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What Protection Does the Sinkhole Statute Offer Your Clients?

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A sinkhole measuring 122 feet in depth recently forced Love Chapel Elementary School in Erwin, Tenn., to permanently close its doors. The Unicoi County Board of Education determined that the 60-year-old school was no longer safe after seismic testing showed that sinkhole activity was occurring across the school's property.¹ In May 2010, the eastbound lanes of Interstate 24 between Nashville and Chattanooga, were closed for several days after a sinkhole measuring 25 feet in depth suddenly appeared in the middle of the highway.² In April and May of 2013, sinkholes caused roads in Nashville, Franklin and Knoxville to close for repairs.³ Several Knoxville television stations also recently reported on the travails of high school teacher Debra Petersen, who may be forced to file bankruptcy because of a sinkhole under her home.⁴ Petersen told reporters that her homeowners' insurance policy will only pay \$10,000 of the damages that total more than \$100,000.⁵ It will cost between \$100,000 and \$200,000 to fix the problem.

As shown by the above stories, Tennessee is one of the leading states for sinkhole activity. According to the United States Geological Survey (USGS), Tennessee is prone to sinkhole activity because of its karst terrain.⁶ Karst refers to various landforms that result from the dissolving of carbonate bedrock.⁷ Much of Tennessee is underlain with carbonate bedrock that naturally dissolves when contacted by groundwater.⁸ The dissolving rock sometimes results in spaces and caverns that can no longer support the heavy soil. Sinkholes occur when the soil depresses into a void because the underlying bedrock no longer provides adequate support.⁹ Most sinkhole activity in Tennessee occurs in the eastern and middle portions of the state. The Tobin and Weary USGS geological map shows that Tennessee's karst terrain primarily exists between approximately the western edge of Middle Tennessee and the state's far eastern border.¹⁰ This region encompasses most of Tennessee's biggest cities, including Nashville, Knoxville, Chattanooga, Johnson City and their surrounding suburban counties.

Because of Tennessee's proneness for sinkholes and because of the significant damage that can result from them, on May 17, 2006, the Tennessee General Assembly approved legislation to address how homeowner property insurance companies should handle sinkhole claims.¹¹ *Tenn. Code Ann.* § 56-7-130, the Sinkhole Statute, imposes certain obligations on all insurers selling homeowners property insurance in Tennessee. The Sinkhole Statute does not apply to commercial structure or general liability policies, but only to homeowners policies. Since the statute's enactment, no Tennessee appellate court has interpreted its provisions and no regulations have been promulgated. However, the statute is increasingly being litigated in several trial courts across Tennessee. This article addresses the rights and liabilities of both policyholders and insurance companies under the Sinkhole Statute by discussing its statutory language and legislative history, and by

referencing circuit court rulings that the authors are aware of from litigating these types of cases.

1. *Tenn. Code Ann.* § 56-7-130(b)-(c) requires insurance companies to make sinkhole insurance “available,” but it is not a mandatory form of coverage.

Homeowners policyholders in Tennessee should not assume that they have sinkhole coverage. Most traditional homeowners policies include an earth

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movement exclusion that generally excludes coverage for “any change of place, position or posture of the soil.”¹² Sinkholes resulting from the collapse of soil through dissolved bedrock would fall within this common exclusion.¹³

While the Sinkhole Statute imposes certain obligations on homeowners insurance companies, it does not make sinkhole insurance a mandatory form of coverage. The plain language of the statute and its legislative history both show that the insurance must simply be “available” to those who want to purchase it. *Tenn. Code Ann.* § 56-7-130(b) provides the following about making sinkhole insurance available:

Every insurer offering homeowner property insurance in this state shall make available coverage for insurable sinkhole losses on any dwelling, including contents of personal property contained in the dwelling, to the extent provided in the policy to which the sinkhole coverage attaches.¹⁴

Subsection (c) of the Sinkhole Statute further provides that companies “may make coverage available in the policy

itself, by endorsement, or through other coverage that the insurer may arrange, and the insurer may make an additional charge for the coverage.”¹⁵ The statute does not include affirmative language requiring sinkhole coverage.

