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ILLINOIS LAW MANUAL

CHAPTER XI
INSURANCE COVERAGE AND DEFENSES

E. CONCURRENT CAUSATION

For the first-party property insurance claim, Illinois law holds that where "a policy expressly insured against loss caused by one risk but excludes loss caused by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributing cause." Mattis v. State Farm Fire Cas. Co., 118 Ill. App. 3d 612 (1983). Causation with respect to third-party tort liability has been treated differently than with respect to first-party property insurance.

The distinction between first-party property insurance and third-party tort claims can be summarized as follows: if the insured is seeking coverage against a loss or damage sustained by the insured, the claim is first-party, whereas, if the insured is seeking coverage against liability that the insured owes to another, the claim is third-party in nature. Property insurance, unlike liability insurance, is unconcerned with establishing negligence or otherwise assessing tort liability. In tort cases, the rules of proximate cause fix culpability and blame those who created the situation in which the physical laws of nature operated. Whereas in first-party property insurance cases, the concern is not with the question of culpability or why the injury occurred, but only with the nature of the injury and how it happened (i.e., loss caused by certain specified perils). This section will deal only with concurrent causation in the third-party tort liability context.

Although the phrase "concurrent causation" describes multiple causation situations where the causes are not independent, the phrase often appears without any definition. In United States Fidelity & Guaranty Co. v. State Farm Mut. Auto. Ins. Co., 152 Ill. App. 3d 46 (1987), however, the Appellate Court held that, in order for an injury to be excluded from coverage under an insurance policy, the injury must have been caused solely by a proximate cause which is excluded under the policy. The court went on to note that a proximate cause of an injury is any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause, but is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury. The court then concluded that even though the policy contained a motor vehicle exclusion, a day care center was entitled to liability coverage for an injury that took place when a child fell out the open passenger door of a moving vehicle. The court was of the opinion that a proximate cause of the injuries was the day care center's failure to provide sufficient and adequate supervision, and that the jury could have concluded that the sole proximate cause of the child's injuries was not the use, operation, or maintenance of the motor vehicle.