of Florida.

149. Collectively, all of the aforementioned insurance companies are herein referred to as the “Defendant Insurance Companies.” At all times relevant to this complaint, the Defendant Insurance Companies were writing homeowners’ insurance policies and issuing such policies to Connecticut residents in Hartford County, Tolland County and Windham County. At all times relevant to this complaint, the Defendant Insurance Companies were also members of the defendant Insurance Services Office, Inc. (ISO) or a similar trade association and/or were advised by ISO and/or a similar trade organization.

## **V. Facts**

### **A. The Defendant Insurance Companies Led Plaintiffs and Putative Class Members into a Sinkhole of Financial Trouble.**

150. Each Plaintiff and putative Class Member owns real property that is crumbling and/or exhibiting a pattern cracking consistent with cement that contains pyrrhotite and/or other iron sulfides that cause their basement walls to fail.

151. Each Plaintiff and proposed Class Member holds an insurance policy that provides coverage should their basement walls collapse (i.e., decay or be built with defective materials).

152. Each Plaintiff's and each proposed Class Member's home was built using defective cement.

153. Each Plaintiff and proposed Class Member has either:

- a. made a claim for coverage with one of the Defendant Insurance Companies due to decay and/or defective cement and been denied by their insurer based on reasons contrary to the express provisions of their respective policy; or
- b. made a claim for coverage with one of the Defendant Insurance Companies due to decay and/or defective cement pursuant to their respective insurance policy and their insurer has expressed an intent to deny coverage, or, at least at the time that this action was filed, failed to respond.

154. Even if a respective plaintiff or putative Class Member submits a claim pursuant to their respective insurance policy, each and every claim will be denied. Indeed, submitting a claim for insurance coverage by the Plaintiffs or putative Class Members is an exercise in futility.

155. Modern insurance practices reveal why filing a bad concrete claim is futile. Insurance companies these days belong to associations that put time and resources into developing standardized language for insurance policies. Member insurance companies in Connecticut adopt this uniform language and then all of these member companies interpret it the same way. That is what happened in this case. Each of the Defendant Insurance Companies is either a member of ISO or another insurance trade association, and/or heavily relies upon copyrighted advice from ISO or another such insurance trade association. Each of the Defendant Insurance Companies adopted some or all of the language drafted by ISO or other insurance

trade associations. And each of the Defendant Insurance Companies has denied or will deny claims alleging that this uniform language prevents coverage.

156. Filing a bad concrete claim at this time is also futile because the Connecticut Department of Insurance (“DOI”) has concluded that insurance companies in Connecticut are collectively denying these claims. For instance, DOI has acknowledged this consistent and collective position of insurance companies in conversations with the Plaintiffs’ attorneys. DOI has even gone so far as to make a public declaration of this “deny” position at a public forum attended by hundreds of affected homeowners.

157. The futility of filing a bad concrete claim is also highlighted by the repeated complaints filed in this Court over the past few years. One jury has already reached a verdict in favor of the plaintiffs who sued their insurance company over their denial of a bad concrete claim. See, e.g., Bacewicz v. NGM Insurance Co., 3:08-CV-1530 (JCH), 2010 WL 3023882 (D.Conn. Aug. 2, 2010) (awarding homeowner \$215,963.74 to replace basement walls). In all of the other bad concrete cases, the plaintiffs made the same types of claims and the insurance companies issued standard denial letters.<sup>2</sup>

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<sup>2</sup> See Jones v. Standard Fire Insurance Co., No. TTD-CV-116004270, 2013 WL 541015 (Conn. Super. Ct. Jan. 11, 2013); Gambacorta v. Covenant Insurance Co., No. TTD-CV-136006583, 2015 WL 1867090 (Conn. Super. Ct. March 23, 2015); Waters v. Liberty Mutual Insurance Group, Inc., No. TTD-CV-065000709, 2009 WL 4282809 (Conn. Super. Ct. November 9, 2009); Tofolowsky v. Bilow, No. TTD-CV-970063795, 2003 WL 1475141 (Conn. Super. Ct. March 17, 2003); R.I. Pools, Inc. v. Paramount Concrete, Inc. 149 Conn. App. 839 (2014); Musgrave et al. v. State Farm Fire and Casualty Company et al., No. TTD-CV15-6009840 (Conn. Super. Ct. 2015); Cote et al. v. Travelers Indemnity Company of America, No., TTD-CV-15-6008838 (Conn. Super. Ct. 2015); Bacewicz v. NGM Insurance Co., No. 3:08-CV-01530, Judgment (D. Conn. Feb. 11, 2011); Possardt et al. v. General Casualty Co., 3:13-cv-00055-SRU (D. Conn. 2013); Panciera et. al. v. Kemper Independence Insurance Co., No. 3:13-CV-1009 (JBA), 2014 WL 1690387 (D. Conn. April 29, 2014); Belz et al. v. Peerless Insurance Co., No. 3:13-CV-01315, 2013 WL 4984704, (D. Conn. Sept 6, 2013); Karas et al. v. Liberty Insurance Corp., No. 3:13-CV-01836, 2013 WL 6778455 (D. Conn. Dec. 11, 2013); Lincoln et al. v. United Services Automobile Association, No. 3:14-CV-00333 (D. Conn. 2014); Metsack et al. v. Liberty Mutual Fire Insurance Co., No. 3:14-CV-01150 (VLB), 2015 WL 5797016 (D. Conn. Sept. 30, 2015); Gabriel et al. v. Liberty Mutual Fire Insurance Co., No. 3:14-CV-01435, 2015 WL 5684063 (D. Conn. Sept. 28, 2015); Roberts et al. v. Amica Mut. Ins. Co., No. 3:14-CV-1589 (SRU), 2015 WL 7458510 (D. Conn. Nov. 24,

158. Indeed, it is no coincidence that the language, terms and conditions contained in the ISO copyrighted contracts of insurance and those contracts of other insurance associations are virtually the same language, terms and conditions cited by the Defendant Insurance Companies to support claim denials.

159. Based upon the reliance on ISO copyrighted contracts of insurance and those contracts of other insurance associations, upon information and belief, Defendant Insurance Companies have all agreed to deny the Plaintiffs and putative Class Members coverage under their policies for defective concrete claims.

160. In addition to this stonewalling scheme, the Defendant Insurance Companies repeatedly and baselessly denied bonafide concrete claims behind a smokescreen of actuarial-motivated policy language.

161. The widespread pattern of defective concrete claim denials has led Plaintiffs and hundreds of similarly-situated homeowners to decry this insurance practice in forums of meaning — from town halls, to the statehouse, to the courthouse. The cost of replacing the basement walls is generally between \$100,000.00 and \$250,000.00. After paying insurance premiums for years, or even decades, Plaintiffs and putative Class Members are left to face this massive expense all alone.

**B. While the Defendants were using ISO forms and other insurance trade associations' forms in an attempt to shore up the "collapse" definition to minimize liability for defective concrete claims, the Plaintiffs and Putative Class Members continue to be deprived of the benefits of their insurance policies.**

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2015); Ray et al. v. Pacific Specialty Insurance Co., No. 3:15-CV-00871 (D. Conn. 2015); Kim et al. v. State Farm Fire & Casualty Co., No. 3:15-CV-00879 (D.Conn. 2015); Mensher et al. v. Liberty Mutual Fire Insurance Co., No. 3:15-CV-01007 (D.Conn. 2015); Carlson et al. v. Allstate Insurance Co., No., 3:15-CV-01045 (D.Conn. 2015); Lees et al. v. Allstate Insurance Co., No., 3:15-CV-01050 (D.Conn. 2015); Jang et al. v. Liberty Mutual Fire Insurance Co., 3:15-CV-01243 (D.Conn. 2015); Roberge et al. v. Amica Mutual Insurance Co., No. 3:15-CV-01262 (D.Conn. 2015); Sabonis v. Kemper Independence Insurance Co., No., 3:14-CV-00694 (D.Conn. 2014).

162. In order to deny bad foundation claims, Defendant Insurance Companies have relied, in part, on ISO-authored amendments and/or other insurance trade association amendments to the homeowners' policies issued to Plaintiffs and/or the putative Class Members. See ISO Language Chart, attached hereto as Exhibit 2.

163. For example, amendments were made to the terms of the homeowners' policies, in Section I — Property Coverages, E. Additional Coverages, Para. 8, Collapse. Certain amendments to the ISO Forms were made in 1990 (HO 00 03 04 91), in 1999 (HO 00 03 10 00), in 2004 (HO 01060205) and in 2011 (HO 01 06 12 11). In 1990, ISO amended its Form to protect the Defendant Insurance Companies, in part, from bad concrete claims. See Exhibit 3, Harleysville Policy Collapse Language. Specifically, ISO added new language to the definition of collapse that (1) excluded loss to a 'foundation' and 'retaining wall' and (2) excluded 'settling, cracking, shrinkage, bulging, or expansion.' In 1999, ISO once again amended its Form to change the definition of "collapse" to mean an "abrupt falling down or caving in of a building or any part of a building...." See "Insurance Coverage for Collapse: How Has It Changed and Why?," adjustersinternational.com attached hereto as Exhibit 4; see also, e.g., Halloran Kemper Policy at P. 2 of 5 attached hereto as Exhibit 5 (incorporating copyrighted material of ISO); see ISO Language Chart, 1999 language, attached hereto as Exhibit 2.

164. In 2004, ISO again changed its Form language removing from the defective material coverage any such material "if the collapse occurs during the course of construction, remodeling, or renovation." See ISO Language Chart, Form HO 01 06 02 05, attached hereto as Exhibit 2. In 2011, ISO again narrowed its Form language by adding an entirely new paragraph stating "The coverage provided under this Additional Coverage-Collapse applies only to an

abrupt Collapse (emphasis added)." See ISO Language Chart, Form HO 01 06 12 11, attached hereto as Exhibit 2.

165. Prior to the amendments, the word collapse, as used in the Additional Coverages section of homeowner policies issued in Connecticut, was construed by the Supreme Court of Connecticut to mean a "substantial impairment in the structural integrity of a building." See Beach v. Middlesex Mutual Assurance Co., 205 Conn. 246, 252 (1987).

166. Prior to making the changes to the Collapse Coverage and then peddling it to the Plaintiffs and/or putative Class Members, the Defendant Insurance Companies and ISO knew or should have known that the Defendant Insurance Companies had insured a legion of homes in the northeastern section of Connecticut that had been constructed between 1984 and 1998 with defective concrete.

167. The Defendant Insurance Companies and ISO knew or should have known that it was only a matter of time before some number of those insureds' homes would develop pattern cracking as a result of the defective concrete used in the original construction of the basement walls.

168. The Defendant Insurance Companies and ISO also knew or should have known that all of the insureds' homes constructed between 1984 and 1998 with the defective concrete would eventually collapse once the concrete disintegrated to the point that the basement walls could no longer perform as intended.

169. The Defendant Insurance Companies and ISO were aware of cases that had been filed and claims that had been made at least as early as 1996 involving defective concrete in homes in northeastern Connecticut. See, e.g., Parker v. Worcester Ins. Co., 247 F.3d 1, 3 (1st Cir.

2001)(Court noting that insurance company denied plaintiff's claim for coverage for collapsing basement walls due to defective concrete). Through the discovery process, Plaintiffs intend to show that the Insurance Company Defendant's knowledge of the issue in northeastern Connecticut was one of the factors that led ISO to change the definition of collapse in the policy language.

170. The Defendant Insurance Companies and ISO, were on notice of the Beach Court's construction of the word "collapse" and were on notice of the defective concrete claims in northeastern Connecticut. Accordingly, the Defendant Insurance Companies and ISO deliberately changed their policies' definition of "collapse" to try to avoid or minimize liability for potential claims brought by the Plaintiffs and putative Class Members, which they all knew would come to pass someday in Northeastern Connecticut.

171. The Defendant Insurance Companies and ISO expanded the definition of "collapse" to mean a "sudden" or "abrupt" collapse. The insurer thought that this change would allow the Defendant Insurance Companies to deny claims on the basis that "collapse" meant more than a "substantial impairment of the structural integrity of a building". What makes this actuarial sleight of hand so deceitful is these changes were made in 2005 -- years after the Defendants knew about the defective concrete claims

172. Other insurance trade associations did the same. Like ISO, the American Association of Insurance Services ("AAIS") has likewise amended the terms of its own homeowners policies in an effort to avoid covering claims for defective concrete in basement walls. Like ISO, AAIS similarly excludes foundations and retaining walls from the "collapse coverage" ostensibly provided. See Exhibit 6.

173. Besieged by insureds raising this issue, the Defendant Insurance Companies kept denying claims, providing bogus responses when they knew they were good claims, while at the same time, casting about for a way to try to shore up the language in their policies.

