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Washington Supreme Court Addresses "Ensuing Loss" Provisions, the "Efficient Proximate Cause" Rule, and the Definition of "Collapse"

By Daniel R. Bentson

On May 17, 2012, the Washington Supreme Court issued two new opinions addressing "ensuing loss" provisions (also known as "resulting loss" provisions), the "efficient proximate cause" rule, and the definition of "collapse" in the first-party property insurance context. Taken together, the results of both cases are hard to reconcile and, in fact, four justices argued that the decisions are irreconcilable. Although these cases do not substantially clarify the law in Washington, they are sure to be of significance for carriers that provide property insurance throughout the state.

In ***Vision One, LLC v. Philadelphia Indem. Ins. Co.***, a unanimous court held that, where faulty workmanship caused structures used to support a concrete floor slab (i.e., "shoring") to give way, which in turn caused the concrete floor slab to fall down, the collapse ensued from the faulty workmanship. The collapse was, therefore, covered under the insurance policy's "ensuing loss" clause.

Vision One also included a detailed discussion of the "efficient proximate cause" rule. Under the efficient proximate cause rule, where two or more perils combine to cause a loss and a ***covered*** cause of loss is the predominant or efficient cause, the loss is ***covered*** – even if an excluded cause of loss appears in the chain of causation. The court, however, rejected the "opposite proposition" – i.e., where two or more perils combine to cause a loss and an ***uncovered*** cause of loss is the predominant or efficient cause, the loss is ***not covered***. Still, the court noted that the policy language itself may address this situation.

In ***Sprague v. Safeco Ins. Co. of Am.***, a divided court (5-4) held that, where faulty workmanship caused structures used to support the deck of a residential home (i.e., "fin walls") to rot to the point of advanced decay, placing the decks in a state of substantial structural impairment, the advanced decay of the fin walls was not covered under the policy's "ensuing loss" clause. The policy at issue contained exclusions for faulty workmanship and rot. The majority opinion stated that *Sprague* involved the straightforward application of *Vision One's* analysis of "ensuing loss" provision – i.e., the rotted fin walls only caused damage to themselves and did not cause an ensuing loss to separate property. However, in a dissent signed by four justices, Justice Stephens, the author of the majority opinion in *Vision One*, argued that the result in *Sprague* could not be reconciled with the court's *Vision One* holding.

Although the policies at issue in *Sprague* did not use the word "collapse," the justices expressed disagreement about the appropriate definition to apply to the term in the context of property insurance. The majority argued that, regardless of whether "collapse" means "falling to the ground" or "substantial structural impairment," the condition of the decks did not constitute a separate loss covered by the policy's "ensuing loss" provision. The dissent disagreed, arguing, in part, that the ordinary definition of "collapse" includes "a breakdown of vital energy, strength, or stamina," and, therefore, courts should adopt the "substantial structural impairment" definition. A concurring opinion, signed by two justices who joined in the majority, criticized the dissent, stating that "collapse," in reference to physical structures, means actually falling down.

In light of these decisions, the divided opinions of the justices in *Sprague*, and the recent (and upcoming) personnel changes on the court, insurers will need to continue keeping close watch on these difficult coverage issues.