INSURANCE COVERAGE WITH “GAPING HOLES” MAY TRANSMUTE ONE FORM OF INSURANCE INTO ANOTHER

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Texas businessmen and other professionals purchase a variety of liability insurance policies to satisfy their individual needs. So do ordinary citizens, with their basic automobile and homeowners’ insurance policies. Insureds modify coverage with endorsements, as necessary, to meet special risk situations. Until recently, Texas courts were not particularly concerned with the “reasonable expectations” of persons who buy insurance, nor with gaps in coverage. However, the Supreme Court of Texas recently labeled a failure to satisfy expectations as an unfair situation, causing “gaping holes” in insurance coverage that courts have a duty to plug. See Utica Nat’l Ins. Co. of Tex. v. American Indem. Co.

The Utica decision which is the subject of this report is not yet released for publication, and in fact, motions for rehearing have been granted. Therefore, it remains to be seen whether the Supreme Court’s “plugging” of gaping insurance coverage holes becomes a reality, a trend, or only an aberration. Whether more sinkholes are added to an already confusing subject of insurance coverage is an open question. However, the outcome of rehearing will be significant to the multitude of Texas consumers who rely for loss protection on their chosen liability insurance policies and who share in premium increases and decreases as carrier’s loss payments ebb and flow in the wake of court decisions on insurance coverage issues.

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The Case of The Gaping Hole In Coverage

In *Utica*, a group of doctors doing business as Mid-Cities Anesthesiology (“Mid Cities”) was insured by Utica National Insurance Company of Texas (“Utica National”) and American Indemnity Company under consecutive CGL policies. Insurance Corporation of America (“ICA”) insured Mid-Cities under a professional liability insurance policy. A member of the surgical staff gained access to and contaminated ampules of fentanyl which were then unknowingly administered to Mid-Cities’ patients, causing forty-four patients to contract hepatitis-C. Those patients sued Mid-Cities and others. ICA initially provided a defense for Mid Cities, but when that insurer was declared insolvent before all forty-four claims were settled, Texas Property and Casualty Insurance Guaranty Association (“Guaranty Association”) took over the defense. The four remaining tort plaintiffs amended their petition to allege “claims implicating the general liability coverage.” The Guaranty Association tendered the defense to American Indemnity and then to Utica National. American Indemnity and the Guaranty Association settled the remaining claims for approximately $1 million, splitting the cost evenly. Utica National refused coverage, relying on the “professional services” exclusion in its CGL policy. American Indemnity brought a declaratory action.

The Austin Court of Appeals characterized the factual allegations as follows when applying the “origins of the damages rule:”

The factual allegations showing the origin of damages include such antecedent acts as failing to properly secure anesthesia narcotics, violating statutory and regulatory standards pertaining to the handling and storage of narcotics, failing to maintain narcotics in a securely locked cabinet, failing to ensure adequate policies to prevent drug contamination, and leaving controlled substances unattended in the operating room.

The Austin Court of Appeals concluded that these “antecedent allegations of negligence” triggered Utica National’s duty to defend. Utica National responded that in order for the professional services
exclusion to apply, it was only necessary to prove that the administration of fentanyl was the “but for” cause of tort plaintiffs’ injuries. That was a reasonable response, given insurance industry acceptance that CGL coverage and professional services coverage serve significantly different functions. CGL policies provide comprehensive coverage, while a professional services policy is narrowly designed to insure members of a particular professional group from the liability arising out of special risks inherent in the practice of their profession.11

The situation confronted by the Austin Court of Appeals was not unique. Professional services frequently involve activities occurring at the time tort plaintiffs suffer bodily injury (e.g., injections of fentanyl) which CGL insurers exclude from coverage by endorsement, but where related non-professional antecedent or concurrent events that may be covered may have contributed to the loss (e.g., improper storage of drugs).12 In such cases, courts allow insurance recovery where preliminary or concurrent non-professional acts are independent of excluded professional acts.13 Conversely, courts disallow recovery where preliminary or concurrent non-professional acts are contributors to losses but are not independent of excluded professional acts. Preliminary or concurrent non-professional acts that contribute to losses are only independent of excluded professional acts when they provide the basis for causes of action by themselves, not requiring acts excluded from coverage to create actionable torts.14 In rejecting this precedent, the Austin Court of Appeals cited Guaranty National Insurance Co. v. North River Insurance Co.15