174. While scrambling to rewrite their policies, the Defendant Insurance Companies engaged in a scheme to deny people coverage by providing misleading responses to claims, holding off on deciding claims while the statute of limitations was running and by defending unnecessary lawsuits.

175. After changing the policy language, the Defendant Insurance Companies denied claims and then unsuccessfully attempted to substantiate these denials in courts throughout Connecticut.

176. Upon information and belief, by making the changes to the Additional Coverages section, the Defendant Insurance Companies attempted to reduce their financial risk under the homeowners' policies issued to the Plaintiffs and putative Class Members, yet they made no corresponding reduction in premiums.

177. The Defendant Insurance Companies made a unilateral change to the policy without providing adequate notice or adequate disclosure. This unilateral change was ineffective to alter or amend the terms of the original contract of insurance between the Defendant Insurance Companies and the Plaintiffs and/or putative Class Members and still did not foreclose coverage for homeowners with defective concrete.

178. As a consequence of the ineffectiveness of the Amendment to the Additional Coverages section, the original provisions of the Additional Coverages section remain in full force and effect.

179. The Plaintiffs and putative Class Members are homeowners without the requisite knowledge and resources to make the many intricate observations needed to determine whether their insurance policies will cover certain events. The Plaintiffs did not and could not negotiate with the Defendant Insurance Companies at arms' length. The changes the Defendant Insurance Companies made to the Additional Coverages section were complicated attempts to reduce their financial risk under the homeowner's policies. For example, one of the Defendant Insurance Companies, Harleysville, touts itself as having "a track record of risk management expertise" and employees who have "robust technical skills and expertise." Harleysville boasts of "employ[ing] a special team of insurance veterans to oversee the underwriting and servicing of this business" and that "no matter what specific needs you have, we can put your mind at ease with comprehensive coverage and the best service around."<sup>3</sup> Harleysville promises its clients that it "has the solutions you need to prepare for and live in retirement."<sup>4</sup> The Plaintiffs and putative Class Members relied to their detriment on the Defendant Insurance Companies', including Harleysville's, superior knowledge and skill in purchasing their homeowners' insurance policies and paying the yearly premiums for such policies.

180. The Defendant Insurance Companies attempted to deliver to these insureds unsuitable insurance policies in exchange for lucrative premium payments. What's worse is the Defendant Insurance Companies were a mouthpiece for ISO and other insurance mtrade associations , frequently selling and reinforcing the copyrighted policy and the wisdom of paying for it. What they were trying to do was sell an egregiously unsuitable product wrapped in a veneer of respectability. The Defendant Insurance Companies real interest was selling the

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<sup>3</sup> [https://www.harleysvillegroup.com/pro/pro\\_2.html](https://www.harleysvillegroup.com/pro/pro_2.html)

<sup>4</sup> [https://www.harleysvillegroup.com/pro/pro\\_2.html](https://www.harleysvillegroup.com/pro/pro_2.html).

policies to reap an enormous bounty — decades of premium payments — without fear of the otherwise inevitable claim.

**VI. Count I: Plaintiff Hallorans' Breach of Contract Claim vs. Harleysville, Nationwide, Kemper, The Travelers Companies and Automobile Insurance Company of Hartford Connecticut.**

181. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

182. The Plaintiffs, Michael and Joyce Halloran (the "Hallorans") own and occupy the residential property located at 127 Pinney St., Ellington, CT 06029 ("subject property").

183. At all times material to this claim, Harleysville was writing homeowner's insurance policies and issuing such policies to residents in this state.

184. The Hallorans purchased the subject property in August 2004. The residence was constructed in 1985.

185. The Hallorans insured the subject property with Harleysville from August 27, 2015 to the present date with a homeowners' policy issued by Harleysville ("Halloran Policy"). Although Nationwide has purchased Harleysville, Harleysville continues to write policies for Nationwide.

186. The Hallorans paid any and all premiums charged by Harleysville, at all times and without default. The relevant portions of the Halloran Harleysville Policy are attached hereto as Exhibit 3.

187. Prior to being insured by Harleysville, the Hallorans insured the subject property with homeowners' policies issued by Kemper insurance company and The Automobile Insurance Company of Hartford Connecticut ("AICHC"). The Hallorans have been provided with

continuous coverage under these insurance policies throughout the time that they have owned the subject property.

188. The Hallorans paid any and all premiums charged by Kemper and AICHC at all times and without default.

189. The relevant portions of the Halloran policy issued by Kemper are attached hereto as Exhibit 5.

190. Pursuant to the terms of the Halloran's Harleysville Policy, Paragraph 8. Collapse, Harleysville agreed to provide coverage for "direct physical loss to covered property involving collapse of a building or any part of building caused only by one more or more of the following:

...

- b. hidden decay; ...
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. See Exhibit 3, Section I-Property Coverages; Additional Coverages; at P. 5 of 18, Section 8, Form HO 00 03 04 91.

191. The language cited in paragraph 190 above, comes from a 1990 copyrighted form HO 00 03 04 91, which was produced by ISO and used virtually the same as the language that is quoted in paragraph 190 above in homeowners' insurance policies by all of the Defendant Insurance Companies.

192. Pursuant to the terms of the Halloran's Kemper Policy, Paragraph 8. Collapse, Kemper agreed to provide coverage for "b. (1) ... an abrupt falling down or caving in of a building or any part of a building that cannot be occupied for its current intended purpose. (2) A building or any part of a building that is in danger of falling down or caving in is not considered

to be in a state of collapse. (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building. (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.”

193. Pursuant to the terms of the Halloran’s Kemper Policy, Paragraph 8. Collapse, Kemper also agreed to provide coverage if a collapse is caused by “c. ... one or more of the following: (2) Decay that is hidden from view, unless the presence of such decay is known to an “insured” prior to collapse; ... or (6) Use of defective material or methods in construction, remodeling or renovation.” See Exhibit 5, Section I-Property Coverages; Additional Coverages; at P. 2 of 5, Section 8, Form AK 3923 (08 13); See also virtually similar language in AAIS policy HO(06-91) attached hereto as Exhibit 6.

194. In September of 2015, the Hallorans discovered horizontal and vertical cracks in their basements walls and on visible portions of the outside of their basement walls.

195. The Hallorans immediately hired a structural engineering firm, Fuss & O’Neill (“F & O”) to investigate the cause of the failing concrete in their home. See Expert Report attached hereto as Exhibit 7.

196. F & O inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

197. F & O then obtained core samples of concrete from the basement wall and basement slab.

198. F & O then performed laboratory testing of the defective concrete from the wall core to evaluate the condition of the concrete and identify likely causes of defects.

199. The laboratory testing was performed in two (2) phases. Phase I consisted of a petrographic analysis, which revealed information regarding the initial concrete mix and placement and possible causes of the deterioration that may have occurred since construction.

200. Phase II consisted of X-Ray Diffraction Analysis (electron microscopy) to confirm whether the iron sulfide found during the petrographic analysis was pyrrhotite or pyrite.

201. F & O evaluated the results of the laboratory testing and concluded that the Hallorans, like their fellow Plaintiffs and putative Class Members, had failing basement walls due to the defective cement.

202. F & O concluded that the cement forming the basement walls was defective due to the presence of a sulfide mineral known as pyrrhotite.

203. Pyrrhotite is a destructive chemical that, when exposed to water and air produces a chemical reaction, which expands and breaks apart the concrete in what is commonly referred to as a "sulfate attack."

204. The sulfate attack is an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

205. On December 22, 2015, F & O told the Hallorans that their basement walls were substantially impaired, in a state of collapse and no longer fit for their intended purpose of holding up the house.

206. Specifically, F & O told the Hallorans that "it is our professional engineering judgment that a chemical reaction of the concrete mix is occurring due to the presence of pyrrhotite and is expected to continue, resulting in increased deterioration and eventual failure of the foundation to function as originally intended." In other words, the sulfate attack will

continue to deteriorate the cement until such time that the basement walls are destroyed and the home caves into its basement.

207. It is certain that the sulfate attack will continue to fracture the cement until such time that the basement walls are destroyed and the home caves into its basement.

208. Upon learning this, on January 25, 2016, the Hallorans filed timely claims with Harleysville, Nationwide, Kemper, Travelers and AICHC pursuant to the terms of their homeowners' insurance policies.

209. At the time the Hallorans filed their claims, they were aware that filing such claims would be futile. The Hallorans were also aware of the many concrete cases brought because of denials of claims. See, e.g., Stavinsky v. Harleysville Worcester Insurance Co., TTD-CV13-6006135S, Judicial District of Tolland at Rockville (Plaintiff's virtually identical foundation claim was denied); Pancieria, et. al. v. Kemper Independent Insurance Co., No. 3:13-CV-1009 (JBA), 2014 WL 1690387 (D. Conn. April 29, 2014) (Same); Cote v. Travelers, TTD-CV15-6008838-S, Judicial District of Tolland at Rockville (Same where Travelers is, upon information and belief, umbrella company for AICHC).

210. The Hallorans have a good faith basis to believe that their claims will be denied and that the filing of their claim is futile.

211. The Hallorans are well aware of their obligation to file a timely lawsuit and know that there is no assurance that Travelers, Nationwide, Harleysville, AICHC or Kemper will deny any claims they make within the two (2) year statute of limitations. In fact, the Travelers indicated that it would likely take about one (1) year from the date of inspection for a decision on

Halloran's claim. Necessarily, the Hallorans file this suit prior to any denial of their claims for coverage.

212. By failing to provide coverage, Harleysville, Kemper, Travelers, Nationwide and AICHC have breached their contractual obligations under the homeowners' policies they entered into with the Hallorans. These breaches have resulted in enormous financial loss and damage to the Hallorans.

213. The Halloran's basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix the Halloran's basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

214. As a consequence of Travelers', Nationwide, AICHC's, Harleysville's and Kemper's breach of contracts with the Hallorans, the Hallorans bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**VII. Count II: Plaintiff Hallorans' Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Harleysville, Nationwide, Kemper, Travelers and Automobile Insurance Company of Hartford Connecticut.**

215. The Plaintiff Hallorans' incorporate in this count all allegations made elsewhere in this complaint.

216. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

217. The Harleysville/Nationwide, Kemper, Travelers/AICHC ("Halloran Defendants") have an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Hallorans.

218. On January 25, 2016, the Hallorans have filed insurance claims with Harleysville/Nationwide, Kemper, Travelers/AICHC regarding the defective concrete in their "basement walls".

219. On or about March 1, 2016, Kemper told the Hallorans that it will "take thirty days or maybe not that long" to determine the outcome of their claim.

220. On or about March 1, 2016 Kemper told the Hallorans that "Kemper hasn't paid any claims" relating to defective concrete and "everyone is saying the same thing."

221. In February 2016, Travelers/AICHC visited the Hallorans' home to visually examine the basement walls. The adjuster told Mr. Halloran that the coverage decision would take about a year.

222. In February 2016 Charlie Mitchell of Nationwide conducted a visual examination of the Hallorans' basement walls. Mr. Mitchell indicated that he was the adjuster on the case for both Nationwide and Harleysville. During the course of the next several weeks, the Hallorans and Plaintiffs' counsel received several phone calls from Al Klopfer, an independent adjuster, demanding to see the house. Mr. Mitchell has told the Hallorans and Plaintiffs' counsel on multiple occasions that Nationwide uses a Nationwide adjuster and that "Al Klopfer is not on the case." Plaintiffs' counsel has written to Nationwide to clarify which adjuster Halloran should speak with. To date, no answer has been provided.

223. Despite the fact that the Hallorans have made claims with all of their insurers, the Plaintiffs have not been provided an answer regarding the outcome of their claims.

224. The Halloran Defendants are ignoring a growing number of state and federal cases holding that the term "foundation" does not include basement walls.

225. Despite being given the Halloran's 150-page expert report, the Halloran

Defendants have spent more than three months refusing to properly apply the collapse provision while they know that they will deny the Halloran's claim.

226. Upon information and belief, the Halloran Defendants are intentionally misleading the Hallorans and are trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

227. The Halloran Defendants have deliberately delayed their coverage decisions despite the fact that they will deny the Hallorans' claims. Accordingly the Halloran Defendants have impeded the plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowner's insurance.

228. The Halloran Defendants have acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties by deliberately delaying denial of the Hallorans' claim for coverage under the Hallorans' various homeowners policies solely in order to preserve its own assets.

229. The Halloran Defendants have breached the implied covenant of good faith and fair dealing under the policies by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failing to act on the Hallorans' pending claims while knowing said claims will be rejected.

