



## The Voice

### And The Defense Wins

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Jackson, Tennessee attorneys and DRI members [Russell E. Reviere](#) and [Jonathan D. Stewart](#) of **Rainey, Kizer, Reviere & Bell, P.L.C.** recently defended an insurance coverage action in the United States District Court for the Eastern District of Tennessee successfully.

The insured submitted a claim to his insurance carrier, Trustgard Insurance Company, after he noticed that his residence was moving down the mountain on which it had been constructed. The insured, himself an engineer, acted as his own general contractor in constructing the residence. As part of that effort, he hired a geotechnical engineer to perform soil testing prior to site work. After a large rainfall event, the insured claimed that he was awakened in the night by a loud noise and discovered the following day that the front wall of the home had separated from the adjoining wall. He submitted his claim to his homeowner's insurance carrier, which quickly hired engineers to investigate the cause of the loss. The carrier ultimately denied coverage on the basis that the damage was caused by the excluded events of soil creep, landslide, and/or faulty construction.

After coverage was denied, the insured filed suit alleging breach of contract, violation of the bad faith statute, and violation of the Tennessee Consumer Protection Act. He asserted that coverage was afforded under the sinkhole coverage provision and collapse (additional coverage) provision of the policy. In order to come within the sinkhole coverage, the plaintiff was required to prove the existence of a sinkhole created by the action of water on limestone or similar rock formations. In order to come within the additional coverage for collapse, the plaintiff was required to prove that the collapse was caused by one of a list of events, which included hidden vermin damage. The plaintiff attempted to prove through expert testimony the existence of a "non-karst" sinkhole and/or that groundhog vermin created extensive burrowing networks that compromised the integrity of the structure's foundation.

Through expert testimony, the carrier was able to successfully persuade the jury that the damage was not caused by a sinkhole. Further, the jury found that groundhog vermin did not cause a collapse of the structure and found in favor of the carrier, affording no coverage to the insured. The jury returned a verdict in favor of the carrier, refusing to award more than \$600,000.00 in damages requested by the insured.

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