In Guaranty National, North River insured Texarkana Memorial Hospital under a CGL policy. North River’s policy excluded coverage for negligently performed professional services. United States Fire Insurance Company insured the hospital for professional liability. A patient at the hospital committed suicide by jumping out a window of the hospital’s psychiatric ward. The administrator of the deceased’s estate sued the hospital. In the underlying tort lawsuit, a jury found
the hospital liable for three acts of negligence: (1) failure to properly monitor and observe the deceased; (2) failure to maintain windows in the deceased’s room in a proper manner to prevent escape or suicide; and (3) failure to maintain an adequate staff of properly trained personnel in the hospital’s psychiatric unit.\textsuperscript{16} As a result, the hospital’s negligence in \textit{Guaranty National} was attributed to its performance of administrative and ministerial tasks, which were not professional services. Therefore, North River’s CGL policy covered the claim.

The Austin Court of Appeals erred in following \textit{Guaranty National} because none of the negligence claims against the hospital in \textit{Guaranty National} involved “medical malpractice” as that term is commonly understood. If, for example, the deceased in \textit{Guaranty National} exhibited no suicidal behavior but committed suicide by jumping from the window of a county jail where she was being held as a prisoner for shoplifting, a negligence claim, at best, would be merely a premises liability cause of action, not the malpractice of criminal justice.

In \textit{Utica}, the allegedly covered events that caused injury, the improper storage of drugs, was not the immediate cause of tort plaintiffs’ damages and was not independent of the excluded cause, the administration of fentanyl. Improper storage of drugs, without administration of fentanyl, would not have created a cause of action in and of itself. Thus, the Austin Court of Appeals erroneously concluded that:

Similarly, [as in \textit{Guaranty National}] the petition here alleged negligence in a number of acts that did not require any professional judgment, education, or training. Each antecedent act required custodial, administrative, or ministerial skills. For example, the Anesthesiology Group’s professional training, education, and expertise were not required to properly store its drugs and screen the people with access to them. These acts relate to security and custodial duties associated with the lawful possession of controlled substances. Accordingly, we conclude that the professional services exclusion does not apply to those antecedent acts that are independent of professional training, education, and expertise.\textsuperscript{17}
In the yet unpublished Supreme Court of Texas opinion in *Utica*, the higher court affirmed the Austin Court of Appeals’ ruling that Utica National owed a duty to defend. However, the Supreme Court did so by distinguishing between the causation phrases “due to,” found in the CGL policy’s professional services exclusion, and the “arising out of,” wording of other exclusions in the same CGL policy. The Court reasoned that because the causation phrase “arising out of” means “but for” causation, the causation phrase “due to” must have an entirely different meaning which requires “a more direct type of causation . . . [which is based on] the manner in which the services were performed.” In other words, for the professional services exclusion to apply, the tort plaintiff’s injury must be caused by a breach of a professional standard of care. The Court did not follow the law of other jurisdictions that hold the two causation phrases “due to” and “arising out of” mean the same thing.

In so holding, the Court refused to accept Utica National’s “but for” causation argument because that interpretation would create a perceived “gaping hole” in coverage if Mid-Cities were sued for an event related to the provision of “professional services but unrelated to any fault in the provision of those services.” The Court concluded that professional services exclusions apply only when insureds are found liable for breaching professional standards of care, conceding that providing medical services was a “but for” cause of tort plaintiffs’ damages which would trigger professional services exclusions. The gaping hole in coverage would occur if doctors were not negligent in providing medical services, facts that would defeat coverage under professional liability policies.

Under Utica’s interpretation of the policy exclusion, by contrast, the doctors’ association would necessarily have a gaping hole in its coverage when it purchases a standard general liability policy. Utica’s interpretation requires only but-for causation to exclude harm related to the provision of professional services. Since medical services were a but-for cause of the damages in this case, the general
[liability] policy would not offer coverage. If the doctors were not negligent in their provision of medical services, the professional liability policy would not provide coverage either. Therefore, the doctors’ association would have no insurance coverage for any claim related to its professional services but unrelated to any fault in the provision of those services.