230. Upon information and belief, the Halloran Defendants have a general business practice of acting intentionally to mislead its insureds into believing that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

231. The Halloran Defendants' breaches of the covenant of good faith and fair dealing

have injured the Hallorans because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**VIII. Count III: Plaintiff Masciovecchio's Breach of Contract Claim vs. 21<sup>st</sup> Century, Homesite and AIG.**

232. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

233. The Plaintiffs, Kenneth Masciovecchio and Victoria Masciovecchio (the "Masciovecchios") own and occupy the residential property located at 54 Portland Drive, Ashford, CT 06278 ("subject property").

234. At all times material to this claim, 21st Century, Homesite and AIG were writing homeowners' insurance policies and issuing such policies to residents in this state.

235. The Masciovecchios built the subject property in 1985.

236. The Masciovecchios insured the subject property with 21st Century from July 10, 2009 to the present date with a homeowners' policy underwritten by Homesite ("Masciovecchio Policy").

237. The Masciovecchios paid any and all premiums charged by their insurers, at all times and without default. The relevant portions of the Masciovecchio 21st Century Policy is attached hereto as Exhibit 8. The Masciovecchios intend to obtain a copy of their policies issued by Homesite and AIG through the discovery process.

238. Prior to being insured by 21st Century, the Masciovecchios insured the subject property with a homeowners' policy issued by AIG. Between these policies, the Masciovecchios

have been provided with continuous coverage under these insurance policies the entire time that they have owned the subject property.

239. Pursuant to the terms of the Masciovecchio Policy, Paragraph 9. Collapse, 21st Century agreed to provide coverage for “direct physical loss to covered property involving collapse of a building or any part of a building caused only by one more or more of the following: ...

- b. Hidden decay; ...
- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. See Exhibit 8, Section I-Property Coverages; Additional Coverages; at P. 5 of 17, Section 8, Form HO 00 03 04 91.

240. The language cited in paragraph 239 above, comes from a 1990 copyrighted form HO 00 03 04 91, which was produced by ISO and used virtually exactly as quoted in paragraph 239 above in homeowners’ insurance policies by all of the named Defendants.

241. In September of 2015, the Masciovecchios discovered horizontal and vertical cracks in their basement walls and on visible portions of the outside of their basement walls.

242. On September 15, 2015, the Masciovecchios made a claim with Homesite over the telephone. During that conversation, Masciovecchios reported the condition of their basement walls and asked for coverage. Homesite told the Masciovecchios that the claim was not covered.

243. The Masciovecchios immediately hired a structural engineering firm, Fuss & O’Neill (“F & O”) to investigate the cause of the failing concrete in their home. See Expert Report attached hereto as Exhibit 9.

244. F & O inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

245. F & O then obtained core samples of concrete from the basement wall and basement slab.

246. F & O then performed laboratory testing of the defective concrete from the wall core to evaluate the condition of the concrete and identify likely causes of defects.

247. The laboratory testing was performed in two (2) phases. Phase I consisted of a petrographic analysis, which revealed information regarding the initial concrete mix and placement and possible causes of the deterioration that may have occurred since construction.

248. Phase II consisted of X-Ray Diffraction Analysis (electron microscopy) to confirm whether the iron sulfide found during the petrographic analysis was Pyrrhotite or Pyrite.

249. F & O evaluated the results of the laboratory testing and concluded that the Masciovecchios, like their fellow Plaintiffs, and putative Class Members, had failing basement walls due to the defective cement.

250. F & O concluded that the cement forming the basement walls was defective due to the presence of sulfide minerals known as pyrrhotite, pyrite and marcasite.

251. Pyrrhotite, pyrite and marcasite are all destructive chemicals that, when exposed to water and air produce a chemical reaction, which expands and breaks apart the concrete in what is commonly referred to as a "sulfate attack."

252. The sulfate attack is an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

253. On December 22, 2015, F & O told the Masciovecchios that their basement walls were substantially impaired, in a state of collapse and no longer fit for their intended purpose of holding up the house.

254. Specifically, F & O told the Masciovecchios that “it is our professional engineering judgment that a chemical reaction of the concrete mix is occurring due to the presence of pyrrhotite and the other iron sulphide minerals and is expected to continue, resulting in increased deterioration and eventual failure of the foundation to function as originally intended.” In other words, the sulfate attack will continue to deteriorate the cement until such time that the basement walls are destroyed and the home caves into its basement.

255. Upon learning this, on January 25, 2016, the Masciovecchios filed a timely claim with Homesite pursuant to the terms of their homeowners’ insurance policy. In fact, Homesite told the Masciovecchios that their September 15, 2015 claim would be reopened. The Masciovecchios attempted to file a claim with AIG but were told that the company does not have a record of any insurance policies that ever covered them on their home.

256. At the time the Masciovecchios filed their claim, they were aware that filing such a claim would be futile. The Masciovecchios were also aware of the many bad concrete cases brought because of denials of claims. See, e.g., Sushil Nanda et al v. Homesite Insurance Company, HHD-CV-12-6030612-S, Judicial District of Hartford at Hartford (Plaintiff’s virtually identical bad concrete claim was denied by Homesite). See also, supra, ¶¶ 133-135.

257. On April 13, 2016, Homesite Insurance Company denied the Masciovecchio’s claim. Homesite denied coverage for the defective concrete asserting that (1) the loss was caused by wear and tear, deterioration, settling, shrinking, bulging, and expansion of foundations and/or inadequate workmanship or defective materials used in construction; (2) the Collapse coverage is not applicable because there was no “abrupt collapse” of the property and (3)

“coverage for ‘abrupt collapse’ would only apply when the damage is caused by decay of a building that is hidden from view. . .” (emphasis added).

258. 21st Century and Homesite have offered no factual evidence that would in anyway support their decision to deny the Masciovecchio’s claim. In fact, they go out of their way to state that they “do not disagree” with the Plaintiffs’ engineering report. Only after a two-month intensive investigation involving core testing, which included petrographic analysis, scanning electron microscopy along with energy dispersive x-ray analysis, were Fuss & O’Neil able to verify the presence and composition of the iron sulphide minerals. This undoubtedly should be considered hidden decay. From this laborious and expert scientific discovery, F&O concluded the following:

“Based on our observations and the laboratory analysis, it is our professional engineering judgement that a chemical reaction of the concrete mix is occurring due to the presence of pyrrhotite and the other iron sulphide minerals and is expected to continue, resulting in increased deterioration and eventual failure of the foundation to function as originally intended. The structural failure may lead to loss of support of the building structure, loss of support of the soil on the outside of the wall and/or allowance of water intrusion into the basement.”

259. The Masciovecchios have a good faith basis to believe that their claim will be denied and that the filing of their claim is futile.

260. After the Plaintiffs attempted to file a claim with AIG, AIG indicated that AIG does not have a record of any AIG insurance policies that ever covered the subject property.

261. By failing to provide coverage, Homesite has breached its contractual obligation under the homeowners' policy it entered into with the Masciovecchios. This breach has resulted in enormous financial loss and damage to the Masciovecchios.

262. The Masciovecchio's basement wall problem is affecting hundreds of other homeowners in their region of this state. The estimated cost to fix the Masciovecchio's basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

263. As a consequence of Homesite's, 21st Century's and AIG's breach of contract with the Masciovecchios, the Masciovecchios bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**IX. Count IV: Plaintiff Masciovecchio's Breach of the Implied Covenant of Good Faith and Fair Dealing vs. 21<sup>st</sup> Century, Homesite and AIG.**

264. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint.

265. The Masciovecchios have filed insurance claims with 21st Century, Homesite and AIG, regarding the defective concrete in their "basement walls".

266. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

267. 21st Century, Homesite and AIG have an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Masciovecchios.

268. 21st Century and Homesite work in correspondence with one another.

269. AIG was the former insurer of the Masciovecchio's policy.

270. 21st Century and Homesite denied coverage for the defective concrete asserting that (1) the loss was caused by wear and tear, deterioration, settling, shrinking, bulging, and expansion of foundations and/or inadequate workmanship or defective materials used in construction; (2) the Collapse coverage is not applicable because there was no “abrupt collapse” of the property and (3) “coverage for ‘abrupt collapse’ would only apply when the damage is caused by decay of a building that is hidden from view. . .” (emphasis added)

271. After the Masciovecchios attempted to file a claim with AIG, AIG indicated that AIG does not have a record of any AIG insurance policies that ever covered the Masciovecchios’s property.

272. 21st Century and Homesite have offered no factual evidence that would in any way support their decision to deny the Masciovecchio’s claim. In fact, they go out of their way to state that they do not disagree with the Masciovecchio’s engineering report. Only after a two-month intensive investigation involving core testing, which included petrographic analysis, scanning electron microscopy along with energy dispersive x-ray analysis, were Fuss & O’Neil able to verify the presence and composition of the iron sulphide minerals. This undoubtedly should be considered hidden decay. From this laborious and expert scientific discovery, F&O concluded the following:

“Based on our observations and the laboratory analysis, it is our professional engineering judgement that a chemical reaction of the concrete mix is occurring due to the presence of pyrrhotite and the other iron sulphide minerals and is expected to continue, resulting in increased deterioration and eventual failure of the foundation to function as originally intended. The structural failure may lead to loss of support of the building structure, loss

of support of the soil on the outside of the wall and/or allowance of water intrusion into the basement.” See Exhibit 9 at 6.

273. Additionally, AIG has indicated that the Masciovecchios never had a policy with their company. Upon information and belief, these assertions are without basis in fact and are calculated toward causing the Masciovecchios to withdraw their claim in this matter.

274. The Masciovecchio Defenants are ignoring a growing number of state and federal cases holding that the term “foundation” does not include basement walls.

275. Despite being given the Masciovecchio’s expert report, the Masciovecchio Defenants have refused to properly apply the collapse provision whil they know that they will deny the Masciovecchio’s claim.

276. Upon information and belief, the Masciovecchio Defendants are intentionally misleading the Masciovecchios and are trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

277. By denying coverage in this manner, Homesite and 21st Century have impeded the Plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

278. Upon and information and belief, the Masciovecchios Defendants have a general business practice of acting intentionally to mislead its insureds into believing that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

279. Homesite and 21st Century have acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in denying the

Masciovecchio's claim for coverage under the Homeowners Policy. The Masciovecchio Defendants' breaches of the covenant of good faith and fair dealing have injured the Masciovecchios because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**X. Count V: Plaintiff Brozeks' Breach of Contract Claim vs. MetLife.**

280. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

281. The Plaintiffs Steven and Patricia Brozek (the "Brozeks") own and occupy the residential property located at 27 Laurel Drive, Stafford Springs, CT 06067 ("subject property").

282. At all times material to this claim, MetLife was writing homeowners' insurance policies and issuing such policies to residents in this state.

283. The Brozeks built the subject property between 1984 and 1985.

284. The Brozeks insured the subject property with MetLife from the date of construction to the present date with a homeowners' policy issued by MetLife ("Brozek Policy").

285. The Brozeks paid any and all premiums charged by MetLife, at all times and without default. The relevant portions of the current Brozek Policy are attached hereto as Exhibit 10. The Brozeks intend to obtain a copy of all of their previous policies issued by MetLife through the discovery process. Pursuant to all of these policies, MetLife has provided the Brozeks with continuous coverage the entire time that they have owned the subject property.

286. Pursuant to the terms of the Brozek Policy, Section D-1, Paragraph 16. Collapse, MetLife agreed to provide coverage for "sudden and accidental direct physical loss to covered

property involving the entire collapse of a building or any part of building caused only by one more or more of the following: ...

- b. hidden decay of the structure; ...
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. [ . . . ] Collapse means an abrupt falling down or caving in of a building or any part of a building. Collapse does not include settling, cracking, sagging, bowing, bending, leaning, shrinking, bulging or expansion. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.” See Exhibit 10, Section I- paragraph 16; Additional Coverages; at P. 7 of 8, Section D-5, Form HP 2000 0205.

287. The language cited in paragraph 286 above, comes directly from two sources: (1) a 1999 copyrighted form HO 01 06 03 06, which was produced by ISO and virtually copied identically in paragraph 241 above (through the language in paragraph f) in the Brozek Policy and (2) a 2005 copyrighted form HO 01 06 03 06, which was produced by ISO and virtually copied identically in paragraph 286 above (beginning with the words “Collapse means an abrupt...”) in the Brozek Policy.

288. In September of 2015, the Brozeks discovered horizontal and vertical cracks in their basements walls and on visible portions of the outside of their basement walls.

289. The Brozeks immediately hired a structural engineering firm, Fuss & O’Neill (“F & O”) to investigate the cause of the failing concrete in their home. See Expert Report attached hereto as Exhibit 11.

290. F & O inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

291. F & O then obtained core samples of concrete from the basement wall and basement slab.

292. F & O then performed laboratory testing of the defective concrete from the wall core to evaluate the condition of the concrete and identify likely causes of defects.

