October 1, 2014

RE: Claim number:

Loss location:

Policy number:

Date of loss:

Dear Insured:

The purpose of this letter is to advise you that MPIUA’s investigation has been completed and to further advise you that after an evaluation of the information gathered during the investigation in relation to the applicable provisions of your policy, MPIUA must respectfully decline to honor your claim. In support of MPIUA’s above stated denial of coverage, please be aware of the following.

During our inspection of the rear wall of the stone foundation at the captioned location on \_\_\_\_\_\_\_\_, we found that the wall appeared to be leaning in toward the basement area, and that there was water on the floor of the basement. There was a temporary support in place. The inspection of the exterior of the rear wall of the foundation showed cracking and movement of the foundation wall.

It is our opinion that the movement and the cracking of the stone foundation wall at the rear of the dwelling is due to wear, deterioration, in conjunction with earth movement and hydrostatic pressure on the exterior of the wall.

A review of the HO-3 (10/00) policy form that provides coverage for your property has determined that normal wear, deterioration, earth movement and water pressure to a foundation are not covered under the provisions of the policy.

We would refer you to page 7 of 22, section E. Additional Coverages, Paragraph 8, entitled collapse, from which we quote in part.

“**8. Collapse**

1. With respect to this Additional Coverage:
2. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
3. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.
4. A part of a building that is standing is not considered to be in a state of collapse even if it is separated from another part of the building.
5. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
6. We insure for direct physical loss to covered property involving collapse of a building if the collapse is caused by one or more of the following:
7. Perils Insured Against in Coverage C – Personal Property. These perils apply to covered buildings and personal property for loss insured by this Additional Coverage;
8. Decay that is hidden from view, unless the presence of such decay is known to you prior to collapse;
9. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to you prior to collapse;
10. Weight of contents, equipment, animals or people;
11. Weight of rain which collects on a roof; or
12. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.
13. Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under **b.(2)** through **(6)** above, unless the loss is a direct loss of the collapse of a building or any part of a building.
14. This coverage does not increase the limit of liability that applies to the damaged covered property.”

We would further refer you to page 8 of 22 of the HO-3 policy form entitled SECTION 1 – PERILS INSURED AGAINST, from which we also quote in part:

“**Coverage A – Dwelling and Coverage B – Other Structures**

**1.** We insure against risk of direct physical loss to property described in Coverages **A** and **B**.

We do not insure, however, for loss:

1. Excluded under Section I – Exclusions;
2. Involving collapse, except as provided in **E.8.** Collapse under Section I – Property Coverages; or
3. Caused by:
   1. Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
      1. Fence, pavement, patio or swimming pool;
      2. Footing, foundation, bulkhead, wall or any other structure or device that supports all or part of a building or other structure;
      3. Retaining wall or bulkhead that does not support all or part of a building or other structure; or
      4. Pier, dock or wharf;

1. Any of the following:
   1. Wear and tear, marring, deterioration;
   2. Inherent vice, latent defect, mechanical breakdown;
   3. Smog, rust or other corrosion, mold, wet or dry rot;

**(f)** Settling, shrinking, bulging or expansion, including resultant cracking, of bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;”

We would also refer you to page 11 of 22 of the HO-3 policy form entitled Section 1-Exclusions, from which we quote in part:

“**SECTION 1 – EXCLUSIONS**

* + - 1. We do not insure for loss cause directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.
         1. **Earth Movement**

Earth Movement means:

**a.** Earthquake, including land shock waves or tremors before, during or after a volcanic eruption;

1. Landslide, mudslide or mudflow;
2. Subsidence or sinkhole; or
3. Any other earth movement including earth sinking, rising or shifting;

caused by or resulting from human or animal forces or any act of nature unless direct loss by fire or explosion ensues, and then we will only pay for the ensuing loss.

* + - * 1. **Water Damage**

Water damage means:

**a.** Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;

1. Water or water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or
2. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

caused by or resulting from human or animal forces or any act of nature.

**B.** We do not insure for loss to property described in Coverages **A** and **B** caused by any of the following. However, any ensuing loss to property described in Coverages **A** and **B** not precluded by any other provision in this policy is covered.

**3**. Faulty, inadequate or defective:

**a.** Planning, zoning, development, surveying, siting;

**b.** Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

1. Materials used in repair, construction, renovation or remodeling; or
2. Maintenance;

of part or all of any property whether on or off the ‘residence premises’.”

We regret, therefore, that we cannot be of service to you relative to this matter.

Please also be further advised that the applicable policy and statutory provisions state that no suit or action can be brought against this insurer for the recovery of any claim by virtue of this policy unless the policy provisions have been complied with and the action is started within two (2) years after your date of loss (see policy provision “suits against us” and M. G. L. c. 175 sec. 99 sec. Twelfth).

MPIUA continues to maintain its full reservation of rights regarding any rights, privileges and/or defenses available to it by law and the contract of insurance.

This correspondence or any other action that is taken by MPIUA through its employees, agents and/or designees is not and should not be considered as a waiver of those rights, privileges and/or defenses.

Sincerely,

## Claims Adjuster