

Is It Me Or Is My Backyard Gone? The Increased Prevalence Of Sinkhole Claims In Florida

By: Brandon Bains



Photo courtesy of Doug Gouzie, 2006

In geologic terms, a sinkhole is a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by ground water. The sinkhole forms when there is a collapse into subterranean voids by dissolution of limestone or dolostone. Given that the bulk of Florida's peninsula is made up of carbonate rock – which is limestone and dolostone – it is no surprise that Florida leads the nation in not only the occurrence of sinkholes, but the claims and litigation that flow from the resulting damages.

Sinkholes are also not just an issue for property insurers. A sinkhole event can impact contractors, sureties, and design professionals who may each be targeted as PTPs – potential third parties – that should share the damages. This shift in focus may be all the more likely in cases where insurance coverage is not definite.

As with most things, the key is to be proactive, understand the issues, and get the right forensic consultants on the ground (or around the hole) right away. Whether an insurance carrier, owner, developer, general contractor, surety, or other interested party, you need to immediately engage professionals on the ground to evaluate and fix the problem - while evaluating the process of fixing the blame. The ground problem requires quick and careful attention and loads of experience with, and attention to, forensics.

For an insurance company, addressing a sinkhole claim requires the collaboration of a number of professionals, including the internal claims team, geological and/or other technical consultants, and outside counsel.

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- Benjamin Franklin



While many believe that the number of sinkhole events has increased dramatically in recent years, many geologists pinpoint the large growth of Florida's population as the primary reason. Florida is set to become (some say already has become) the third most populous state, and similar to the phenomenon of "it rained because I washed my car," with more people around, there are more eyes to notice when a sinkhole forms, even if the rate of occurrence is the same as it has been through all of Florida's history (perhaps this is why Ponce de León's fountain of youth could not be located).

Regardless of the rate of occurrence, there is no question that the number of sinkhole claims has increased. The Florida Legislature has tweaked the law a number of times as it tries to strike a balance between discouraging bad claims and encouraging good insurance practices. One positive is that the revisions to the statute have tightened up the terminology to match the scientific, geological reality of what a sinkhole is and when it occurs. This solved a problem that Florida courts faced when there was damage that resulted from slight movement over time as opposed to a contemporaneous sinking of the soil that is a hallmark of a sinkhole. That said, there is still a significant amount of debate on what events and what damage are covered by the statutory definition of a sinkhole. This is why it is critically important for technical consulting early on in order to understand the exact nature of the beast.

Recent efforts to clarify the law have also spawned some uncertainty. Fights abound for what counts as "structural damage." Courts struggle to understand and explain exactly what structural damage means – is it narrow or broad and does it mean damage that is structural or damage to a structure? In fact, courts recently have overruled their own precedent on what the term means, which is only leading to more doubt for anyone trying to assign risk and value to a certain claim.

Those involved with sinkhole claims also may know anecdotally what a recent study by the State of Florida confirmed: bad-faith claims are disproportionately likely to occur with respect to sinkhole insurers. This is due in part to the short fuse for adjusting a sinkhole claim. As is the case with other types of insurance claims, the insurer has 60 days to pay the claim once all policy provisions have been fulfilled. Arguably, the time for addressing a claim should be expanded for sinkholes because of the complexity, but this has not yet been addressed by the Legislature. For this reason, there is a premium on mobilizing efforts of the entire team quickly when a claim comes in the door.

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