Proximate Cause – The Wayne Tank Principle and The Three Little Pigs

The proximate cause of a loss is the dominant factor that leads to that loss, which can significantly affect the outcome of insurance claims. Understanding this principle is crucial for navigating insurance coverage disputes.

The question of what is the proximate, or dominant cause of a loss is one that has been the cause of the loss of many trees over the years with so many articles, judgements and insurance assessments being written on large volumes of paper.

The Wayne Tank principle relates to an English decision of *Wayne Tank & Pump Co Ltd v Employers Liability Assurance Corp Ltd [1974] QB 57*. In that case there was a fire at the insured's factory and the factory was destroyed. It was found that the proximate cause of the fire was the negligence of the insured's employee, and that was an exclusion under the policy. The court found that the loss was not covered due to the exclusion.

At common law the general principle then was that if there are two or more proximate causes, but that one of those causes was excluded under the policy then the insurer is not liable to indemnify the insured for the loss, notwithstanding that the other cause of the loss is not an excluded loss and falls within the ambit of the policy coverage. So if the policy covered fire or storm, but the loss was also caused by an excluded cause the entire claim could arguably be excluded.

Of course it is not always easy to determine on any factual scenario what the proximate cause of the loss is.

Take the three little pigs. Depending upon whether you are reading a child friendly modern version or one of the more traditional ones, the first two pigs suffered their loss when they lazily built their houses out of twigs and straw. The smart pig suffered no such loss as he built his house out of bricks.

So what caused the loss? Was it the fact that the first two houses were built out of twigs and then straw, or was it the fact that a wolf came along and blew their house down? I will leave that out there for the loss adjusters to answer.

What then if the pigs had an insurance policy which covered wolf damage but excluded poor design and construction? Australian courts have been keen to point out that each decision will turn on its own facts, and have recently been moving away from the general Wayne Tank Principle as always applying. Following summaries from earlier cases, in the Federal Court of Australia Full Court case *LCA Marrickville Pty Ltd v Swiss Re International* (2022), Moshinsky J cited the general principles of proximate cause as follows;

1. A proximate cause is determined based upon a judgment as to the 'real', effective', 'dominant' or 'most efficient' cause;
2. There may be more than one proximate cause of loss;
3. The words 'proximate cause' and 'direct cause' are often used interchangeably;
4. Proximate in this context means proximate in efficiency, rather than in time;

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5. The proximate cause principle is not divorced from the terms of the particular policy under consideration but was based upon the inferred common intention of the parties and would not apply if it would defeat the manifest intention of the parties.

When there is more than one proximate cause of loss, one must go back to the contractual intentions by construing the words of the insurance policy.

After the intense storms in NSW last year, a multitude of property damage insurance claims have arisen. We have handled a number of queries from clients who have had their insurance claims declined because of claims of defective building. We can assist you on advising in this regard.

Key takeaways

- Proximate cause is the dominant cause of loss and can affect insurance claims.
- The Wayne Tank principle illustrates how exclusions in insurance policies can impact coverage.
- Australian courts are moving away from rigid applications of the Wayne Tank principle.
- Multiple proximate causes can exist, necessitating careful interpretation of insurance policies.
- Recent storms in NSW have led to increased queries regarding insurance claims related to property damage.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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