

SPECIAL REPORT

WAS IT A SINKHOLE, EARTH MOVEMENT OR SOIL EROSION – AND MORE IMPORTANTLY, IS THE DAMAGE COVERED UNDER COMMERCIAL OR PERSONAL INSURANCE POLICIES

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I have been following with interest the news reports pertaining to the condemnation of three homes and the forced evacuation of nineteen other families in Fraser, MI in late December 2016 as a result of a large “sinkhole” in the area of 15 Mile and Hayes.

As I followed these reports, I wondered whether or not these homeowners would be paid under their Homeowners insurance, which is designed to cover damage to a home.

The answer, unfortunately, is no.

First, let’s answer the question as to whether this event was a sinkhole, earth movement or soil erosion.

We normally think of sinkholes occurring primarily in Florida and this is accurate. In Florida, there are laws that actually require insurance companies to provide sinkhole insurance. Under the Florida law, sinkhole means “. . . a landform created by subsidence of soil, sediment or rock as underlying strata are dissolved by groundwater. A sinkhole may form by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved”.

Michigan has extensive sinkhole areas in Alpena and Presque Isle County, as well as in the Upper Peninsula and the counties of Kent, Iosco and Monroe.

What happened in Fraser was not technically a sinkhole. It also was not an earth movement, which is defined under most insurance policies to include earthquake, which is the shaking and trembling of the earth's crust.

This loss was, in fact, caused by soil erosion. A sewer line eleven feet in diameter in the area of these homes apparently was defective, allowing ground water to get into the sewer line, carrying soil out and eroding the soil under the sewer pipe. This was not the first event of this kind in this area. A prior event happened in 2004.

The question is whether or not the homeowners involved will be able to seek recovery under their Homeowners policies. We have examined the typical Homeowners insurance policy and these are the four pertinent exclusions that we found.

The first exclusion is the earth movement exclusion, meaning earthquake; erosion; or earth sinking, rising, or shifting unless there is first a fire or explosion.

The second exclusion is for underground water damage, meaning water below the surface of the ground, including water which exerts pressure on or flows, seeps or leaks through any part of a building unless a fire or explosion occurs.

The third exclusion is for settling, shrinkage, bulging or expansion, including resultant cracking of pavement, patios, foundations, walls, floors or ceilings.

Last, there is a collapse exclusion, which eliminates coverage for settling, cracking, shrinkage, bulging or expansion.

The bottom line for the homeowners in Fraser is that their Homeowners policy is very unlikely to provide coverage and our evaluation of the marketplace indicates that there are no endorsements for additional coverage that could have been purchased.

This is a case where the loss cannot be easily insured against and the only possible solution is due diligence in purchasing a home to be certain that there is no history of soil erosion events in the area.

We also looked at a similar situation that occurred recently at a large office building in Southfield. In this case, a large water pipe under the building suddenly collapsed, causing massive soil erosion and serious damage to walls, flooring and foundation. It is thought that this loss will approach \$5,000,000.

The commercial insurance policy has similar exclusions that we discussed under the Homeowners forms and those include an earth movement exclusion and a soil erosion exclusion. In addition, there is an exclusion that applies to commercial policies for water under the ground surface pressing on, or flowing or seeping through; foundations, floors or paved surfaces.

What saved the day for this particular loss was that the policy included flood coverage, a coverage that is not available for homeowners under the Homeowners form. Under the flood coverage form, loss specifically includes water under the ground surface pressing on; or flowing or seeping through;

- a) foundations, walls, floors, or paved surfaces;
- b) basements; or
- c) doors, windows or other openings.

Under the flood form, it further indicates that “flood includes water or other material that backs up or overflows from any sewer or septic tank or drain, regardless of the proximity of the backup to such conditions”.

The takeaway regarding the commercial form is that, wherever possible, the commercial Property insurance policy should include a flood endorsement.

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