Exposing Carriers Who Abuse Efficient Proximate Cause

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A. Introduction.

Whenever there are two or more causes of a loss, it is likely that the carrier's investigation will focus on exaggerating an excluded cause and ignoring any fact that argues for coverage.

Carriers habitually push the envelope when trying to deny coverage in concurrent causation situations. The most recent evidence is found in Palub v. Hartford Underwriters Ins. Co.,92 Cal. App. 4th 645, 112 Cal. Rptr. 2d 270 (2001) (rev. den. Dec. 12, 2001), where the Court of Appeal reaffirmed the basic principal that when the proximate cause of a loss is a covered peril, it doesn't matter if there is an excluded peril somewhere else in the causation chain.

To the extent that the "exclusion" would exclude loss proximately caused by [a covered peril], it violates Insurance Code section 530 and the long-standing principal that a property insurer is liable whenever a covered risk is the proximate cause of a loss, and is unenforceable.

92 Cal. App. 4th at 650, 112 Cal. Rptr. 2d at 274.

Since this is an area fraught with the potential for the carrier to manipulate its investigation and coverage analysis to the policy holder's detriment, it is critical to understand how California law applies proximate cause to insurance claims.

B. Proximate Cause, Efficient or Otherwise.

In California, it is settled that where a policy exclusion conflicts with state law the exclusion has no effect. Howell v. State Farm Fire & Cas. Co., 218 Cal. App. 3d 1446, 1464, n.4, 267 Cal. Rptr. 708 (1990). It is also settled that where there are two or more causes of loss "concurrent causes" and the efficient proximate cause is a covered peril, then there is coverage for the loss, even if one or more of the concurrent causes is excluded.. Garvey v. State Farm Fire & Cas. Ins. Co., 48 Cal. 3d 395, 257 Cal. Rptr. 292 (1989).

Just as Justice Stanley Mosk warned in his Garvey dissent, the insurance industry has devoted considerable energy to twisting and contorting efficient proximate cause to fit any claims denial situation. Plaintiff's counsel's job is to us to cut through the confusion.

Whenever there are two or more causes of a loss, and one or more of those causes is excluded, the analysis begins with Insurance Code section 530, which states:

An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

If the covered cause is closer in time to the loss than the excluded cause, this is generally where the analysis will stop. A prime example of how this works is found in Brooks v. Metropolitan Life Ins. Co., 27 Cal. 3d 305, 163 P.2d 689 (1945).

In Brooks, an insured with terminal cancer died in a fire. The carrier denied coverage under an accidental death policy, arguing essentially that since the insured would have not have died of his burns if he had not already been sick, the exclusion for "disease and mental infirmity" applied. Disease, argued the insurance company, was a concurrent cause and trumped the covered peril, i.e., death by fire.

The California Supreme Court rejected the argument:

The presence of preexisting disease or infirmity will not relieve the insurer from liability if the accident is the proximate cause of death; and [] recovery may be had even though a diseased or infirm condition appears to actually contribute to cause the death if the accident sets in progress the chain of events leading directly to death, or if it is the prime or moving cause. Brooks, supra, 163 P. 2d at 691.

In other words, in a hypothetical claim situation such as where wind a covered peril requires replacing a roof that was previously functioning adequately and the carrier denies the claim by arguing (1) the roof was negligently installed, (2) third-party negligence is excluded, (3) the wind would not have blown off the roof but for the negligent installation, Brooks tells us that the carrier is not being reasonable.

The Brooks rule is critical in understanding proximate cause and efficient proximate cause because it was expressly followed when our Supreme Court examined an excluded cause of loss within the causal chain in Sabella v. Wisler, 59 Cal. 2d 21, 32, 27 Cal. Rptr. 689, 696 (1963) and Garvey v. State Farm Fire & Cas. Co., 48 Cal. 3d 395, 403, 257 Cal. Rptr. 292, 296 (1989).

Both Sabella and Garvey demonstrate how concurrent causation analysis becomes a shade more complex when an excluded cause occurs after a covered peril. The analysis then becomes a search for the "efficient proximate cause" of the loss, also known as the "predominate" cause.

When an excluded peril appears within the causal chain, carriers often look to Insurance Code section 532 as a basis for denying coverage. The statute provides:

If a peril is specially excepted in a contract of insurance and there is a loss which would not have occurred but for such peril, such loss is thereby excepted even though the immediate cause of loss was a peril which was not excepted.

In 1963, the California Supreme Court reconciled sections 350 and 352 in Sabella v. Wisler, 59 Cal. 2d 21, 27 Cal. Rptr. 689 (1963), which concerned a subsidence damage claim made under a

homeowner policy. In Sabella, the policy specifically excluded "settling" and the carrier denied coverage, relying on section 352. The policy holder argued that the reason the house settled was that a negligently installed sewer line had ruptured, spilling water into loose fill and "setting in motion the forces tending towards settlement." The Supreme Court held that the loss was covered because third party negligence was a covered peril under the policy and that negligence was the efficient cause of the damage.

"In determining whether a loss is within an exception in a policy, where there is a concurrence of different causes, the efficient cause the one that sets the others in motion is the cause to which the loss is attributed, though the other causes may follow it and operate more immediately in producing the disaster."