293. The laboratory testing was performed in two (2) phases. Phase I consisted of a petrographic analysis, which revealed information regarding the initial concrete mix and placement and possible causes of the deterioration that may have occurred since construction.

294. Phase II consisted of X-Ray Diffraction Analysis (electron microscopy) to confirm whether the iron sulfide found during the petrographic analysis was Pyrrhotite or Pyrite.

295. F & O evaluated the results of the laboratory testing and concluded that the Brozeks, like their fellow Plaintiffs, and putative Class Members, had failing basement walls due to the defective cement.

296. F & O concluded that the cement forming the basement walls was defective due to the presence of a sulfide mineral known as pyrrhotite.

297. Pyrrhotite is a destructive chemical that, when exposed to water and air, produces a chemical reaction, that expands and breaks apart the concrete in what is commonly referred to as a "sulfate attack."

298. The sulfate attack is an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

299. On December 22, 2015, F & O told the Brozeks that their basement walls are substantially impaired, in a state of collapse and no longer fit for their intended purpose of holding up the house.

300. Specifically, F & O told the Brozeks that "it is our professional engineering judgment that a chemical reaction of the concrete mix due to the presence of pyrrhotite is

occurring and is expected to continue, resulting in increased deterioration and eventual failure of the foundation to function as originally intended.” See Exhibit 11 at pp. 5-6. In other words, the sulfate attack will continue to deteriorate the cement until such time that the basement walls are destroyed and the home caves into its basement.

301. Upon learning this, on January 20, 2016, the Brozeks filed a timely claim with MetLife pursuant to the terms of their homeowners’ insurance policy.

302. At the time the Brozeks filed their claim, they were aware that filing such a claim would be futile; specifically, the DOI told the public that insurance companies were denying all claims for defective concrete. The Brozeks were also aware of the many bad concrete cases brought because of denials of claims. See, e.g., Clarke v. Auto. Ins. Co., et al., No. TTD-CV13-6006996-S (Conn. Super. Ct. 2013) (Plaintiff’s virtually identical bad concrete claim was denied by Metropolitan Group Property and Casualty Company).

303. On February 12, 2016, MetLife denied coverage of the Brozeks’ claim. In a phone call with Plaintiffs’ attorneys prior to the issuance of the denial letter, a MetLife employee told the Plaintiffs’ counsel that the Brozek’s claim was being denied on the basis that the problem with the concrete is “not a sudden collapse.” The denial letter set forth many other ostensible reasons for the denial. See Brozek Denial Letter, attached here as Exhibit 12.

304. By failing to provide coverage, MetLife has breached its contractual obligation under the homeowner’s policy it entered into with the Brozeks. This breach has resulted in enormous financial loss and damage to the Brozeks.

305. The Brozek's basement wall problem is affecting hundreds of other homeowners in their region of this state. The estimated cost to fix the Brozeks' basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

306. As a consequence of MetLife's breach of contract with the Brozeks, the Brozeks bring this claim individually and on behalf of all similarly-situated homeowners in Connecticut.

**XI. Count VI: Plaintiff Brozek's Breach of the Implied Covenant of Good Faith and Fair Dealing vs. MetLife.**

307. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint.

308. The Brozeks have filed an insurance claim with MetLife regarding the defective concrete in their "basement walls".

309. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

310. MetLife has an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Brozeks.

311. MetLife denied coverage for the defective concrete asserting that the Brozek claim was being denied on the basis that the problem with the concrete is "not a sudden collapse." The denial letter set forth many other ostensible reasons for the denial. See Denial Letter, attached hereto as Exhibit 12.

312. MetLife has offered no factual evidence that would in any way support its decision to deny the Brozeks' claim.

313. MetLife is ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

314. MetLife was provided an extensive engineering report regarding the presence of hidden decay in the form of oxidizing minerals in the Brozeks' basement walls, however despite this, MetLife denied coverage..

315. Upon information and belief, MetLife intentionally denied the Brozek's claim asserting that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

316. By denying coverage in this manner, MetLife has impeded the Brozek's right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

317. Upon information and belief, MetLife has a general business practice of acting intentionally to mislead its insureds into believing that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

318. MetLife has acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in denying the Brozek's claim for coverage under their homeowners policy. MetLife has breached the covenant of good faith and fair dealing and has have injured the Brozeks because the Brozeks have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

## **XII. Count VII: Plaintiff Dyer's Breach of Contract Claim vs. Harleysville and Nationwide.**

319. The Plaintiff incorporates in this count all allegations made elsewhere in this complaint except for Section V above.

320. The Plaintiff, Michael Dyer (“Dyer”) owns and occupies the residential property located at 83 Bentley Drive, Manchester, CT 06042 (“subject property”).

321. At all times material to this claim, Harleysville was writing homeowner’s insurance policies and issuing such policies to residents in this state.

322. Dyer purchased the subject property in July 2015. The residence was constructed in 1995.

323. Dyer insured the subject property with Harleysville from June 30, 2015 to the present date with a homeowners’ policy issued by Harleysville (“Dyer Policy”). It was recently brought to Dyer’s attention that Nationwide has purchased his Harleysville policy, however the language from Harleysville policy still governs any of his claims.

324. Dyer paid any and all premiums charged by Harleysville and Nationwide, at all times and without default. The relevant portions of the Dyer Policy are attached hereto as Exhibit 13.

325. Pursuant to the terms of Dyer’s Harleysville Policy, Paragraph 8. Collapse, Harleysville agreed to provide coverage for “direct physical loss to covered property involving collapse of a building or any part of building caused only by one more or more of the following:

...

- b. hidden decay; ...
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.” See Exhibit 13, Section I-Property Coverages; Additional Coverages; at P. 5 of 18, Section 8, Form HO 00 03 04 91.

326. The language cited in paragraph 325 above, comes from a 1990 copyrighted form HO 00 03 04 91, which was produced by ISO and used virtually exactly as quoted in paragraph 268 above in homeowners' insurance policies by all of the Defendant Insurance Companies.

327. In November of 2015, Dyer discovered horizontal and vertical cracks in his basements walls and on visible portions of the outside of his basement walls.

328. Dyer immediately hired William F. Neal ("Neal"), a Licensed Professional Engineer and a Licensed Connecticut Home Inspector, to investigate the cause of the failing concrete in his home.

329. Neal inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

330. After inspecting the house, Neal concluded that Dyer, like his fellow Plaintiffs and putative Class Members, had failing basement walls due to the defective cement.

331. Neal concluded that the cement forming the basement walls was defective due to a chemical reaction resulting from incompatible materials used in the concrete mix.

332. Dyer's residence is facing an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

333. Specifically, Neal told Dyer that the condition "will continue to deteriorate the concrete and the foundation walls will very likely bulge inward until they structurally fail."

334. He is certain that the chemical reaction will continue to destroy the cement until such time that the basement walls are deteriorated and the home caves into its basement.

335. On January 25, 2016, Dyer filed timely claims with Harleysville/Nationwide pursuant to the terms of his homeowner's insurance policy.

336. At the time Dyer filed his claim, he was aware that filing such a claim would be futile. Dyer was also aware of the many concrete cases brought because of denials of claims. See, e.g., Stavinsky v. Harleysville Worcester Insurance Co., TTD-CV13-6006135S, Judicial District of Tolland at Rockville (Plaintiff's virtually identical foundation claim was denied by Harleysville).

337. On January 27, 2016, Michael A. Emanuel ("Emanuel"), a claims adjustor from Nationwide, was dispatched to Dyer's residence pursuant to Dyer's claim.

338. Emanuel told Dyer that "99 out of 100" claims similar to Dyer's get rejected and he would likely be issuing a denial letter soon.

339. Dyer has a good faith basis to believe that his claim will be denied and that the filing of his claim is futile.

340. Dyer is well aware of his obligation to file a timely lawsuit and knows that there is no assurance that Harleysville will deny any claims they make within the two (2) year statute of limitations. Necessarily, Dyer filed this suit prior to any denial of his claim for coverage.

341. By failing to provide coverage, Harleysville/Nationwide has breached its contractual obligations under the homeowner's policy(s) they entered into with Dyer. These breaches have resulted in enormous financial loss and damage to Dyer.

342. Dyer's basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix Dyer's basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

343. As a consequence of Nationwide's/Harleysville's breach of contract with Dyer, Dyer brings this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XIII. Count VIII: Plaintiff Dyer's Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Harleysville and Nationwide.**

344. The Plaintiff incorporates in this count all allegations made elsewhere in this complaint.

345. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

346. Harleysville and Nationwide have an obligation to exercise good faith in fulfilling their contract to provide insurance coverage to Mr. Dyer.

347. Mr. Dyer has filed insurance claims with Harleysville and Nationwide, regarding the defective concrete in his "basement walls".

348. A representative of the Defendant, Nationwide, told Mr. Dyer that that "99 out of 100" claims similar to Dyer's get rejected and he would likely be issuing a denial letter soon.

349. Despite the fact that Mr. Dyer has made a claim with Harleysville and Nationwide, Mr. Dyer has not been provided an answer regarding the outcome of their claims.

350. Nationwide and Harleysville have been provided a report from structural engineer William Neal which indicates that the Plaintiff has defective concrete in his basement walls. Despite this, the Dyer Defendants have refused to properly apply the collapse provision in the Dyer policy, while the Dyer Defendants know that they will deny Mr. Dyer's claim.

351. Upon information and belief, the Defendants have deliberately delayed their coverage decisions despite the fact that they will deny the Mr. Dyer's claims. Accordingly, the Defendants have impeded the plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

352. The Dyer Defendants are ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

353. Despite being given the report from William Neal, the Dyer Defendants have refused to properly apply the collapse provision while they know that they will deny Dyer's claim.

354. Upon information and belief, the Dyer Defendants are intentionally misleading Dyer and are trying to convince him that the damage suffered to his basement walls is not covered, solely to avoid payment of a covered loss.

355. The Defendants have acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in deliberately delaying the denial of the plaintiff's claim for coverage under the Homeowners Policy.

356. The Defendants have breached the implied covenant of good faith and fair dealing under the Policy by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failed to act on the Plaintiffs' pending claims while knowing said claims will be rejected.

357. Upon information and belief, the Dyer Defendants have a general business practice of acting intentionally to mislead its insureds into believe that the collapse of the

basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of constructions is not a covered loss.

358. The Dyer Defenants' breaches of the covenant of good faith and fair dealing have injured the Dyers because they have had to pay the court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

#### **XIV. Count IX: Plaintiff Furlong's Breach of Contract Claim vs. Amica Mutual Insurance Company**

359. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

360. The Plaintiffs, Michael and Sue Ann Furlong (the "Furlongs") own and occupy the residential property located at 68 Bakos Road, Tolland, CT 06084 ("subject property").

361. At all times material to this claim, Amica was writing homeowner's insurance policies and issuing such policies to residents in this state.

362. The Furlongs purchased the subject property in 2006. The residence was constructed in 1997.

363. The Furlongs insured the subject property with Amica from March, 2006 to the present date with a homeowners' policy issued by Amica ("Furlong Policy").

364. The Furlongs paid any and all premiums charged by Amica, at all times and without default. The relevant portions of the Furlong's Amica Policy are attached hereto as Exhibit 14.

365. The Furlongs have been provided with continuous coverage under this insurance policy throughout the time that they have owned the subject property.

366. Pursuant to the terms of the Furlong's Amica Policy, Additional Coverage Section, Paragraph 8. Collapse, Amica agreed to provide coverage for "direct physical loss to covered property involving collapse of a building or any part of building caused only by one more or more of the following:

...

b. hidden decay; ...

f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. See Exhibit 14, Section I-Property Coverages; Additional Coverages; at P. 5 of 19, Section 8, Form HO 00 03 07 98.

367. The language cited in paragraph 366 above, comes from a 1990 copyrighted form HO 00 03 04 91, which was produced by ISO and used virtually the same as the language that is quoted in paragraph 366 above in homeowners' insurance policies by all of the Defendant Insurance Companies.

368. On July 27, 2015, the Furlongs discovered horizontal cracks in their basements walls and on visible portions of the outside of their basement walls.

369. On August 15, 2015, Furlong's filed a timely complaint with Amica pursuant to the terms of their homeowners insurance policy.

370. After noticing the cracks and notifying Amica, Amica contracted with Geodesign Inc., Cianci Engineering, and TEC Services to conduct an investigation regarding cracks.

371. Geodesign Inc. concluded, among other things, that based on a March 7, 2016 petrographic evaluation done on the Furlong's home:

a. "The pyrrhotite content in the aggregate is high and unusual";

b. "The deterioration of the concrete in upper and lower levels of the house foundation is due to oxidation of the pyrrhotite in the aggregates"; and

c. "Less than 20% of the pyrrhotite is completely oxidized, with the remaining pyrrhotite having a potential for causing additional detrimental reactions that may further deteriorate the concrete".

