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Supreme Judicial Court of Maine Addresses Earth Movement Exclusion

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In *Bibeau v. Concord Gen. Mut. Ins. Co*., 2021 WL 243867, 2021 ME 4, the Supreme Judicial Court of Maine addressed an earth movement exclusion contained in a residential homeowners policy. In 2017, the insured submitted a claim to Concord for damage to the insured's home which included foundation cracks and settlement resulting in interior damage to the home. The insured contended that the damage was the result of a 2006 water line leak. Concord denied the claim based on the Earth Movement exclusion contained in it's policy which precluded coverage for losses caused by earthquakes, landslides, mudslides, mudflow, subsidence, sinkholes or "[a]ny other earth movement including earth sinking, rising or shifting; caused by or resulting from human or animal forces or any act of nature".

The insured filed suit asserting a breach of the policy and unfair claims settlement practices. According to the insured's expert, the damage was caused by a 2006 water line leak -- which in turn caused the foundation to settle. Concord's expert, however, concluded that the settling was caused by the house being built on "unprepared or uncontrolled fill" which allowed the house to settle at different rates. Despite the disagreement regarding the cause of the settling, the parties ultimately agreed that the damage was the result of earth moving under the house's foundation. Concord moved for summary judgment and the trial court entered summary judgment for Concord, reasoning that because there was no genuine dispute that the losses were caused by "subsurface soils being undermined and earth movement," the Earth Movement exclusion precluded coverage. The trial court further concluded that the disagreement over the cause of the settlement was not material because regardless of the cause of the earth movement, the losses were clearly excluded by the policy's Earth Movement exclusion.

On appeal, the insured argued that the trial court erred in concluding that the Earth Movement exclusion was not ambiguous. Rather, the insured contended that the Earth Movement exclusion was susceptible to multiple reasonable interpretations because similar exclusions have been limited to losses stemming from natural disasters and not to losses stemming from leaking pipes. The insured contended that if Concord wanted to exclude the types of loss at issue, the policy should have specifically included the accidental discharge from a water pipe in its list of what constituted earth movement.

In concluding that the Earth Movement exclusion was not ambiguous, the Court contrasted the language of the exclusion at issue to different exclusionary language addressed in other cases where the reach of the exclusion was limited to natural causes. Distinguishing the Concord Policy language from the language at issue in the comparison cases, the Court held that Concord's Earth Movement exclusion was not reasonably susceptible to multiple different interpretations. Rather, because the exclusion applied to any "earth movement including earth sinking, rising or shifting; caused by or resulting from human or animal forces or any act of nature", the exclusion clearly applied to any earth movement, not just natural disasters.

The court further rejected the insured's argument that the policy was ambiguous because the language was "complicated and confusing" and "cannot be understood by an average person". In rejecting this argument, the court stated: "Although these provisions are found in different sections of the policy and require some careful reading and analysis, they proceed logically from one section to another and contain language that is not reasonably susceptible to different interpretations."

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