



b.pre (PARED!)

[the business interruption e-source]

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Is there any standard rule or state law by which insurance carriers are required to respond when you have a loss and the proximate cause may be in question?

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ANTI-CONCURRENT CAUSATION: THE ANSWER

This question, posted by a subscriber to *Be Prepared!*, has to do with concurrent causation and how policy forms handle a hurricane claim when you have wind damage, water damage, wave wash, storm driven water, or rain, etc. A number of carriers have developed “anti-concurrent causation” wording to restrict coverage in these situations.

According to *Investopedia*, the definition of ‘concurrent causation’ is, “**An insurance theory stating that if loss or damages occur as a result of more than one cause, one of which is covered (insured) while the other is not, the damages are likely to still be compensated for by the insurer.**” This theory has been a frequent source of debate and reinterpretation in courts across the U.S. and Canada; insurers have tried to insert

anti-concurrent causation clauses into contracts (especially in property/casualty insurance) to restrict coverage against certain perils even if they are involved in concurrent causation.

In more recent times, these concurrent causation exclusions have also become known as “anti-concurrent exclusions,” since their purpose is to prevent the theory of concurrent causation from providing coverage for losses never intended to be covered by standard property insurance policies. A number of different anti-concurrent causation clauses are in use today, and some are more troublesome than others.

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WYOMING OFFICE:

1740H Dell Range Blvd.,
#300 Cheyenne, WY 82009
PHONE: 307.433.8180
FAX: 307.634.9497

EMAIL: info@bisimplified.com
WEB: www.bisimplified.com

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Newsletter Layout & Design by
showoffgraphics@mac.com

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One of the more commonly used clauses is found in the Insurance Services Office Causes of Loss-Special Form (CP 10 30 04 02). It states, **“We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.”** Then the exclusions are listed.

This provision bars coverage whenever an excluded peril directly or indirectly causes damage. Although this is a very unfavorable clause for policyholders, unlike other forms, at least it is limited in scope to excluded causes of loss, which in many instances will leave room for argument over whether an event was a cause or an effect.

When covered and non-covered perils combine to create a loss, the insured is entitled to recover that portion of the damage caused solely by the covered peril. The doctrine of concurrent causation is not an affirmative defense or avoidance issue; instead, it is a rule embodying the basic principle that insureds are not entitled to recover under their insurance policies unless they prove their damage is covered by the policy. The insured must present some evidence upon which the jury can allocate the damages attributable to the covered peril. Because the insured can recover only for covered events, the burden of segregating the damage attributable solely to the covered event is a coverage issue for which the insured carries the burden of proof. Otherwise, failure to segregate covered and non-covered perils is fatal to recovery.

A practical difficulty with the concurrent causation doctrine is that there is no general basis for distinguishing causes. This is problematic in interpreting broad form insurance policies because the determination of coverage depends on finding at least one covered cause.

Anti-concurrent causation clauses are so named because they are intended, among other things, to be a response to the rule in most jurisdictions that in instances of concurrent causation—where multiple forces independently cause a loss, one of which is a covered peril and the other is not—the insurance policy must respond.

The rules of insurance policy interpretation should be based on common sense and the understanding of the parties to the contract. That way, insurers and policyholders are in a much better position to make sound insurance transaction decisions. In the case of causation theory, it would be an excellent idea to get rid of “proximate cause,” “concurrent cause,” “efficient proximate cause,” and other jargon as a prologue to the development of a set of simple and cogent doctrines.

When a loss occurs, policyholders should keep two things in mind as they evaluate coverage in light of an anti-concurrent causation clause. First, the different clauses in use may lead to different results depending upon the facts of a claim. So, do not assume that just because a court has enforced one clause it would hold that another clause bars coverage. Second, not all courts will enforce these clauses. Moreover, in many instances more than one state’s law is potentially applicable to a loss. So, the policyholder should examine the laws of all states which might be applied to determine whether a viable claim exists.

In addition to the importance of determining an initial cause and the issue of “two concurrent causes,” it is extremely important to construct an accurate timeline so that issues of concurrent losses can be accurately depicted in court. This is imperative in a state where the court may find that anti-concurrent causation language may be considered irrelevant when a covered cause of loss is the initial trigger for coverage.

A review of case law points out that each loss must be analyzed on a case-by-case basis. The facts of the loss must be reviewed and the exact wording of the policy must be applied to the facts. The case law and any statutory law of the applicable jurisdiction must be referenced. Policyholders should be alert to the presence of those clauses when buying property coverage and aware of how the courts are interpreting them when claims are made. If there is a good probability of incurring loss from these perils, if possible it would be prudent to endorse coverage for them on the policy and eliminate the concurrent causation problem.

b. (FUNNY!)

[a little insurance humor]

Coming home, I drove into the wrong house and collided with a tree I don’t have.



The other car collided with mine without giving warning of its intentions.

I thought the window was down, but found out it was up when I put my head through it.

I collided with a stationary truck that was coming the other way.

A truck backed through my windshield into my wife’s face.