We believe it unlikely that the State Board of Insurance or the parties here intended this standard policy to offer so little coverage. After all, Utica chose to insure a doctors’ association, knowing that its primary purpose was to provide professional services. In most situations, the association’s potential liability could at least arguably be traced back to its professional services in some manner.

Consequently, we conclude that the parties intended the general liability policy to exclude coverage normally provided by professional liability policies – that is, coverage for liability caused by the breach of a professional standard of care.25

In a nutshell, the Court is saying that a finder of fact will determine which policy covers the payment of indemnity. Stated differently, if a trial results in a judgment that plaintiffs’ infections were caused by the breach of professional standards of care — for example, doctors’ negligent administrations of anesthetic — Utica’s duty to indemnify as the CGL carrier would be negated. If, however, professional services were rendered with due care but negligent handling of drugs caused bodily injuries, professional services exclusions would not apply.

The Enoch Dissent

Justice Enoch filed a dissenting opinion. He concluded that the distinction, if any, between the two causation phrases at issue was immaterial. He states that “I cannot think of a more direct tie of liability for ‘bodily injury’ to the ‘manner in which the services were performed’ than by anesthesiologists administering tainted anesthesia to patients.”26 The Enoch dissent takes issue with “plurality’s supposition” that the wording of the professional services exclusion created a “gaping hole” in coverage. “The Supreme Court’s job is to decide what [coverage the insureds] bought, not
to decide what they should have bought. And in this case, they bought a policy that excludes coverage when a claim is based on injuries ‘due to’ the rendering of professional services.”

Along with Justice Enoch in his dissent, we take issue with this conclusion. We believe professional liability insurers should defend lawsuits such as Utica because events that actually caused injuries were the injections of tainted narcotics, part of a professional service. Whether Mid-Cities actually committed malpractice is a non-issue in determining whether the professional liability insurer owed a defense. If Mid-Cities were found not liable for malpractice, the professional liability insurer would not owe a duty to indemnify, pursuant to the language of the policy. If professional liability insurers defend, as they should, insureds would receive exactly what they bargained for.

Causation Problems

As illustrated by Utica, causation problems exist in all fields of insurance. When courts determine coverage issues, they generally rely on the precise wording of insurance policies. However, when insurers try to restrict their liability, courts use a more stringent construction. When courts consider insurance policy provisions that exclude or limit coverage, the causes of injury are usually irrelevant to the causation analysis, and when decision-makers determine coverage under Texas law, they focus on the factual origins of the claimed injuries rather than on legal theories asserted. Decision-makers must also distinguish between antecedent links in the chain of causation from the central linking events which led to the claimed losses.

Causal Language in Insurance Policies

Causal phrases, such as “caused by,” “results in,” “results from,” “arising out of,” and “due to,” are an essential part of insurance policies. Cause in fact is an essential element of proximate cause in both tort and insurance law. However, there is a difference in how those principles are applied. As Justice Cardozo pointed out in 1918, “there is a tendency [in tort law] to
go farther back in the search for causes than there is in the law of contracts. . . .”  Cardozo noted further that, “[e]specially in the law of insurance, the rule is that, ‘You are not to trouble yourself with distant causes.’”

In insurance law, the term “proximate cause” has essentially the same meaning as in tort law, but insurance law ignores the element of foreseeability of injury, and the cause in fact element of proximate cause includes all events “but for” which the loss would not have occurred. Prosser offers this example of how causation works in the insurance context. Event “A” is a cause in fact of event “B” if event “A” must happen before event “B” can happen. However, if event “B” would have occurred regardless of event “A,” event “A” is not the “but for” cause of event “B.” Any set of circumstances that becomes a necessary condition of a particular event becomes a cause in fact of the event in question.

Liability insurance losses are of a nature that decision-makers may almost always theoretically separate the events that occur at the time bodily injury takes place from some related but antecedent or concurrent events that arguably contributed to the bodily injury, like negligent hiring or training. As in tort law, the concept of proximate cause focuses and constrains a review of causation fact patterns. In this connection, causation refers to a cause in fact that sets in motion a chain of events that produces loss or damage. In making a proximate cause analysis for liability insurance losses, decision-makers focus on the necessary causes of a loss by looking at the significance of events or facts related to the tort plaintiffs’ losses.