Beyond the express statutory language, the legislative history also shows that the Sinkhole Statute was never intended to require automatic coverage. During legislative debate, the Senate sponsor of the underlying sinkhole legislation, Sen. Roy Herron, repeatedly told his colleagues that the bill did not require insurers to automatically place sinkhole insurance on every policy. For example, on April 18, 2006, Sen. Herron told the Senate Commerce Committee that “[t]hey don't have to make it a part of their basic coverage but they have to make it available to homeowners that [sic] want to purchase that insurance.”¹⁶ Before the Senate, Finance, Ways & Means Committee on May 9, 2006, Sen. Herron again told his colleagues that “[i]t does not require them to include it in every policy, they just have to make it available.”¹⁷ Similar exchanges occurred in the House of Representatives where the members referred to the bill as requiring a new “option,” not mandatory insurance.¹⁸

Though sinkhole coverage is not mandatory, some debate exists about how insurance companies may make it “available” to customers. For example, to the extent that companies choose to make the insurance available by endorsement as described under *Tenn. Code Ann.* § 56-7-130(c), does the Sinkhole Statute also require companies to advertise the existence of the endorsement? If a customer tells an agent that she wants the cheapest policy available, does the agent still have a duty to inform the customer about an optional endorsement that comes with an additional charge? The authors are aware of only one Tennessee court that has directly interpreted *Tenn. Code Ann.* 56-7-130 regarding the above questions and it ruled that no notice or affirmative statement about sinkhole insurance is

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required under the statute. On July 19, 2011, Judge Jeffrey S. Bivins¹⁹ with the Williamson County Circuit Court, 21st Judicial District, addressed *Tenn. Code Ann.* § 56-7-130 and concluded that “[t]he plain language of *Tenn. Code Ann.* § 56-7-130 does not require an insurance agent or an insurance company to take affirmative actions to make potential policyholders aware of sinkhole insurance coverage.”²⁰

A comparison of the Sinkhole Statute’s language to other Tennessee insurance statutes supports the Williamson County Circuit Court’s interpretation that notice of sinkhole insurance is not required under *Tenn. Code Ann.* § 56-7-130. For example, the uninsured automobile liability statute (UIM), found at *Tenn. Code Ann.* § 56-7-1201, shows that the Tennessee General Assembly knows how to require agents to discuss certain types of insurance when it desires to do so. First, unlike the Sinkhole Statute, the UIM statute includes mandatory language expressly requiring that automobile insurers in Tennessee “shall include uninsured motorist coverage” in the base policy.²¹ “However, any named insured may reject in writing the uninsured motorist coverage completely or select lower limits of the coverage but not less than the minimum coverage limits in § 55-12-107.”²² Therefore, unlike the Sinkhole Statute, the UIM statute requires that the insured “reject in writing” UIM coverage before it is removed from the policy. The UIM statute results in the insured either obtaining the UIM coverage or discussing the option with the agent. The Sinkhole Statute does not include any similar language.

Although no Tennessee appellate court has addressed the notice requirements under *Tenn. Code Ann.* § 56-7-130, some courts in other jurisdictions have addressed similar statutes with differing results. For example, in *Edens v. Shelter Mutual Ins. Co.*,²³ the Eighth Circuit Court of Appeals addressed an Arkansas automobile insurance statute

with “make . . . coverage available” language similar to *Tenn. Code Ann.* § 56-7-130.²⁴ Relying on the “make . . . available” language, the *Edens* plaintiff argued that the court should read a commercial reasonableness test into the statute to require the company to provide the insured with notice of the insurance. The *Edens* plaintiff argued that a commercial reasonableness test would prevent companies from selling the coverage to only those knowledgeable enough to request it.²⁵ The Eighth Circuit, however, disagreed and concluded that “[a]s the Arkansas legislature already has done with uninsured and no-fault insurance, it can unambiguously require an insurer to do more than make [the insurance] available. . . . The legislature could specify that underinsured coverage automatically is part of the policy unless specifically rejected by the policyholder.”²⁶ Other courts, however, have imposed a commercial reasonableness test to require insurance companies to provide notice of insurance under some circumstances.²⁷

While the plain language of the Sinkhole Statute and its legislative history show that sinkhole insurance is not a mandatory form of coverage in Tennessee, the questions regarding the Sinkhole Statute’s notice requirements likely will continue to be litigated on a case-by-case basis. To avoid costly litigation on the subject, companies and agents would be wise to provide notice of the insurance and leave it to the individual policyholder’s discretion to choose whether to purchase the coverage. However, the Sinkhole Statute and the known cases interpreting it do not now impose that requirement.

2. Tenn. Code Ann. § 56-7-130(d) establishes minimum standards for investigating sinkhole claims.

a. The application of Subsection (d) presents confusing questions for both insurance companies and policyholders.

