

## Regulatory/Law

# Complicated Cats

Losses caused by multiple perils such as wind, rain, hail and flooding often create complex insurance coverage issues.

The United States experienced a historic year in 2017 for weather and climate events, according to the National Centers for Environmental Information, with 16 separate billion-dollar disaster events that included hurricanes Harvey, Irma and Maria, and the wildfires across the Western states. Those events accounted for just a few of the 219 separate disasters that occurred from 1980 to 2017, and caused damage costing, in aggregate, over \$1.5 trillion.

In addition to exorbitant costs, catastrophic storms often lead to complex insurance coverage issues. One of the frequent legal questions at the center of claims arising out of a catastrophic weather event is how coverage is impacted when a loss is caused by multiple perils, and the relevant insurance policy may cover one (or more) of the causes of the loss, but exclude another. For example, an issue may arise when a hurricane destroys a home, and the loss was caused by wind, rain, hail and flooding, i.e., multiple perils. If a homeowners insurance policy covers wind, rain, and hail, but excludes flood waters, is the loss covered?

Courts across the country disagree about property insurers' liability for losses attributable to both covered and excluded risks. The majority of jurisdictions have adopted the efficient proximate cause doctrine to resolve multiperil causation questions, including Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Washington, D.C., Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, North Dakota, New Hampshire,

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New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia and Wyoming. The doctrine holds that the efficient cause that sets other causes in motion is the cause to which the loss is attributable. If the efficient cause is covered by the insurance policy, then coverage exists, even if excluded causes contributed to the total loss.

Some states, including Florida and Texas where a high number of property losses occur, follow the concurrent cause doctrine. A minority of states take this policyholder-friendly position, which allows coverage if at least one of the multiple causes of a loss is covered by the policy, even if another concurrent cause is excluded. In addition to Florida and Texas, Kentucky, Minnesota, North Carolina, Pennsylvania, and Wisconsin follow the concurrent cause doctrine.

Insurance companies have attempted to contract around the confusion that arises out of multicause losses by including an anti-concurrent cause (ACC) provision. An ACC provision can help clarify an insurance company's intent

to extend exclusion provisions to circumstances where a loss results from concurrent causes.

However, the variation in common law doctrines between jurisdictions has resulted in contradictory interpretations of identical contractual provisions. While some states have declined to interfere with contractual decisions made by carriers and their insureds (by adding an ACC provision), others have gone as far as banning ACCs by statute.

With the incidence of natural disasters on the rise, we can expect to see ACC clauses appear more frequently in property insurance policies. **BR**