

Supreme Court of Appeals of West Virginia Upholds Earth Movement Exclusion



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Tuesday, June 6, 2017

The ***Supreme Court of Appeals of West Virginia (“WVSCA”)*** recently held that the circuit court erred when it deemed the earth movement exclusion in Erie’s policy ambiguous. The WVSCA then reversed the circuit court and remanded the case with instructions to enter declaratory judgment in Erie’s favor.

In ***Erie Ins. Prop. and Cas. Co. v. Chaber***, No. 16-0490 (W.Va. June 1, 2017), the underlying property damage claim arose after the insureds’ commercial property was damaged by a landslide that sent soil and rock down a hill and into the insureds’ building. Following an investigation, Erie denied the claim in reliance upon the policy’s earth movement exclusion, which excludes coverage for all earth movement regardless of the cause. The insureds argued that Erie’s exclusion was ambiguous in reliance upon the WVSCA’s holding in *Murray v. State Farm Fire & Casualty Co.*, 203 W.Va. 477, 509 S.E.2d 1 (1998). The WVSCA quickly noted, however, that the earth movement exclusion examined in the *Murray* case was markedly different from Erie’s earth movement exclusion, which was a 2013 ISO form “apparently designed to minimize confusion regarding the scope of coverage and the nature of earth movement exclusionary language.” *Chaber* at. p. 9. The Court agreed that “[a] provision in an insurance policy excluding a loss regardless of whether such loss is

'caused by an act of nature or is otherwise caused' is not ambiguous and excludes coverage for the loss whether it is caused by a man-made or naturally-occurring event." *Chaber* at p. 12.

In finding that the earth movement exclusion at issue was clear and unambiguous, the WVSCA also quickly dispensed with the insureds' arguments regarding efficient proximate cause, anti-concurrent causation, reasonable expectations, and ensuing loss. *Chaber* at p. 12. First, the property damage caused by earth movement, whether resulting from natural or man-made events, is excluded so there is no need to analyze the efficient or concurrent causes of the loss. Second, there is no reasonable expectation of coverage where there is no ambiguity in the policy because "the reasonable expectations doctrine is not a mandate for courts to rewrite insurance policies and reallocate their assignment of risks between insurer and insured." *Chaber* at p. 15 (internal citation omitted). Finally, the WVSCA found the circuit court's reliance upon the ensuing or resulting loss provision in an effort to revive coverage for the entire loss (and not just glass breakage) to be "unjustifiable." *Chaber* at p. 16.

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