

SUMMER LAW UPDATE

***MASSACHUSETTS SJC HOLDS
ANTICONCURRENT CAUSE
PROVISIONS VALID AND
ENFORCEABLE***

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Two recent cases decided by the Supreme Judicial Court of Massachusetts have affirmed the effectiveness and enforceability of so-called anticoncurrent cause provisions. These provisions disclaim coverage for losses deriving from a combination of covered and excluded risks. They typically provide, “[s]uch loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.” Thus, if a peril covered by an insurance policy causes damage, but an excluded peril combines to directly or indirectly cause that damage, an anticoncurrent cause provision will operate to preclude coverage.

In Boazova v. Safety Ins. Co., 462 Mass. 346 (2012), the Supreme Judicial Court of Massachusetts held that an anticoncurrent cause provision was not ambiguous and therefore enforceable. In Boazova, the plaintiff claimed the “hidden seepage” provision of her insurance policy covered damage to her home. The trial judge

granted the insurer’s motion for partial summary judgment because the insured failed to prove the “hidden seepage” provision of the policy covered the loss. Moreover, the trial judge held that even if the insured could satisfy her burden, the policy’s anticoncurrent cause provision precluded coverage because an excluded peril (“surface water”) combined to cause the damage. On appeal, the Supreme Judicial Court held that even though the insured satisfied her burden of proving the “hidden seepage” provision covered the claimed loss, an excluded peril, “surface water,” either directly or indirectly contributed to the damage, and the policy’s anticoncurrent cause provision therefore precluded coverage. In so holding, the Court found that such provisions are not ambiguous and will be enforced.

Similarly, in Surabian Realty Co., Inc. v. NGM Ins. Co., 462 Mass. 715 (2012), the Supreme Judicial Court held an anticoncurrent cause provision precluded coverage where the loss resulted from the combination of a covered peril (backed-up drain water), and an excluded peril (surface water). The Court found that even though backed-up drain water and surface water frequently operate in tandem, the anticoncurrent cause provision did not so foreclose the possibility of coverage as to render the indorsement illusory. The Court noted, for example, that in the absence of some other excluded peril, the policy

would still cover damage resulting from the backup of an interior drain at the property. Similarly, the Court explained coverage may be present in situations where “heavy rain enters a sewer system, is diverted out of the system, and is then the sole cause of damage to property.” Id. at 722.

In sum, the crux of these decisions is to affirm the enforceability of anticoncurrent cause provisions. Therefore, when a policy contains such a provision, and the loss derives from the combined effect of a covered and excluded peril, there will be no coverage in Massachusetts.

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