

BAD FAITH BLOG

# Cabin Crushed, Claim Properly Denied, No Montana Unfair Trade Practices Act Exposure

AUTHOR: SANDBERG PHOENIX

**Summary:** Parker's cabin was damaged when a boulder came down a hillside and crashed into it. The trial court found the earth movement exclusion applied, found there was no coverage, and denied Parker's Unfair Trade Practices Act (UTPA) claim. The Supreme Court of Montana affirmed.

*Parker v. Safeco Insurance Company of America*

The Supreme Court of Montana concluded that a boulder falling down a hillside constituted excluded earth movement. For that reason, there was no coverage. Because Safeco had hired an engineer to examine the incident twelve days after the rock fall, because that expert reconstructed the 440 foot path the boulder took falling down the hillside before crashing into Parker's cabin, and because Safeco gave that expert's report to the insured after receiving it, Safeco acted properly toward its insured. Contrary to Parker's claims, Safeco did not prejudice Parker in the way it handled the claim. Safeco's expert concluded the freeze-thaw process in the soil and water where the rock fall began had caused the rock to be dislodged before it fell.

Parker contended Safeco had engaged in unfair and deceptive practices in violation of the UTPA. The Montana Supreme Court disagreed because Safeco had "promptly investigated the claim and hired an engineer to examine the facts. Safeco provided Parker with all the information it had about the events as it became available." Because Safeco had informed Parker of its decision to deny the claim due to the earth movement exclusion and did not change its position regarding that exclusion, although the experts disagreed regarding the exact mechanism that caused the landslide/earth movement, there was earth movement which caused the damage to Parker's cabin, a factor determined very quickly by Safeco and a position it maintained throughout. Accordingly, the trial court had properly granted summary judgment to Safeco. The Montana Supreme Court's approach recognizing the fast and thorough investigation which was immediately shared with its insured as proper grounds for rejecting the UTPA claim is the type of reasonable approach other courts should follow.

By Anthony L. Martin

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