Tenn. Code Ann. § 56-7-130(d) establishes minimum standards for investigating sinkhole claims in Tennessee. However,

because sinkhole insurance is not a mandatory form of coverage, the application of subsection (d) presents confusing questions for insurance companies and adjusters handling those claims. For example, if an insured has not requested sinkhole insurance or has outright refused the insurance, is the insurer still required to follow the minimum investigation requirements of the Sinkhole Statute? No Tennessee appellate court has answered this question.

Insurance companies have valid arguments that subsection (d) should not apply when the insured does not have coverage. For example, subsection (d) uses the undefined terms “insurer” and “insured” when discussing obligations.²⁸ If a homeowners policyholder refused to purchase an available sinkhole endorsement, the company arguably is not an “insurer” within the meaning of the Sinkhole Statute. Subsection (d)(2) of the statute also appears to apply only when the claimant has sinkhole insurance. That provision states that “prior to denying a claim, the insurer shall obtain a written certification from an engineer, a professional geologist, or other qualified individual stating that the cause of the claim is not sinkhole activity.”²⁹ A certification confirming that the cause was not sinkhole activity would be necessary only if sinkholes were a covered peril. It would be nonsensical to require such a certification when the policyholder does not have the insurance.

Subsection (d) of the statute unfortunately does not include express language that clearly addresses these questions. Companies have good arguments that the minimum standards should not apply when the policyholder fails to purchase available sinkhole insurance, but policyholders can argue that the Sinkhole Statute’s lack of express limiting terms shows that the minimum standards should apply to all sinkhole claims, regardless of coverage. Although arguments regarding the applicability of subsection (d) exist on both sides of the issue, until the matter is decided by an appellate court or through statutory amendments, insurers are wise to follow

“[The legislations’ language] is interesting because, if passed, they would significantly modify the current Sinkhole Statute and possibly eliminate altogether the requirement to have sinkhole insurance available in Tennessee.”

subsection (d)’s investigation provisions. Insurers will be in a better position during litigation if they have met the primary requirements of the statute, even if they later argue that it does not apply because the policyholder failed to purchase the available sinkhole coverage.

b. The step-by-step requirements of Subsection (d).

After receiving a claim for sinkhole loss, to comply with *Tenn. Code Ann.* § 56-7-130(d), the insurer must first physically inspect the insured’s premises. The Sinkhole Statute states that upon the receipt of a claim for sinkhole loss, “[t]he insurer shall make an inspection of the insured’s premises to determine if there has been physical damage to the structure that might be the result of sinkhole activity.”³⁰ This first step in the sinkhole claims investigation process is widely followed anyway. The vast majority of insurance claims already involve a physical inspection of the premises. Notably, there are no time requirements related to this first step.³¹ While significant delays will likely give rise to claims for bad faith pursuant to *Tenn. Code Ann.* § 56-7-105, the Sinkhole Statute does not provide an express time requirement to complete inspections.

During the inspection required by subsection d(1), the insurer needs to closely review subsection d(2) to determine (A)³² whether the property has damage to a structure that is “consistent with sinkhole activity”; and (B) whether “the structure is located in close proximity to a structure in which sinkhole damage has been verified.”³³ The insurer needs to check for both A and B because the existence of either triggers the

requirement for an engineer, professional geologist or other qualified individual to conduct additional investigations regarding the cause of loss. While the item A requirement will likely be easily met if the property has a sunken hole in the ground of any type, the item B requirement is again lacking in clarity. The Sinkhole Statute does not define “close proximity.” The house next door having sinkhole damage likely would trigger additional investigations, but would an unknown house four blocks away require it? How about a mile away? The General Assembly unfortunately did not answer these questions. Regardless, if the initial inspection shows that the property has damage “to a structure that is consistent with sinkhole activity” or that the property is in “close proximity to a structure” with verified sinkhole damage, the insurer is then required to obtain a “written certification from an engineer, a professional geologist, or other qualified individual” stating that the cause of loss is not sinkhole activity and “that the analysis conducted was of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability.”³⁴ This written certification must be obtained before the claim is denied.

