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INTERPRETING THE ALL-RISK POLICY IN FIRST PARTY CLAIMS FOR DAMAGE TO BUILDINGS



The B.C. Supreme Court in *The Owners, Strata Plan NW2580 v. Canadian Northern Shield Insurance Company*, 2006 BCSC 330 provided an excellent summary of the current legal doctrines that apply to interpreting an all-risk policy in cases of damage to buildings caused by earth movement and settling.

THE FACTS

The insured's building suffered damage when preload soil or sand was placed on the adjacent property, causing the insured's property to move and settle.

The insurer denied coverage on the basis of two exclusions against loss or damage "*caused directly or indirectly*" to buildings by:

- aa) *Snowslide, landslide, subsidence or other earth movement, except for ensuing loss or damage which results from fire, explosion, smoke or leakage from fire protective equipment; and*
- cc) *Settling, expansion, contraction, moving, shifting or cracking unless concurrently and directly caused by a peril not otherwise excluded (Emphasis added).*

CAUSATION PRINCIPLES EXAMINED

In analyzing the chain of causation in this case, whereby the preload caused the earth movement, which in turn resulted in the damage to the insured's building, the Court distinguished between proximate and direct cause, contributing and indirect causes, and concurrent causes. The damage in this case was not the result of concurrent causes, which refers to independent causes combining to cause the damage.

Proximate cause (opposite of remote cause) relates to "*the quality of the closeness of a particular cause*". Direct cause (opposite of indirect cause) relates to "*the degree to which an event leads straight or immediately to its consequences*". The court in this case determined that the proximate

cause of the damage was the preload. The direct cause of the damage was the earth movement, whereas the indirect cause was the preload.

INTERPRETING THE POLICY

The court went on to interpret the exclusions in light of general principles of interpretation of insurance policies, which included:

1. The *contra proferentem rule* (ambiguities in the policy drafted by the insurer should be resolved against the insurer);
2. Coverage provisions should be construed broadly and exclusion clauses narrowly; and
3. The desirability of giving effect to the reasonable expectations of the parties; for the insured, their reasonable expectation that the policy will provide coverage for legitimate claims on an ongoing basis.

With respect to Exclusion aa), the court held that “*earth movement*” referred only to naturally occurring phenomenon (as opposed to the situation in this case where the earth movement was caused by human intervention). Exclusion aa) did not apply.

With respect to Exclusion cc), the court followed legal authorities that stand for the proposition that “settlement” in this context is **not** limited to naturally occurring settlement. In respect of the exception to Exclusion cc) the court held that there was no concurrent or independent contributing cause of the loss beside settlement. Accordingly, Exclusion cc) was applied and coverage for damage to the insured’s building was excluded from the policy.

PRACTICAL IMPACT FOR INSURANCE INDUSTRY

This case provides a succinct summary of causation analysis and theory in the context of first party claims. It also provides principles of interpretation with respect to two common exclusions pertaining to earth movement and settling. Finally, it underscores the utility of carefully drafting exclusions and the potential peril of simply inserting the phrase “directly or indirectly” rather than employing more deliberate wording as was done in this case.

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