

## [Montana Federal Court Holds Definition of 'Building' Does Not Extend to Mountain Tunnel](#)

### ***Property Coverage Update***

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*U.S. District Court for the District of Montana*

In *Mont. Rail Link, Inc. v. Travelers Indem. Co.*, 2011 U.S. Dist. LEXIS 12811 (D. Mont. Feb. 9, 2011), the U.S. District Court of Montana held that the plain meaning of “building” did not extend to a tunnel running through a mountain, and thus a collapsed tunnel did not constitute “physical damage to property” as that phrase was defined in a first-party property policy.

In the spring of 2009, Montana Rail Link began a project to widen the Mullan Tunnel, through which trains travel on the Northwest Pacific Railroad line as they cross the Continental Divide. In July 2009, decomposed granite collapsed a section of the tunnel and buried the track. The collapse completely closed the tunnel and blocked rail traffic for 25 days.

Montana Rail submitted a first-party property claim to its insurer, Travelers Indemnity. Travelers argued that the damage resulting from the collapse was not “physical damage to property” as defined by the policy. The policy defined “physical damage to property” as “direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, bridges or buildings.”

In a motion for partial summary judgment, Montana Rail asked the court to declare that the Mullan Tunnel was encompassed in the word “building,” which was not defined in the policy. In support, Montana Rail argued that most courts would define “building” as “any structure, more or less permanent, with walls and a ceiling, and that is used for human habitation, commercial or industrial purposes.” Travelers countered by arguing that the common sense meaning of “building” could not

include the Mullan Tunnel. Travelers asserted that, under Montana Rail's definition, even a mailbox or a submarine would be considered within the meaning of "building."

The court held the Mullan Tunnel was not a "building" under the word's common and ordinary meaning, and declined to consider the circumstances under which the policy was issued in order to reach its conclusion. The court noted that the Mullan Tunnel was not "a building in the mountain," but instead was an "underground passage built through a hill." Because the court found the term "building" to be unambiguous, the court rejected Montana Rail's argument that Travelers should have excluded tunnels from the definition of "building" had it not wished to afford coverage for losses to the tunnel. Finally, referring to the terms immediately preceding "building" in the definition of "physical damage to property," the court noted that, even if the tunnel could fall within the more general category of railroad "structures," it still falls outside the more restrictive category of "buildings." Thus, Montana Rail's motion for partial summary judgment was denied.

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