

## New Jersey Appellate Division Holds “Subsidence Exclusion” Precluded Coverage For A Partial Building Collapse Resulting From Soil Subsidence.



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In Essex Insurance Company v. New Jersey Pan-African Chamber of Commerce, the New Jersey Appellate Division held that a “Subsidence Exclusion” applied to a claim arising from the partial collapse of a building that resulted from soil subsidence precluded coverage. In Essex, Scottsdale Insurance Company (“Scottsdale”) insured a pile driving contractor that was retained to perform timber and sheet metal pile work at a construction site. During construction, after Scottsdale’s insured had driven timber and sheet pile at the construction site, the building at the adjoining property partially collapsed, injuring a worker. As a result of the injury to the worker and partial collapse, underlying lawsuits were filed.

The Subsidence Exclusion in the Scottsdale policy precluded coverage for “‘bodily injury’ or ‘property damage’ caused by, resulting from, attributable or contributed to, or aggravated by the subsidence of land as a result of landslide, mudflow, earth sinking or shifting, resulting from operations of the named insured or any subcontractor of the named insured.” The Appellate Division held that the Subsidence Exclusion was clear and unambiguous and the underlying lawsuits fell within the “clear import and intent” of the exclusion because the underlying complaints allege that “pile-driving activity caused vibrations which in turn caused the soil beneath the . . . building’s foundations to ‘erode and subside down into the excavation’; and caused ‘erosion to the surrounding land.’” The Appellate Division noted that the trial court held that the Subsidence Exclusion did not apply because “[r]easonable minds can disagree as to whether vibrations mean earth shifting or sinking,” and stated that the trial court’s statement was incomplete because the underlying complaints “did not merely allege vibrating sand or soil beneath the . . . building’s foundation caused the collapse [but rather] allege the vibrations generated by construction activity caused the sand or soil to ‘erode and subside down into the excavation.’” The Appellate Division held that “[t]he earth’s erosion and subsiding down into the excavation constituted earth ‘sinking or shifting’ and thus fell within the policy’s exclusion.”

If you would like more information on this decision or on the “Subsidence Exclusion”, please contact either Vincent E. Reilly, Esq. or Michael S. Chuvén, Esq.

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