

FEDERAL COURT

Sandman v. Mountain West Farm Bureau Mutual Ins., 29 MFR 203, 1/4/2002

INSURANCE: Coverage of house relocation due to shifting ground excluded as "earth movement"... no coverage under repair, debris removal, mitigation, collapse provisions... punctuation subordinate to text... Molloy.

Robert & Paula Sandman bought a house in Columbia Falls along the Whitefish River in 1991. In 1996 the ground under and around the house became unstable and shifted, allowing the floor, foundation, ceiling, and walls to shift. Intermittent earth movement created risk of fire, gas explosion, and glass breakage.

Sandmans took steps to prevent further damage but in 1997 the ground again shifted. They tried to stabilize with beams and jacks, which collapsed, causing further damage. They and neighbors sought advice from NTL Engineering, and following its recommendations, moved the house to a different location on their property at a cost of \$190,000+. They sought reimbursement from Mountain West, which denied coverage based on the "earth movement" exclusion:

Earth Movement. Meaning any loss caused by, resulting from, contributed to or aggravated by earthquake; landslide; mudflow; earth sinking, rising or shifting; volcanic eruption meaning the eruption, explosion or effusion of a volcano; unless direct loss by: fire, explosion other than the explosion of a volcano; or breakage of glass or safety glazing material. ensues and then we will pay only for the ensuing loss.

Sandmans sued Mountain West seeking coverage. Sandmans argue that the house was damaged by a "loss of land stability" rather than earth movement. However, policy terms of earth movement, earthquakes, landslides, mudflows, and earth sinking, rising or shifting and their common meanings are nearly identical to terms used to characterize the events on Sandmans' property. Their own affidavit and geotechnical report refer to earth movement, destabilizing pressure in the slope, and landsliding as the causes of harm to their home. The type of earth movement taking place at their residence is specifically and unambiguously excluded from coverage.

Sandmans argue alternatively that their losses consisted of earth movement and thus should be treated differently than a loss caused by earth movement. However, a loss consisting of earth movement is a loss caused by movement of the earth. If a fire had occurred, it is unlikely that Sandmans would support any contention that the losses were not covered because they were harms consisting of fire and not harms caused by fire.

Sandmans argue that their losses fall under exceptions to the earth movement exclusion. They contend that the period between "material" and "ensues" creates an inherent ambiguity. However, Clinton (Mont. 1951), held that: Punctuation is no part of the English language. It is always subordinate to the text."

The effect of these exceptions is that Mountain West will cover actual losses ensuing from a fire, explosion, or glass breakage caused by earth movement. Such losses must be the direct result of a fire, explosion, or broken glass and not be caused solely by the shifting ground. While there may have been broken glass and glazing, these losses were apparently due to earth movement and were not themselves the cause of a separate loss to Sandmans.

Sandmans also contend that they had a duty to prevent losses from fire, explosion, glass breakage, or theft due to earth movement pursuant to the "Your Duty after Loss" condition. However, because damages due to earth movement are expressly excluded, a covered loss did not occur and this provision has not been triggered.

Sandmans argue that they are entitled to compensation under the debris removal provision because their entire house was debris. However, this provision only applies to covered perils, the policy does not cover earth movement, and earth movement caused their losses. The repairs provision is likewise inapplicable.

Sandmans contend that their losses should be covered by the "collapse" provision. There are no Montana cases interpreting "collapse." Some courts have held that similar policies provided coverage when the collapse was a material impairment of the building's basic structure or integrity. Others have given it a more traditional interpretation as "an unambiguous term which denotes a falling in, loss of shape, or reduction to flattened form or rubble." 71 ALR3d 1072.

Even if Sandmans' losses were due to a collapse, Mountain West is not required to cover damage unless the collapse was "caused only by ... use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation," while it is clear that earth movement played a role in destruction of Sandmans' property.

Notwithstanding the ambiguous nature of "collapse," an expectation that Sandmans' loss is covered as a collapse is not objectively reasonable in light of the general denial of coverage for losses caused by earth movement. Partial summary judgment for Mountain West.

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