



Case Alert

State Supreme Court Cases Highlight Importance of Wording in Earth Movement Exclusions

In *Erie Insurance Property and Casualty Company v. Chaber*,¹ the West Virginia Supreme Court recently held that an insurance policy’s earth movement exclusion was unambiguous and applied to both manmade and natural earth movement. The Court also found that a narrow “ensuing loss” exception to the exclusion that provided coverage for glass breakage resulting from earth movement could not be extended to cover the entire loss.

The Erie Insurance Property and Casualty Company (Erie) insured five commercial buildings owned by Dmitri and Mary Chaber. One of the properties was damaged by a landslide, and the Chabers filed a claim with Erie. Erie asserted that the loss was excluded from coverage because the policy excluded coverage for losses caused by earth movement, which was defined to include earthquakes, landslides, subsidence of manmade mines, and earth sinking (aside from sinkhole collapse), rising or shifting. The exclusion stated that it applied “regardless of whether any of the above . . . is caused by an act of nature or is otherwise caused,” and also contained an anti-concurrent causation clause. However, there was an exception for glass breakage caused by earth movement.

After their claim was denied, the Chabers filed suit against Erie and sought, among other things, a declaratory judgment that coverage existed for the loss. Erie’s expert opined that the landslide was caused by seasonal climate change. The Chabers’ expert opined that the landslide was caused by improper excavation and was actually a rockfall as opposed to a landslide. The trial court granted summary judgment to the Chabers, finding that the loss was caused in part by a manmade rockfall and that the policy did not unambiguously exclude loss caused by manmade rockfall. The court further found that the glass breakage exception to the exclusion was ambiguous and that the ensuing loss should be covered in its entirety.

The Supreme Court of West Virginia reversed, finding that the policy language was unambiguous because of the specific language stating that the earth movement exclusion applied regardless of whether it was “caused by an act of nature or is otherwise caused.” In its decision, the Supreme Court noted it was unable to find any other jurisdictions where a court had concluded that such language was ambiguous. The Supreme Court further found that the glass breakage exception was unambiguous, and that coverage applied only to glass breakage resulting from earth movement and not to the entire loss.

¹ *Erie Ins. Prop. and Cas. Co. v. Chaber*, No. 16-0490, 2017 WL 2415333 (W.Va. June 1, 2017).

Small changes in the earth movement exclusion can lead to very different results, as demonstrated by the Florida Supreme Court’s decision in *Fayad v. Clarendon Nat’l Ins. Co.*² The Fayads’ home was damaged by earth movement that resulted from manmade blasting that occurred nearby. Their insurer, Clarendon, denied coverage based on the policy’s earth movement exclusion, which defined earth movement as “earthquake...landslide, mine subsidence, mudflow, earth sinking, rising, or shifting; unless direct loss by: (1) fire; or (2) explosion...ensues and then we will pay only for the ensuing loss.” During litigation, the trial court granted summary judgment to Clarendon.

The Florida Supreme Court reversed, finding that, in the absence of express language excluding earth movement “regardless of its cause,” the policy only excluded earth movement resulting from natural events. The court found that this interpretation was supported by case law from other jurisdictions, by the dictionary definition of “earth movement,” and by the fact that all of the enumerated earth movement events were events that occurred naturally.

These two cases illustrate the importance of reading exclusionary clauses carefully. The exclusions may contain anti-concurrent causation language or other language that defeats coverage entirely as in the policy at issue in *Chaber*. Furthermore, small changes in the policy’s wording can significantly broaden or narrow coverage; for example, adding the “regardless of its cause” language to the earth movement exclusion eliminated coverage for manmade earth movement. This type of broad exclusionary language could potentially leave the insured vulnerable to significant uninsured losses, such as loss resulting from blasting at construction sites.

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² 899 So.2d 1082 (Fla. 2005).