The Sinkhole Statute allows for the written certification described above to be provided by an engineer, a professional geologist, or an “other qualified individual.” Engineers are defined as primarily individuals who are licensed under *Tenn. Code Ann.* § 62-2-401, et. seq. with a specialty in the geotechnical engineering field.³⁵ A professional geologist is someone licensed under *Tenn. Code Ann.* § 62-36-101, et. seq., with a

bachelor’s degree in geology or earth science and “expertise in the geology of this state.”³⁶ Significantly, the term “other qualified individual” is not defined. Based upon the terms of the Sinkhole Statute, companies would best protect themselves by hiring either a geologist or geotechnical engineer with sinkhole inspection experience and knowledge of the geology of Tennessee. Especially considering that the individual will need to provide the certification within a reasonable professional probability. However, by using the undefined term of “other qualified individual,” the statute leaves a wide gap that seems to allow any individual to conduct the inspection as long as it was later proven that he or she was qualified to provide an expert opinion under the *McDaniel/Daubert*³⁷ standards for the admissibility of expert proof. This issue also will likely be clarified by future litigation.

Beyond the minimum investigation requirements imposed on insurers, subsection (d)(3) also includes an interesting provision that requires a policyholder to pay up to \$2,500 for sinkhole claims investigations that are filed in bad faith.³⁸ Subsection (d)(3) states that if a policyholder submits a sinkhole claim without good faith grounds and the above-described (d)(2) certification determines that the cause of loss was not sinkhole activity, “the policyholder shall reimburse the insurer for fifty percent (50 percent) of the cost of the analysis” required by *Tenn. Code Ann.* § 56-7-130(d)(2). The total potential liability to the policyholder is limited to \$2,500.

Recovery under section d(3) has several hurdles. An insurer can claim this fee only if it first informs the policyholder about the potential liability for the investigation costs and then gives the policyholder an opportunity to withdraw the claim after receiving the warning.³⁹ In reality, insurers’ best chance at recovery of investigation costs under (d)(3) will occur if the required warning is provided expressly in the policy or the sinkhole coverage endorsement’s terms. However, even if this

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required warning is provided in compliance with the statute, the insurer then still must prove that the policyholder filed the claim in bad faith, which is not an easy task.

3. Possible Legislative Efforts to Reform Tenn. Code Ann. § 56-7-130?

In early 2013, Sen. Jim Tracy and Rep. Roger Kane introduced companion bills in the Senate (S.B. 880) and House of Representatives (H.B. 1005) that would fundamentally rewrite the provisions of *Tenn. Code Ann.* § 56-7-130.⁴⁰ However, soon after introduction, Rep. Kane took H.B. 1005 “Off-Notice,” which essentially means that it is no longer being pursued by the sponsor during that legislative year.⁴¹ The Senate bill, S.B. 880, also has not been actively pursued since being assigned to the Committee on Commerce and Labor in March 2013 and it does not have any cosponsors.

While neither H.B. 1005 nor S.B. 880 have actively moved within the General Assembly, their language is interesting because, if passed, they would significantly modify the current Sinkhole Statute and possibly eliminate altogether the requirement to have sinkhole insurance available in Tennessee. For example, to reduce the issues discussed in this article regarding a company’s duty to make sinkhole insurance available, the bill sponsors would simply remove that requirement by stating that companies “*may* make available coverage” instead of the current “*shall* make available coverage.”⁴² Instead of choosing a more limited approach to clarify that insurance companies are not required to provide notice of the insurance, the sponsors chose to entirely abolish the requirement to have sinkhole insurance as an available option.

The companion bills also would significantly amend several of the claims investigation and payment requirements under the current Sinkhole Statute. For example, to address the confusion about the application of subsection (d)’s investigation standards

when the customer does not have sinkhole insurance, the bills would make clear that such standards apply only “[u]pon a receipt of a claim for a sinkhole loss *under a policy providing sinkhole loss coverage.*”⁴³ Additionally, instead of requiring an engineer to possess “geotechnical expertise” as defined in the current Sinkhole Statute, H.B. 1005 and S.B.880 would allow any licensed engineer with expertise in the identification of sinkhole activity to provide the required certification. The proposed bills also would alter the way claims would be paid by implementing a multiple-step process of approvals and agreements between the policyholder, engineers and the insurance company that are not included in the present statute.

Even though H.B. 1005 and S.B. 880 have not yet moved during the 108th General Assembly, the bills indicate that the legislature is beginning to identify and grapple with some of the ambiguities in *Tenn. Code Ann.* § 56-7-130 that are being litigated throughout Middle and Eastern Tennessee. Only time will tell whether these legislative efforts will change the current statute.

