

Declaratory Judgment – Foundation Collapse

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Ashley A. Noel

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Ashley A. Noel obtained judgment as a matter of law on behalf of an insurer in a declaratory judgment action on the ground that the suit limitation in the applicable policy barred the insured's claim.

The insured sought coverage under his homeowners policy for the alleged "collapse" of his foundation due to the oxidation and expansion of the mineral pyrrhotite within the concrete used to form the foundation. The policy at issue required the insured to commence any action seeking coverage under the policy within eighteen months after a loss. The insured contended that the insurer's failure to issue a coverage decision regarding his claim excused his compliance with the suit limitation provision pursuant to the principles of waiver and estoppel. Attorney Noel successfully argued that principles of waiver and estoppel did not excuse the insured's failure to comply with the suit limitation provision because there was no evidence that the insurer made any representations to the insured that the claim would be covered, or that the insured relied on the lack of a coverage determination in refraining from filing suit.

The insured also contended that the suit limitation provision was inapplicable to claims involving progressive property damage because his loss was not yet complete when the suit limitation provision expired. The Court agreed with Attorney Noel that the out-of-state precedent relied on by the insured was distinguishable based on differences in policy language, and found that the date on which the insured file his claim with his insurer represented the last possible date on which his loss occurred. The Court therefore held that the insured's failure to file suit within eighteen months of the date on which he filed his claim barred any claims against his insurer.