In both tort and insurance law, events must be at least a “but for” cause of a loss and a substantial factor in bringing about the damage or injury. Decision-makers should not trace events back to their metaphysical beginnings when they undertake a tort-like causation analysis to determine causal relationships between events at issue. However, a decision-maker’s analysis in the
insurance context is nevertheless a tort-like analysis even though the decision-maker ignores tort elements of fault, duty, foresee ability, and trivial causal links. The goal of a causal analysis is to determine the causal relationship between material events and the loss. Material converging events play a role in causal fact patterns with respect to coverage issues because those events may be excluded or they may be covered by the insurance policies under review.

**Concurrent Causation**

Texas insurance law recognizes a concurrent causation theory where two or more acts, independent of each other, cause injury. The theory is used to determine if coverage exists under two different policies, such as a CGL policy and an auto liability policy, or a homeowner’s policy and an auto liability policy. In some cases, insureds assert concurrent causation arguments to bypass policy exclusions. When courts reject the theory in those contexts, they ask whether claims would exist “but for” conduct excluded by the insurance policy under review.

**Motions For Rehearing**

Both Utica National and the Guaranty Association filed motions for rehearing in the Supreme Court of Texas in December 2003. Both motions were granted, but no hearing date has been set. Utica National urges the Court to withdraw its opinion and issue a new opinion “that is faithful to the language of the [CGL] policy” and one that embraces the insurance coverage law of the majority of jurisdictions. Utica National urged these specific grounds in its request for rehearing:

1. Nowhere does the “professional services” exclusion state or imply that there must be a “breach of the professional standard of care” in order for the exclusion to apply.

2. General liability insurance is not designed to provide coverage for all occurrences that the professional liability policy fails to cover.

3. The Court’s opinion departs from the majority rule for determining a duty to defend when excluded and non-excluded claims are alleged, and permits plaintiffs to manufacture coverage.
4. By judicially narrowing the scope of the “professional services” exclusion, the Court’s opinion tampers with one of the virtues of the general liability policy – its relatively low cost.

The Guaranty Association requested rehearing on three grounds, the third of which sounds much like ground number three raised by Utica National:

1. to reconsider whether remand is appropriate given that the summary judgment evidence offered by Utica raises a genuine issue of material fact on its affirmative defense that coverage was excluded under the terms of the professional services exclusion.

2. to reconsider whether remand is appropriate given that the summary judgment evidence offered by Utica failed to raise a genuine issue of material fact on Utica’s duty to indemnify the physicians who rendered no medical treatment to a particular plaintiff, since as a matter of law, the physicians who rendered no medical treatment to a plaintiff could not have owed any professional duty to that plaintiff.

3. to clarify whether [the Court] intended to overrule a line of cases which hold that where both covered and non-covered conduct are found to be a cause of damages to the plaintiff, coverage will be afforded for the covered cause of action unless the covered claim is dependent upon proof of the non-covered conduct.

Conclusion

It is conceivable that the Court will make some material changes in its decision and opinion when the Court rehears Utica. However, because Utica is a summary judgment matter, remand for a trial court determination of causation may still be in order. If grounds of causation are found to be purely professional services, then Utica National’s CGL policy would not provide indemnity coverage for the doctors. If, on the other hand, failure to properly store narcotics (as opposed to injections of tainted drugs) is the basis for liability, and if one can accept the idea that such a theory of liability is covered under Utica National’s policy, then Utica National would indemnify the insureds. On remand, a finder of fact may conceivably find two proximate causes of injury, one being malpractice, the other falling within CGL coverage. Thus, this case may be one where an allocation of damages must also be made on remand, involving other factual questions. If Mid-
Cities is found liable in the trial court on two bases — one which is within CGL coverage and one which is not covered — an equitable apportionment between the two bases would then appear reasonable. ⁵²

To resolve the problems of policy language, such as those raised in Utica, CGL carriers may heed the Supreme Court’s observation and change the wording in exclusions, such as the professional services exclusion, to include the phrase “arising out of” instead of “due to.” As an alternative, CGL carriers may consider the type of phrasing frequently found in property coverage forms which excludes coverage for specific types of loss causation, regardless of any contributing events, either concurrent events or any sequence of events. ⁵³

But changes in the language of insurance policies, without more, will not stop a trend towards allowing a search for remote causations in a chain of events until a cause for which there is insurance coverage is stumbled upon. The “distant causes” of which Justice Cardozo disapproved so many years ago may become viable causation for purposes of insurance claims.

