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Property Insurance Claims with Multiple Causation Losses: Coverage Fundamentals

Evaluating Causation in First-Party Claims with Covered and Non-Covered or Excluded Causes

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Today's faculty features:

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Insurance 101-Insights for Young Lawyers: Evaluating First-Party Property Claims with Multiple Causes Under the Efficient Proximate Cause Doctrine

by Susan J. Field and Rina Carmel

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Causation is sometimes a factor in evaluating whether insurance coverage exists for a loss. The concepts of causation differ in tort law and insurance law. In tort law, the causation analysis focuses on "fixing culpability for the damage being claimed in the lawsuit," while in insurance law, the causation analysis focuses on "determining whether the specific type of injury caused by the specific type of physical act or event was intended to be covered under the terms of the subject policy."[1]

In most states, and under most policies, the principles of causation differ between first-party property and third-party liability coverages, with stricter requirements under first-party property policies. First-party property policies typically require that the loss be *caused by* a covered cause of loss or peril, in order for coverage to exist. Many policy forms provide substantially as follows: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations *caused by or resulting from* any Covered Cause of Loss"[2] or covered peril. Likewise, many policies exclude coverage "for loss *caused directly or indirectly by* any" excluded causes or perils.[3]

Where a loss has more than one cause, determining whether the causation requirement is satisfied can be one of the most challenging aspects of evaluating coverage in the first-party property arena. Where both causes are covered, the coverage analysis—at least on that point—is simple: the causation requirement is satisfied.[4] Likewise, where both causes are not covered/excluded,[5] the coverage analysis is simple: no coverage exists. However, where a covered cause and non-covered/excluded cause combine to cause a loss, the analysis may be far from simple. The factual reasons are, among others, that property claims are highly fact-intensive and

often involve scientific or technical issues. From a coverage perspective, even after extensive investigation, it may be difficult or even impossible to identify which cause was the efficient proximate cause of the loss, especially where the facts implicate complex coverage issues.

Where a loss has more than one cause, determining whether the causation requirement is satisfied can be one of the most challenging aspects of evaluating coverage in the first-party property arena

States have adopted various approaches to analyze coverage where the property claim has both covered and non-covered/excluded causes. This article briefly summarizes the various approaches. The article then reviews the statutes and case law discussing the meaning and application of the efficient proximate cause. Finally, the article suggests some steps that insurers and insureds alike should consider when working with consultants to investigate claims with multiple causes of loss.

I. APPROACHES TO CAUSATION IN PROPERTY CLAIMS WITH COVERED AND NON-COVERED/ EXCLUDED CAUSES

Traditionally, states have used two main approaches to evaluate causation in losses with more than one cause, (1) the efficient proximate cause doctrine, and (2) the concurrent cause rule, also called the independent concurrent cause rule, both of which are rooted in statutes and common law. More recently, many states—but not all—have adopted an approach that allows the parties to contract out of the efficient proximate cause doctrine, by (3) enforcing policy language, in particular, ''anti-concurrent causation'' clauses and ''lead-in'' clauses. This third approach is based on contract principles.

Efficient Proximate Cause Doctrine: The efficient proximate cause doctrine is the majority approach.

As a very brief and general summary, it provides that the existence of coverage depends on whether the ''proximate cause,'' ''efficient proximate cause,'' ''efficient cause,'' ''predominant cause'' or ''moving cause'' of the loss is a covered cause of loss under the policy.[6] If it is, then the policy's causation requirement is deemed satisfied. Conversely, if the efficient proximate cause is not covered/excluded, the claim is not covered.[7]

Independent Concurrent Cause Rule: A minority of states apply the concurrent cause rule, also called the independent cause rule. This rule provides, essentially, that one covered cause of loss, no matter how insignificant in the causal chain, suffices to satisfy the causation requirement. ''[W]here there are multiple causes for a loss, some of which are insured and others of which are excluded, the insured risk prevails over the excluded risk.''[8]

