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## Forfeiture's 'Relation-back' No Benefit to Insurance Co. (NY Law Journal)

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## Excerpt From The Decision

"Here, the government did not win final judgment of forfeiture until long after the loss by fire of the property in which plaintiff clearly had an insurable interest. By the time that judgment was entered, the right of plaintiff to assert a claim under her insurance policy had become fixed."

Judge Roger J. Miner



# Forfeiture's 'Relation-Back' No Benefit to Insurance Co.

BY DEBORAH PINES

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AN INSURER can not escape paying fire insurance proceeds to a homeowner by claiming that, under federal drug forfeiture laws, the owner's insurable interest in the property divested retroactively upon the commission of drug crimes on the premises, a federal appeals panel has ruled.

Ruling on an issue of first impression, the U.S. Court of Appeals for the Second Circuit declared, in *Counihan v. Allstate Insurance Company*, 93-7873, the so-called "relation-back" provision of the forfeiture statute was "not enacted to shield insurance carriers from their contractual obligations." Instead, the provision was "designed to provide a significant weapon in the government's arsenal for the war on narcotics," Second Circuit Judge Roger J. Miner wrote for the court.

The relation-back provision of 21 USC §881 holds that "all right, title, and interest in property . . . shall vest in the United States upon commission of the act giving rise to forfeiture under this section."

Judge Miner's ruling, filed Thursday, upset a 1993 ruling by Eastern District Judge Leonard Wexler that Allstate Insurance Company need not pay on a \$98,000 fire insurance policy to a Hamptons homeowner, Josephine A. Counihan. (NYLJ, Aug. 11, 1993). Judge Wexler had found Ms. Counihan's insurable

Continued on page 3, column 4

## Forfeiture Ruling

Continued from page 1, column 5

interest in the Noyac, N.Y. ranch-style home ended in 1988 when her son was arrested there for selling cocaine to an undercover police agent. The government subsequently won forfeiture rulings entitling it to the home.

Judge Miner's opinion was joined in by a visiting judge, Jane A. Restani, of the U.S. Court of International Trade. Judge J. Daniel Mahoney concurred separately.

Ms. Counihan, who lives in Southampton, acquired a one-half interest in the home in question at 890 Noyac Road overlooking Peconic Bay in 1982. Later she purchased the relevant \$98,000 landlord's fire insurance policy with Allstate.

## Drug Arrest in 1988

While Ms. Counihan had several tenants between 1982 and 1990, her son was living there on July 22, 1988 when he was arrested for selling drugs and a search warrant revealed drugs, drug paraphernalia and cash on the premises. After his conviction, the government won a July 2, 1990 judgment of forfeiture entitling it to the Noyac property. That forfeiture judgment, however, was overturned in 1991 and before a new forfeiture judgment was entered in 1992, the home was destroyed by fire on Nov. 1, 1990.

Judge Wexler found that absent the relation-back provisions, Ms. Counihan would be entitled to recover on