

New Jersey Court Holds Failure to Report Claim Letter Timely Barred Coverage for Related Suit Filed in Subsequent Policy Period

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The Superior Court of New Jersey, Appellate Division, has affirmed summary judgment for an insurer, holding that the failure of a home inspection company to provide timely notice to its insurer of a claim letter barred coverage for a subsequent related lawsuit filed in the following policy period. *Alpine Home Inspections, LLC v. Underwriters at Lloyd's London*, 2008 WL 4963518 (N.J. Super. Ct. App. Div. Oct. 21, 2008). In so holding, the court rejected the home inspection company's argument that the plaintiff's later assertion of increased damages constituted a new "claim" for which notice was timely.

The home inspection company failed to detect the presence of termites during a home inspection. The homeowner's attorney informed the home inspection company by letter of a preliminary damage estimate of \$3,300 on June 5, 2005, during an August 1, 2004, to August 1, 2005, policy period. Because the amount of the claim was less than its liability policy deductible, the home inspection company did not report the letter to the insurer during the policy period. The homeowner filed suit on November 11, 2005, during a second claims-made policy period running from August 1, 2005, to August 2, 2006. The home inspection company informed the insurer of the lawsuit on November 22, 2005. In March 2006, the homeowner asserted increased damages based on a reduction in value of the home, which resulted in a transfer to another court to avoid a jurisdictional limitation on damages.

The home inspection company argued that it was entitled to coverage for the lawsuit under the policy in effect at the time that the lawsuit was filed because it reported the suit to its insurer during that policy period and because the assertion of increased damages constituted a new claim that was timely reported. The court rejected these arguments, holding that the claim was first made during the first policy period (at the time of the June 5, 2005, claim letter) and that "a claim for increased damages [is not] a new claim that arose within the second policy period; it is simply a claim for enhanced damages for the same claim for which [the home inspection company] received notification during the first policy period."

The home inspection company also argued that it had continuous coverage from August 1, 2004, to August 1, 2006, and that notice at any point during that time was effective. The court rejected this argument, concluding

that "[s]uch an analysis flies in the face of a claims made policy."