

Better Understanding Efficient Proximate Cause in California Insurance Claims

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A. Introduction.

Whenever there are two or more causes of a loss in a causal chain, it is likely that the carrier's investigation will focus on an excluded cause and downplay 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,” in a causal chain, 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); *see also Sabella v. Wisler* (1963) 59 Cal.2d 21, 31-33.

The reason *Garvey* and *Sabella* are important is they lay the foundations for determining coverage where there is a single causal chain with a mix of covered and excluded risks causing damage.

The puzzle begins with two seemingly irreconcilable sections of the California Insurance Code.

We start with 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.

We then look at section 532, which 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 the loss was a peril which was not excepted.

Squaring these two code sections has proven problematic, because it requires weighing evidence as much as interpreting law.

An early example of this process is found in *Brooks v. Metropolitan Life Ins. Co.*, 27 Cal. 2d 305 (1945), where a covered risk occurred at the very end of causal chain.

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, trumped the covered peril, i.e., death by fire.

Our Supreme Court rejected the argument:

[T]he 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.

Id. at 309.

In other words, where an event such as a fire ignites a causal chain leading to loss, an underlying weakness such a disease, doesn’t cut-off coverage, even is disease is specifically excluded in the policy.

The *Brooks* rule became an important launch point when our Supreme Court later examined a covered cause of loss followed in the causal chain by an excluded risk 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* reconciled sections 530 and 532 by focusing on the “efficient proximate cause” of the loss, also known as the “predominant” or “most important” cause. *Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 754.

“[I]n 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 others in motion – is the cause to which the loss should be attributed, though the other causes may follow it, and operate more

immediately in producing the disaster.

* * *

The efficient proximate cause referred to in *Sabella* has also been called the predominant cause or the most important cause of the loss. “By focusing the causal inquiry on the most important cause of a loss, the efficient proximate cause doctrine creates a ‘workable rule of coverage that provides a fair result within the reasonable expectations of both the insured and the insurer.

Vardanyan v. AMCO Ins. Co. (2015) 243 Cal.App.4th 779, 787.

Sabella concerned a subsidence damage claim made under a homeowner policy. The policy specifically excluded “settling” and the carrier denied coverage, relying on Section 352, since settlement was the immediate cause.

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 that set the causal chain into motion.

“[I]n 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).

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 as 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.

Julian v. Hartford Underwriters Ins. Co. (2005) 35 Cal.4th 747, revisited *Sabella* and *Garvey*, reaffirming their basic principles, but fine tuning some of their analysis.

The Supreme Court reaffirmed the basic premise that “Policy exclusions are unenforceable to the extent that they conflict with section 530 and the efficient proximate cause doctrine.”

Julian added the “most important cause of loss” to the *Garvey/Sabella* efficient proximate cause definition (prior to *Julian*, some commentators, including this one, could argue this was not included).

Balancing the “important cause” language, the court reaffirmed *Howell v. State Farm Fire & Cas. Co.* (1990) 218 Cal.App.3d 1446, 1461, which allowed:

“Stated simply, the important question presented by this case is whether a property insurer may contractually exclude coverage when a covered peril is the efficient proximate cause of the loss, but an excluded peril has contributed to or was necessary to the loss. We conclude that a property insured may not limit its liability in this manner, since the statutory and judicial law in this state make the insurer liable whenever a covered peril is the ‘efficient proximate cause’ of the loss, regardless of other contributing causes. Consequently, the policy exclusions at issue in this case are not enforceable to the extent they conflict with California law.”

“*Garvey* implicitly and *Howell* explicitly held that section 530 and the efficient proximate cause doctrine announce a rule that reasonable insureds consider themselves insured against losses proximately caused by perils covered under a first party insurance policy, regardless of contrary language employed in connection with excluded perils.” *Julian, supra*, 35 Cal.4th at 756.

Whether a cause in the chain is the efficient proximate cause presents an issue of fact, reserved for the trier of fact, generally a jury. *State Farm Fire & Casualty Co. v. Von Der Lieth* (1991) 54 Cal.3d 1123, 1131-1132 (also holding that, if third party negligence is not excluded under the policy, then it is a covered peril).

D. Conclusion.

Insurance companies don't make money by paying claims, they make money by investing premium dollars.

The efficient proximate cause doctrine can be a leveler in the right set of circumstances. Understand it's basic principles when evaluating your claim and you may be pleasantly surprised at the result.

THE END