

Insurance Coverage: Applying the Concurrent Proximate Cause Rule to Losses Due to Excluded Acts

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INSURANCE COVERAGE: APPLYING THE CONCURRENT PROXIMATE CAUSE RULE TO LOSSES DUE TO EXCLUDED ACTS?

Presented by:

Kenneth R. Goleaner and Katrina L. Smeltzer

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Overview



- General background
- Difference from Efficient Proximate Cause Rule
- What it is
- How Plaintiffs' attorneys plead around coverage
- Analysis
 - Examples
- Test
- Takeaways

Concurrent Proximate Cause Rule



- A loss arises from multiple alleged causes
 - One covered
 - One excluded

- Outcome:
 - Coverage is provided

States Adopting Concurrent Proximate Cause Rule

Missouri, Iowa, Minnesota,
New Jersey, Tennessee, Texas
Wisconsin, Vermont, others...



Efficient Proximate Cause Rule



- Differences
 - Predominantly first-party insurance
 - Permits recovery for a loss caused by a combination of a covered cause and an excluded cause if the covered cause set the other cause(s) in motion

States Adopting Efficient Proximate Cause Rule

Missouri, Arkansas, Massachusetts,
Nevada, Oklahoma, South Dakota,
Washington, others...

Efficient Proximate Cause Rule



- Can be contracted around with appropriate policy language
- Examples

Concurrent Proximate Cause Rule



- Third-party liability
- Common exclusions at issue
 - “Assault and Battery”
 - “Expected or Intended Injury”
 - “Abuse or Molestation”
 - “Auto”

Savvy Plaintiff's Attorneys



- As an end-around to apparent absence of coverage, will plead:
 - Failure to provide adequate security
 - Negligent supervision
 - Negligent retention
 - Negligent training
 - Negligent entrustment

Example Case



- *Adams v. Certain Underwriters at Lloyd's of London*, 589 S.W.3d 15 (Mo. App. E.D. 2019)
 - Outside a nightclub
 - Shooting into crowd of teenagers
 - Killed 16-year-old waiting to attend party

Example Case



- *Adams v. Certain Underwriters at Lloyd's of London*, 589 S.W.3d 15 (Mo. App. E.D. 2019)
 - Claim against nightclub
 - Negligent failure to provide adequate security and crowd control
 - Not assault and battery

Analysis



- Analyze relationship
 - Loss (shooting death)
 - Excluded cause (battery and assault)
 - Potentially covered cause (negligent failure to provide adequate security)

Analysis



- Broad application
 - As long as covered cause is a direct cause of loss, covered
- Limited application
 - Concurring causes must be independent and distinct

Difficulty Formulating Uniform Test



- Whether covered cause is dependent on excluded cause
- *Adams case*
- *Yount case*

Policy Language



- “in whole or in part”
- Exclusion of supervision or entrustment claims “arising out of” excluded cause

Takeaways



- Be mindful of rule
- Pay attention to allegations over titles
- Watch for amended pleadings
- Be cautious when denying

Questions?



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