By failing to use a “but for” approach to causation in Utica, the Court actually converted general liability insurance into professional liability insurance coverage. On rehearing, if the Court adopts an understandable “but for” causation analysis, the Court will reduce the likelihood of lower courts transforming other forms of insurance into entirely different forms of coverage. By providing predictable coverage analysis procedures, the Court will narrow issues, improve uniformity of appellate decisions and thereby provide greater certainty of the law, all of which will reduce litigation costs and unnecessary burdens on the court system.

Does a liability insurer have a duty to defend its insured against a claim involving an injury allegedly resulting from multiple causes, when the injury would not have occurred – and thus the claim would not exist – “but for” conduct expressly excluded from coverage under the policy?

The causation phrase “due to” is synonymous with the phrase “caused by” and clearly refers to the proximate cause of the loss. U.S. Fid.

According to Black’s Law Dictionary the terms “due to,” “sustained by,” “caused by,” “resulting from,” “sustained by means of,” “sustained in consequence of,” and “sustained through” are synonymous. BLACK’S LAW DICTIONARY, 501 (6th ed. 1990).


Another commentator concludes the following with respect to the professional services exclusions:

It is the nature of the services being performed, that controls, so the [professional services] exclusion can be inapplicable to the acts of a professional who was not acting in his professional capacity.

The exclusion has been held to apply even to particular acts not involving a specialized skill if such acts were an integral part of what, overall, was the provision of professional services. Of course, however, not every act taken in the course of providing professional services is encompassed by the exclusion. Sexual abuse is not encompassed by the exclusion.

In addition, it has been held that when a service is provided by a nonprofessional employee, but is one for which the employer professional was ultimately responsible, the exclusion still applies. The hiring and supervision of the employee constitutes an integral part of the process of rendering professional services.

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15 909 F.2d 133 (5th Cir. 1990). See *Utica*, 110 S.W.3d at 456.


17 *Utica*, 110 S.W.3d at 457.

18 The professional services exclusion states that the policy does not apply to: “...Bodily injury ... due to rendering or failure to render any professional service [including] any health service ...” See *Utica*, 2003 WL 21468776 at **2.


20 See discussion at text for notes 34-35.

21 *Utica*, 2003 WL 21468776 at **5. See *Am. States Ins. Co. v. Bailey*, 133 F.3d 363 (5th Cir. 1998) (holding that insurer has no duty to defend or to indemnify its insured against claims that could not be bought absent underlying and excluded tortious activities); *Folsom Investments, Inc. v. Am. Motorists Ins. Co.*, 26 S.W.3d 556 (Tex. App. – Dallas 2000, no pet. h.) (concluding that insurer has no duty to defend or indemnify its insured against claims that could not be brought absent the underlying and excluded tortious activities).

22 *Utica*, 2003 WL 21468776 at **5.
See Data Specialties, Inc. v. Transcon. Ins. Co., 125 F.3d 909 (5th Cir. 1997) (finding no coverage under CGL policy for those sums insured became “legally obligated to pay as damages,” where insured was not at fault); Hi-Port, Inc. v. Am. Intern. Specialty Lines Ins. Co., 22 F. Supp.2d 596 (S.D. Tex. 1997), aff’d, 162 F.3d 93 (5th Cir. 1998) (holding that if insured was not negligent insured was not legally obligated to pay damages and CGL insurer owed no duty to indemnify for a voluntary payment); Rocor Intern., Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 77 S.W.3d 253 (Tex. 2002) (finding that insurer was not obligated to indemnify insured on claim on which insured is not liable).

Utica, 2003 WL 21468776 at **5.

Id.

Utica, 2003 WL 21468776 at **7.

Id.


We use the term “decision-makers” here to describe persons who decide whether there is coverage, i.e., the insurance company claims representative, or triers of fact in the courts.


Chemstar, Inc., 797 F. Supp. at 1549 (policy term “results in” denotes a causal relationship between an occurrence and property damage).