Policy Language Enforced: Most states allow the parties to contract out of the efficient proximate cause doctrine. These states include Alaska, Arizona, Maryland, Missouri, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, Utah, Virginia and Wyoming.[9] The parties do so by way of policy language such as an anti-concurrent causation clause and/or lead-in clause. A common anti-concurrent causation clause typically provides, usually at the end of an exclusion: ''Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.''[10]

In contrast, the lead-in clause, which began to appear in policy forms in the 1980s, is often the first sentence of the ''losses not insured'' provision of a property policy, and is followed by a list of exclusions. A lead-in clause may read as follows:

> We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these [exclusions]: . . .[11]

The anti-concurrent causation and lead-in clauses bar coverage where any one of the causes of the loss is excluded. In states that enforce such clauses, courts have rejected arguments that the efficient proximate cause doctrine should apply to create coverage.[12] However, as with other policy language, if the anti-concurrent causation or lead-in clauses are ambiguous, or otherwise inapplicable, then courts may not enforce them,[13] and instead employ the state's statutory scheme or common law doctrine regarding causation.[14]

A few states refuse to enforce anti-concurrent causation or lead-in clauses, notably California, Washington State and West Virginia.[15] Instead, those states apply the efficient proximate cause doctrine. Even so, the policy can cover some manifestations of a cause and not others, without violating the efficient proximate cause doctrine. In *Julian*, a

''weather-conditions clause'' barred coverage for earth movement and water damage only ''if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above [*i.e.*, earth movement and water damage] to produce the loss.''[16] The California Supreme Court held this ''weather conditions clause'' was permissible, and did not run afoul of the public policy against anti-concurrent causation and lead-in clauses.[17]

II. THE EFFICIENT PROXIMATE CAUSE DOCTRINE

A. Terminology and Definitions

In 1872, the California legislature enacted several statutes governing causes of loss with respect to insurance coverage. California Insurance Code Section 530 provides:

> 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.

California Insurance Code Section 532 states:

> 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 the loss was a peril which was not excepted.

As several cases have observed, these statutes articulate different standards of causation, and are difficult to reconcile.[18] Courts have subsequently concluded that Section 530 sets forth the efficient proximate cause standard which applies to first-party property claims, while the ''but for'' standard in Section 532 applies to third-party liability claims.[19]

Washington State defines efficient proximate cause to mean ''that cause 'which, in a natural and continuous sequence, unbroken by any new, independent cause, produces the event, and without which that event would not have occurred. . . . Where a peril specifically insured against sets other causes in motion which, in an unbroken sequence and connection between the act and final loss, produce the result for which recovery is sought, the insured peril is regarded as the ''proximate cause'' of the entire loss.''[20]

The efficient proximate cause is the predominating cause of the loss, meaning the most important cause

Courts use a variety of terms to describe the concept of efficient proximate cause, including ''proximate cause,'' ''efficient proximate cause,'' ''efficient cause,'' ''predominant cause,'' and ''moving cause.''[21] One court has described it as ''*the cause*.''[22] Terminology and definitions may vary by state. The California Supreme Court, for example, has cautioned against using the term ''moving cause'' because it could be misconstrued to mean the triggering cause, potentially resulting in erroneous denials of coverage.[23] Broadly speaking, many states agree on the following general principles:

- The efficient proximate cause is the predominating cause of the loss, meaning the most important cause.[24] Some states (not including California) also define it as the cause that sets the other causes in motion.[25]
- The efficient proximate cause need not be the triggering cause.[26]
- The efficient proximate cause need not be the first cause in time. Nor need it be the last cause in time.[27]
- In terms of location, the efficient proximate cause need not be the closest cause in place. Nor need it be the most distant cause in place.[28]
- A ''remote'' cause of loss should not be the efficient proximate cause. The reason is that this could result in creating coverage where the parties did not intend coverage.[29]
- Efficient proximate cause is often a question of fact.[30] If the facts are undisputed, then it is a question of law.[31]
- The insured bears the burden of ''prov[ing] that the efficient proximate cause of the loss was an insured risk.''[32] The insurer bears the burden of proving that exclusions bar coverage.[33] In Washington State, courts interpret the word ''cause'' in an exclusion to mean ''efficient proximate cause.''[34]

