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Seattle Court Denies \$13 Million "Collapse" Claim

By Ronald J. Clark

Judge finds insured's "substantial structural impairment" back-dating theory is scientifically unsound

Lake Chelan Homeowners Ass'n v. Northern Ins. Co. of N.Y., et al., No. 07-2-28610-1 SEA (King County Super. Court)

Bullivant attorneys Ron Clark and Jason Skuda recently won a significant summary judgment victory for Northern Insurance Company of New York (a Zurich company) in a case before Seattle Judge Steven Gonzales. The judge rejected an insured condominium association's claim for \$13 million in "collapse" investigation and remediation coverage submitted in 2006 under Northern policies effective from 1999 to 2002. The policies provided limited "collapse" coverage based on "hidden decay" commencing during a policy period.

The association claimed that hidden decay caused by defective workmanship performed between the late 1970s and early 1990s caused various areas of 20 insured buildings to be in states of substantial structural impairment ("SSI"). The association alleged these areas constituted covered "collapse" (an undefined term) and that its experts could back date the commencement of most areas of SSI to Northern's coverage period or earlier coverage afforded by a co-defendant insurer.

In motions filed on behalf of Northern and a co-defendant insurer, defendants challenged the scientific validity of the association's "collapse" back-dating theory and methodology under the *Frye* test. The association's experts claimed a simple, untested back-dating formula could place the first occurrence of SSI to points in time at least four years before observation. Northern's motion included arguments that this formula ignored critical variables influencing the development of rot and that the formula was not accepted within the relevant scientific community. Northern further challenged the formula based on its extremely subjective inputs and the relative inexperience of the personnel making the SSI determinations.

Judge Gonzales granted Northern's motion, denying all coverage claimed by the association. The judge held the association's theory was defective to the point that "it is not possible to say on a more probable than not basis, even in the light most favorable to [the association], that collapse happened during coverage from a specific policy as opposed to at some other time." Last week, Judge Gonzales further rejected the association's motion for reconsideration.