

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

---

No. 97-50013

---

JOE BALANDRAN; DOLORES BALANDRAN,

Plaintiffs-Appellants,

VERSUS

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Western District of Texas

---

July 24, 1998

Before DeMOSS and DENNIS, Circuit Judges, and ROSENTHAL, District Judge.\*

PER CURIAM:

In October 1996, this case was tried to a jury in the United States District Court for the Western District of Texas. The jury found that the damage to the Balandran home was caused by a leaky sewer line and awarded the Balandrans \$66,500. Shortly thereafter, Safeco moved for judgment as a matter of law asserting that the

---

\* District Judge for the Southern District of Texas, sitting by designation.

Balandrans' claim was excluded from coverage under Subsection (h) of the insurance policy in question. The district court granted the motion and entered judgment in favor of Safeco. The Balandrans appealed, claiming that Subsection (h) does not exclude from coverage losses that fall within the accidental discharge peril.

On November 18, 1997, this Court certified the following question to the Supreme Court of Texas.

Whether the exclusion in Subsection (h) of the 1991 Texas Standard Homeowner Policy--Form B excludes from coverage damage to a dwelling caused by a movement of its foundation that was caused by an underground plumbing leak?

The factual circumstances and procedural background involved in this controversy are fully described in our published opinion certifying this question. *Balandran v. Safeco Ins. Co. of America*, 129 F.3d 747 (5th Cir. 1997).

On July 3, 1998, the Supreme Court of Texas issued its opinion and judgment in response to our certified question, holding that:

- 1) Exclusion 1(h) of the 1991 Texas Standard Homeowner Policy--Form B does not exclude from coverage damage to a dwelling caused by a movement of its foundation that was caused by an underground plumbing leak.
- 2) Joe Balandran and Delores Balandran shall recover from Safeco Insurance Company of America, which shall pay the costs in this Court.

See *Balandran v. Safeco Ins. Co. of America*, No. 97-1093, 1998 WL 352968 (Tex. S. Ct. July 3, 1998).

In light of the decision of the Supreme Court of Texas, we now

vacate the judgment entered by the district court in favor of Safeco; and remand this case to the district court for entry of judgment on the jury verdict consistent with the decision of the Supreme Court of Texas.