B. Defining and Counting the Number of Perils

First-party property coverage often depends on whether what occurred constitutes a covered or excluded peril. Thus, in a claim involving multiple causes of loss, a first step in the factual investigation is often to ascertain what perils occurred, and how many perils occurred; indeed, these issues can be key in determining whether or not coverage exists. Perhaps surprisingly, it is not always clear what perils occurred, or how many perils occurred. A summary of the facts in *Julian* indicates the reasons why this may be so. In that case, (1) heavy rains fell,

(2) following which a slope failed above the insureds' home, (3) leading to a landslide, which (4) caused a tree to crash into the insureds' home.[35] Put another way, the first three occurrences are not covered/excluded under many policies, but the fourth occurrence could be covered if it occurred independent of any other peril—but in *Julian*, it happened as a result of non-covered/excluded perils.

The initial starting point for the analysis is usually the facts of the loss, and how the policy's insuring provisions and exclusions define various perils. Case law may also provide guidance on how to define the perils (especially if the policy does not do so), and for determining how many perils occurred.

Perhaps surprisingly, it is not always clear what perils occurred, or how many perils occurred

In a recent case in Washington State, *Northwest Bedding*,[36] heavy snow fell in the Spokane area, followed by an unusually fast snowmelt. A government agency and others diverted water from the snowmelt into man-made drainage ditches, but the water overflowed the ditches and collected on the ground. Because of frozen ground and bedrock relatively close to the surface, the ground could not absorb the water, which flooded the insured's building.

The parties agreed on the chain of events, and that the policy excluded the perils of "surface water" and "flood."[37] Thus, at issue was whether a third party's diversion of water was a distinct peril, and if so, whether it was the efficient proximate cause of the loss. The court held it was not:

> So, the key question here is whether the overflow of a drainage system constructed or manipulated by one or more third parties is an independent peril from the snowmelt and surface water and flood that inundated Northwest Bedding's premises. It is not. Diversion of water flowing in a large area, whether from snowmelt or not, is what the average purchaser of insurance would expect the words "flood" and "surface water" to encompass.[38]

Other Washington State cases have also considered the issue of the number of perils as a threshold issue in analyzing efficient proximate cause. In a claim involving damage to the insureds' cabin from a landslide caused by wind and rain, the court found that a landslide and rain were not the "same peril."[39] On the other hand, where homes located in a flood plain were damaged by rain-induced flooding, the court found that in the factual context of that claim, rain and flood were not distinct perils.[40] An important factor in the latter court's reasoning was that insureds knew their homes were located in a flood plain, and that consequently the only way they could obtain flood coverage was through the federal government's National Flood Insurance Program, not homeowners policies. Thus, the number of perils can depend on the facts of the claim.

In some cases, courts have found that an alleged cause of loss is not, in fact, a cognizable cause. In *MRI Healthcare Center of Glendale, Inc. v. State Farm General Insurance Co.*,[41] the insured was a magnetic resonance imaging (MRI) scanning center. Years before the loss, it had cut a hole in the building roof to bring the MRI machine in, and had modified the roof by installing a skylight and a copper barrier to keep electrical or radio wave interference out of the MRI room. The loss followed heavy rainstorms, which required the building landlord to repair the roof. Initially, the roofer planned to place a layer over the existing roof during repairs, having no impact on the MRI machine. However, during repairs, the roofer discovered dry rot and decay from long-term water intrusion (a non-covered peril) immediately above the MRI machine. That necessitated structural repairs to the roof above the MRI machine, which in turn required "ramping down" the MRI machine, *i.e.*, de-magnetizing it. The insured worked with an MRI machine specialist to de-magnetize the machine. The specialist warned that the machine might not "ramp up," *i.e.*, might not work, due to the inherent nature of the machine, and the fact that it had been ramped up, *i.e.*, in service, for 14 years. Following repairs to the roof, the MRI machine did not ramp up, resulting in a loss of business income while the machine was out of service.