372. TEC Services concluded, among other things, that based on their review of background information, visual observations of the provided samples, petrographic observations, and their experience:

a. "The pyrrhotite content in the aggregate is high and unusual";

b. "The deterioration of the concrete in upper and lower levels of the house foundation is due to the pyrrhotite in the aggregates. The pyrrhotite in the aggregate oxidizes and reacts with the paste, leading to the dissolution of the paste, internal crackings, and formation of ettringite and thaumasite"; and

c. "Less than 20% of the pyrrhotite is completely oxidized, with the remaining pyrrhotite having a potential for causing additional detrimental reactions that may further deteriorate the concrete".

373. Cianci Engineering concluded that "the cause of the claimed condition at the insured's residence, which consists of map cracking in the foundation, is indicative of a material defect with the original concrete used to pour the foundation. A gradual expansive reaction, which is dependent on the foundation's ongoing exposure to water and oxygen, has resulted in map cracking."

374. Pyrrhotite is a destructive chemical that, when exposed to water and air produces a chemical reaction, which expands and breaks apart the concrete in what is commonly referred to as a “sulfate attack.”

375. The sulfate attack is an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

376. The Furlongs have a good faith basis to believe that their claims will be denied and that the filing of their claim is futile.

377. The Furlongs are well aware of their obligation to file a timely lawsuit and know that there is no assurance that Amica will deny any claims they make within the two (2) year statute of limitations. To date, the Furlongs have still not been denied coverage. Necessarily, the Furlongs file this suit prior to any denial of their claims for coverage.

378. By failing to provide coverage, Amica has breached its contractual obligations under the homeowners’ policy they entered into with the Furlongs. These breaches have resulted in enormous financial loss and damage to the Furlongs.

379. The Furlong's basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix the Furlong’s basement wall problem, which is typical of hundreds of other homeowners, is \$138,000.00.

380. As a consequence of Amica's breach of contract with the Furlongs, the Furlongs bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XV. Count X: Plaintiff Furlong’s Breach of Implied Covenant of Good Faith and Fair Dealing vs. Amica Mutual Insurance Company.**

381. The Plaintiff incorporates in this count all allegations made elsewhere in this

Complaint.

382. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive benefit of the contract.

383. Amica Mutual Insurance Company has an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Furlongs.

384. On or about July 27, 2015 the Plaintiffs filed insurance claims with Amica Mutual Insurance Co., regarding the defective concrete in their "basement walls".

385. Despite the fact that the Plaintiffs have made a claim with Amica, the Plaintiffs have not been provided an answer regarding the outcome of their claims.

386. Amica is ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

387. Despite the fact that the Furlongs had an engineering firm prepare an extensive report indicating that they had defective concrete in their basement walls, Amica has refused to provide coverage for their claim, while knowing that they intend to deny the Furlongs claim.

388. Upon information and belief, Amica is intentionally misleading the Furlongs and are trying to convince them that the damage suffered to their basement walls is not covered, solely to avoid payment of a covered loss.

389. The Defendant has deliberately delayed its coverage decisions despite the fact that it intends to deny the Plaintiffs' claims. Accordingly, the Defendants have impeded the Plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

390. The Defendant has acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in deliberately delaying the denial of the plaintiff's claim for coverage under the Homeowners Policy.

391. Upon information and belief, Amica has a general business practice of acting intentionally to mislead its insureds into believe that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

392. The Defendant has breached the implied covenant of good faith and fair dealing under the Policy by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failed to act on the Plaintiffs' pending claim while knowing said claims will be rejected. The Furlong Defendant has breached the covenant of good faith and fair dealing and has injured the Furlongs because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XVI. Count XI: Plaintiff McKinneys' Breach of Contract Claim vs. The Andover Companies and Merrimack Mutual Fire Insurance Co..**

393. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

394. The Plaintiffs, Mark and Carolyn McKinney (the "McKinneys") own and occupy the residential property located at 70 Yale Drive, Manchester, CT 06042 ("subject property").

395. At all times material to this claim, The Andover Companies and Merrimack Mutual were writing homeowner's insurance policies and issuing such policies to residents in this state.

396. The McKinneys purchased the subject property in 2006. The residence was constructed in 1991.

397. Since purchasing the property, the McKinneys insured the subject property with the Andover Companies and Merrimack Mutual with a homeowners' policy issued by the Andover Companies and Merrimack Mutual.

398. The McKinneys paid any and all premiums charged by McKinneys, at all times and without default. The relevant portions of the McKinney Merrimack Mutual Policy are attached hereto as Exhibit 15.

399. The McKinneys paid any and all premiums charged by Kemper and AICHC at all times and without default.

400. The relevant portions of the McKinney policy issued by the Andover Companies and Merrimack Mutual are attached hereto as Exhibit 15.

401. Pursuant to the terms of the McKinneys' Merrimack Mutual Policy, Paragraph 8. Collapse, Merrimack Mutual agreed to provide coverage for "direct physical loss to covered property involving abrupt collapse of a building or any part of building if such collapse was caused only by one more or more of the following:

...

- b. Decay, of a building or any part of a building, that is hidden from view...;  
...
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. See Exhibit 15, Section I-Property Coverages; Additional Coverages; at P.7 of 23, Section 8, Form HO 00 05 05 11.

402. The language cited in the above paragraph above, comes from a 2010 copyrighted form Form HO 00 05 05 11, which was produced by ISO and used virtually the same language that is used by all of the Defendant Insurance Companies.

403. During their policy period, the McKinneys discovered hairline horizontal cracks in their basements walls.

404. Upon learning this, on May 30, 2013, the McKinneys filed timely claims with the Andover Companies including Merrimack Mutual pursuant to the terms of their homeowners' insurance policy.

405. At the time the McKinneys filed their claim, they were aware that filing such claims would be futile. The McKinneys were also aware of the many concrete cases brought because of denials of claims.

406. The McKinneys claim was subsequently denied by Merrimack Mutual in July 2013.

407. The McKinneys are knowingly filing a timely claim against Merrimack Mutual.

408. By failing to provide coverage, the Andover Companies, including Merrimack Mutual, breached their contractual obligations under the homeowners' policy they entered into with the McKinneys. These breaches have resulted in enormous financial loss and damage to the McKinneys.

409. The McKinneys basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix the McKinneys' basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

410. As a consequence of Andover Companies', including Merrimack Mutual's, breach of contract with the McKinneys, the McKinneys bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XVII. Count XII: Plaintiff Mckinneys' Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Merrimack Mutual Fire Insurance Co., Andover Companies.**

411. The Plaintiff incorporate in this count all allegations made elsewhere in this Complaint.

412. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

413. The Merrimack Mutual Fire Ins Co., and Andover Companies have an obligation to exercise good faith in fulfilling their contract to provide insurance coverage to the McKinneys.

414. The Plaintiffs have filed an insurance claim with Merrimack Mutual Fire Insurance Company ("Merrimack"), regarding the defective concrete in their "basement walls".

415. On or about July 15, 2013, Merrimack denied the Plaintiffs claims and did not provide a legitimate basis for so doing.

416. Merrimack has offered no factual evidence for the claim that the damage to the Plaintiffs' residence was caused in any part by the "foundation" and not the "basement walls," in support of their decision to deny the claim

417. Merrimack is ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

418. Upon information and belief, Merrimack is inentionally misleading the McKinneys

and it is trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

419. Merrimack acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in denying the plaintiff's claim for coverage under the Homeowners Policy. The McKinney Defendant breached the covenant of good faith and fair dealing and have injured the McKinneys because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XVIII. Count XIII: Plaintiff Luxenberg's Breach of Contract Claim vs. Merrimack Mutual Fire Insurance Co.**

420. The Plaintiff incorporates in this count all allegations made elsewhere in this complaint except for Section V above.

421. The Plaintiff Kelly Luxenberg ("Luxenberg") owns and occupies the residential property located at 45 Chatham Road Manchester, CT 06042 ("subject property").

422. At all times material to this claim Merrimack Mutual Fire Insurance Co. was writing homeowner's insurance policies and issuing such policies to residents in this state.

423. Luxenberg purchased the subject property in 1994 and Luxenberg purchased the property in 2012.

424. Luxenberg insured the subject property with Merrimack Mutual Fire Insurance Co. from June 2012 to the present date with a homeowners' policy ("Luxenberg Policy").

425. Luxenberg paid any and all premiums charged by Merrimack Mutual Fire Insurance Co., at all times and without default.

426. Pursuant to the terms of Luxenberg's Merrimack Mutual Fire Insurance Co. Policy, Paragraph 8. Collapse, Merrimack Mutual Fire Insurance Co. agreed to provide coverage for "direct physical loss to covered property involving collapse of a building or any part of building caused only by one more or more of the following: ...

- b. hidden decay; ...
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation." See Exhibit 16, Section I-Property Coverages; Additional Coverages; at P. 5 of 18, Section 8, Form HO 00 03 04 91.

427. The language cited in paragraph 426 above, comes from a 1990 copyrighted form HO 00 03 04 91, which was produced by ISO and used virtually exactly as quoted in paragraph 426 above in homeowners' insurance policies by all of the Defendant Insurance Companies.

428. In March of 2016, Luxenberg discovered horizontal and vertical cracks in her basements walls and on visible portions of the outside of her basement walls.

429. Luxenberg immediately hired William F. Neal ("Neal"), a Licensed Professional Engineer and a Licensed Connecticut Home Inspector, to investigate the cause of the failing concrete in her home.

430. Neal inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

431. After inspecting the house, Neal concluded that Luxenberg, like her fellow Plaintiffs and putative Class Members, likely had failing basement walls due to the defective cement.

432. Luxenberg's residence is likely facing a condition that cannot be halted, which affects the durability and ultimately causes the failure of the concrete.

433. Specifically, Neal told Luxenberg that he was concerned that the condition “will continue to deteriorate the concrete and the foundation walls will very likely bulge inward until they structurally fail.”

434. On April 6, 2016 Luxenberg filed a timely claims with Merrimack Mutual Fire Insurance Co. pursuant to the terms of her homeowner’s insurance policy.

435. At the time Luxenberg filed her claim, she was aware that filing such a claim would be futile. Luxenberg was also aware of the many concrete cases brought because of denials of claims. See, McKinney Denial cited above.

436. Luxenberg has a good faith basis to believe that his claim will be denied and that the filing of his claim is futile.

437. Luxenberg is well aware of her obligation to file a timely lawsuit and knows that there is no assurance that Harleysville will deny any claims they make within the two (2) year statute of limitations. Necessarily, Luxenberg filed this suit prior to any denial of his claim for coverage.

438. By failing to provide coverage, Merrimack Mutual Fire Insurance Co. has breached its contractual obligations under the homeowner’s policy(s) they entered into with Luxenberg. These breaches have resulted in enormous financial loss and damage to Luxenberg.

439. Luxenberg's basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix Luxenberg’s basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

440. As a consequence of Nationwide's/Harleysville's breach of contract with Luxenberg, Luxenberg brings this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XIX. Count XIV: Plaintiff Luxenberg's Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Merrimack Mutual Fire Insurance Co.**

441. The Plaintiff incorporates in this count all allegations made elsewhere in this Complaint.

442. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

443. Merrimack Mutual Fire Insurance Co. ("Merrimack") has an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Luxenbergs.

444. On or about April 6, 2016 Luxenberg has filed an insurance claim with Merrimack regarding the defective concrete in their "basement walls".

445. Despite the fact that Luxenberg has made claims with Merrimack, and the adjustor has been to the subject property on several occasions, they have not been provided an answer regarding the outcome of their claims.

446. Merrimack has deliberately delayed their coverage decision despite the fact that they intend to deny the Luxenberg's claims. Accordingly, Merrimack has impeded Merrimack's right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

447. Merrimack is ignoring a growing number of state and federal cases holding that

insurers are required to provide coverage for basement walls with defective concrete.

448. Merrimack has acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in deliberately delaying the denial of the plaintiff's claim for coverage under the Homeowners Policy.

449. Upon information and belief, Merrimack is intentionally misleading Ms. Luxenberg and trying to convince her that the damage suffered to her basement walls is not covered solely to avoid payment of a covered loss.

450. The Defendant has breached the implied covenant of good faith and fair dealing under the Policy by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failed to act on the Plaintiffs' pending claims while knowing said claims will be rejected. The Luxenberg Defendant breached the covenant of good faith and fair dealing and have injured the Luxenbergs because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XX. Count XV: Plaintiff Poulins' Breach of Contract Claim vs. AIG, Travelers, State Farm and Geico.**

451. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

452. The Plaintiffs, Donald and Nancy Poulin (the "Poulins") own and occupy the residential property located at 57 Colgate Drive in Manchester, CT.

