

Addressing Matter Of First Impression, Montana Supreme Court Rules That Earth Movement Exclusion In Liability Policy Bars Coverage For Construction Defect Claims (Insurance Law Alert)

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The Supreme Court of Montana ruled that a trial court erred in deeming an earth movement exclusion ambiguous as to property damage claims arising out of negligent construction. *Loendorf v. Employers Mutual Cas. Co.*, 2022 WL 2816311 (Mont. July 19, 2022).

After discovering foundation cracks and structural damage in their homes, homeowners sued the builder, alleging negligent construction. The complaint alleged that the damage resulted from the faulty construction of foundation systems and the settling of soil near and beneath the homes. Employers, the builder's liability insurer, defended under a reservation of rights. While the litigation was pending, the homeowners filed a declaratory judgment action seeking a ruling that Employers was obligated to indemnify the underlying claims.

A trial court ruled in the homeowners' favor, ruling that an earth movement exclusion, which applied to damage "arising out of, caused by, resulting from, contributed to, aggravated by, or related to . . . settling . . . or any other movement of land, earth or mud," did not apply. The trial court reasoned that the exclusion applied only where earth movement is the result of "settling of the earth rather than earth movement as a result of the insured's actions" and that the exclusion was limited to "long-term earth movement that spanned years."

Addressing this matter of first impression under Montana law, the Supreme Court of Montana reversed, ruling that the unambiguous language of the exclusion encompassed claims of property damage caused by the insured's negligence and involving the movement of earth. The court stated:

Applying the Earth Movement Exclusion based on a perceived distinction between "natural" and "human-caused" earth movements is an erroneous framework that improperly injects further causation concepts into the Policy. While the Homeowners are correct that the Exclusion does not attempt to differentiate between natural and human-caused earth movement, that does not render it ambiguous, but rather encompassing, by design. The Exclusion broadly eliminates coverage for the insured's liability for damage that is related to any earth movements.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