The insured contended that coverage existed because rainstorms were the efficient proximate cause of the loss. The court rejected this contention, explaining: "Even if the storm damage set in motion the course of events leading to the ramp down of the MRI machine, it ultimately was the ramping down itself that was the sole, and predominating, cause of [the insured's] loss."[42] Moreover, the rainstorms "were not the cause of the chain of events leading to the ramping down of the MRI machine."[43] Instead, the court noted that the original plan had been to place a cover over the roof, not impacting the MRI machine, and the intervening discovery of dry rot which required structural repairs to the roof. Because the causation requirement, as well as other policy requirements for coverage, were not satisfied, the court affirmed summary judgment in favor of the insurer.

West Virginia's landmark case on efficient proximate cause, *Murray*,[44] provides a useful framework for evaluating losses with a large number of causes. In that case, the insureds' homes were damaged by

rocks falling from a 40-year-old, 50-foot-high highwall of an abandoned rock quarry situated next to their homes. The insureds contended that the perils that caused the loss were ''rockfalls'' resulting from ''weathering,'' which were covered perils under the all-risk homeowners' policies, based on their experts' assertions. The insureds also contended that the causes included negligent construction of the highwall, and negligent maintenance by its current owner, both of which were covered perils. The insurers contended that the perils that caused the loss were ''landslide'' and ''erosion,'' both of which were expressly excluded under the policies.

The West Virginia Supreme Court ruled that the term ''landslide,'' in an insurance policy, ''contemplates a sliding down of a mass of soil or rock on or from a steep slope,'' and includes a naturally-occurring rockfall.[45] The court further ruled that the term ''erosion'' means ''the group of processes whereby earth or rock material is loosened or dissolved and removed from any part of the earth's surface,'' and includes the process of weathering.[46]

The *Murray* court reasoned that because the policies' earth movement exclusion referred to natural events, some of which could be attributable to a combination of natural and ''man-made events'' (such as landslide, subsidence and erosion), the exclusion barred coverage for naturally-occurring events, but not for ''man-made events'' such as negligent construction and maintenance.[47] Whether the landslide or negligent construction and maintenance was the efficient proximate cause was a question of fact, and the court remanded for a jury trial.

III. WORKING WITH CONSULTANTS TO INVESTIGATE CAUSES OF LOSS

First-party property claims often prove expensive and time-consuming to investigate, more so where the claim involves multiple causes of loss, because in such claims, causation is usually a question of fact.[48] Moreover, evaluating causation often requires technical or scientific expertise.

Thus, both insurers and insureds must often retain consultants with appropriate expertise to assist in evaluating causation. From the insured's perspective, consultants may help the insured meet its burden of proving that the claim is covered.[49] From the insurer's perspective, retaining consultants may show that the insurer investigated the claim in accordance with applicable state standards.

[B]oth insurers and insureds must often retain consultants with appropriate expertise to assist in evaluating causation

A key step in retaining consultants is to ensure that they are knowledgeable in the fields the claim implicates. The following types of consultants may be useful in evaluating causation.

- Building-related claims: Structural engineers, seismic experts, general contractors.
- Earth movement claims: Geotechnical engineers, seismic experts, structural engineers, soil engineers, geologists.
- Mold-related claims: Industrial hygienists, plumbers, general contractors.
- Food and beverage claims: Agricultural consultants, food chemists, food processing consultants, winemakers.

As with experts in litigation, it is important to inquire at the outset whether a proposed consultant has any conflicts of interest. It is also important to confirm that the consultant has the requisite qualifications, especially given the time and expense of conducting an investigation.