453. At all times material to this claim, AIG, State Farm, Travelers and Geico were writing homeowner's insurance policies and issuing such policies to residents in this state.

454. The Poulins purchased the subject property in 2004. The residence was constructed in 1991.

455. The Poulins insured the subject property with AIG from the date of purchase until 2005. The Poulins insured the subject property with Travelers from November 1, 2005 until November 1, 2006. The Poulins insured the subject property with State Farm from 2005 until January 31, 2015. The Poulins have insured the subject property with Geico from November 1, 2015 until the present date.

456. The Poulins paid any and all premiums charged by AIG, Travelers, State Farm and Geico, at all times and without default. Counsel intends to obtain the relevant portions of the Poulins' State Farm Policy through discovery. The Poulins intend to obtain a copy of their policies issued by AIG and Geico through the discovery process.

457. Upon information and belief the Defendants State Farm, AIG and Geico agreed to provide coverage for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one more or more of the following: ...

- b. Hidden decay; ...
- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

The language cited above comes from a 1990 copyrighted Form HO 00 03 04 91, which was produced by ISO and used virtually exactly as quoted above in homeowners' insurance policies by all of the named defendants.

458. In February of 2014, the Poulins discovered horizontal and vertical cracks in their basement walls and on visible portions of the outside of their basement walls.

459. On February 18, 2014, the Poulins made a claim with State Farm over the telephone. During that conversation, the Poulins reported the condition of their basement walls and asked for coverage. State Farm told the Poulins that the claim was not covered.

460. Following their verbal denial, the Poulins received a denial letter from State Farm on February 21, 2014. This letter stated, "...the foundation of your home is settling and cracking. Settling and cracking of foundation and walls as well as earth movement is specifically excluded under the Homeowners policy." See State Farm Denial Letter Dated February 21, 2014, attached hereto as Exhibit 17.

461. At the time the Poulins filed their claim with State Farm, they were aware that filing a claim with AIG, Travelers, and Geico would be futile. The Poulins have also been made aware of the many bad concrete cases brought because of denials of claims. See, e.g., Kim et al. v. State Farm Fire & Casualty Co., No. 3:15-CV-00879 (D. Conn. 2015); Sushil Nanda et al v. Homesite Insurance Company, HHD-CV-12-6030612-S, Judicial District of Hartford at Hartford (Plaintiff's virtually identical bad concrete claim was denied by Homesite). See also, supra, ¶¶ 133-135.

462. State Farm has offered no factual evidence that would in any way support their decision to deny the Poulins' claim.

463. The Poulins have a good faith basis to believe that their claim will be denied with AIG, Travelers and Geico and that the filing of their claim is futile.

**XXI. Count XVI: Plaintiffs Poulins' Breach of the Implied Covenant of Good Faith and Fair Dealing vs. AIG, Travelers, State Farm and Geico.**

464. The Plaintiffs incorporate in this count all allegations made elsewhere in this

Complaint.

465. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

466. AIG, Travelers, State Farm and Geico have an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Poulins.

467. The Plaintiffs have filed an insurance claim with State Farm, regarding the defective concrete in their "basement walls".

468. On or about February 21, 2014, State Farm denied the Plaintiffs claims indicating that "Settling and cracking of foundation and walls as well as earth movement is specifically excluded under the Homeowners Policy".

469. On or about March 18, 2014, State Farm sent the Plaintiffs a letter indicating that based on their recent claim there were "some positive measures that can be taken which could reduce the potential for similar loss." Specifically State Farm stated, "The foundation of the home is cracked and in need of repair. Have a qualified contractor inspect the foundation and [sic] make the needed repairs to prevent further damage and cracking." The letter went on to indicate "Your cooperation with the above underwriting requirements within the next **90 days would be appreciated.**" The notice NEVER INDICATED THAT THEIR POLICY WOULD BE DISCONTINUED IF THE REPAIRS WERE NOT MADE.

470. On or about October 28, 2014 State Farm sent a letter to the Plaintiffs indicating they would be discontinuing their insurance policy with the Plaintiffs stating "This risk is no longer acceptable to State Farm Fire and Casualty Company due to your failure to maintain the

premises, as outlined in our letter to you dated March 18, 2014. The requirement(s) outlined in the letter were repair the cracked foundation”

471. State Farm terminated their policy, despite the fact that they never told the Plaintiffs that repairs were necessary in order for the policy to continue.

472. Further, State Farm has offered no factual evidence for the claim that the damage to the plaintiffs' residence was caused in any part by earth movement , or that the damage was suffered by the "foundation" and not the "basement walls," in support of their decision to deny the claim.

473. The Poulin Defendants are ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

474. Upon information and belief, the Poulin Defendants are intentionally misleading the Poulins and are trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

475. By terminating the policy and denying coverage in this manner State Farm has impeded the plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

476. Upon information and belief, the Poulin Defendants have a general business practice of acting intentionally to mislead their insureds into believing that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

477. The Poulin Defendants acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in denying the plaintiff's claim for coverage under the Homeowners Policy. The Poulin Defendants breached the covenant of good faith and fair dealing and have injured the Poulins because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XXII. Count XVII: Kandrysawtz Breach of Contract vs. American Commerce, NGM Insurance Company, and Main Street America Assurance Company.**

478. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

479. The Plaintiffs, David and Patricia Kandrysawtz (the "Kandrysawtz") own and occupy the residential property located at 335 Long Hill Street East Hartford, CT 06108 ("subject property").

480. At all times material to this claim, American Commerce and NGM were writing homeowner's insurance policies and issuing such policies to residents in this state.

481. The Kandrysawtz built and purchased the subject property in 1984.

482. The Kandrysawtz' insured the subject property with American Commerce and National Grange from August 2014 to the present date with homeowners' policy issued by American Commerce and National Grange.

483. The Kandrysawtz paid any and all premiums charged by American Commerce and National Grange, at all times and without default. The relevant portions of the American

Commerece Policy are attached hereto as Exhibit 18. It is the undersigneds intention to obtain the Kandrysawtz National Grange policy through discovery.

484. The Kandrysawtz have been provided with continuous coverage under these insurance policies throughout the time that they have owned the subject property.

485. Upon information and belief, America Commerce Insurance Company agreed to provide coverage for “direct physical loss to covered property involving collapse of a building or any part of building if the collapse was caused by one more or more of the following:

...

2. decay that is hidden from view unless the presence of such decay is known to an “insured” prior to collapse;
6. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.” See Exhibit 18, ISO Form HO 00 03 10 00.

486. In April of 2016, the Kandrysawtz discovered horizontal and vertical cracks in their basements walls and on visible portions of the outside of their basement walls.

487. The Kandrysawtz, upon information and belief, believe that their basement walls are defective due to the presence of a sulfide mineral known as pyrrhotite.

488. Pyrrhotite is a destructive chemical that, when exposed to water and air produces a chemical reaction, which expands and breaks apart the concrete in what is commonly referred to as a “sulfate attack.”

489. The sulfate attack is an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

490. In other words, the sulfate attack will continue to deteriorate the cement until such time that the basement walls are destroyed and the home caves into its basement.

491. It is certain that the sulfate attack will continue to fracture the cement until such time that the basement walls are destroyed and the home caves into its basement.

492. Based on this belief, on May 6, 2016, the Kandrysawtz filed timely claims with American Commerce and National Grange pursuant to the terms of their homeowners' insurance policies.

493. At the time the Kandrysawtz filed their claims, they were aware that filing such claims would be futile. The Kandrysawtz were also aware of the many concrete cases brought because of denials of claims. See, e.g., Bacewicz v. NGM Insurane Co., No. 3:8-CV-01530, Judgment (D. Conn. Feb. 11, 2011); Stavinsky v. Harleysville Worcester Insurance Co., TTD-CV13-6006135S, Judicial District of Tolland at Rockville (Plaintiff's virtually identical foundation claim was denied); Pancier, et. al. v. Kemper Independent Insurance Co., No. 3:13-CV-1009 (JBA), 2014 WL 1690387 (D. Conn. April 29, 2014) (Same); Cote v. Travelers, TTD-CV15-6008838-S, Judicial District of Tolland at Rockville (Same where Travelers is, upon information and belief, umbrella company for AICHC).

494. The Kandrysawtz have a good faith basis to believe that their claims will be denied and that the filing of their claim is futile.

495. The Kandrysawtz are well aware of their obligation to file a timely lawsuit and know that there is no assurance that American Commerece of National Grange will deny any claims they make within the two (2) year statute of limitations. Necessarily, the Kandrysawtz file this suit prior to any denial of their claims for coverage.

496. By failing to provide coverage, American Commerece and National Grange have breached their contractual obligations under their homeowners' policies they entered into with the Kandrysawtz. These breaches have resulted in enormous financial loss and damage to the Kandrysawtz.

497. The Kandrysawtz' basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix the Kandrysawtz' basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

498. As a consequence of American Commerece and National Grange breach of contracts with the Kandrysawtz, the Kandrysawtz bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XXIII. Count XVIII: Plaintiffs Pawelczyk's Breach of Contract Claim vs. Bunker Hill and All State.**

499. The Plaintiff incorporates in this count all allegations made elsewhere in this complaint except for Section V above.

500. The Plaintiffs, Mark Pawelczyk and Felice Pawelczyk ("Pawelczyks") own and occupies the residential property located at 44 Evans Crossing, South Windsor,CT 06074 ("subject property").

501. At all times material to this claim, Bunker Hill and All State were writing homeowner's insurance policies and issuing such policies to residents in this state.

502. The Pawelczyks purchased the subject property in 2001. The residence was constructed in 1985.

503. The Pawelczykzs insured the subject property with All State starting in 2001 and were subsequently insured by Bunker Hill Insurance Company. Bunker Hill Insurance Company currently insures the property.

504. The Pawelczykzs have paid any and all premiums charged by All State and Bunker Hill Insurance Company, at all times and without default. The relevant portions of the All State policy are attached hereto as Exhibit 19, the relevant portions of the Bunker Hill policy are attached hereto as Exhibit 20.

505. Pursuant to the terms of the Pawelczykzs's All State Policy, P. 15 Paragraph 11. Collapse, All State agreed to provide coverage for :

- a. the entire collapse of a covered building structure;
- b. the entire collapse of part of a covered building structure; and
- c. direct physical loss to covered property caused by (a) or (b) above.

For coverage to apply, the collapse of a building structure specified in (a) or (b) above, must be a sudden and accidental direct physical loss caused by one or more of the following:

- a) A loss we cover under Section I. Coverage C - Personal Property Protection;
- b) Hidden decay of the building structure;
- c) ...
- f) Defective methods or materials used in construction repair modeling or renovation.

Collapse does not include settling, cracking, shrinking, bulging, or expansion.

506. On or about July 16, 2015 the Pawelczykzs discovered horizontal and vertical cracks in his basement walls and on visible portions of the outside of his basement walls.

507. In March of 2016 the Pawelczykhs hired William F. Neal (“Neal”), a Licensed Professional Engineer and a Licensed Connecticut Home Inspector, to investigate the cause of the failing concrete in their home.

508. Neal inspected the basement walls to observe and document the defects in the cement, including any cracks, spalls or other signs of deterioration.

509. After inspecting the house, Neal concluded that the Pawelczykhs, like their fellow Plaintiffs and putative Class Members, had failing basement walls due to the defective cement.

510. Neal concluded that the cement forming the basement walls was defective due to a chemical reaction resulting from incompatible materials used in the concrete mix.

511. The Pawelczykhs’ residence is facing an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

512. Specifically, Neal told the Pawelczykhs that the condition “will continue to deteriorate the concrete and the foundation walls will very likely bulge inward until they structurally fail.”

513. He is certain that the chemical reaction will continue to destroy the cement until such time that the basement walls are deteriorated and the home caves into its basement.

514. On April 1, 2016 the Pawelczykhs filed a timely claims with Bunker Hill pursuant to the terms of their homeowner’s insurance policy.

515. On April 1, 2016 the Pawelczykhs filed a timely claims with All Statel pursuant to the terms of their homeowner’s insurance policy.

516. At the time the Pawelczykhs filed their claim, they were aware that filing such a claim would be futile. The Pawelkclczykhs were also aware of the many concrete cases brought

because of denials of claims. See, e.g., Lees et al. v. Allstate Insurance Co., No., 3:15-CV-01050 (D.Conn. 2015); Stavinsky v. Harleysville Worcester Insurance Co., TTD-CV13-6006135S, Judicial District of Tolland at Rockville (Plaintiff's virtually identical foundation claim was denied by Harleysville).

517. Karl Krieg, an adjustor from Bunker Hill, intimated that the Pawelczyzs' claim would be denied stating, "everybody knows where this is going, people are going to start walking that's what's going to happen."