Sabella, supra, 59 Cal. 2d at 31, 27 Cal. Rptr. at 695 (quoting, 6 Couch, Insurance (1930) § 1466). As the high court later explained in Garvey:

We reasoned [in Sabella] that sections 530 and 532 were not intended to deny coverage for losses whenever "an excepted peril operated to any extent in the chain of causation so that the resulting harm would not have occurred 'but for' the excepted peril's operation." Rather, we explained that when section 532 is read along with section 530, the "but for" clause of section 532 necessarily refers to a "proximate cause" of the loss, and the "immediate cause" refers to the cause most immediate in time to the damage.

Garvey, supra, 48 Cal. 3d at 402, 257 Cal. Rptr. at 295. Garvey reaffirmed the Sabella analysis in 1989 when the Supreme Court considered another claim for damage to a home damaged by earth movement. Again the carrier denied coverage under an earth movement exclusion and again the insureds argued that their policy covered losses caused by third party negligence. The Supreme Court looked to efficient proximate cause to solve the coverage question.

Sabella defined "efficient proximate cause" alternatively as the "one that sets others in motion" and as "the predominating or moving efficient cause." We use the term "efficient proximate cause" (meaning predominating cause) when referring to the Sabella analysis because we believe the phrase "moving cause" can be misconstrued to deny coverage erroneously, particularly when it is understood to mean the "triggering" cause. Garvey, supra, 48 Cal. 3d at 403-404, 257 Cal. Rptr. at 296.

Garvey, teaches a number of lessons. First, in determining an efficient proximate cause, look for an active cause that sets a causal chain in motion. Following Brooks, a simple condition of person or property can never be an efficient proximate cause.

Second, an efficient proximate cause is a predominating cause and a term of art. In denying coverage, carriers will be creative and expansive in their own definitions of efficient proximate cause, but cannot be allowed to get away with loose definitions.

C. Reading Exclusions Out of the Policy.

Even though Sabella, Garvey, Howell and their progeny have been the law in California for over a generation, carriers still attempt to push the efficient proximate cause doctrine beyond its limits to deny coverage.

For example, some carriers will argue that efficient proximate cause translates into the "most important" cause of a loss and then will fixate on an excluded event in the chain of causation in order to document a denial. This is a position that relies on a misstatement of the law. Garvey, after all, establishes that efficient proximate cause is equivalent to predominating cause, the meaning first offered in Sabella. Nowhere do the cases discuss "most important" cause as a standard.

The distinction is not mere linguistics. Going back to our roof loss hypothetical, a sloppy roofing job may well prove adequate against the elements for a decade or more before a windstorm tears it apart. The roofer's negligence cannot by definition be an efficient proximate cause of the loss because it sets nothing in motion. It is simply a state of condition and the Brooks rule is that "recovery may had even though a diseased or infirm condition appears to actually contribute to cause the [loss] if the [covered peril] sets in progress the chain of events leading directly to [the loss], or if it is the prime or moving cause." 163 P.2d 689, 691. Since it is the windstorm a covered peril that sets the damage chain in motion, following Brooks, Sabella and Garvey, windstorm is the efficient proximate cause and triggers coverage under the policy.

For its part, roofer negligence an excluded peril is an infirm condition that is a remote cause as a matter of law and cannot defeat coverage. The reasonable expectations of both insured and insurer that wind damage is covered are met. The carrier is free to pursue the roofer on its own in subrogation, but it must pay the claim benefits provided by the policy.

Palub v. Hartford Underwriters Ins. Co., 92 Cal. App. 4th 645, 112 Cal. Rptr. 2d 270 (2001), provides a good example of how carriers continue to try to abuse efficient proximate cause analysis. In Palub, the insureds made a claim under their all-risk homeowner policy for damage to their home after a slope behind the house failed. The insured argued that weather conditions caused the slope to fail and were the efficient proximate cause of the loss. The insurer argued that weather conditions were excluded under the policy by a provision stating, "We do not insure against loss to property . . . caused by any of the following . . . (a) Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss."

The Court of Appeal observed that in light of this language, weather conditions were not an excluded cause of loss by themselves. The Court also held that to the extent that the policy provision attempted to exclude coverage for weather conditions that acted as the efficient proximate cause of a loss, the exclusion violated Insurance Code section 530 and was unenforceable.

Palub, in turn, relied on Howell v. State Farm Fire & Cas. Co., 218 Cal. App. 3d 1446, 267 Cal. Rptr. 708 (1990), which addressed much the same problem. Howell involved an all-risk homeowner's policy and a claim for damage due to landslide. The insured argued that fire had destroyed the vegetation on a nearby slope and unusually heavy rains then drenched the bare unprotected ground, resulting in a landslide. An expert testified that the landslide probably would not have happened had the ground cover been intact. The Court held that the fire was the efficient proximate cause of the loss under this analysis and found coverage. 218 Cal. App. 3d at 456, 267 Cal. Rptr. at 714-715.

The primary issue decided by Howell is that an insurer cannot contractually exclude coverage when an insured peril is the efficient proximate cause of the loss, no matter how the policy is written. Any exclusion purporting to defeat coverage where the efficient proximate cause is a covered peril is simply read out of the policy.

D. Conclusion.

Just as Justice Mosk warned in Garvey, the efficient proximate cause analysis has tempted many a carrier to engage in studied mischief. But Sabella and Garvey provide the bedrock definitions for efficient proximate cause. Brooks confirms that a pre-existing, latent infirmity can never be an efficient proximate cause since is a condition rather than a moving cause. And Palub and Howell render inapplicable exclusions that seek to limit coverage where a covered peril is the efficient proximate cause of loss.

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