In retaining consultants, both parties should consider giving the consultant all information and a copy of all documentation involved with the claim. Consultants can often advise whether any additional information or documentation may be relevant for the investigation. They can also advise whether destructive or scientific testing may be necessary, and if so, what kind of testing.

Consultants should generally not receive a copy of the insurance policy or be asked to determine whether coverage exists, however. The reasons include that consultants are knowledgeable about scientific and technical issues, not insurance coverage, and it is for the insurer to make the coverage decision. Moreover, opinion evidence as to whether coverage exists is irrelevant in many states.[50] However, a consultant may be asked whether the facts fall within relevant policy language.

As an illustration, in a claim involving opal ''crazing,'' *i.e.*, spider web cracking or fracturing in opals, a consultant may opine on the reason the opals crazed (*i.e.*, causation).[51] In opals, crazing can occur due to evaporation of water naturally present in opals, latent defect, wear and tear, marring, something inherent in the opal, or from striking the opal. Some of these causes may be covered, while some may not be covered/excluded. A consultant may also opine on whether the opal crazing was accidental. However, a consultant may not opine on whether opal crazing constitutes ''direct physical loss'' (as required by first-party property policies), or whether coverage exists.

Each party should usually advise the other that it has retained consultants. Doing so can facilitate an

insurer's requests for information and inspections, and moreover demonstrates that the claim is under investigation. Likewise, the policy's cooperation clause usually requires the insured to provide the insurer with information and documentation needed to investigate the claim, including materials prepared by consultants.

Each party should also keep in mind that communications with consultants may not be privileged, and thus subject to discovery should a coverage action result, particularly if either side designates a consultant as an expert. On the other hand, most jurisdictions recognize a privilege for work performed in anticipation of litigation, although the scope of such a privilege varies based on the rules of evidence, the facts surrounding the retention of the consultant and the scope of the consultant's assignment.

IV. CONCLUSION

First-party property claims can involve highly complex issues of causation. An understanding of the policy language, governing law, and facts of the claim (with the assistance of consultants, if appropriate) can assist both parties in an appropriate evaluation of coverage.

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[1] 7 Couch on Insurance § 101:40 (Steven Plitt *et al*. eds., 2008), *quoted in* Amherst Country Club, Inc. v. Harleysville Worcester Ins. Co., 561 F.Supp.2d 138, 149 (D.N.H. 2008).

[2] Insurance Services Office Form No. CP 00 10 06 95 (emphasis added).

[3] South Carolina Farm Bureau Mut. Ins. Co. v. Durham, 380 S.C. 506, 509, 671 S.E.2d 610 (S.C. 2009) (emphasis added).

[4] Of course, other policy provisions may impact the existence of coverage for the claim. For example, a loss that occurs outside the policy period or the insured's failure to comply with policy conditions may constitute grounds for disclaimer.

[5] This article does not address the distinction between enumerated peril policies (in which only those perils enumerated in the policy are covered; such policies may also contain exclusions) versus so-called all-risk policies (in which all perils are arguably covered, except those which are excluded). Rather, for the sake of simplicity, and to keep the focus on the issue of causation, this article simply refers to covered versus non-covered/excluded causes of loss.

[6] *E.g*., Murray v. State Farm Fire & Cas. Co., 203 W. Va. 477, 487 n.8, 509 S.E.2d 1 (1998).

[7] *E.g*., Garvey v. State Farm Fire & Cas. Co., 48 Cal. 3d 395, 412–13 (1989).

[8] American Family Mut. Ins. Co. v. Schmitz, 2010 WI App 157, 23–26, 330 Wis. 2d 263, 23–26, 793 N.W.2d 111, 23–26, *rev. denied*, 2011 WI 29, 332 Wis.2d 280, 797 N.W.2d 525. *Schmitz* enforced, for the first time in Wisconsin, a policy's anti-concurrent causation language, but the court stopped short of overruling the independent concurrent causation rule articulated in earlier cases, which involved policies that did not contain anti-concurrent causation language. *Id*., 24.