518. The Pawelczyzs have a good faith basis to believe that their claim will be denied and that the filing of their claim is futile.

519. The Pawelczyzs are well aware of their obligation to file a timely lawsuit and knows that there is no assurance that Bunker Hill and All State will deny any claims they make. Necessarily, Pawelczyzs filed this suit prior to any denial of their claim for coverage.

520. By failing to provide coverage, Bunker Hill and All State have breached their contractual obligations under the homeowners policies they entered into with the Pawelczyzs. These breaches have resulted in enormous financial loss and damage to the Pawelczyzs.

521. The Pawelczyzs basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix Pawelczyzs basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

522. As a consequence of Bunker Hill's and All State's breach of contract with the Pawelczyzs, the Pawelczyzs bring this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XXIV. Count XIX: Plaintiffs Pawelczyk's Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Bunker Hill and All State.**

524. The Plaintiff incorporates in this count all allegations made elsewhere in this Complaint.

525. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

526. Bunker Hill and All State have an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Pawelczyk.

527. On or about April 7, 2016, the Plaintiff has filed an insurance claim with Bunker Hill Insurance Co. and All State Insurance Co., regarding the defective concrete in their "basement walls".

528. Despite the fact that the Plaintiffs have made claims with Bunker Hill Insurance Co. and All State Insurance Co., and the adjusters have been to the subject property on several occasions, they have not been provided an answer regarding the outcome of their claims.

529. The Pawelczyk Defendants are ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

530. Upon information and belief, the Pawelczyk Defendants are intentionally misleading the Pawelczyk and are trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

531. The Defendants have deliberately delayed their coverage decision despite the fact that they intend to deny the Plaintiffs' claims. Accordingly, the Defendants have impeded the

Plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

532. The Defendants have acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in deliberately delaying the denial of the Plaintiff's claim for coverage under the Homeowners Policy.

533. Upon information and belief, the Pawelczyk Defendants have a general business practice of acting intentionally to mislead its insureds into believe that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

534. The Defendants have breached the implied covenant of good faith and fair dealing under the policy by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failed to act on the Plaintiffs' pending claims while knowing said claims will be rejected. The Pawelczyk Defendants breached the covenant of good faith and fair dealing and have injured the Pawelczyks because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XXV. Count XX: Plaintiff LaValley's Breach of Contract Claim vs. Liberty Mutual Fire Insurance Company.**

535. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint except for Section V above.

536. The Plaintiffs, Paul and Paula LaValley (the "LaValley") own and occupy the residential property located at 126 Buckley Highway in Stafford, Connecticut.

537. At all times material to this claim, Liberty Mutual was writing homeowner's insurance policies and issuing such policies to residents in this state.

538. The LaValleys purchased the subject property in 2003. The residence was constructed in 1984.

539. Upon information and belief, the Defendant Liberty Mutual agreed to provide coverage for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one more or more of the following: ...

- b. Hidden decay; ...
- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

540. In December 5, 2011, the LaValleys discovered horizontal and vertical cracks in their basement walls and on visible portions of the outside of their basement walls.

541. On July 5, 2012, the LaValleys made a claim with Liberty Mutual over the telephone. During that conversation, the LaValleys reported the condition of their basement walls and asked for coverage. Liberty Mutual told the LaValleys that an adjuster would be sent out to see their home.

542. The LaValleys then received a phone call from an estimator who set up an appointment with a visual inspector. The estimator told the LaValleys over the telephone that she could ask her boyfriend about their problem because he was in the construction business. She indicated that foundations are not covered and said that "the only way that it would be covered would be if there was a 'total collapse' or 'in a pile of rubble.'"

543. On July 20, 2012, the LaValleys got a letter in the mail indicating that the damages to their home were \$0.00 and that the estimator encouraged them to get the phantom repairs done. She then followed up with a phone call and said “there is nothing we can do; it has to be a pile of rubble.”

544. In October 2014, the LaValleys were having solar installed and the town engineer inspected their home. The town engineer told the LaValleys that their basement walls were crumbling and that they had the same crumbling concrete problem as many other people.

545. On May 6, 2016, the LaValleys filed a timely new claim and/or a request to reopen their 2012 claim.

546. At the time the LaValleys filed their claim, they were aware that filing a claim with Liberty Mutual would be futile. The LaValleys were made aware of the many bad concrete cases brought because of denials of claims. See, e.g., Parker v. Worcester Ins. Co., 247 F.3d 1, 3 (1st Cir. 2001)(Court noting that insurance company denied plaintiff’s claim for coverage for collapsing basement walls due to defective concrete).

547. Liberty Mutual has never offered any factual evidence that would in any way support their decision to deny the LaValley’s claim.

548. The LaValleys have a good faith basis to believe that their claim will be denied with Liberty Mutual and that the filing of their claim is futile.

**XXVI. Count XXI: Plaintiff Lavalley’s Breach of the Implied Covenant of Good Faith and Fair Dealing vs. Liberty Mutual Fire Insurance Company**

549. The Lavalley’s incorporate in this count all allegations made elsewhere in this

complaint.

550. There is a covenant of good faith and fair dealing implied in every contract that requires that neither party do anything that could impair the right of the other party to receive the benefits of the contract.

551. Liberty Mutual Fire Insurance Company has an obligation to exercise good faith in fulfilling its contract to provide insurance coverage to the Lavalleyes.

552. On or about July 5, 2012, the Plaintiffs filed an insurance claim with Liberty Mutual regarding the defective concrete in their "basement walls".

553. Despite the fact that the Plaintiffs made a claim with Liberty Mutual almost four years ago, the Lavalleyes have not been provided an answer regarding the outcome of their claim.

554. Liberty Mutual is ignoring a growing number of state and federal cases holding that insurers are required to provide coverage for basement walls with defective concrete.

555. Upon information and belief, the Lavalley Defendants are intentionally misleading the Lavalleyes and are trying to convince them that the damage suffered to their basement walls is not covered solely to avoid payment of a covered loss.

556. Liberty Mutual has deliberately delayed their coverage decisions despite the fact that they intend to deny the Plaintiffs' claims. Accordingly, Liberty Mutual has impeded the Plaintiffs' right to receive benefits that they reasonably expected to receive under the contract for homeowners insurance.

557. Liberty Mutual has acted in bad faith and violated the implied covenant of good faith and fair dealing in the performance of its duties in deliberately delaying the denial of the Plaintiff's claim for coverage under the Homeowners Policy.

558. Upon information and belief, Liberty Mutual has a general business practice of acting intentionally to mislead its insureds into believing that the collapse of the basement walls of a building caused by hidden decay or by the use of faulty or defective materials or methods of construction is not a covered loss.

559. Liberty Mutual has breached the implied covenant of good faith and fair dealing under the Policy by, among other things, knowingly, deliberately, consciously, intentionally, recklessly, negligently, and/or with dishonest, interested and/or sinister motive failed to act on the Plaintiffs' pending claims while knowing said claims will be rejected. The LaValley Defendant has breached the covenant of good faith and fair dealing and has injured the LaValleys because they have had to pay court costs and expert costs to litigate their claims, and have lost the interest on liquidated funds due them under these insurance policies.

**XXVII. Count XXII: Plaintiff Zaremba's Breach of Contract Claim vs. Kemper, and Travelers.**

560. The Plaintiff incorporates in this count all allegations made elsewhere in this complaint except for Section V above.

561. The Plaintiff, Stanley Zaremba ("Zaremba") owns and occupies the residential property located at 190 Oakes Rd. Ashford, CT 06278 ("subject property").

562. At all times material to this claim, Kemper and Travelers were writing homeowner's insurance policies and issuing such policies to residents in this state.

563. Zaremba built the subject property in 2002.

564. Zaremba insured the subject property continuously from 2002 to the present date. Zaremba was insured by by Kemper from 2002-2008. He was insured by Travelers from June 30, 2008 until June 21 2010. Thereafter until the present time, he has been insured by Kemper.

565. Zaremba paid any and all premiums charged by Kemper and Travelers, at all times and without default.

566. Upon information and belief, the Defendants Kemper and Travelers, agreed to provide coverage for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following: ...

- Hidden decay; ...
- Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

567. In February of 2016, Zaremba discovered that he had horizontal and vertical cracks in his basements walls, his basement floor and on visible portions of the outside of his basement walls.

568. Upon information and belief, these cracks were caused by defective concrete.

569. Upon information and belief, Zaremba's residence is facing an irreversible condition, which affects the durability and ultimately causes the failure of the concrete.

570. Specifically, Zaremba's basement walls will continue to deteriorate and the home will inevitably cave into its basement.

571. On May 6, 2016, Zaremba filed timely claims with Kemper and Travelers pursuant to the terms of his homeowner's insurance policy.

572. At the time Zaremba filed his claim, he was aware that filing such a claim would be futile. Zaremba was also aware of the many concrete cases brought because of denials of claims involving both Kemper and Travelers. See, e.g., Panciera, et al. v. Kemper Independence Insurance Co., No. 3:13-CV-1009 (JBA), 2014 WL 1690387 (D.Conn. April 29, 2014) (Same); Cote v. Travelers, TTD-CV15-6008838-S, Judicial District of Tolland at Rockville (Conn. Super. Ct. 2015).

573. Zaremba has a good faith basis to believe that his claim will be denied and that the filing of his claim is futile.

574. Zaremba is well aware of his obligation to file a timely lawsuit and knows that there is no assurance that Kemper and Travelers will deny any claims they make within the two (2) year statute of limitations. Necessarily, Zaremba filed this suit prior to any denial of his claim for coverage.

575. By failing to provide coverage, Kemper and Travelers have breached their contractual obligations under the homeowner's policy(s) they entered into with Zaremba. These breaches have resulted in enormous financial loss and damage to Zaremba.

576. Zaremba's basement wall problem is affecting hundreds of other homeowners in the northeast region of this state. The cost to fix Zaremba's basement wall problem, which is typical of hundreds of other homeowners, is estimated to exceed \$150,000.00.

577. As a consequence of Kemper's and Travelers' breach of contract with Zaremba, Zaremba brings this claim individually and on behalf of all similarly situated homeowners in Connecticut.

**XXVII. Count XXIII: Violation of the Connecticut Unfair Trade Practices Act (CUTPA) and the Connecticut Unfair Insurance**

**Practices Act (CUIPA) against Harleysville, Nationwide, Kemper, 21<sup>st</sup> Century, Travelers, Homesite, AIG, MetLife, Bunker Hill, All State, Automobile Insurance Company of Hartford Connecticut, NGM, Main Street America Assurance Group, Andover Companies, Merrimack Mutual, Geico, State Farm, Amica Mutual Insurance Company.**

578. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint.

579. The Defendant Insurance Companies are insurance companies licensed and qualified to engage in the business of insurance within the State of Connecticut.

580. The Defendant Insurance Companies issued homeowners' insurance policies to parties that provide virtually identical collapse coverage, to wit:

“We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following: ... b. Hidden decay; ... [or] f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.”

See ISO Language Chart (Exhibit 2) revealing standardized language.

581. Upon information and belief, the Defendant Insurance Companies are either members of ISO and/or own shares or have owned shares in ISO's publicly-traded parent company, Verisk Analytics, or have looked to, consulted with and taken input from ISO when drafting the insurance policies at issue, and the denials for bad concrete claims.

582. Further, ISO is responsible for drafting uniform policy provisions and filing them with DOI, which language the Insurers use in all of their homeowner's insurance policies. In fact, most times, the Defendant Insurance Companies have adopted the ISO language wholesale.

583. Through its participation in ISO, the Defendant Insurance Companies know that insureds in northeastern Connecticut have made valid claims stemming from policy coverage language, including but not limited to, hidden decay and the use of defective material or methods in building the basement walls. The Defendant Insurance Companies know that numerous claims have been filed due to hidden decay and defective materials, and also know that insurers have concocted denials of these claims for a variety of lackluster reasons. Courts in this District, however, have persuasively rejected these types of denials in favor of plaintiffs when determining whether homeowners have sufficiently pled a cause of action for breach of contract. See, e.g., Metsack v. Liberty Mutual Fire Insurance Co. et al., 2015 WL 5797016, Docket No. 3:14-CV-01150(VLB) (D. Conn.) (denying claim due to alleged “settling/earth movement or seepage from ground water”); Pancieria et. al. v. Kemper Independence Insurance Co., No. 3:13-CV-1009 (JBA), 2014 WL 1690387 (D. Conn. April 29, 2014) (denying claim due to, amongst other claims, alleged “faulty construction”); Belz et al. v. Peerless Insurance Co., No. 3:13-CV-01315, 2013 WL 4984704, (D. Conn. Sept 6, 2013) (denying claim due to alleged “poor workmanship and materials used”); Karas et al. v. Liberty Insurance Corp., No. 3:13-CV-01836, 2013 WL 6778455 (D. Conn. Dec. 11, 2013) (denying claim due to alleged deterioration); ; Lincoln et al. v. United Services Automobile Association, No. 3:14-CV-00333 (D. Conn. 2014) (denying claim for a variety of reasons including, but not limited to, alleged wear and tear, marring, deterioration, settling, faulty workmanship/construction).