Breas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co., 220 F.3d 1, 7 (1st Cir. 2000) (the phrase “arising out of” indicates wider range of causation than the concept of proximate causation in tort law, it falls somewhere between proximate and “but for” causation); McCarthy Bros. Co. v. Cont’l Lloyds Ins. Co., 7 S.W.3d 725, 729, 730 n.7 (Tex. App. – Austin 1999, no pet. h.) (the phrase “arising out of” in endorsement to subcontractor’s commercial general liability (CGL) insurance policy making the general contractor an additional insured for liability arising out of the subcontractor’s work for the general contractor was not limited to liability stemming directly from the subcontractor’s negligence and could extend to the general contractor’s sole negligence); Jarvis Christian College v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 197 F.3d 742, 747 n. 5 (5th Cir. 1999) (the phrase “arising out of” means originating from, having its origin in, growing out of or flowing from); Beretta U.S.A. Corp. v. Fed. Ins. Co., 117 F. Supp.2d 489, 493-94 (D. Md. 2000), aff’d, 17 Fed. Appx. 250 (4th Cir. 2001) (the phrase “arising out of” implies only but for causation); Capitol Indem. Corp. v. 1405 Associates, Inc., 340 F.3d 547, 550 (8th Cir. 2003) (under Missouri insurance law, when the phrase “arising out of” is used, the applicable causation standard is not the strict “direct and proximate cause” standard applicable in general tort law; instead, “arising out of” may be established by a simple causal relationship between the accident or injury and the activity of insured).

When an exclusion prevents coverage for injuries “arising out of” particular conduct, “[a] claim need only bear an incidental relationship to the described conduct for the exclusion to apply.” Scottsdale Ins. Co. v. Texas Sec. Concepts & Investigation, 173 F.3d 941, 943 (5th Cir. 1999); Sport Supply Group, Inc. v. Columbia Cas. Co., 335 F.3d 453, 458 (5th Cir. 2003).

See discussion at text for notes 34-35.

Causal analysis should differ based on the fact that a policy is a first-party or third-party policy (i.e., liability insurance policy). M. Elizabeth Medaglia, Richard S. Kuhl, Gregory H. Horowitz, The “Concurrent Cause” Theory: Inapplicable to Environmental Liability Coverage Disputes, 30 TORT & INS. L. J. 823, 825 (Spring 1995) (hereinafter
referred to as the “Medaglia article”). The Medaglia article quotes from Garvey v. State Farm Fire & Cas. Co., 770 P.2d 704, 710 (Cal. 1989):

[T]he right of coverage in the third-party liability insurance context draws on traditional tort concepts of fault, proximate cause, and duty. This liability analysis differs substantially from the coverage analysis in the property insurance context, which draws on the relationship between perils that are either covered or excluded in the contract.


39 Id.


42 PROSSER & KEETON, § 41 at 266; RESTATEMENT (SECOND) OF TORTS §432, cmt. a, at 430 (1965) (hereinafter Restatement).

43 PROSSER & KEETON, §41 at 265.


46 See Salem Group v. Oliver, 607 A.2d 138, 142 (N.J. 1992) (Clifford, J., dissenting) (“ ’[I]n 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.’ ”); Vanguard Ins. Co. v. Clarke, 475 N.W.2d 48, 49 (Mich. 1991) (third-party liability policy).


50 U.S. Liquids, 271 F. Supp.2d at 933.

51 On rehearing, when the Court decides whether to sustain the majority opinion, the Court will hopefully also revisit the Guaranty Association’s position. That position perhaps resulted from the perceived need to avoid the “number of occurrences” question if the causation argument was lost. In other words, if the Court rejected the Guaranty Association’s argument that the cause of plaintiffs’ damages was the single occurrence of failure to keep drugs secure from tampering, the Court would obviously choose the alternative, the multiple injections of tainted drugs. Under this latter choice, there would be forty-four occurrences instead of a single occurrence. Depending on the dates of the injections, this choice could subject the Guaranty Association to payment of claims for multiple occurrences/multiple policy limits rather than for one occurrence/one policy limit.


53 See, e.g., LINDA G. ROBINSON, JACK P. GIBSON, COMMERCIAL PROPERTY INSURANCE, p. V.T.1 (International Risk Management Institute, Inc., 2003), providing that:

“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 causes or events that contribute concurrently or in any sequence to the loss.”