[9] State Farm Fire & Cas. Co. v. Bongen, 925 P.2d 1042, 1045 (Alaska 1996) (collecting cases); Bao v. Liberty Mut. Fire Ins. Co., 535 F.Supp.2d 532, 540, 541 (D. Md. 2009) (predicting, as issue of first impression, that Maryland would not apply efficient proximate cause doctrine; collecting cases); Toumayan v. State Farm Gen. Ins. Co., 970 S.W.2d 822, 826 (Mo. Ct. App. 1998), *motion for rehrg. and/or transfer to Supreme Court denied*, (July 8, 1998); N.D. Cent. Code § 26.1-32-03; *Amherst Country Club*, 561 F.Supp.2d at 152–54 (discussing Bates v. Phenix Fire Ins. Co., 156 N.H. 719, 943 A.2d 750 (2008)); Duensing v. State Farm Fire & Cas. Co., 2006 OK CIV APP 15, 16–21, 131 P.3d 127, 133–34; *Durham*, 380 S.C. 506, 671 S.E.2d 610.

[10] *E.g*., *Durham*, 380 S.C. at 512, 671 S.E.2d 610.

[11] *Bongen*, 925 P.2d at 1043; *see* Thompson v. State Farm Fire & Cas. Co., 165 P.3d 900, 902 (Colo. Ct. App. 2007), *cert. denied*, 165 P.3d 900 (Colo. 2007).

[12] *Bongen*, 925 P.2d 1042; *see Thompson*, 165 P.3d at 904.

[13] *See, e.g*., *Toumayan*, 970 S.W.2d at 826.

[14] *See, e.g*., *Toumayan*, 970 S.W.2d at 826 ("The application of the efficient proximate cause doctrine is appropriate where there is an absence of exclusionary language or where the insurance contract is ambiguous.").

[15] Julian v. Hartford Underwriters Ins. Co., 35 Cal. 4th 747 (2005); Findlay v. United Pacific Ins. Co., 129 Wash. 2d 368, 917 P.2d 116 (1996); Murray v. State Farm Fire & Cas. Co., 203 W. Va. 477, 486, 490–91, 509 S.E.2d 1 (1998); *see Thompson*, 165 P.3d at 904.

[16] *Julian*, 35 Cal. 4th at 751–52.

[17] *Julian*, 35 Cal. 4th at 758–61; *see* Freedman v. State Farm Ins. Co., 173 Cal. App. 4th 957, 961–63 (2009).

[18] *E.g*., *Garvey*, 48 Cal. 3d at 401.

[19] *See Julian*, 35 Cal. 4th at 750, 756–57; *Garvey*, 48 Cal. 3d at 405–13; Howell v. State Farm Fire & Cas. Co. 218 Cal. App. 3d 1446 (1990).

[20] Graham v. Public Employees Mut. Ins. Co., 98 Wash. 2d 533, 538, 656 P.2d 1077 (1983).

[21] *Murray*, 203 W. Va. at 487 n.8, 509 S.E.2d 1.

[22] Pioneer Chlor Alkali Co., Inc., v. National Union Fire Ins. Co. of Pittsburgh, *Pa*., 863 F.Supp. 1226, 1231 (D. Nev. 1994) (emphasis in original).

[23] *Garvey*, 48 Cal. 3d at 403.

[24] *Garvey*, 48 Cal. 3d at 403.

[25] *Graham*, 98 Wash. 2d at 538.

[26] *Garvey*, 48 Cal. 3d at 403; *Murray*, 203 W. Va. at 487 n.9, 509 S.E.2d 1.

[27] *Garvey*, 48 Cal. 3d at 403; *Graham*, 98 Wash. 2d at 538. Timing may, however, be relevant to the issue of whether there has been an ensuing loss, which in some circumstances can mean that otherwise excluded losses may be covered. A discussion of ensuing loss is beyond the scope of this article.

