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Mississippi Supreme Court Addresses Earth Movement Exclusion

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Recently, the Mississippi Supreme Court held that structural damages to the foundation of an insured's home came within the earth movement exclusion in a homeowner's policy, notwithstanding a provision in the policy which provided coverage for water damage resulting "from accidental discharge or overflow of water ... from within ... [p]lumbing, heating, air condition or household appliance."

In *Mississippi Farm Bureau Cas. Ins. Co. v. Smith*, 264 So. 3d 737 (Miss. 2019), the appellee, Smith, filed a lawsuit against her homeowner's insurance company, Mississippi Farm Bureau Casualty Insurance Company ("Farm Bureau") for its refusal to pay for repairs to the foundation of Smith's home. Smith alleged that the refusal to pay for repairs amounted to breach of contract and asserted claims for bad faith and tortious breach of contract. In response, Farm Bureau filed a motion for summary judgment on the basis of the policy's earth-movement exclusion, which provided that Farm Bureau "did not insure for loss caused directly or indirectly by...Earth Movement...[which] means...[a]ny other earth movement including earth sinking, rising or shifting... caused by or resulting from human or animal forces." Smith filed a cross-motion for partial summary judgment on the basis that the earth-movement exclusion did not preclude coverage because her insurance policy also contained a clause expressly covering water damage.

The issue before the Supreme Court was whether the earth-movement exclusion precluded coverage for the damage to Smith's foundation. In the trial court, Smith's expert witness opined that there were some foundational problems that could be caused from either faulty design in the foundation, poor compaction on the fill dirt when the house was first built, or a busted water line resulting in wet soil. With respect to water damage, the expert opined that a burst water line could cause foundation problems by causing the earth beneath the home to lose its compaction and settle away, causing a weak spot in the foundation. However, the expert opined that even if a water leak did exist, any foundation problem at the home would have resulted from earth movement.

The court held that the water-damage coverage clause did not supplant the earth-movement exclusion, finding that Smith had not submitted any admissible evidence that her foundation problems were caused by water damage. The Court noted that although Smith described various plumbing leaks in and around her home in written discovery, she failed to offer proof that these leaks had caused or contributed to her foundation problems. To the contrary, the court found that the proof submitted by Smith demonstrated the opposite, that her foundation was damaged by the earth movement. The Court further noted that while Smith's expert initially opined that Smith's foundation problems could have been caused by "water damage," the expert opined that even if a leaking pipe had caused the foundation to shift, the ultimate contributing factor in either scenario was earth movement. The Court found it important that the exclusion at issue stated that it applied to earth movement "regardless of any other cause or event contributing concurrently or in any sequence to the loss," and held the language in the policy was unambiguous. The Court held that since it was undisputed that earth movement caused Smith's property damage, Farm Bureau was entitled to summary judgment as a matter of law on the basis of the earth movement exclusion.