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Nevada Supreme Court Finds An Earth Movement Exclusion Ambiguous

By Andrew B. Downs

The Nevada Supreme Court recently held that a property insurance policy's earth movement exclusion was ambiguous because, unlike some other earth movement exclusions, it did not state clearly whether it applied to both natural and man-made earth movement.

Powell v. Liberty Mut. Fire Ins. Co. 127 Nev. Adv. Op. 14 (May 5, 2011), arose out of a claim under a homeowners policy. A water pipe in Ms. Powell's home exploded, flooding the sub-basement of the home. Afterwards, the home suffered a shift in the foundation and extensive cracking and separation in the wall and ceiling. The trial court granted Liberty's motion for summary judgment, finding the earth movement exclusion controlling.

The Liberty earth movement exclusion provided there was no coverage for "Earth movement, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide, mine subsidence; mudflow; earth sinking, rising or shifting." The Nevada Supreme Court held that exclusion was ambiguous because it did not make clear whether it applied to both natural and man-made earth movement and because it did not state what was excluded earth movement when there was not a widespread calamitous event.

In reaching this conclusion, the Nevada Supreme Court distinguished other forms of earth movement exclusions that specified their application to both natural and unnatural causes, as well those which used "includes but is not limited to" language before a listing of examples of excluded earth movement. The court noted that the policy it was considering simply stated "including" before the examples, rather than the "including but not limited to" used in other policies. The court did note in dicta that the anti-concurrent causation language in the policy was enforceable, but found it inapplicable due to the ambiguity of the earth movement exclusion.

This decision does not render unenforceable all earth movement exclusions in Nevada. Many exclusions in common use, including the exclusion in the ISO CP 10 30 (06 07) form, and the exclusion in the HO3 policy form, contain materially different language that addresses the ambiguities perceived by the Nevada Supreme Court.

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