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## **CONCURRENT CAUSATION/EFFICIENT PROXIMATE CAUSE**

Litigation following Hurricane Katrina highlighted the difficulties in sorting out the existence of insurance coverage when covered and uncovered perils converge to cause a loss. The combination of wind-driven forces and flooding occasioned by Hurricane Sandy places this dichotomy at the forefront of issues to be assessed in determining the existence of insurance coverage for storm-related claims. While some jurisdictions describe this confluence as “concurrent causation,” others, including New Jersey, describe the necessary analysis as determining the “efficient proximate cause.”

In Ariston Airline & Catering Supply Co., Inc. v. Forbes, 211 N.J. Super. 472, 487 (Law. Div. 1986), the Court considered a claim by an insured to recover for damages to its warehouse floor caused by a combination of a frost heave, design or construction defects, and other factors. Canvassing the manner in which other courts adjudicated similar disputes, the Ariston Court observed that “[n]umerous cases hold that coverage is provided where the policy does not exclude the efficient cause of the damage even though it excludes other contributing causes.” Id. at 486. The Court then held that “if the efficient cause of the loss was a design or construction defect, it was a cause which set in motion a series of events, the last of which was the formation of ice lenses and the consequent heaving of the earth which caused the damage. This opinion holds that both first and last events are covered. Either is enough.” Id. at 487.

More recently, in Simonetti v. Selective Ins. Co., 372 N.J. Super. 421, 430 (App. Div. 2004), the Appellate Division considered whether mold and other property damage claimed by the homeowners arose from a covered or uncovered peril. The homeowners argued that the damage arose from a rainstorm, a covered peril, while the insurance company argued that the problems resulted from faulty construction, an uncovered peril. The Simonetti Court remanded the matter to the trial court for a hearing on the precise cause of the damage. Id. at 432. According to the Court, “the fact that two or more identifiable causes -- one a covered event and one excluded -- may contribute to a single property loss does not bar coverage.” Id. at 431. “With regard to sequential causes of loss, our courts have determined that an insured deserves coverage where the included cause of loss is either the first or last step in the chain of causation which leads to the loss.” Ibid.

Some policy forms contain provisions known as Anti-Concurrent Causation Endorsements designed to preempt this type of controversy. Indeed, the Simonetti Court relied on the lack of an anti-concurrent causation endorsement in the policy in remanding the matter back to the trial court. Id. at 431. Absent such language, the outcome of claims stemming from multiple sources will hinge more on factual development than policy language.

Schenck, Price, Smith & King's Hurricane Sandy Insurance Advisory Group has prepared a presentation on a wide range of topics which are likely to arise from Sandy-related insurance claims. Please feel free to contact any member of the Group with any questions which you may have at 973-539-1000.

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