584. A growing number of Connecticut cases have seen either (1) damages awarded to insureds/homeowners due to claims that defective concrete has caused their basement walls to fail or (2) settlements between insurers and insureds/homeowners due to the same claims. All of

these cases have seen claim denials based on the standardized ISO language and facts strikingly similar to those of the subject Plaintiffs and putative Class Members. Due to their participation in ISO or adoption of ISO language or advice given to them by ISO, Defendant Insurance Companies are keenly aware or should know of Bacewicz, Panciera and all of the other similarly situated cases that have settled or received judgments in favor of the insureds.

585. Based on the foregoing, the Defendant Insurance Companies were aware that denials based on the reasons aforementioned, were false and misleading, considering the case law and the provisions of the Plaintiffs' homeowners' policies.

586. The Defendant Insurance Companies, as part of their regular business practice, denied the Plaintiffs' claims and said denials were unfair, deceptive and have caused substantial injury to consumers (i.e., the Plaintiffs and putative Class Members).

587. The Defendant Insurance Companies have repeatedly denied valid claims in great number, often following inadequate claim investigations. These denials were made for disingenuous reasons and frequently made after much delay.

588. Based on the plain language of the homeowners' policies, and reasonable lay person's interpretation of the homeowners' policies issued by the Defendant Insurance Companies, the Defendant Insurance Companies are obligated to payout the claims made by the Plaintiffs for decaying concrete and crumbling basement walls. Despite the Defendant Insurance Companies' contractual obligation, these companies have repeatedly taken part in a uniform industry wide practice of unfairly denying coverage for these types of claims.

589. The Plaintiffs derive no benefit from the Defendant Insurance Companies' industry wide practice of denying meritorious claims based on their misleading, deceptive, delayed and unscrupulous denials.

590. Armed with the knowledge that there were numerous bad concrete claims and that all insurance companies were denying these claims, the Defendant Insurance Companies did not attempt "in good faith to effectuate prompt, fair and equitable settlements in which liability has become reasonably clear." C.G.S. § 38a-816(6)(f).

591. In fact, the Defendant Insurance Companies repeatedly denied meritorious claims, provided misleading denial letters, failed to conduct reasonable investigations and unscrupulously delayed denying claims when they knew they were going to reject them anyway. C.G.S. § 38a-816(a), (d) and (e). While attending to this scheme of unethical, immoral and oppressive behavior, the Plaintiffs have been substantially harmed by living in homes in a state of collapse, while worrying about the statute of limitations and pursuing unnecessary lawsuits.

592. The outrageously unprincipled practices of these Defendant Insurance Companies are unfair and offend public policy. Mayors, state legislators and U.S. Congressmen and Senators are pleading for government money to replace the basement walls of hundreds, perhaps thousands, of their constituents. The Governor has set in motion a task force to examine the scope of the problem. The Attorney General's Office, working together with the Department of Consumer Protection, Department of Insurance and the Department of Banking, are seven (7) months into an investigation to determine the cause of the collapsing homes, the geographic scope of the affected homeowners, any unfair trade practice, and the potential fixes for the problems, including legislative reform. The Commissioner of the Connecticut Department of

Insurance has even issued a directive to insurance companies forbidding them from non-renewing affected homeowners' insurance policies.

593. Flying in the face of public policy are the Defendant Insurance Companies' industry wide trade practices of deceit, delay and denial, which practices endanger the free flow of credit to consumers, drastically lowers property values and destabilizes the housing market.

594. The Defendant Insurance Companies' unfair trade practices have caused the Plaintiffs' substantial injury and ascertainable loss.. They can not sell or refinance their homes. They are paying too much in taxes for homes that are essentially worthless. They have lost money because they paid for an insurance contract that they did not bargain for and, among other things, they have incurred attorney's fees and costs related to pursuing this lawsuit.

595. As a result of the above conduct and engaging in conduct prohibited by CUIPA, the Defendant Insurance Companies have also violated the Connecticut Unfair Trade Practices Act. C.G.S. § 42-110b(a).

596. Punitive damages are warranted under CUTPA where defendants have failed to conduct adequate investigations, delayed coverage decisions unnecessarily, abandoned accepted claims processing practices by showing reckless and wanton disregard for the Plaintiffs.

596. A copy of this Second Amended Complaint has been sent to the Attorney General and the Commissioner of Consumer Protection.

## **XXIX. Count XXIV: Declaratory Judgment for Class**

597. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint.

598. This action is brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, to resolve an actual controversy regarding the meaning of the insurance policy language upon which the Defendant Insurance Companies are relying (whether the language was written in a policy existing at the time the Plaintiffs' homes were built or written at any time up to and including today) to deny Plaintiffs and putative Class Members any coverage for bad concrete claims.

599. An actual controversy exists between Plaintiffs, other putative Class Members similarly situated and the Defendant Insurance Companies concerning whether the denials of coverage under these homeowners' policies are enforceable under applicable law or whether the language of these policies is ambiguous to such an extent that the language must be construed in favor of the Plaintiffs and putative Class Members, and against the Defendant Insurance Companies.

600. Plaintiffs and other putative Class Members are entitled to obtain a declaratory ruling as follows:

As a consequence of several Connecticut Federal Court rulings that certain defined terms in Plaintiffs' and Putative Class Members' homeowners' insurance policies are ambiguous, the Plaintiffs and putative Class Members seek a declaration that the Defendant Insurance Companies have a duty to provide coverage for claims resulting from iron-sulfide-infected concrete.

### **XXX. Remedy for Plaintiffs and the Class**

601. The Plaintiffs incorporate in this count all allegations made elsewhere in this complaint.

602. There are at least four common issues among all Plaintiffs and putative Class Members:

- a. Whether Defendant Insurance Companies breached their contracts of insurance with the Plaintiffs and putative Class Members by failing to provide coverage for bad concrete claims.
- b. Whether Defendant Insurance Companies and ISO/other insurance trade associations and/or Defendant Insurance Companies themselves conspired to attempt to provide unsuitable homeowners insurance policies to Plaintiffs and putative Class Members all the while being previously aware of bad concrete claims and attempting to stylize policies that would not provide coverage for bad concrete claims.
- c. Whether Defendant Insurance Companies, as part of a regular business practice, denied the insureds' claims in an unfair, deceptive manner that has caused substantial injury to the Plaintiffs and putative Class Members.
- d. Whether the Plaintiffs and putative Class Members suffered losses and, if so, the proper measure of the losses.

603. Plaintiffs and putative Class Members seek various forms of relief that could be ordered as “common answers” to resolve the litigation. These common answers consist of the following:

- a. An Order compelling Defendants to pay for the costs of replacing the basement walls of each of the Plaintiffs and members of the Class;
- b. An Order awarding actual damages in the amount of any losses the Plaintiff or members of the Class suffered;
- c. An Order awarding punitive damages pursuant to C.G.S. Sec. 42-110g(a);;
- d. An Order awarding pre- and post- judgment interest pursuant to C.G.S. 37-3a and other applicable laws;
- e. An Order awarding costs pursuant to C.G.S. § 42-110g and other applicable laws;
- f. An Order awarding attorneys' fees pursuant to C.G.S. § 42-110g and other applicable laws;
- g. An Order certifying a class action under one or more of Rule 23(b)(1), 23(b)(2) or 23(b)(3) of the Federal Rules of Civil Procedure.

- h. Such other and further relief as this Court may seem just and proper.

604. While there are many ways to provide relief here and the Plaintiffs and putative Class Members wish to keep every option open, the biggest things the Plaintiffs and putative Class Members want can be simply described. They want an order that requires the Defendant Insurance Companies and ISO/other insurance trade associations to remove their existing basement walls and build brand new ones. They want their attorneys' fees paid. The calculations for the costs of basement wall replacements can be structured in an entirely ministerial, not discretionary way. Rather than the Court having to look in every basement, the Court can establish a set price per linear foot for which to reconstruct the basement walls and multiply that price by the total linear footage of the basement.

### **XXXI. Class Action Allegations.**

605. **Class Definition.** Plaintiffs bring this action as a class action under Fed. R. Civ. P. 23 (a), (b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of Plaintiffs and the following class of persons similarly situated (the "Class"):

606. All individuals who own a home in the Connecticut towns of Ashford, East Hartford, Ellington, Manchester, Stafford, Stafford Springs, Tolland, South Windsor, or any other Connecticut town located in Hartford County, Tolland County or Windham County whose homes are insured by any of the Insurance Defendants, and whose homes have sustained 'pattern cracking' including but not limited to horizontal and vertical cracks on their basement walls, and whose bad foundation claims have been denied or will be denied by the Insurance Defendants, which denials are or will be based on the same standardized language regarding the term

‘collapse’, the term ‘basement’, the term ‘foundation’, the term ‘decay’, the term ‘hidden’ and the term ‘retaining wall.’

607. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are thousands of members of the Class, perhaps over ten thousand. Defendants possess the exact information that makes it feasible to determine the actual number of Class Members. In fact, Defendants have business records that identify this type of information.

608. **Commonality.** Repeated complaints are filtering into the Courts. While these complaints are all isolated from one another, the Plaintiffs in these cases are all saying the same thing. They are complaining about their basement walls having defective concrete. They are all making the same kind of allegations as are the Plaintiffs in the instant case. They are all getting the same kind of denial letters. See, supra, fn. 3 at Sec. V(A), para. 157. These cases are all connected but the Plaintiffs don’t know it. Soon, there will be an avalanche of these similar cases if there is not a class action.

609. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendant Insurance Companies breached their contracts of insurance with the Plaintiffs and putative Class Members by failing to provide coverage for bad concrete claims.
- b. whether Defendant Insurance Companies and ISO/other insurance trade associations and/or Defendant Insurance Companies themselves conspired to provide unsuitable homeowners insurance policies to Plaintiffs and putative Class Members all the while being previously aware of bad concrete claims and

knowing full well that these policies would not provide coverage for bad concrete claims.

- c. Whether Defendant Insurance Companies, as part of a regular business practice, denied the insureds' claims in an unfair, deceptive manner that has caused substantial injury to the Plaintiffs and putative Class Members.
- d. Whether the Plaintiffs and putative Class Members suffered losses and, if so, the proper measure of the losses.

610. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class because: (a) the conduct of Defendants giving rise to the claims is the same as to all members of the Class; and (b) the losses suffered by the Plaintiffs are caused by the standardized language, unsuitability of and inadequate disclosures associated with Defendants' homeowner's insurance products.

611. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in litigation generally. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

612. **Rule 23 (b)(1) Requirements.** Class action status in this action is warranted under Fed. R. Civ. P. 23 (b)(1) because prosecution of separate actions by the members of the class would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the party opposing the class and adjudications with respect to individual Class Members would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests. Specifically, if the policy language challenged here is ambiguous as claimed here, such a determination would be dispositive of the interests of other homeowners.

613. **Rule 23 (b)(2) Requirements.** Class action status in this action is warranted under Fed. R. Civ. P. 23 (b)(2) because the parties opposing the class have acted on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Specifically, the homeowner's insurance policies at the center of this lawsuit are pre-packaged using uniform advice and/or uniform policy language.

614. **Rule 23 (b)(3) Requirements.** Class action status is also warranted under Fed. R. Civ. P. 23 (b)(3) because: (a) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (b) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (c) questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

## **XXXII. Requested Relief.**

615. Plaintiffs request the following relief:

- a. an Order compelling Defendants to pay for the costs of replacing the foundations of each of the Plaintiffs and members of the Class;
- b. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the denials of the bad foundation claims;
- c. An Order awarding actual damages in the amount of any losses the Plaintiff or members of the Class suffered;
- d. An Order awarding punitive damages pursuant to C.G.S. Sec. 42-110g(a);;
- e. An Order awarding pre- and post- judgment interest pursuant to C.G.S. Sec. 37-3a and other applicable laws;

- f. An Order awarding costs pursuant to C.G.S. § 42-110g and other applicable laws;
- g. An Order awarding attorneys' fees pursuant to C.G.S. § 42-110g and other applicable laws;
- h. An Order certifying a class action under one or more of Rule 23(b)(1), 23(b)(2) or 23(b)(3) of the Federal Rules of Civil Procedure.
- i. Such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

616. Plaintiffs demand a trial by jury on all the claims and counts of this Complaint.

THE PLAINTIFFS:

By   /s/  

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