[28] *Murray*, 203 W. Va. at 487 n.9, 509 S.E.2d 1 (quoting L. Russ, 7 Couch on Insurance 3d § 101:44 (1997)).

[29] *Garvey*, 48 Cal. 3d at 408; *see* Cal. Ins. Code § 530; *Graham*, 98 Wash. 2d at 538 n.1 Shepardize.

[30] *E.g.*, *Garvey*, 48 Cal. 3d at 412–13.

[31] Mission Nat'l Ins. Co. v. Coachella Valley Water Dist., 210 Cal. App. 3d 484, 492 (1989); Northwest Bedding Co. v. National Insurance Co. of Hartford, 154 Wash. App. 787, 794 Shepardize, 17, 225 P.3d 484 (2010), *rev. denied*, 169 Wash. 2d 1012, 236 P.3d 895 (2010).

[32] *Murray*, 203 W. Va. at 486, 509 S.E.2d 1.

[33] *Murray*, 203 W. Va. at 484, 509 S.E.2d 1.

[34] Vision One, LLC v. Philadelphia Indem. Ins. Co., 158 Wash. App. 91, 104, 24, 241 P.3d 429 (citing cases), *rev. granted*, 171 Wash.2d 1001, 249 P.3d 182 (2011). The case involves the collapse of shoring equipment supporting a poured concrete slab during construction of a condominium complex. The legal issues include efficient proximate cause and other issues of importance in first-party property insurance. As of the date of writing this article, oral argument before the Washington Supreme Court is set for September 15, 2011.

[35] *Julian*, 35 Cal. 4th at 751. It is often useful to organize the facts in this style, to help clarify the facts, coverage issues and analysis.

[36] 154 Wash. App. 787, 225 P.3d 484.

[37] The policy did not define either terms. Washington State's judicial definitions of these terms are set forth at *Northwest Bedding*, 154 Wash. App. at 792, 11, 793, 16, 225 P.3d 484.

[38] *Northwest Bedding*, 154 Wash. App. at 795, 19, 225 P.3d 484.

[39] *Findlay*, 129 Wash. 2d at 378.

[40] Kish v. Insurance Co. of N. Am., 125 Wash. 2d 164, 170–73, 883 P.2d 308 (1994).

[41] 187 Cal. App. 4th 766 (2010).

[42] *MRI Healthcare*, 187 Cal. App. 4th at 782.

[43] *MRI Healthcare*, 187 Cal. App. 4th at 783.

[44] *Murray*, 203 W. Va. 477, 509 S.E.2d 1.

[45] *Murray*, 203 W. Va. at 484, 509 S.E.2d 1 (citing 13A G. Couch, Couch on Insurance 2d 48:180 (1982) ("What Constitutes a Landslide")).

[46] *Murray*, 203 W. Va. at 484, 509 S.E.2d 1 (citing Dictionary of Geological Terms).

[47] *Murray*, 203 W. Va. at 484–89, 509 S.E.2d 1. The appendices to the decision collect cases and treatises regarding earth movement exclusions. *Id.*, 203 W. Va. at 493–97, 509 S.E.2d 1.

[48] *E.g.*, *Garvey*, 48 Cal. 3d at 412–13.

[49] *E.g.*, *Murray*, 203 W. Va. at 486, 509 S.E.2d 1.

[50] *See, e.g.*, Chatton v. National Union Fire Ins. Co. of Pittsburgh, Pa., 10 Cal. App. 4th 846, 865 (1992).

[51] This example is based on Harmon v. Safeco Ins. Co. of America, 24 Kan. App. 2d 810, 954 P.2d 7 (1998), which involved the issue of whether there was an "accidental direct physical loss." In *Harmon*, the insured's expert testified in court as to the various causes of opal crazing, but also testified that he was unable to determine the cause of crazing in the insured's opals.