Conclusion

The Sinkhole Statute provides many interesting questions that will be answered only by additional litigation or statutory amendments. Until that occurs, policyholders should closely review their policies to ensure that they have sinkhole coverage. Sinkhole insurance is not mandatory in Tennessee and some companies do not automatically provide that form of coverage.

Homeowners’ insurance companies also must closely review *Tenn. Code Ann.* § 56-7-130 upon the receipt of a sinkhole claim to ensure that they are complying with the statute’s express terms. Until the provisions of subsection (d) and their applicability are directly addressed by the Tennessee Court of Appeals, insurers should expect that they will be sued for any noncompliance with the statute.

Beyond all else, insurers and policy-

holders need to know that sinkholes and the coverage disputes related to sinkholes will increase in Tennessee over the next several years. As one engineer recently told Channel 5 News in Nashville, “Two years ago I only looked at about 12 all year . . . I’ve looked at 13 in the last two weeks.”⁴⁴

With Tennessee’s continued fast growth, new development, and its karst terrain, the discovery of sinkholes and development around sinkholes is inevitable. With each new sinkhole that involves a home or a homeowners’ policy, practitioners can expect that they will be called upon to review the Sinkhole Statute and the meaning of its terms. 🏠



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Notes

1. Brad Hicks, “Love Chapel Elementary School to Close,” *Johnson City Press*, Feb. 14, 2013, <http://www.johnsoncitypress.com/article/104813#axzz2ThXKm6jq>.
2. Press Release, “Tenn. Dep’t Transp., Large Sinkhole Closes I-24 in Grundy County” (May 18, 2010), <http://news.tn.gov/node/5174>.
3. Don Jacobs, “Sinkhole closes one lane of Lovell Road in West Knox County,” *Knoxville News Sentinel*, May 9, 2013,

www.knoxnews.com/news/2013/may/09/sinkhole-closes-one-lane-of-lovell-road-in-west/?partner=RSS; Kevin Young, "Sinkhole closes road near Franklin subdivision," WSMV TV, April 19, 2013, www.wsmv.com/story/21895696/sinkhole-closes-road-near-franklin-subdivision; Kevin Young, "Sinkhole closes McGavock Pike near Nashville Airport," WSMV TV, May 9, 2013, www.wsmv.com/story/22080946/sinkhole-closes-mcgavock-pike-near-nashville-airport.

4. Alexis Zotos, "Sinkhole Threatens West Knoxville Home," WATE Television, Mar. 4, 2013, <http://www.wate.com/story/21484710/sinkhole>.

5. *Id.*

6. Jessica Robertson & Randall Orndorff, "The Science of Sinkholes," USGS Science Features Blog (March 11, 2013, 5:48 a.m., updated 11:16 a.m.), http://www.usgs.gov/blogs/features/usgs_top_story/the-science-of-sinkholes/?from=textlink.

7. Martin S. Kohl, "Subsidence and Sinkholes in East Tennessee," State of Tennessee Dep't Env't Conservation: Div. of Geology 4-5 (2001), <http://www.tn.gov/environment/tdg/maps/pdf/sinkhole.pdf>.

8. Robertson & Orndorff, *supra* n. 6 (citing USGS geological map available at http://pubs.usgs.gov/of/2004/1352/data/USA_karst.pdf).

9. Kohl, *supra* n. 7, at 5-8.

10. Brett D. Tobin and David J. Weary, "Digital engineering aspects karst map: a GIS version of Davies, W.E.," Simpson, J.H.; Ohlmacher, G.C.; Kirk, W.S.; and Newton, E.G., 1984, "Engineering Aspects of Karst: U.S. Geological Survey, National Atlas of the United States," scale 1:7,500,000, U.S. Geological Survey Open-File Report 2004-1352, http://pubs.usgs.gov/of/2004/1352/data/USA_karst.pdf.

11. 2006 Tenn. Pub. Acts Ch. 805 §§ 1-2, available at www.tn.gov/sos/acts/104/pub/pc0805.pdf. For ease of reference, the authors sometimes refer to *Tenn. Code Ann.* § 56-7-130 as the "Sinkhole Statute."

12. *Lee v. Nationwide*, 1988 Tenn. App. LEXIS 264, at *8 (Tenn. Ct. App. April 29, 1988) (Tennessee Court of Appeals reviewing an earth movement exclusion and concluding that "taken together or separately, the words, earth movement, mean any change of place, position or posture of the soil.").

13. See *Burton v. State Farm Fire & Cas. Co.*,

533 F.2d 177, at 179 (5th Cir. 1976) (interpreting Alabama law) (holding that the words "earth sinking" included in a traditional earth movement exclusion "clearly covers such phenomena as limestone sinkholes.") (2-1 decision).

