

Washington Appellate Court Explains Efficient Proximate Cause and Ensuing Loss.

—by Paul M. Rosner, J.D., CPCU, Soha & Lang P.S.*

In a decision issued this week, *Vision One, LLC et al. v. RSUI*, No. 38411-6 (10/19/2010), Division II of the Washington Court of Appeals explained the efficient proximate cause rule. The case arose out of the collapse of a concrete slab during the construction of a condominium. The developer's policy excluded loss caused by faulty workmanship, but the exclusion contained an exception for ensuing loss caused by a covered cause.

Efficient Proximate Cause

Division II explained that the efficient proximate cause of a loss is the predominant cause which sets into motion the chain of events producing the loss—not necessarily the last act in a chain of events. Whenever covered and excluded perils combine to cause a loss, the loss will be covered only if the predominant or efficient proximate cause was a covered peril. If multiple causes contribute to cause a loss, the tier of fact must determine which cause was the predominant or efficient proximate cause.

Ensuing Loss

The Court of Appeals then explained where an ensuing loss provision is an exception to an exclusion, the provision applies when an excluded peril causes a separate and independent covered peril. Damage caused by the covered peril is covered under the resulting loss provision, but damage resulting from the excluded peril remains excluded:

For example, following the destruction caused by the 1906 San Francisco earthquake, gasfed fires broke out and caused even more damage across the city. Most property insurance policies excluded earthquake damage but covered fire damage. Because an excluded peril (earthquake) caused an independent covered peril (fire), the resulting fire damage was covered as a “resulting loss.” But earthquake damage remained uncovered.

Accordingly, “assuming faulty workmanship caused the shoring and concrete slab to collapse, faulty workmanship was the initial excluded peril and the collapse was the loss.” Therefore, no independent covered peril (such as fire) caused a covered resulting loss. “The collapse resulted directly from the initial excluded peril of faulty

workmanship, and loss resulting directly from the initial excluded peril remains uncovered.”

Other Issues

The court also held that:

1. The efficient proximate cause rule is a rule of policy construction. Failure to cite efficient proximate cause in a denial letter does not prevent the application of efficient proximate cause analysis to determine coverage.
2. Determining the cause of collapse is a question of fact for the jury unless the facts are undisputed.
3. When an insurer denies a tender, it is estopped from claiming that it was released from liability based upon the insured's subsequent settlement in violation of an impairment of subrogation provision.

** If you are an insurance claims professional or CPCU and have any questions concerning this article or would like copies of the decision, please contact Paul M. Rosner, J. D., CPCU of Soha & Lang P. S. at (206) 654-6601. Soha & Lang, P.S. is regional and national coverage counsel for a number of the nation's major insurance companies. Advising and representing insurers in the resolution of coverage and bad faith disputes is the major focus of the firm's practice. The views expressed in this article are those of the author and do not necessary reflect the opinions of the firm or its clients.*

Issues: Efficient Proximate Cause; Resulting Loss; Ensuing Loss; Faulty Workmanship; Impairment of Subrogation Provision; Washington Insurance Law; Bad Faith;