

## **SINKHOLE COLLAPSE AND BURDEN OF PROOF**

[Plaintiff] is not required to prove that sinkhole collapse caused damage to his residence. Rather, the defendant, Metropolitan Property and Casualty Insurance Company, is required to eliminate sinkhole collapse as a possible cause or contributing cause of any and all damage to the [Plaintiff's] residence. The Court finds and instructs you, as a matter of law, that if you find that Metropolitan Property and Casualty Insurance Company proved by the greater weight of the evidence that sinkhole collapse can be ruled out as a possible cause or contributing cause of all of the damage to the [Plaintiff's] property, then Metropolitan has met its burden and you must find in favor of the defendant. However, if you find that Metropolitan Property and Casualty Insurance Company has not proven that sinkhole collapse can be ruled out completely as a possible cause or contributing cause of some or all of the damage to the [Plaintiff's] property, then your verdict must be for the plaintiff. This is so even if you find that the defendant has proven that some of the damage to the plaintiff's property was caused by a condition excluded by the policy. Thus, in addition to proving that an exclusion within the insurance policy applies, the defendant also has the burden to prove that all of the damages are unrelated to sinkhole collapse or other covered peril.

Source: *Michigan Millers Mut. Ins. Corp. v. Benfield*, 140 F.3d 915; *Downs vs. U.S.*, 2007 U.S. Dist. LEXIS 19023 (S.D. Fla. 2007); *Hudson v. Prudential Prop. & Cas. Ins. Co.*, 450 So. 2d 565, 568 (Fla. 2d DCA 1984); *Warth v. State Farm Fire & Cas. Co.*, 695 So. 2d 906, 908 (Fla. 2d DCA 1997); *Paulucci v. Liberty Mut. Fire Ins. Co.*, 190 F. Supp. 2d 1312, 1318 (M.D. Fla. 2002); *Wallach v. Rosenberg*, 527 So. 2d 1386, 1389 (Fla. 3d DCA 1988); *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986); *B & S Assocs., Inc. v. Indem. Cas. & Prop., Ltd.*, 641 So. 2d 436, 437 (Fla. 4th DCA 1994).

### **ALL-RISK POLICY**

[Plaintiff] had an all-risk insurance policy with Metropolitan Property and Casualty Insurance Company. Pursuant to the terms of an all-risk policy, Metropolitan Property and Casualty Insurance Company must provide payment for all losses and damage unless the cause of the damages is specifically and expressly excluded. [Plaintiff's] insurance contract with Metropolitan specifically provides coverage for damage sustained to [Plaintiff's] home if sinkhole collapse was the cause or contributing cause of all or part of the damage.

Source: Florida Standard Jury Instruction MI 12.1(a); *Church of the Palmer Presbyterian, Inc. v. The Cincinnati Insurance Co.*, 404 F. Supp. 2d 1339 (M.D. Fla. 2005); *Hudson v. Prudential Property and Casualty Insurance Co.*, 450 So.2d 565 (Fla. 2d DCA 1988).