14. *Tenn. Code Ann.* § 56-7-130(b).

15. *Tenn. Code Ann.* § 56-7-130(c).

16. S.B. 3002, 104th Tenn. Gen. Assembly, Senate Commerce Committee (April 18, 2006) (statement of Senator Herron); see also S.B. 3002, 104th Tenn. Gen. Assembly, Senate Floor (May 15, 2006) (Senator Herron stating that "[i]t does not say that it has to be a part of their basic policy.").

17. S.B. 3002, 104th Tenn. Gen. Assembly, Senate, Finance, Ways & Means (May 9, 2006) (statement of Senator Herron stating that the bill "would require the insurance industry to make available, to make available coverage for sinkholes. It does not require them to include it in every policy, they just have to make it available...")

18. H.B. 2447, 104th Tenn. Gen. Assembly, Floor of House of Representatives (Apr. 27, 2006) (Bill sponsor Representative McDonald answering questions confirming that the statute would "make available the option to purchase sinkhole coverage" and would require policyholders to purchase sinkhole insurance "at an extra premium.").

19. Judge Bivins is now a Court of Criminal Appeals Judge.

20. *Burkhalter, et. al. v. Eric Loes, et. al.*, Case No. 2010-184 (Williamson County Circuit Court Tenn. July 19, 2011). For purposes of disclosure, the authors of this article represented the defendants in that action.

21. *Tenn. Code Ann.* § 56-7-1201(a) (emphasis added).

22. *Tenn. Code Ann.* § 56-7-1201(a)(2).

23. 923 F.2d 79, 82 (8th Cir. 1991).

24. *Id.* at 80.

25. *Id.* at 81.

26. Notably, after the *Edens* decision, the Arkansas legislature did later amend the referenced statute. See *Shelter Mutual Insurance Co. v. Irwin*, 831 S.W.2d 135, 334 (Ark. 1992).

27. See *State Auto Ins. Companies v. Shannon*, 769 N.E.2d 228, 234 (Ind. Ct. App. 2002) (Court of Appeals of Indiana interpreting statute that included "shall make available" language, but also included a provision requiring written rejection of the insurance

similar to Tennessee's UIM statute.); See also *Shelter Mutual Insurance Co. v. Irwin*, 831 S.W.2d 135, 334 (Ark. 1992) (Supreme Court of Arkansas relying upon Arkansas General Assembly's recent amendment requiring a written rejection "opt-out" of the insurance to require agents to discuss options with the insured, even though the applicable statute was not amended at the time of the underlying events.).

28. *Tenn. Code Ann.* § 56-7-130(d).

29. *Id.* at § 56-7-130(d)(2).

30. *Id.* at § 56-7-130(d)(1).

31. *Id.*

32. The Sinkhole Statute does not include the (A) and (B) designations we have used in this article, but the authors have provided them for ease of reference regarding the discussions of the two provisions.

33. *Tenn. Code Ann.* § 56-7-130(d)(2).

34. *Id.*

35. *Id.* at § 56-7-130(a)(1).

36. *Id.* at § 56-7-130(a)(2).

37. See *McDaniel v. CSX Transp.*, 955 S.W.2d 257 (Tenn. 1997) (discussing Tennessee's admissibility standards for expert proof); see also *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) (discussing federal admissibility standards for expert proof).

38. *Tenn. Code Ann.* § 56-7-130(d)(3).

39. *Id.*

40. H.B. 1005, 108th Tenn. Gen. Assembly (2013) (as referred to Insurance and Banking Subcommittee of Insurance and Banking Committee, March 20, 2013); S.B. 880, 108th Tenn. Gen. Assembly (2013) (as referred to Committee on Commerce and Labor, Feb. 6, 2013).

41. See H.B. 1005, 108th Tenn. Gen. Assembly (2013) (Designated Off-Notice by Insurance and Banking Subcommittee of Insurance and Banking Committee on Feb. 27, 2013 and March 20, 2013), available at <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=H.B.1005>.

42. See H.B. 1005 & H.B. 880, *supra* n. 39.

43. *Id.* (emphasis added).

44. Adam Ghassemi, "Tennessee Sinkholes Create Never Ending Battle," Newschannel5.com, May 1, 2013, www.newschannel5.com/story/22131816/tennessee-sinkholes-create-never-ending-battle.